

## Restrictions on Transfer Fees *March 2011 Newsletter*

The subject of “transfer fees” imposed in connection with sales of units or lots in common interest developments (CIDs) has recently come to the forefront of the national debate regarding federal housing regulations. Upon a sale or transfer of a unit or lot in a CID, the association has certain responsibilities. Upon receipt of notice from an open escrow, the association must provide certain information and ensure that all rights and responsibilities unique to the property are carried out. Some CC&Rs or property deeds require a “transfer fee” must be paid to the association or to a third party (e.g. developer, manager, etc.).

Last August, the Federal Housing Finance Agency (FHFA) proposed a new regulation addressing such “deed-based private transfer fees.” This regulation would have prohibited FHFA-regulated organizations from either purchasing or investing in mortgages encumbered by any such covenants requiring a transfer fee to a third party. The proposed regulation even prohibited transfer fees that directly benefit the property, along with fees that simply provided income to a third party.

The FHFA directly regulates Fannie Mae, Freddie Mac, and government-sponsored mortgage lending enterprises (including the twelve Federal Home Loan Banks), which provide trillions of dollars in funding to mortgage markets and other lenders. As a result, FHFA’s regulation will eventually “trickle down” through the mortgage-lending system nationwide. According to Community Associations Institute (CAI) February press release, the proposed regulation could have affected as many as 11 million home mortgages, which are especially vulnerable to financing difficulties in the current market. Therefore, the community association industry has worked tirelessly to limit this regulation’s impact on mortgages in our communities.

In response to the industry’s concerns and efforts to work with regulators to narrow the proposed rules, FHFA recently announced that the proposed regulation would exempt transfer fees paid to community associations and similar organizations that use such fees to benefit the property or community. However, any transfer fees that do not directly benefit the property will still be barred. This reflects our industry’s effective leadership and success in dealing with legislative and agency rulemaking.

As a result, the proposed FHFA rules (which will likely be revised again before becoming effective) will not affect most transfer fee covenants in favor of associations. However, please note that California law (specifically, Civil Code Sections 1098 and 1098.5) still imposes some restrictions on private transfer fees.