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FHFA proposed ban on "Private Transfer Fees"

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On August 13th, the Federal Housing Finance Agency (FHFA) issued a proposed regulation to ban the use of deed-based or covenant-based transfer fees. The proposal would prohibit Fannie Mae, Freddie Mac and all federal home loan banks from purchasing mortgages for properties in communities with deed-based transfer fees. While the target of the regulation appears to be private transfer fees that require a payment to a third party each time a property is sold, the proposed rule, as currently written, would include deed-based transfer fees used by many community associations. The definition of a deed-based transfer fee used by FHFA is fairly broad. For purposes of this document, CAI interprets this to mean any fee or payment required at time of sale of a property by a deed or covenant restriction.

How would this regulation impact community associations?

The impact of such a rule would be devastating to communities with such restrictions. The reason for this is that Fannie Mae, Freddie Mac and the Federal Home Loan Banks supply funding for most bank originated mortgages subject to conforming mortgage limits set by these entities. If they cannot purchase such mortgages from banks, banks will not lend money for purchase of these properties. To further complicate matters, it is difficult - if not impossible - to remove a deed restriction, as it usually requires a super-majority of all property owners to approve such changes and, in some instances, requires the consent of all property owners.

Will this impact fees charged by management companies or associations at the time of a property sale?

Since the target of the proposed regulation are fees that are required to be paid by deed-based or covenant-based restrictions, the proposed rule should not - in most cases - impact fees charged by management companies for production of documents or other services rendered at time of sale when such fees are based upon contractual relationships. CAI's public policy supports the ability of associations and management companies to charge reasonable fees for the production of documents and certification of information necessary at time of sale. To the extent the broad definition of "transfer fees" used by FHFA creates confusion that would impact the ability to recover these costs, CAI will address this in its comments to FHA, if needed.

How is CAI responding to this challenge?

In 2009, in response to a growing set of federal challenges, the CAI Government and Public Affairs Committee established a Federal Affairs Task Force to advise and oversee the Institute's efforts in the federal affairs arena. Working with the task force members and the G&PA Committee, CAI surveyed members to gather data on how communities utilize deed-based transfer fees to support

their arguments and counter FHFA's misperception of these fees. Manager members, board volunteers and business partners all worked in concert to get the word out and the response will help CAI support industry arguments to FHFA on the negative impact of this rule with hard data. Individual data is critical to make the government truly understand the negative impact of the proposed regulation.

Some highlights of the data collected include:

*1,252 communities responded to the survey.

*Close to 50% of communities reported having a deed-based transfer fee.

*Communities reporting such fees represent 482,000 housing units.

*More than 40% of these communities have had such fees in place for 10 or more years.

*Such fees are levied in three ways; a fixed fee, a percentage of sale or a multiple of monthly assessments.

*100% of the fees reported go directly into the community by funding reserves, specific operating expenses, capital project funds or community based charities.

*Two thirds of the properties with deed-based fees would require a two-thirds majority or more of all owners to amend or eliminate such fees.

*Such fees have resulted in a cancellation of a sale within a community less than 1% of all sales.

In addition to this grassroots work, the G&PA staff has been meeting and communicating with other affected associations and reaching out to key members of Congress. Public comments were due on October 15, 2010. FHFA will review all the comments submitted which typically takes anywhere from about 90 days to many months. CAI submitted comments and stepped up efforts to educate members of Congress who have oversight over FHFA. As this is an issue many are following with great interest, an FHFA Resource page with the most up to date information can be found at www.caionline.org. The CAI national response to this issue continues to be strong and it is a great example of members, chapters and Legislative Action Committees (LACs) working for the good of the industry.

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