From: Matt Boeger [Matt@boegerland.com]
Sent: Wednesday, October 13, 2010 4:50 PM
To: !FHFA REG-COMMENTS
Subject: Private Transfer Fee Covenants, (No. 2010-N-11) - PROPER DISCLOSURE IS THE ONLY REAL ISSUE

Mr. Pollard:

My family recently obtained approvals for a large destination resort project that will represent over 900 new jobs for an economically impoverished rural county in Northern California. We have been relentlessly pursuing some form of financing for this project for more than two years to no avail. I believe that private transfer fee covenants represent a viable option to create capital that would help us bring this project to reality along with the badly needed jobs and 40,000 new visitors annually to this rural resort area. Lake County's own economic impact analysis identified more than $50,000,000 in ANNUAL local benefit to the County.

We established the Clear Lake Foundation. The Foundation's mission is to preserve, promote and protect Clear Lake itself. The primary goal of this 501c3 foundation is to collect contributions from the private business community, with our project being the primary contributor, and allocate these funds to many of the conservation efforts already underway around Clear Lake. The mechanism we plan to use to provide several million dollars of funding to the Foundation is the PTF covenant. Your agency's proposed restrictions would eliminate this source of funding.

In my view, the recordation of a PTF covenant represents an obligation against a property that is no different than many other types of obligations that are currently recorded against properties every day. A common form of infrastructure financing used in California is called a Mello Roos infrastructure bond. This type of bond financing has been in use for decades here and has never been a problem. Mello Roos bonding is used to fund a communities infrastructure development. Each property owner in a project that has a Mello Roos bond has an additional monthly obligation, in addition to their regular mortgage, that must be paid. Everyone knows that a property within a project that has a monthly Mello Roos obligation is worth less than a like kind property that does not.

Most homebuyers would prefer to live in communities that have additional amenities like parks and open space that provide a higher quality of life. The problem is that the homeowner's association costs required to pay for these additional amenities can be prohibitive for many.

I believe that PTF covenants are superior to these other commonly used forms of infrastructure finance due to the fact that the home buyer does not have to make payments on a monthly basis and only has this fixed obligation due at the close of escrow when the homeowner presumably has funds to pay. This covenant is essentially a "mini-bond" that can spread additional community and infrastructure costs over a very long period.

These covenants will create an income stream that I can offer to an investor in exchange for capital that I can use to build my project that I can't otherwise obtain. My overall capital cost burden will be reduced by this same amount. This means I can deliver the same home to my buyers at a significantly lower price point and still make a profit. Alternatively, a well capitalized builder with plenty of his own cash, could reasonably take the position that he will sell the homes at a breakeven today in exchange for the income stream off into the future. Regardless, this tool allows the total up front capital burden to be pushed out into time and spread over many future owners of the same home. We all know that it is the first phase of any development project that is so very difficult and risky to complete. It is for this reason that many projects fail and therefore the sources of investment are few and very expensive if they do exist. This significantly drives up the costs (risk v reward) associated with development.

I think that the real issue here from a consumer protection standpoint is that there must be adequate disclosure required. California has already addressed this issue and the legislature has already codified disclosure requirements. It is my understanding the largest title company in the Country has also agreed to proper disclosure as addressing their opposition.

We all know that the source of the opposition to the use of PTF comes from the title and real estate broker groups.

Title companies worry that they will be on the hook for missing a recorded obligation and therefore have additional liability. The Brokers seem to have the opinion that they will have to share some portion of their commissions at the closing table when the seller has to pay the PTF as well. I think these concerns are misguided and in any event not related to protecting the consumer.

In addition, the most common application of the PTF is to provide revenue for environmental preservation or homeowners association costs. Whenever a project developer is required to dedicate open space or preserve sensitive habitat, there is an ongoing maintenance cost associated with this effort. Usually the developer is required to tender a large endowment that will generate a large enough return to fund this maintenance obligation in perpetuity. A small project we were recently involved in was required to put up over $2.0mm to maintain several acres of wetland. The environmental preservation aspects are a fundamental part of land development today but the associated costs significantly increase the up front capital costs for a project. Again, this means that the costs for a home constructed there are going to be that much higher.

Please reject the attempts by certain special interest groups to convince your agency to effectively kill the use of PTF as a tremendous tool in making housing more affordable for all Americans as well as providing other community and environmental benefits that would otherwise not be economically viable. As long as the presence of the PTF is adequately disclosed to any potential purchaser then each buyer can make their own informed judgement about whether or not the sale price of the property is fairly adjusted to compensate for the additional cost upon resale.

Thank You,

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