

Guidance on Private Transfer Covenants (No. 2010-N-11)From: Doris Goldstein [newtownlaw@gmail.com] on behalf of Doris Goldstein [dgoldstein@newtownlaw.com]

Sent: Thursday, October 14, 2010 10:32 PM

To: !FHFA REG-COMMENTS

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

As an attorney who works with developers who are trying to create a real sense of community, I am adamantly opposed to the proposed regulation. Many thoughtful developers have included within their documents provisions for the creation of 501(c)(3) or 501(c)(4) organizations that are funded in part by transfer fees. These organizations serve many purposes, depending on the community. Some provide cultural programming, education and events. Others protect the environment and conserve natural areas within or adjacent to the community. In all cases, the benefits achieved by these organizations enhance the community more than any minor detrimental effect on sales that might be caused by the transfer fees. If that were not the case, developers would not ask to have these fees in their documents.

In addition, many communities have a small transfer fee that goes to the homeowners' association, usually no more than three months' assessments. These kinds of fees also stay within the community and enhance its value.

There is a misconception that buyers are somehow surprised to learn about these fees. Transfer fees are in the recorded instruments, along with all kinds of other important restrictions on property like architectural control and the requirement to pay homeowner assessments. That's where the law says the transfer fee needs to be. If they weren't there they wouldn't be enforceable. It's the only way to provide notice, particularly to subsequent purchasers, and if individual buyers are surprised at closing, that means someone didn't do appropriate inquiry.

While I would be saddened to think about these kinds of beneficial transfer fees disappearing in the future, I am even more appalled to think that existing communities will be penalized because they already have these kinds of fees written into their documents. Amending documents is always difficult and sometimes impossible. It is extremely unreasonable to refuse to lend in communities that include fees that were entirely legal when written and were, until now, widely regarded as a "best practice" for drafting homeowner association documents.

Thank you very much for your consideration. Sincerely, Doris Goldstein

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