



CALIFORNIA ASSOCIATION OF REALTORS®

October 15, 2010

Alfred M. Pollard, General Counsel
Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552

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

2010 OFFICERS

STEPHEN L. GODDARD
President

BETH L. PEERCE
President-Elect

DON FAUGHT
Treasurer

JOEL SINGER
*Executive Vice President/
State Secretary*

Dear Mr. Pollard:

I am writing on behalf of the California Association of REALTORS® (C.A.R.) to comment on the Federal Housing Finance Agency's (FHFA) proposed guidance on private transfer fees (PTF). C.A.R. strongly supports FHFA's proposed prohibition on private transfer fees for Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. However, C.A.R. is asking the FHFA to modify the proposed guidance to "grandfather" existing PTF so as not to disadvantage homeowners who are already in a property with an existing PTF. Lastly, C.A.R. believes the FHFA should require a disclosure of any existing PTF in line with California's existing statute (Civil Code Section 1098.5).

C.A.R. would like to bring to your attention a number of problems with PTF, including:

- **The fees are imposed on buyers every time the property sells — and can last forever.** PTF are collected for as long as mandated by the deed. There are no limits — the fee can be imposed indefinitely. And, every time the typical home is sold, the person or non-government entity that is the beneficiary of the fee collects a hefty sum — up to \$10,000 or more.
- **Private transfer fees put homeownership farther out of reach for more families.** According to a recent study by the C.A.R., every time the cost of a home increases by \$10,000, another 200,000 purchasers can't afford to buy a home.
- **There are no controls over how the collected revenue is spent.** The entity is levying the PTF is free to decide how the money is spent — with no control by government, and no requirement that the fee benefit homeowners or their community.
- **Only government should have the power to tax.** But anyone selling a home in California is free to add a private transfer "fee" at the time of every subsequent sale. The highest rate C.A.R. is aware of is currently 1.75% of the home's value — but there's no limit.
- **Private transfer fees skim home equity.** One website even shows how to impose these "taxes" to personally benefit sellers — and the website operator!
- **No non-profit carve out.** While supporters of PTF have advocated for a charitable exception, in practice, these charities often provide little if any benefit back to the community. There have even been instances where non-profit groups threaten developers with legal action to block construction. The creation of a PTF for the benefit of the non-profit is the resulting compromise.



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C.A.R. has concerns that the proposed guidance as proposed will negatively impact the ability of homeowners to market their properties in cases where there is already a PTF on title. While C.A.R. has fought against PTF for over twenty-years at the state level, their existence necessitates our asking the FHFA to grandfather existing PTFs for the purpose of mortgage financing by the entities it regulates. Fannie Mae and Freddie Mac are responsible for over sixty percent of the mortgage finance market so the impact could be considerable. The guidance as proposed would prevent homeowners from marketing to these conventional buyers if their homes already have a PTF on title.

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This has the potential to impact tens of thousands of home in California. The beneficiaries of the PTF have no ownership stake in the property and therefore no incentive to remove the PTF from title. This would severely hinder the ability of these homeowners to sell their properties. Many may be forced to reduce their listing prices in order to attract cash buyers in the market.

A major hurdle in determining how many PTF are currently on homes is the absence of reporting and disclosure requirements in California prior to 2007 (Civil Code, Section 1098.5). Under California law, a receiver of a transfer fee imposed prior to January 1, 2008, had to record a specified document against the property in the office of the county recorder in which the property is located. Additionally, California's law addresses FHFA's concern that "disclosures may be insufficient and add costs not fully understood by consumers." Under California law, a PTF on a residential property must present actual dollar-cost examples of the fee for a home priced at \$250,000, \$500,000, and \$750,000.

For the foregoing reasons, C.A.R. is strongly opposed to private transfer fees, but does support grandfathering existing PTF for the purpose of federal financing. C.A.R. will continue to seek legislation in California to outlaw their imposition on home buyers as we have for the last twenty years.

Thank you for your consideration of this request. Please do not hesitate to contact me if you have any questions.

Sincerely,

Steve Goddard, President
California Association of REALTORS®



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