

PRIVATE TRANSFER FEE COVENANTS GUIDANCE (No. 2010-N-11)

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Deadline for Comments: 10-15-10 (Postmark Date)

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To: Alfred M. Pollard
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Date: Friday, October 15, 2010

Attention: Public Comments "Guidance on Private Transfer Fee Covenants, (No. 2010-N-11)".

Dear Sir:

ON 10-8-10 I FIRST BECAME AWARE OF THE ABOVE GUIDANCE. I OWN AND RESIDE IN A CO-OP APARTMENT IN A BUILDING LOCATED IN ASTORIA, QUEENS, NEW YORK CITY AND AM CONCERNED THAT THE GUIDANCE AS PRESENTLY WRITTEN COULD REPRESENT A SERIOUS THREAT TO THE FINANCIAL STABILITY OF MY CO-OP AND TO MANY OTHER PRESENTLY WELL MANAGED AND FINANCIALLY STABLE CO-OPS AND CONDOMINIUMS IN NEW YORK CITY, NEW YORK STATE AND THE REST OF THE USA.

IT APPEARS THAT THERE WAS LITTLE OR NO PUBLICITY OR MEDIA COVERAGE ABOUT THIS PROPOSED GUIDANCE IN MY NEIGHBORHOOD WHERE THERE ARE MANY CO-OPS AND CONDOS.

THE FINE PRINT IN THE FEDERAL REGISTER DATED 8-16-10 UNDER THE ABOVE TITLE SEEMS TO INCLUDE all CONDOS AND CO-OPS WITH “FLIP TAXES” IN THE PROHIBITION. EVEN THOSE PRESENTLY WITHOUT FLIP TAXES ARE AFFECTED BECAUSE IT PROHIBITS ANY FUTURE USE OF THIS VERY IMPORTANT REVENUE SOURCE.

CO-OPS AND CONDOS ARE LUMPED TOGETHER WITH DEVELOPERS, SPECULATORS AND FINANCIAL FIRMS WHICH SECURITIZE, PACKAGE AND SELL PRIVATE TRANSFER FEE COVENANTS AS SECURITIES AND RECORD THE COVENANTS AS ENCUMBERANCES ON THE PROPERTIES FOR PERIODS AS LONG AS 99 YEARS. PROCEEDS OF THESE FEES ARE NOT PAID TO THE PROPERTY OWNERS BUT INSTEAD GO TO AN OUTSIDE THIRD PARTY HOLDER OF THE SECURITIZED RIGHT TO THE FEE.

TO THE BEST OF MY KNOWLEDGE, MOST CO-OPS AND CONDOS GENERALLY DO NOT DO ANY OF THE ABOVE THINGS AND THE SO CALLED “FLIP TAX” CAN USUALLY BE CHANGED OR ELIMINATED BY THE CO-OP OR CONDO BOARD AT ANY TIME THEY SEE FIT TO DO SO. FOR THESE AND MANY OTHER REASONS, THESE CO-OP AND CONDO “FLIP TAXES” ARE QUITE DIFFERENT FROM PRIVATE TRANSFER FEE COVENANTS WHICH, AS NOTED ABOVE, CAN BE AND OFTEN ARE SECURITIZED AND TRADED.

ALSO, IN ANY REAL ESTATE TRANSACTION, THERE SHOULD BE AND GENERALLY IS FULL DISCLOSURE OF ANY “FLIP TAX” OR ANY COVENANT OR OTHER RESTRICTION OR POTENTIAL ENCUMBERANCE AT OR BEFORE CLOSING. THIS IS TRUE WHEN SOMEONE PURCHASES A CO-OP OR CONDO OR ANY OTHER TYPE OF HOME OR PROPERTY.

I BELIEVE THAT RECENT MEDIA ARTICLES HAVE MENTIONED INSTANCES WHERE SOME HOME PURCHASERS HAVE BEEN SURPRISED AFTER PURCHASING TO FIND COVENANTS THEY WERE NOT PREVIOUSLY AWARE OF. IT IS DIFFICULT TO UNDERSTAND HOW SUCH “SURPRISES” CAN OCCUR IF THE

ATTORNEYS AND TITLE INSURERS DO THEIR JOBS PROPERLY. REPORTEDLY, SOME STATES HAVE ADDRESSED THIS ETHICAL PROBLEM WITH ENHANCED DISCLOSURE RULES.

PROBABLY THE TWO MOST IMPORTANT FACTORS IN DETERMINING THE SUITABILITY OF BANK INVESTMENTS IN MORTGAGES, AND INDEED, IN ANY OTHER TYPE OF INVESTMENT, HAVE GENERALLY ALWAYS BEEN AND WILL LIKELY CONTINUE TO BE THE ABILITY OF THE BORROWER TO REPAY THE LOAN AND THE QUALITY OF THE COLLATERAL IF ANY, REGARDLESS OF THE PRESENCE OR ABSENCE OF TRANSFER FEE COVENANTS.

CO-OP AND CONDO BOARDS GENERALLY CAREFULLY SCREEN ALL PROSPECTIVE RESIDENTS FOR INCOME AND OTHER CRITERIA AND USUALLY ALSO REQUIRE A SUBSTANTIAL DOWN PAYMENT, GENERALLY ABOUT 20%. IN MANY CO-OPS AND SOME CONDOS APARTMENTS ARE OFFERED AT PRICES SOMEWHAT BELOW PREVAILING MARKET LEVELS. THESE FACTORS AND MANY OTHERS CONTRIBUTE TO THE GENERALLY HIGH QUALITY OF CO-OP AND CONDO APARTMENTS AS COLLATERAL FOR MORTGAGES, ALTHOUGH THERE HAVE BEEN SOME MARKED EXCEPTIONS TO THIS IN SOME AREAS WITH HIGH FORECLOSURE RATES AND WHERE UNSCRUPULOUS MARKETING AND LENDING PRACTICES HAVE OCCURRED.

PROCEEDS OF THE "FLIP TAX" ARE FREQUENTLY USED FOR CAPITAL IMPROVEMENTS WHICH FURTHER ENHANCES THE QUALITY OF THIS TYPE OF HOUSING AS MORTGAGE COLLATERAL. **SUCH MORTGAGES ARE VERY GOOD INVESTMENTS FOR FANNIE MAY, FREDDY MAC AND THE BANKS AND SHOULD CERTAINLY CONTINUE TO BE ALLOWED.**

CO-OPS AND CONDOS PRESENTLY PROVIDE REASONABLY PRICED QUALITY HOUSING TO MILLIONS OF NEW YORK CITY AND NEW YORK STATE RESIDENTS AND TO MILLIONS MORE THROUGHOUT THE ENTIRE USA. THE RESTRICTIONS ON MORTGAGES TO CO-OPS AND CONDOS WITH FLIP TAXES IN

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**THE PROPOSED GUIDANCE {No. 2010-N-11} WOULD SERIOUSLY
IMPAIR THE FINANCIAL STABILITY OF ALL SUCH HOUSING.**

**TO THE BEST OF MY KNOWLEDGE MOST "FLIP TAX"
PROCEEDS ARE NOT PAID TO THIRD PARTIES SUCH AS
SPECULATORS OR INVESTORS AND THERE IS NO
SECURITIZATION OR LONG TERM RECORDED PROPERTY
ENCUMBERANCE. PLEASE DO NOT REMOVE THIS
IMPORTANT FINANCIAL MANAGEMENT TOOL FROM CO-OPS
AND CONDOS.**

ACKNOWLEDGEMENT AND RESPONSE REQUESTED.

Robert, Brachy
10-15-10