

President  
Brian Pitman



Executive Vice President  
Leslie Midgley

October 14, 2010

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

RE: *Public Comments: Guidance on Private Transfer Fee Covenants, No.2010-N-11*

Dear Mr. Pollard:

The Texas Land Title Association (TLTA), representing over 1,000 title agents and underwriters licensed to do business in Texas, appreciates the opportunity to comment on and support the proposed guidance regarding Private Transfer Fee Covenants.

TLTA agrees with the findings and conclusions of the Federal Housing Finance Agency (FHFA) regarding the dangers of transfer fee covenants and would add the following comments and suggested modification.

Comments:

- In the typical transfer fee covenant, the homeowner is saddled with the burden, upon the sale of his or her property, of a fee that will be payable to the previous owner or even a third party based on the sales price. The bargained-for sales price will be diminished by the amount of the fee and not realized by the seller. During the period of the seller's ownership, no benefits accrued to the homeowner, the neighborhood or the community. Instead the benefits, if predictions hold true, will be to those who plan to securitize and sell the obligations (fees) as an investment vehicle. What justification can there be for rewarding the beneficiary of a private transfer fee (who is receiving a percentage of the sales price) for the increase in value resulting from the improvements a homeowner puts into his or her property during ownership?
- We agree with FHFA concerning the possible complications to real estate transactions caused by private transfer fees, but would like to point out the comment may be understating the problem in many states. For example, typical real estate contracts do not allow for the purchaser to object to restrictions and covenants of record affecting subdivisions. Consequently, unless transfer fee covenants are specifically disclosed prior to the execution of a real estate contract, potential homebuyers will not know transfer fee covenants affect the subject property until after the real estate contract has been executed. If the potential purchaser does not want to purchase property with such covenants, she or he will be exposed to either loss of earnest money or the threat of specific performance.

- A number of states have recently passed legislation banning private transfer fee covenants to protect the legitimate rights of homeowners or property owner associations (POA's) that impose historically beneficial assessments used for the improvement and maintenance of the subdivision where the property is located. The Texas Legislature has also attempted to curtail this practice. Unfortunately, some individuals are continuing to illegally engage in private transfer fee schemes believing erroneously that a sham charity structure is enough to protect their activities from violating the Texas statute.
- Transfer fee covenants are creating problems in allowing homeowners and lenders to obtain title insurance. Many title insurance underwriters doing business in Texas have made an underwriting decision, based on the potential risk, not to insure any residential real property with a transfer fee covenant of record unless a full and complete release is obtained. Often, the release is difficult to obtain, resulting in an uninsurable transaction. Furthermore, in many of the covenants the fee is characterized as a lien, resulting in lenders who refuse to loan on such encumbered property. These factors amount to a ticking time bomb relative to ensuring certainty of title in our future real estate market.

Suggested Modification:

TLTA supports the proposed rule, but respectfully offers the following modification. The rule should be amended to allow a transfer fee for the benefit of POA's. This very narrow exception to the general rule against tolerating private transfer fees is justified because of the unique relationship a POA has with the affected property. Potential buyers are usually given adequate notice of POA transfer fees and revenues from such fees used to improve the subdivision in which the property is located can help improve the value of the property subject to the fee in a proximate and easily identifiable manner.

TLTA encourages you to limit any exceptions to just the POA's. Though some may argue that some other community benefit or charity financed by such a fee may indirectly benefit the property or property owners, we encourage FHFA to apply the principles of proximity and ultimate control over the use of the revenues. In a POA context, the homeowner, through his or her voting rights, has the ability to have a say as to how the revenues are spent. Other arrangements, although they may exist for charitable or community causes, ultimately risk disenfranchisement and exploitation of the property owner.

For these reasons and those stated in your proposed guidance we support your conclusions and applaud your judgment.

Sincerely,

A handwritten signature in black ink that reads "BRIAN PITMAN". The signature is written in a cursive, slightly stylized font.

Brian Pitman  
TLTA President