

EAST WEST PARTNERS

MANAGEMENT COMPANY, INC.

October 15, 2010

Submitted by email to regcomments@fhfa.gov

Alfred M. Pollard, Esq.
General Counsel
Federal Housing Finance Agency
1700 G Street, NW, 4th Floor
Washington, DC 20552
Attention: Guidance on Private Transfer Covenants (No. 2010-N-11)

Re: Guidance on Private Transfer Covenants (No. 2010-N-11)

Dear Mr. Pollard:

This letter is written in strong opposition to the Federal Housing Finance Agency's (FHFA) proposed Guidance that its regulated entities should not back mortgages on properties encumbered by private transfer fee covenants. We dispute the FHFA's conclusion that all transfer fees increase housing prices and cause title problems. We argue that transfer fees should exempt transfer fees payable to 501(c)(3) charitable organizations, community associations, or that are payable to or imposed by governmental entities.

The Town of Chapel Hill, North Carolina adopted an affordable housing ordinance in 2005 for the purpose of creating home ownership opportunities for low and moderate income households within Town limits, where real estate is relatively expensive. The Town approved a large condominium project named East 54 that contains affordable housing units pursuant to the ordinance. The Special Use Permit for East 54 approved by the Town Council requires the condominium declaration to impose a 1% transfer fee on all the "market rate" residential units. The "affordable" units are exempt from the transfer fee. East 54 has been developed and many unit closings have occurred, with the developer paying the 1% transfer fee on the initial sales of market rate units.

The 1% transfer fee is payable to the Community Home Trust ("CHT"), a non-profit 501(c)(3) corporation established for the purpose of creating and maintain permanent affordable housing in Chapel Hill. CHT purchases the affordable units in East 54 and then "sells" them in a 99 year lease transaction to low to moderate income residents. The transfer fee monies are

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maintained in a dedicated bank account in the name of CHT, and are expended on behalf of the affordable unit "owners" to subsidize the cost of living at East 54, principally to subsidize the monthly dues assessed by the non-profit condominium association against the units. The transfer fees are not paid directly or indirectly to the developer.

The FHFA's concerns about transfer fees can be distilled to two: increased housing prices and title problems. In the case of East 54, the opposite is true. The transfer fees at East 54 ensure that there is permanent, affordable housing in that community, and help to maintain East 54 as a high quality development with marketable units. There is no title problem because the transfer fee is clearly disclosed in the East 54 sales contract, the offering statement required by the North Carolina Condominium Act, and in the public records by being part of the recorded Declaration of Condominium. The transfer fee does not adversely impact sales at East 54. In one of the worst real estate markets in American history, East 54 has sold 97 out of 127 units.

The FHFA's proposed Guidance would have an extreme adverse effect on East 54 and the affordable housing program in Chapel Hill. The market rate unit buyers purchased their units at East 54 rightfully expecting to be able to obtain mortgages. If mortgages now become unavailable, the units will become unmarketable and prices will plummet. When the prices of the market rate units plummet, owners will be more inclined to stop paying association dues as their investment is devalued. At the same time the transfer fee payments will stop because sales of market rate units have stopped, thereby decreasing the association dues subsidy for the affordable units. The condominium association will quickly fall behind budget, and the decrease in project quality and unit value will accelerate. With the one action, the Federal government will have managed to destroy a vibrant, high quality development providing 33 affordable housing units in addition to 94 market rate units. The developer would be forced to seek removal of the transfer fee in order to stabilize the project. This requires the vote of 75% of all unit owners and the consent of CHT and the Town Council, and the success of that action is hard to predict.

We strongly recommend that the FHFA take the following actions with respect to the proposed Guidance:

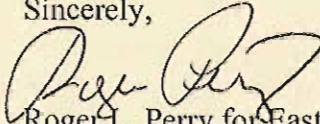
A. Exemptions. The Guidance should contain well crafted exemptions for transfer fees payable to community associations, 501(c)(3) charitable organizations, or that are otherwise imposed by or payable to government entities. State legislatures, including North Carolina's, have passed legislation prohibiting the enforceability of transfer fees. This legislation contains exemptions to minimize unintended negative consequences.

B. Disclosure. Concerns about title transparency should be addressed by disclosure requirements. For example, the FHFA could require through its supervised entities that the existence of the transfer fee be identified in a bold legend on the first page of the covenants.

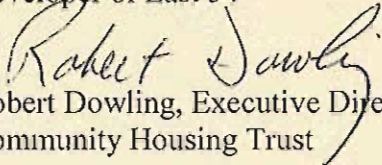
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C. Not Retroactive. The Guidance should only apply to transfer fee covenants established after the effective date of the Guidance. It should not be retroactive. This will avoid the ambush effect of the proposed Guidance on unit owners who could not reasonably have predicted the Federal government's move to make mortgages unavailable to them, and which would cripple developments like East 54 where the developer, CHT and the Town could have planned differently if given the opportunity.

Sincerely,



Roger L. Perry for East 54 Associates, LLC,
Developer of East 54



Robert Dowling, Executive Director,
Community Housing Trust