

From: Heather Gould [Hgould@goldfarbblipman.com]
Sent: Friday, October 15, 2010 3:24 PM
To: !FHFA REG-COMMENTS
Subject: Guidance on Private Transfer Covenants (No. 2010-N-11)

I am writing to comment on the proposed guidance concerning private transfer fee covenants. Our law firm represents numerous public agencies and nonprofit 501(c)(3) affordable housing organizations, including community land trusts, that operate affordable homeownership programs.

The public agencies and nonprofits that we work with often implement their affordable homeownership programs through resale restriction agreements which are recorded against title to the homes. The resale restriction agreements typically require that the buyer of the home be low or moderate income at the time of purchase, continuously occupy the home, and sell the home to another low or moderate income household for an affordable price. Fannie Mae has already established rules as to when these resale programs are permissible. See Fannie Mae Announcement 06-03.

Sometimes, public agencies and nonprofits will charge a fee that is paid by the seller upon the owner's sale of the home. The fee is intended to cover the public agency's reasonable costs related to income qualifying the new buyer, calculating the affordable sales price, marketing the home for the seller, and otherwise administering the transfer and other components of the applicable homeownership program.

The public agencies that we work with are often required by law to impose resale restriction agreements. For example, California's Community Redevelopment Law (California Health and Safety Code Section 33334.3) requires that a 45 year resale restriction be recorded against title to homes that are constructed or substantially rehabilitated and assisted with low and moderate income housing funds. Similarly, nonprofit organizations are often required to impose resale restrictions. Sometimes public agencies utilize nonprofits to implement the Redevelopment Law programs (and thereby require that the nonprofit administer a 45 year income and use restriction). Other times, nonprofits are simply trying to comply with IRS requirements concerning tax exemption. For example, the IRS's Revenue Proceeding 96-32 states that resale restrictions are one way for a housing organization to comply with tax exemption requirements. It is costly and time consuming for agencies and nonprofits to administer affordable homeownership. The transfer fees collected by agencies and nonprofits are one way to help agencies and nonprofits pay for the costs incurred in ensuring that the affordable homes remain affordable to and occupied by low and moderate income households. Without such fees, there is no dedicated source of funding, and the ability to enforce the income and use restrictions could be severely impaired.

It would be useful to public agencies and nonprofits administering affordable homeownership programs described above if FHFA were to permit such entities which are operating resale programs that are otherwise Fannie Mae compatible, to charge the selling owner for reasonable costs related to income qualifying the new buyer, calculating the affordable sales price, and otherwise administering the transfer and other components of the applicable homeownership program.

Similar to the resale program described above, some nonprofits operate affordable homeownership community land trust programs. Under a typical community land trust program, the nonprofit land trust will lease land to a low or moderate income homebuyer who will own the home located on the land. The homebuyer and land trust will enter into

a ground lease that imposes certain affordability covenants, such as requiring that the homeowner be low or moderate income at the time of purchase, occupy the home, and sell the home to another low or moderate income household for an affordable price upon resale. Fannie Mae has also established rules as to when Community Land Trust programs are permissible. See Announcement 06-03. Land trust programs face costs that are similar to resale restriction programs. It would be reasonable for FHFA to permit an exception to the private transfer fee rules that would allow a land trust, whose program is otherwise Fannie Mae compliant, to charge for reasonable costs related to income qualifying the new buyer, calculating the affordable sales price, and otherwise administering the transfer and other components of the applicable homeownership program.

We believe that clarifications to the proposed rule as outlined above would meet the goals of protecting homebuyers from unreasonable charges, while allowing public agencies and nonprofits to assure the long-term retention of affordability of homes developed as affordable housing.

Thank you for your time and consideration.

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