

Congress of the United States
Washington, DC 20515

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

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

Dear Mr. Pollard:

We applaud the Federal Housing Finance Agency (FHFA) for protecting consumers and taxpayers by restricting Government Sponsored Entities (GSEs) of Fannie Mae, Freddie Mac and the Federal Home Loan Banks from investing in mortgages with private transfer fee covenants. FHFA's proposed "Guidance on Private Transfer Fee Covenants, (No. 2010-N-11)" is an effective measure that protects consumers and the security of the GSEs from this predatory financial scheme. Currently, 18 states and the Federal Housing Administration have recognized the danger these encumbrances impose on real estate transactions.

Increasingly, American homes are being burdened by private transfer fees that offer no benefit to the property but rather enrich third-party investors who have no ownership interest in the land. Typically, a private transfer fee occurs when a property's developer quietly slips the fee into a covenant or deed restriction to the property. The covenant requires the sellers to pay one percent of the final sales price to the investor's trustee each time the home is sold for the next 99 years.

Private transfer fees provide no benefit to homeowners, the property or the public, but rather steal homeowners' equity, cloud title to the real estate and depress home prices in the community.

Consumers are essentially forced to pay for the right to sell their property. To illustrate, if a consumer purchases a home with a private transfer fee covenant attached to it for \$200,000, and then resells the home for \$225,000, he will be required to pay \$2,250 back to the developer. If the homeowner made improvements to the property that led to an increase in its value, he will still be obligated to pay the developer part of the appreciation that was earned in sweat equity. Even if the home drops in value, and the homeowner

finds himself underwater on the mortgage, he must still pay the one percent fee. In the end, the homeowner is forced to pay one percent of his equity in exchange for no apparent benefit.

Private transfer fees take an already complicated real estate transaction and make it more difficult. If a consumer refused to pay the fee, the transaction would not close because the private transfer fee is secured by a lien that purportedly runs with the title to the property. This could allow a trustee to foreclose on the property to obtain payment of the fee. This ultimately restrains the ability to freely transfer, or alienate, the land.

Supporters of private transfer fees acknowledge that the mere presence of the fee will require the seller to lower his sales price by 2% or more. Their marketing materials state, "A buyer buying property encumbered by a 1% fee will always pay less than he would have otherwise paid." This artificial reduction in home prices will cause localities to raise taxes to make up the revenue that is siphoned off from the homeowner. As R. Wilson Freyermuth of the University of Missouri School of Law correctly noted, "The enforcement of a private transfer fee covenant will reduce the value of the affected land, creating an artificial reduction in the community's ad valorem tax base. Incremental sums that would have gone to the local community to fund public education, infrastructure, and community services will instead be diverted to developers." And appraisals that are based on comparable sales (comps) will be hurt each time the encumbered house is sold, thus hurting real estate values for all homeowners in the neighborhood.

These covenants are especially predatory because homeowners usually do not become aware of the fee until they close on their home or, worse, when they try to sell their home years later. The obligation may be buried within dozens or hundreds of pages of legal documents, and may not require the consumer's acknowledgment. Even real estate professionals have difficulty discovering whether a private transfer fee covenant has been placed onto a property.

More concerning is news that a proponent of these covenants is attempting to "securitize" pools of transfer fees to create bonds that can be sold on a secondary market, based on projected future cash flows. The proponent claims to have burdened some \$600 billion worth of real estate with these fees. As the recent housing crisis has demonstrated, the deleterious effects of predatory financial products can be exacerbated when they are "securitized" and sold to investors.

Common law requires that for a covenant to burden a property, it must also benefit the property. While the private transfer fees discussed above clearly do not benefit a property, other fees payable to homeowners, condo and co-op associations, environmental conservation and other charitable interests in the community do benefit the property.

When a fee conveys to a homeowner, condo or co-op association, the fee funds the types of amenities and common areas that consumers acknowledge the benefit of when they

move into the community. As such, we believe that these fees and others that directly benefit the land should be exempted from FHFA's otherwise valuable rule.

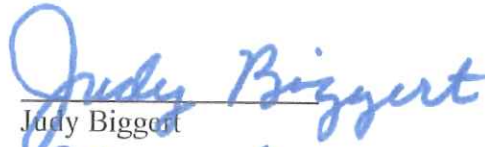
Finally, these fees impair the value of the lender's security and thus expose FHA, Fannie Mae and Freddie Mac to greater risk.

We urge FHFA to move quickly to prevent any more consumers from predatory private transfer fee covenants, and we look forward to working with you on this important issue.

Sincerely,



Brad Sherman



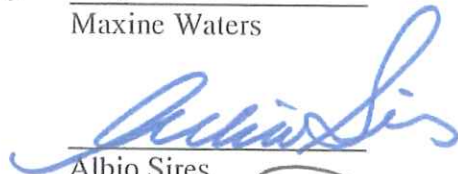
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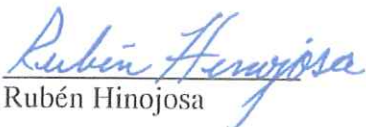
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