

NAR Issue Summary

State and Local Issues / Private Transfer Fees

What is the fundamental issue?

Developers, home owners associations and private individuals are recording deed restrictions requiring the payment of a percentage of the proceeds of future property sales back to the developer, HOA or individual.

I am a real estate professional. What does this mean for my business?

Private transfer fees are another potential obstacle to closing, are a possible source of liability for Realtors, and could create title problems and litigation.

NAR Policy:

The National Association of REALTORS® opposes private real estate transfer fees. NAR believes such fees decrease affordability, serve no public purpose, and provide no benefit to property purchasers, or the community in which the property is located. Exceptions are fees paid to homeowner associations, condominiums, cooperatives, and other tax-exempt organizations that use the proceeds to benefit the property - NAR does not object to such fees.

Because private transfer fee deed restrictions are often difficult to discover, and, therefore, disclose prior to a transaction, REALTORS® risk liability issues. In addition, deed restrictions imposing private real estate transfer fees will position affected properties at a disadvantage in the marketplace, and may well undermine economic stability.

NAR encourages the enactment of statutes, ordinances, or regulations which would prohibit the use of deed restrictions for the purpose of imposing private transfer fees.

Further, in communities where private transfer fees currently exist, the National Association of REALTORS® urges their repeal and opposition to any increases.

Opposition Arguments:

Legislative/Regulatory Status/Outlook

During the 2011 state legislative season, sixteen additional states enacted laws prohibiting private transfer fees in most situations, bringing the total as of September 2011 to 34 states. Prohibition bills were also introduced in 2011 in an additional eight states. More information on these efforts can be found in the NAR State Issues Tracker.



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At the federal level, the Federal Housing Finance Agency (FHFA) published a final rule on March 15, 2012 that restricts **GSEs from investing in mortgages with private transfer fee covenants**. The rule factors in the thousands of comments submitted to the FHFA from various concerned individuals and organizations in response to the FHFA's previous proposed guidance on private transfer fees. The new regulation limits Fannie Mae, Freddie Mac and the Federal Home Loan Banks from dealing in mortgages that have private transfer fee covenants attached to the properties when the fees have no direct benefit to the community. **Existing fee covenants are be grandfathered in so as not to create an entire group of existing homes for which buyers would not be able to get a loan.**

You can view an NAR Press release regarding this issue [here](#).
The final FHFA rule can be viewed [here](#).

Current Legislation/Regulation (bill number or regulation)

No actions at this time.

Regulatory Contact(s):

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