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

October 14, 2010

Re: Guidance on Private Transfer Fee Covenants [No. 2010-N-11]

Dear Mr. Pollard:

This letter is a public comment on the Federal Housing Finance Agency's proposed guidance No. 2010-N-11 on Private Transfer Fee Covenants.

The lawyers in our firm have created dozens of homeowners associations for condominiums, as well as single and multi- family residential development in the State of Washington over the last thirty years. We continue to represent many of those associations long after the original developer has sold all of the units and surrendered control of the association to the resident owners.

If the proposed guidance is adopted in its current form, it will have a devastating adverse impact on the struggling housing market because home buyer access to mortgage financing, which is already difficult to obtain, will be denied for any home in a community which uses transfer fees to pay for various programs and services that benefit and enhance the value of the homes in those projects. Moreover, it will make it difficult, if not impossible, for existing owners in such projects to refinance their homes. This is in direct contravention of the FHFA's stated objectives of supporting wider availability of housing finance options and affordable housing.

We urge the FHFA to either withdraw the proposed guidance entirely and allow state legislatures to address this issue or to, at a minimum, exempt transfer fee covenants which are payable to an owner association or a similar nonprofit entity and devoted to purposes which benefit the land encumbered by the covenant or the community in which it is located.

We are aware that the initial impetus for the guidance was recent publicity about private transfer fees which are used as a tool to generate extra revenue for a developer long after the units have been sold to owner-occupants. These arrangements provide little or no benefit to the homeowner associations and communities subject to these covenants. As you know, some seventeen states have already passed legislation addressing the problems caused by such covenants and more are likely to do so in 2011.

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Transfer fees have been in use, without significant objection, for many years in residential communities as a method to pay for various community benefits. For example, thousands of homes are subject to transfer fees for such purposes as:

1. The provision of working capital to owners associations to pay for future maintenance and repair of capital facilities benefiting the owner-residents, as playgrounds, parks, stormwater and pollution control systems, and community domestic water systems.

2. Educational, cultural and social services programs for the benefit of residents, including community recreational centers which provide day care programs, English as second language classes, after school programs for children, and adult education classes.

3. Environmental mitigation and protection of wildlife habitat, including protection programs for endangered and threatened species.

4. Implementation of affordable and low income housing programs.

These beneficial programs are well accepted in the marketplace because buyers uniformly regard them as adding value to their homes. In fact, most developers and builders strive to include these types of amenities because homes in communities with these features sell more quickly and for higher prices. We are unaware of any statistically significant data that indicates such fees adversely impact the marketability or value of homes.

Moreover, the law, at least in Washington, requires disclosure of such fees at the time a purchase and sale agreement is executed. The law further creates a right to cancel a purchase contract or, if a sale has closed, to either rescind a completed sale or seek damages, including an award of attorney fees, if the disclosure is not made or is inaccurate. No one can justifiably claim to have been unaware of such fees without a suitable remedy.

An additional difficulty that would be created by the proposed Guidance is that many transfer fee covenants cannot be changed without approval of a supermajority of the owners in the development and, in many cases, without the consent of the local government that approved the project initially. Local government approval is required where, as a condition of development approval, local building and planning officials have required that a transfer fee covenant be created and enforced in order to finance ongoing maintenance and repair of improvements which are necessary to protect environmental resources, maintain required open space and recreational facilities, preserve archeologically significant features and so on. Most local jurisdictions will not allow such covenants to be modified or terminated without lengthy public hearing processes and without creation of some alternative mechanism for funding the maintenance and repair obligations that were the reason the fees were required in the first place.

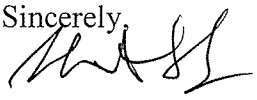
Even if it is possible to obtain the approvals of local governments and supermajorities of owner residents necessary to modify covenants, the process can take months or years, leaving

owners in the affected projects without the ability to sell or refinance their homes in the meantime.

We respectfully request that the FHFA withdraw the proposed guidance and allow state legislatures to address these issues, or, at a minimum, amend the guidance to create an exemption for transfer fees which are paid to a homeowners association or similar non-profit entity and used to pay for programs and projects which benefit the community which is subject to the fee.

Thank you for your prompt attention to this comment.

Sincerely,



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Ltr to FHFA 10-13-2010