NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

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October 15, 2010

Mr. Edward J. DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, NW
4th Floor
Washington, DC 20552

Re: Federal Register Notice 2010-N-11 Private Transfer Fee Covenants

Dear Mr. DeMarco:

I am writing on behalf of the 1.1 million members of the National Association of REALTORS® (NAR) to support the Federal Housing Finance Agency's (FHFA's) proposed guidance on the use of private transfer fees for the Federal Home Loan Banks (FHLBs) and the government sponsored enterprises (GSEs) Fannie Mae and Freddie Mac. We fully support the FHFA guidance that states the FHLBs and the GSEs should not purchase mortgage encumbered by private transfer fees and that such purchases are not prudent or safe or sound investments.

The National Association of REALTORS® is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®.

As you know, a private transfer fee commonly occurs when a developer adds a covenant to the deed of each new home, or a homeowner agrees to add a covenant to an existing home's deed, that requires future owners of the property to pay a percentage of the selling price to a designated beneficiary. While the percentage fee paid is tied to the home price, it does not correlate with any tangible benefit received by the home buyer. The transfer fee rule is a covenanted mandate so it is extremely difficult to reverse the requirement once it is in place. In many cases the fee is attached to the deed for up to 99 years meaning several subsequent buyers may pay a fee where no service was rendered or benefit received.

Private transfer fees increase the cost of homeownership, do little more than generate revenue for developers or investors and typically provide no benefit to homebuyers. They place an inappropriate burden on the transfer of property. Moreover, there is virtually no oversight on where or how proceeds can be spent, on how long a private transfer fee may be imposed, or on how the fees should be disclosed to home buyers. Already, one company is negotiating with institutional investors to "securitize" pools of transfer fees, which will essentially create bonds that can be sold on a secondary market, based on the future cash flows.

The Federal Housing Administration (FHA) recognizes the negative impact of private transfer fees. The U.S. Department of Housing and Urban Development (HUD) General Counsel has confirmed that private transfer fees clearly violate HUD's regulations which prohibit legal restrictions on conveyance and require lenders to convey clear, marketable title.

Should FHFA believe that some private transfer fees have a legitimate place in real estate markets, other ways to minimize unintended consequences should be adopted. An exception should be considered for organizations, such as homeowners associations, where there is a direct benefit to the homeowner. Further, FHFA should ensure that the fees paid are reasonable and fully disclosed to all parties in the transaction. Exception language may read "any fee, charge, assessment, fine, or other amount payable to a homeowners', condominium, cooperative, mobile home, or property owners' association pursuant to a declaration or covenant or law applicable to such association, including, but not limited to, fees or charges payable for estoppel letters or certificates issued by the association or its authorized agent, so long as no portion of the fee or charge is required to be passed through to a third party designated or identifiable by description in the document or another document referenced therein."

FHFA should also consider an exception for existing properties with private transfer fees as the lack of an exception would curb the ability of homeowners to sell their homes. Given the already troubled housing market, prohibiting transactions with existing attached transfer fees could result in a further disruption of real estate markets. We therefore urge you grandfather such existing covenants from the prohibition.

Thank you for your time and consideration of this matter. If you have any questions or concerns, or if we may be of service to you, please do not hesitate to contact NAR's Senior Regulatory Policy Representative, Jerry Nagy, at 202.383.1233 or jnagy@realtors.org.

Sincerely,

Vicki Cox Golder

Vicki Cox Golder, CRB
2010 President
National Association of REALTORS®