

Stephen Cross, Deputy Director
RE: Proposed Rule Change Private Transfer Fees [2010-N-11]
October 14, 2010

Lack of transparency, accountability, and lack of disclosure

Proponents of the private transfer fee argue that the captured monies are put to a public purpose benefiting homeowners. We are skeptical of these assertions, since the financial records of the auxiliary corporations are closely-held. They are termed "private" or "confidential" by those entities that have custody of the records; thus the records are resistant to if not barred from homeowner scrutiny.

This issue of transfer fee monies was the subject of a 4.5 year battle in the California courts culminating in an Appellate decision in *Golden Rain Foundation v Franz et al* (2008) 163 Cal.App.4th 1141. Franz is a senior living in a senior community, Leisure World Seal Beach (Orange County.) She made multiple written requests to the Golden Rain Foundation, a community service organization, to inspect and copy the Foundation's financial records. She made the request under California Civil Code 1365.2. When the Foundation refused, she (and other homeowners) sued in small claims court. They won multiple small claims suits in the Orange County courts, but the Foundation appealed the decisions in superior court. The Foundation lost every round of the legal battle, but appealed finally to the Fourth District Appeals Court, which published its opinion that the Foundation must open its financial records to the homeowners from whom they collected the transfer fees and other monies.

Franz herself learned only at close of escrow on purchasing her home that it was subject to a \$700 transfer fee whose purpose was to enable her to play golf, though she is not a golfer. A transfer fee is levied by the Golden Rain Foundation every time a Leisure World property is transferred.

The California Research Bureau, a wing of the California State Library, reports that California associations now collect more than \$200 million in assessments annually. The association industry itself annually publishes statistics on California common interest developments; it reported in 2009 that associations now control \$9.9 billion – in cash. These figures do not include monies collected by auxiliary corporations like the Golden Rain Foundation, which have under their control an unknown number of dollars comprising transfer fees. This was the quest of Ms. Franz and the other Leisure World seniors: to learn how much was in the Foundation's coffers and to what use it was being put. Was it being used to benefit homeowners or was it being used for sky-high salaries, pension plans, lifetime health care benefits and a private van for the general manager, the management infrastructure, and perhaps the Foundation board itself?

Transfer fees are a particular burden to seniors or anyone in search of affordable housing which association living may offer. Seniors in particular buy into an association as part of their strategy to downsize into more affordable housing. First they are hit with a surprise transfer fee – like Ms Franz – and then they discover that they must pay continuing assessments to a second corporate entity disguised as fees payable to a "Landscaping" or "Recreational" committee whose mission is a questionable one. The fees are subject to no statutory caps or else to unreasonable caps, e.g. 1% of the sales price. Finally, they are

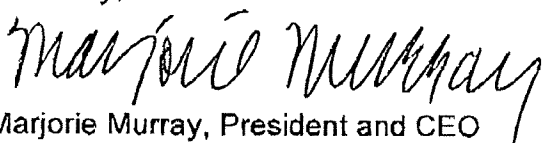
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unable to find out how this "committee" or "CSO" is using their dollars, because the committee records are labeled "confidential."

We agree with the comments contained in the proposed rule change that "To the extent that private transfer fee covenants benefit unrelated third parties, one cannot claim that a service or value is rendered to the relevant property owner or community." The association industry has presented scant evidence that transfer fees directly benefit the homeowners – particularly seniors – who pay them. If the industry should present convincing evidence, then we would be more than happy to evaluate it. However, the evidence brought to us by California homeowners over the last ten years is to the contrary.

We urge FHFA to adopt the rule on private transfer fees as proposed.

Sincerely,



Marjorie Murray, President and CEO
Center for California Homeowner Association Law
A 501c3 nonprofit
1305 Franklin Street, Suite 201
Oakland, California 94612
www.calhomelaw.org
mmurray@calhomelaw.org