

May 2, 2012

Ms. Carole Galante  
Acting Assistant Secretary for Housing - Federal Housing Commissioner  
US Department of Housing and Urban Development  
Washington, DC 20410

Dear Ms. Galante:

We encourage the Federal Housing Administration to harmonize regulatory treatment of transfer fee covenants with the Federal Housing Finance Agency. We believe multiple federal standards on transfer fee covenants will not benefit homeowners and are unnecessary.

On March 15, 2012, FHFA finalized a rulemaking on transfer fee covenants, establishing a clear, national standard to protect homeowners from equity-stripping private transfer fees while preserving the preeminence of State and local governments over land use standards. FHFA's final regulation concerning transfer fee covenants was broadly accepted due to its adherence to established jurisprudence and State statutes, which find that for a transfer fee covenant to run with the land, the covenant must touch and concern the land and provide a direct benefit to the owners and residents of that land.

We understand that FHA is contemplating a standard for transfer fee covenants which will apply to FHA-insured mortgages. We urge FHA to proceed cautiously and to avoid duplicate and conflicting national standards on transfer fee covenants. The use of transfer fee covenants to benefit encumbered properties is wide-spread and occurs in most regions of the country.

The majority of existing State statutes permit transfer fee covenants where proceeds are delivered to a community association (homeowner, property owner, and condominium associations or housing cooperative corporations) as well as to an agency or political subdivision of federal, State, or local government. FHFA, which received in excess of 4,000 public comments on its proposal, adopted this standard as well, acknowledging that transfer fee covenants used by community associations can provide a direct benefit to the burdened property.

States<sup>1</sup> and FHFA have rejected private transfer fee covenants where proceeds are delivered to a third party with no continuing interest in the burdened property. We believe these private transfer fee covenants are unconscionable, serving only to generate income for a third party at the expense of purchasers. This close coordination of State statute and federal rulemaking offers homeowners new protection from equity-stripping private transfer fees while ensuring that valid transfer fee covenants may continue to be enforced.

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<sup>1</sup> As of April 2012, the following states have existing statutes governing the use of private transfer fee covenants. To review each State statute, click on the corresponding abbreviation: [AL](#), [AR](#), [AZ](#), [CO](#), [FL](#), HI, IA, [ID](#), [IL](#), [IN](#), [KS](#), [KY](#), [LA](#), [MD](#), [MI](#), [MN](#), [MO](#), [MT](#), [NC](#), [NE](#), [NY](#), [ND](#), [NV](#), [OH](#), [OK](#), [OR](#), [PA](#), [SC](#), [SD](#), [TN](#), [TX](#), [UT](#), [VA](#), [WA](#), [WY](#)

The adoption of an additional and potentially conflicting federal standard on transfer fee covenants by FHA will cause unnecessary confusion in the housing market. State legislatures and FHFA have already acted through an open and transparent process to offer homeowners strong protections against transfer fee covenants that do not provide a direct benefit to the land. We strongly urge FHA to accept a mortgagee's compliance with FHFA's transfer fee covenant regulation as compliance with relevant FHA mortgage insurance program rules, guidelines, and requirements.

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 us.

Sincerely,

American Land Title Association  
Community Associations Institute  
Institute of Real Estate Management  
National Association of Home Builders  
National Association of Realtors