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Transfer fee victory - FHFA issues final rule

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On March 15th, the Federal Housing Finance Agency (FHFA) issued its long awaited final rule on transfer fees. FHFA had proposed a federal regulation which would have banned federally backed mortgages for property in a community association with a deed-based transfer fee. As originally drafted, the proposed rule would have cut-off nearly all mortgage funding to the 11 million housing units, or 49%, of all community association housing that have existing deed-based transfer fees. Over the past two years, CAI members worked diligently to gather data on transfer fees, submitted comments to FHFA and brought the issue to the attention of key lawmakers. The final rule issued on March 15 shows that those efforts were an enormous success.

FHFA's final rule adopted nearly all of CAI's recommendations. FHFA will continue to allow deed-based transfer fees charged by community associations. In addition, FHFA has clarified that any such fee which benefits the community in which it is levied will continue to be allowed under the new rules.

Specifically, FHFA requires that all private transfer fees created on or after February 8, 2011, must provide a direct benefit to the properties upon which they are levied. Private, deed-based transfer fees that directly benefit property are considered "excepted transfer fee covenants" and are allowed under the FHFA rule. An "excepted transfer fee covenant" is defined as a covenant that requires payment of a private transfer fee to a covered association and limits the use of such fees exclusively to purposes which provide a direct benefit to the property on which the fee is charged. FHFA also provides guidance on what a direct benefit means under the rule. Allowable uses for the transfer fee funds will include use for maintenance and improvements to the property, administration costs, and acquisitions. Transfer fees will also be able to be used for cultural, educational, charitable, recreational, environmental, conservational and other activities provided they are conducted in or protect the community or adjacent property or they are conducted on property that is used primarily by residents of the community.

State Legislation

The FHFA victory on transfer fees is just part of the story. In 2011 there was model legislation introduced in state legislatures across the country which would have banned any and all transfer fees. This would have included all deed-based transfer fees as well as any fees charged by management companies or other business partners in conjunction with the sale of property in a community association.

CAI worked with the National Association of Realtors and the American Land Title Association, sponsors of the model bill, to amend the language to allow for transfer fees charged by associations and their agents to be exempt from the proposed statutory ban. As a result of this outreach and the hard work of our state legislative action committees, nearly all of the 32 states that enacted transfer fee bans have statutory exemptions for community associations and their agents.

It is unprecedented for an organization like CAI to achieve such a clear victory in such a compressed time period across the spectrum of state and federal law, but thanks to the work of CAI and our members, we have achieved a victory that will help ensure the financial health of all community associations.

As part of our ongoing Mortgage Matters program, CAI is working to protect homeowners in community associations and to ensure access to fair and affordable mortgage products for all current and potential community association residents. You can follow our work and share your thoughts at www.caimortgagematters.org and on Twitter at @CAIGPA.

CAI will continue to monitor and participate in shaping changing federal housing policies to ensure the perspective of community associations is heard.

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