

Guidance on Private Transfer Fee Covenants, (No. 2010-N-11)From: Hutcherson, Kerry (VOF)
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Sent: Friday, October 15, 2010 11:15 AM
To: !FHFA REG-COMMENTS
Cc: Lee, Bob (VOF)
Subject: Guidance on Private Transfer Fee Covenants, (No. 2010-N-11)

October 15, 2010

Alfred M. Pollard

General Counsel, Federal Housing Finance Agency

Fourth Floor

1700 G Street, NW

Washington, DC 20552

Dear Mr. Pollard,

I write to submit comments on behalf of the Virginia Outdoors Foundation (VOF) regarding the notice of proposed guidance that was published in the Federal Register by the Federal Housing Finance Agency as item No. 2010-N-11. The Virginia Outdoors Foundation is a body politic of the Commonwealth of Virginia, and it was created in 1966 by the General Assembly "to promote the preservation of open-space lands and to encourage private gifts of money, securities, land or other property to preserve the natural, scenic, historic, scientific, open-space and recreational areas of the Commonwealth." In furtherance of its statutory mission, the Virginia Outdoors Foundation holds over 3,000 conservation easements on over 500,000 acres of farmland, forestland, natural habitat, and historical and recreational lands throughout the Commonwealth. Conservation of these lands and their conservation values from harmful development provides a significant public benefit to the citizens of Virginia, and in particular, land conservation helps to protect the Chesapeake Bay, a national treasure, by limiting impervious coverage and non-point source pollution.

As a conservation easement holder, VOF is obligated to monitor and enforce the terms of the easements that it holds. Tracking ownership of eased properties as they are transferred from one landowner to another is a critically necessary condition precedent in VOF's monitoring and enforcement practices. VOF can track most transfers of eased property through diligent courthouse research, but VOF endeavors to make contact with new owners of eased property as soon as possible after the property is transferred to a new owner. VOF has found that making this sort of contact in a timely fashion after a new owner obtains title to an eased property helps to educate the new owner about the restrictions of the conservation easement so as to maintain good landowner relations and minimize easement violations. VOF has recently resolved to insert the following provision in its Deed of Easement Template: "At such time as any interest in all or any portion of the Property is conveyed (except for conveyances such as deeds of trust or mortgages, access or utility easements, or boundary line adjustments) and before title is passed, Grantor shall be required to pay One Hundred Fifty (\$150.00) Dollars to Grantee for recovery of the costs of educating a new owner about the terms of this Easement and their applicability to any interest in all or any portion of the Property. The amount set forth above may be modified from time to time by Grantee's Board of Trustees based on changes in staff and material costs." The purpose of including this provision is two-fold: 1) it requires the owner of eased property to notify VOF of an upcoming transfer of the property so that VOF can make contact with the new owner, and 2) it allows VOF to recover its costs expended by educating the new owner about the terms of the conservation easement. The amount of cost recovery is minimal (\$150), and it does not apply to conveyances such as deeds of trust or mortgages, access or utility easements, or boundary line adjustments. While VOF has not yet executed and recorded any deeds of conservation that contain this provision, VOF's 2011 Deed of Easement Template contains the provision and therefore the provision will start to appear in deeds of conservation easement held by VOF in early 2011.

While VOF questions whether FHFA's proposed guidance regarding private transfer fees would even apply to the provision described above (i.e., VOF is a public body, and therefore even if the provision is construed to be a transfer fee, it should not be considered to be "private"). Nevertheless, VOF respectfully requests that the FHFA do the following: (1) Insert an exception for tax-exempt organizations' and public bodies' use of transfer fees; (2) Continue to support homes and homeowners with community-benefits fees; (3) Support reasonable Community-Benefits Fee Standards that distinguish between community-benefits fees (charitable purpose) and abusive fees that benefit only developers; (4) Allow communities to freely associate to support community services, schools, affordable housing, and conservation with no new taxes; and (5) At a minimum, extend the comment period through January 30, 2011, to allow for fully informed decision-making that fully considers the implications of the proposed harsh change. Thank you for considering these comments. Please feel free to contact me if you have any questions.

Respectfully submitted,

Kerry Brian Hutcherson
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