

CBA 
COLORADO BAR ASSOCIATION
Established in 1897

October 14, 2010

Via E-Mail: regcomments@fhfa.gov

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
Fourth Floor, 1700 G Street, NW
Washington, D.C. 20552

Attn: Public Comments

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

Dear Mr. Pollard:

The purpose of this letter is to provide the FHFA comments to the above-referenced Guidance on behalf of the Real Estate Section Council of the Colorado Bar Association (the "RESC"). The purposes of the RESC include, among others, (i) to provide leadership in the practice of real estate law, (ii) to serve the public good, and (iii) to participate actively in the drafting, review and promotion of legislation and other laws, rules or regulations that affect real property, title and the practice of real estate law.

We are writing to express our grave concern about the potential impact the proposed Guidance could have on many residential real estate transactions in Colorado if adopted in its current form.

As we believe is the case in many other States, there are many communities in Colorado, a number of which include hundreds or thousands of residential units, that have existing transfer fee covenants in place. Many of these existing transfer fee covenants are found within the Declaration of Covenants, Conditions & Restrictions establishing the homeowner's association for the community, with the transfer fee being payable to the association for purposes benefitting the community. Others are found in various other recorded covenants, establishing transfer fees payable to community foundations or other non-profit entities for various community, charitable, conservation, recreational and other purposes. Many of these have been in existence for decades, and we are not aware of any

evidence that such fees have been a significant impediment to sales of residences in these communities.

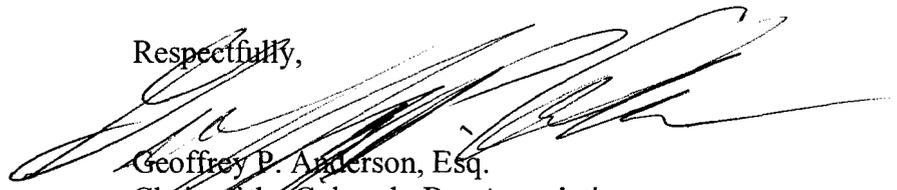
In many instances, these existing transfer fee covenants are extremely difficult, if not impossible, to terminate. Many would require the vote or approval of a majority or supermajority of all of the owners and mortgagees within the community, which is obviously a serious challenge in large communities. Some do not have any provision allowing for termination at all.

While we recognize that some transfer fees may be contrary to what many people believe to be good public policy, we feel the proposed Guidance paints with too broad a brush. We believe, if FHFA is to issue a Guidance along the lines of the proposal, that it should contain exceptions for the types of transfer fees we describe in this letter. Legislation passed by various States that prohibit certain private transfer fees generally acknowledge that beneficial fees, like those described in this letter, should not be prohibited.

If the Guidance were adopted in its current form, and Fannie Mae and Freddie Mac could not purchase any mortgage loans secured by mortgages on homes in these communities, Colorado homes would be rendered unmarketable, and the homeowners would be unable to refinance their existing mortgages. Contrary to the FHFA's stated concern that any transfer fees "will have a particularly detrimental effect on still fragile housing markets" we believe that the Guidance itself will have a far more severe and detrimental effect, especially in the current fragile housing market, and is one that is completely unnecessary and easily avoidable.

Given that most of the transfer fee covenants currently in existence in Colorado would be expressly allowed even under the strictest prohibitions adopted under some State transfer fee legislation (i.e., transfer fees payable to homeowner associations and other non-profit entities to be used for purposes benefitting the community), and there is no evidence we are aware of that indicates these sorts of covenants have posed any significant impediment to sales of homes in these communities, we strongly urge the FHFA to reconsider its proposal to adopt a Guidance that would have such a devastating affect on many homeowners in Colorado.

Respectfully,



Geoffrey P. Anderson, Esq.
Chair of the Colorado Bar Association
Real Estate Section Council