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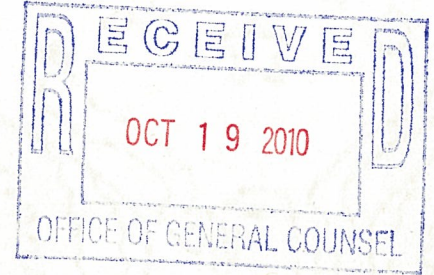
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October 14, 2010



Edward DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street NW, Fourth Floor
Washington, DC 20552

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

Dear Mr. DeMarco:

I am writing to express my strong concerns about the proposed Guidance on Private Transfer Fee Covenants currently being considered by the Federal Housing Finance Agency. This proposal will have an enormously destructive impact on the housing market in New York City. Transfer fees or "flip taxes" are a common way for cooperatives and condominium associations to finance capital improvements, create reserve funds, reduce maintenance fees and preserve affordable housing. The transfer fees directly benefit residents of the building; they do not go to some third party or developer. Because the fees are reflected in the governing documents of the organization, they are not hidden or difficult to find, and real estate agents, lenders, title companies and all other parties are aware of their existence. Accordingly, there is no risk of unknown liens, title defects, or other hidden problems.

I understand that as many as 65-75% of all cooperatives and condominiums in New York City have some version of a transfer fee. Forcing these buildings to eliminate their transfer fees will have a significant negative impact on the housing market in New York City and elsewhere in the country. It will cause steep increases in monthly costs for residents, increase the need for borrowing, reduce the number of buildings that are well-maintained and, at least during the period before the transfer taxes are eliminated, will render tens of thousands of apartment units virtually unsalable.

1. Transfer Fees Keep Buildings in Good Repair. Buildings that have transfer fees usually use the fees for general maintenance or major capital repairs, such as replacing boilers or roofs, installing or replacing elevators, creating roof gardens or other amenities and otherwise adding to the value of the building. Buildings without transfer fees often have to impose special assessments on tenants when capital repairs are needed. Indeed, many buildings in my district that currently do

not have transfer fees are considering adopting them in order to give them the financial wherewithal to make repairs that have been postponed due to lack of funds.

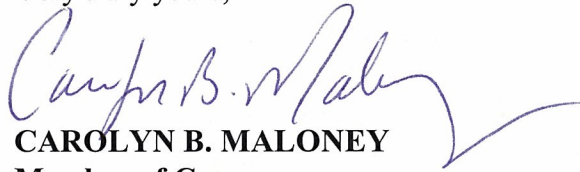
2. Steep Increases in Maintenance Fees, Substantial Borrowing or Deferred Repairs Would Follow Elimination of Transfer Fees. Cooperatives and condominiums that have transfer fees typically set fees and assessments at levels that are inadequate to cover the cost of repairs or capital improvements. Elimination of transfer fees as a source of revenue would leave cooperatives and condominiums with several unattractive alternatives: raise monthly maintenance fees, impose costly special assessments, borrow or defer repairs. All of these alternatives have extremely negative consequences: (i) Increased fees and assessments will make housing unaffordable for many, particularly individuals on fixed or low incomes who can least afford a precipitous increase; (ii) Additional borrowing will add risk to the New York City housing market; and (iii) Deferred repairs will reduce the quality of the housing stock in New York City.
3. Transfer Fees Are a Mechanism for Preserving Affordable Housing. Transfer fees are a common choice for residents of cooperatives and condominiums who want to keep their annual costs low. For the elderly and others on a fixed income, and residents of moderate means, transfer fees have meant the difference between having sufficient income to remain in their homes and being forced to sell. Further, many housing complexes in my district with transfer fees formerly participated in the Mitchell-Lama affordable housing program. Under the Mitchell-Lama program, developments pay low real estate taxes in exchange for keeping rents affordable for moderate income tenants. The tax benefits end when the building leaves the Mitchell-Lama program, resulting in substantial cost increases for the building. Most of those developments that have opted to leave the Mitchell-Lama program have adopted flip taxes in order to keep monthly maintenance fees low enough to enable existing tenants to remain in their homes. A substantial number of these tenants would likely have to sell their homes without the benefit of transfer fees to keep costs low.
4. Eliminating Transfer Fees Would Be Destructive to New York City Housing Market. Presumably, if this Guidance is adopted, most developments with transfer fees would seek to eliminate them, which would require a vote by cooperators and condominium owners to amend the By-laws and Proprietary Lease. Typically, this requires a supermajority vote, with a non-vote counting as a vote against the proposal. There are many buildings in my district in which it is not easy to get 2/3 of the cooperators or unit owners to vote on any proposal, even if it would be in their best interest. For some buildings, it could take years. No financing would be available to the building until the amendments were approved. At best, potential buyers would have to accept unfavorable terms from financial

institutions that would not be able to sell the loans on the secondary market, which would impose significant downward pressure on the prices sellers could command. This would have an extremely negative effect on the housing market in New York City.

5. Reserves Will Shrink. Without transfer fees, many buildings will no longer be able to maintain large reserves to cover costs in the case of an emergency. Transfer fees provide a significant infusion of funds, while it takes time to build up a reserve through monthly maintenance charges or assessments.
6. Risk that Former Shareholders will Seek Refund. I understand that there is a risk that former shareholders and unit owners who were required to pay a Transfer Fee on the assumption that everyone would have to pay it, would now sue for a refund. It would not be fair to impose this risk on the cooperatives and condominiums that adopted Transfer Fees in good faith.

Far from imposing a burden, transfer fees in cooperatives and condominium associations benefit all parties. Sellers can demand the premium that a well-maintained building commands, existing tenants enjoy lower maintenance fees and purchasers have the benefit of buying into a well-maintained building with reasonable monthly costs. Accordingly, I strongly oppose this Guidance as proposed, as it applies to cooperatives and condominium associations.

Very truly yours,



CAROLYN B. MALONEY
Member of Congress

CBM/mre