Guidance on Private Transfer Fee Covenants (No. 2010-N-11)   October 15, 2010

I am writing to provide public comment regarding the proposed draft Guidance regarding Private Transfer Fee Covenants. Two perspectives require some analysis and reconsideration of the proposed draft Guidance: (1) The business model under which a transfer fee is imposed makes an immense difference. (2) A case study demonstrates that transfer fees can actually enhance property values and add to market stability. Different facts and circumstances require different approaches; however, the proposed draft Guidance appears to be a one size fits all solution to a problem that is likely quite limited in scope.

BUSINESS MODEL: As a former property owner in the Washington DC suburbs (Arlington, Fairfax, and Alexandria) I am quite familiar with the business model for property development and subsequent homeowner associations in that area. A developer acquires the land, the state or county build and maintains roads, the developer's builder builds the houses, and subsequently the municipal governments provide services. The primary function of the homeowners associations in that business model is to maintain the appearance of the neighborhood through an architectural review board. Some contract for trash removal (where it is not provided by the county), and others may plant flowers at the entrance to the neighborhood. In this business model, the homeowners association does not own or maintain the infrastructure.

There is a significantly different business model utilized in which there is a community owners association that is much different from a homeowners association. In South Carolina, these are frequently referred to as gated communities or plantations. A developer acquires the land, builds roads and sells lots. The lot owners then individually contract with a builder when they are ready to build a home. Access to such subdivisions is usually restricted, with armed security providing some law enforcement functions, and funding of all infrastructure maintenance and enhancement is the direct responsibility of the property owners. Some aspects of this model are similar to condominium ownership. My following case study reflects a plantation where the 1,000 property owners jointly own the community: 7 miles of fence, 5 gates, 22 miles of roads, a community center, and hundreds of acres of land (woods, wetlands, lagoons, lakes).

CASE STUDY: Through my work in budgeting, accounting and financial planning, I have attained insights into the highly successful operation of the Indigo Run Community Owners Association. This organization utilizes a fully disclosed transfer fee to fund improvements and enhancements to the community owned infrastructure that would not otherwise be financially possible. In this case, property values have been enhanced, liquidity maintained, property transfers fostered, and market stability improved due to property transfer fee covenants, as the following metrics demonstrate:

1. Indigo Run homes that sold this year through September were on the market a median of 74 days. This clearly demonstrates that property transfers were not hampered and liquidity was not reduced by a property transfer fee.

2. Fannie Mae reported a mortgage default rate of 1.07% for 2009. Indigo Run properties experienced a foreclosure rate of only .62% for 2009. Trulia.com reports that there are presently 306 foreclosed properties for sale out of 35,252 in the local real estate market, reflecting a local 2010 default rate of .87%. Only 3 of these 306 properties are located in Indigo Run, for a plantation 2010 default rate of .37%. These two metrics clearly demonstrate that there is not additional risk, instability or uncertainty as a result of a property transfer fee.

3. Trulia.com reports that 8.4% of the properties in the local real estate market are presently listed for sale. By contrast only 4.8% of Indigo Run properties are presently listed for sale. This clearly demonstrates the stability and positive effects of a property transfer fee.

4. Trulia.com reports that home sales prices have fallen 34.5% in the local market over the last 5 years. In that same timeframe, the median home sale price on Indigo Run decreased by 15.2%. This further demonstrates the stability and positive effects of a property transfer fee. Value is actually built and enhanced.

5. The median property sale price is $615,000 on Indigo Run this year. The property transfer fee is detailed on the real estate contract and at closing on the HUD-1 form. The present Indigo Run transfer fee is a fixed amount of $2,766, which represents .4% of the median sales price and is collected at closing from buyer/seller funds as they negotiated. It should be noted that an additional minimum of 7% of the sale price (6% real estate commission, .25% municipal transfer fee, and a minimum of .75% other taxes and fees) is collected at closing. There is no complication, confusion, uncertainty, reduced transparency or risk as a result of a property transfer fee.

SUMMARY: In the case of Community Owner Associations, private transfer fee covenants can actually add value, stability and liquidity to the real estate market. The funding of new and improved infrastructure enhancements may depend on property transfer fees. The other approach of special assessments for these purposes, would most likely result in instability, uncertainty and potential liens for nonpayment. The value, liquidity and marketability of Community Owner Association properties could be impaired as a result of the proposed draft guidance on Private Transfer Fee Covenants.

Very respectfully,
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