



October 15, 2010

VIA E-MAIL: regcomments@fhfa.gov

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)

Dear Mr. Pollard:

On behalf of Lennar Charitable Housing Foundation ("LCHF"), the undersigned hereby respectfully submit comments regarding the Federal Housing Finance Agency's "Guidance on Private Transfer Fee Covenants" (No. 2010-N-11) (the "Guidance") as printed in the Federal Register on August 16, 2010. LCHF is a nonprofit public benefit organization (IRS Section 501(c)(3)) which provides funding through transfer fees for more than 55 other nonprofit (501(c)(3)) organizations which provide housing for homeless people in California and Nevada.

For the reasons cited herein, LCHF respectfully urges the Federal Housing Finance Agency ("FHFA") to withdraw its proposed Guidance and permit the various states to regulate transfer fee covenants as they deem appropriate. For example, Section 1098.5 of the California Civil Code requires that all transfer fee covenants be fully disclosed in a prescribed manner.

An unintended consequence of FHFA's proposed Guidance is the imposition of severe restrictions on the marketability of homes by rendering all such properties unfinanceable due to the fact that any loans on such properties could not be sold to Fannie Mae, Freddie Mac or the Federal Home Loan Banks. One of the articulated purposes of the Guidance is to increase liquidity and stability in the housing finance market. The Guidance will have the exact opposite effect—it would decrease liquidity and stability by rendering hundreds of thousands of homes virtually unsaleable and unfinanceable, and would, as a result, cause a significant confusion and devaluation of all such properties in the midst of perhaps the worse housing crisis since the 1930s.

In January, 2010, the American Land Title Association ("ALTA") proposed model legislation dealing with the issue of transfer fee covenants. This proposed model legislation includes, among other limited exemptions, (a) an exemption for the type of beneficial transfer fees payable to a homeowners association to be used exclusively for purposes authorized in the underlying documentation so long as no portion of the fee is required to be passed through to a designated third party, and (b) an exemption for those beneficial transfer fees paid to an organization described in Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code to be used exclusively to support cultural, educational, charitable, recreational, (01946987.3)



environmental, conservation, or other similar activities. Approximately 18 states have enacted legislation to regulate private transfer fees, the vast majority of which have adopted similar exemptions.

In summary, LCHF recommends that FHFA withdraw its Guidance and leave the regulation of private transfer fee covenants to the various states to deal with as they deem best for their respective citizens through comprehensive disclosure requirements or otherwise. Alternatively, LCHF requests that FHFA exempt from its Guidance the type of "beneficial" transfer fees paid to non-profit organizations such as homeowner associations and LCHF to avoid the potentially catastrophic marketability problems on homes subject to any kind of transfer fee covenant that would be created if the Guidance were to be adopted as proposed.

Respectfully submitted,

Lennar Charitable Housing Foundation,
a California nonprofit public benefit corporation

A handwritten signature in black ink, appearing to read "Jim LeSieur", with a long horizontal flourish extending to the right.

Jim LeSieur
Board Member

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