

For the Common Good: Use of Community Transfer Fees by Community Associations

September 27, 2010



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Background

On August 13, 2010, the Federal Housing Finance Agency (FHFA) issued a draft regulation addressing the issue of “Private Transfer Fees.” The proposal would prohibit Fannie Mae, Freddie Mac and federal home loan banks from purchasing mortgages for any property that contained a “deed-based transfer fee” payable at time of sale. Regulatory interest in this matter was driven by the advent of investment vehicles that relied on deed-based transfer fees that require payment to parties outside of the community in which the deed is recorded at the time of transfer – a fee often referred to as a “Private Transfer Fee.” In its draft language, FHFA chose to apply the regulation banning mortgage funding to any property with any deed-based transfer fees, including fees payable to community associations.

In their justification for the proposed regulation, it was noted that “FHFA is concerned that the fees fund purely private streams of income for select market participants and do not benefit homeowners.” The FHFA went on to note, “even if the fees are dedicated to homeowners associations, they are not proportional or related to the purposes for which the fees are collected.” FHFA offered no study or data to justify this position.

In response to these FHFA “findings,” CAI surveyed its membership to gather data on the nature, use and benefits of deed-based transfer fees in community associations across the country. The goal of the survey was to provide empirical evidence that demonstrates how “Community Transfer Fees¹” are used and benefit homeowners in community associations across the country. This report is the product of that survey.

Community Associations Institute (CAI) is a membership organization representing the interests of the more than 60 million Americans who live in community associations. Our 30,000 members represent volunteer board members of associations, managers of community associations and businesses that support community associations across the country. CAI members work to promote harmonious and vibrant communities through our national organization and our more than 60 chapters across the country.

¹ “Community Transfer Fee” is used to refer to a deed-based fee payable to a community association or affiliated entity where the funds collected are used to benefit the properties paying such fees.

Survey Process

CAI's Transfer Fee Survey contained 19 questions on the topic of transfer fees within community associations. The survey was sent electronically to all CAI members.²

To ensure data from individual respondents was not duplicated, the survey captured the names, addresses and communities responding to the survey; 99% of the respondents provided this data. When this data was not provided, the responses were not included in the calculations published in this report.

As the terms "private transfer fee" or "deed-based transfer fee" are not clearly defined legal terms, the questions were structured to ensure that respondents provided accurate data on deed-based fees rather than any other fees that may be charged at the time of transfer. CAI data on deed-based transfer fees reflects deed-based fees payable to the community association or community association based entity, not to outside third party investors.³

The survey was open from August 31 to September 17, 2010. A total of 1,254 communities, representing 959,295 housing units, responded to the survey.

Although this survey did not use a random sample of communities, CAI believes that the number of communities responding and the geographic diversity of such responses provide data that may be used as the basis to provide accurate estimates for the uses of deed-based transfer fees throughout the national community association universe. This report shall distinguish between summaries of the actual data and national estimates based on such data⁴.

² CAI's survey was sent electronically to 21,521 individual members. This number varies from our total membership number due to members opting out of e-mail communication as prescribed by the "CAN-SPAM Act." As of July 31, 2010, CAI had 30,100 individual members.

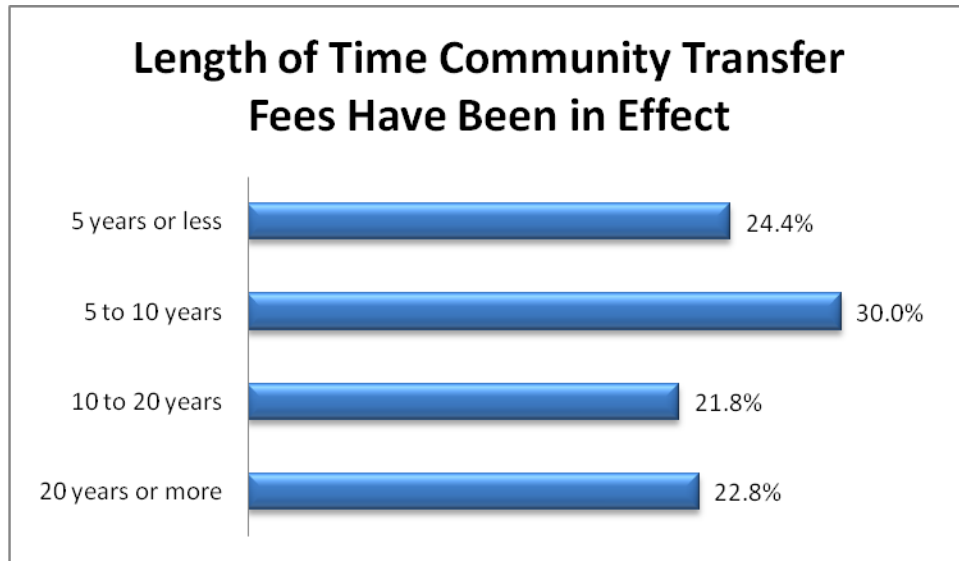
³ "Private Transfer Fee" and "Deed-Based Transfer Fee" are not clearly defined legal terms. For purposes of this survey, CAI considered any transfer fee payable to a community association and found in a master deed, individual property deed, declaration or bylaw to be a "Deed-Based Transfer Fee." Each of these documents may be considered to run with the land and bind future purchasers. In some jurisdictions, association bylaws are recorded and are considered to run with the land.

⁴ Unless otherwise noted, all results in this report refer to the respondents who indicated that their community has Community Transfer Fees.

Survey Highlights

- CAI's Community Transfer Fee Survey represents data collected from 1,254 communities in 40 states, representing 959,295 units in community associations.
- Community transfer fees on units/homes in their communities were reported by 49 percent of responding communities.
- Community Transfer Fees have existed for more than a generation. More than 40 percent of such fees having been in place for 10 years or more.
- A community-payable, deed-based transfer fee attached to their property was identified by 489,198 units responding to the survey.
- At least two-thirds of all property owners would be required to remove fee provisions by 70 percent of communities with Community Transfer Fees.
- Such fees are collected as either a fixed fee, percentage of sale price or a multiple of association assessments.
- When a Community Transfer Fee is a fixed fee, it is typically \$500 or less.
- When a Community Transfer Fee is a percentage of the sale price, it is typically less than three-quarters of one percent of the sale price of the property.
- Community Transfer Fees are disclosed to potential purchasers in nearly all circumstances.
- The existence of such fees results in the loss of a sale of property in less than 1 percent of reported transactions.
- Such fees are used to support the community association and residents by 99.2 percent of responding communities.

Community Transfer Fees apply to the initial and all subsequent sales of the property for 90 percent of respondents.



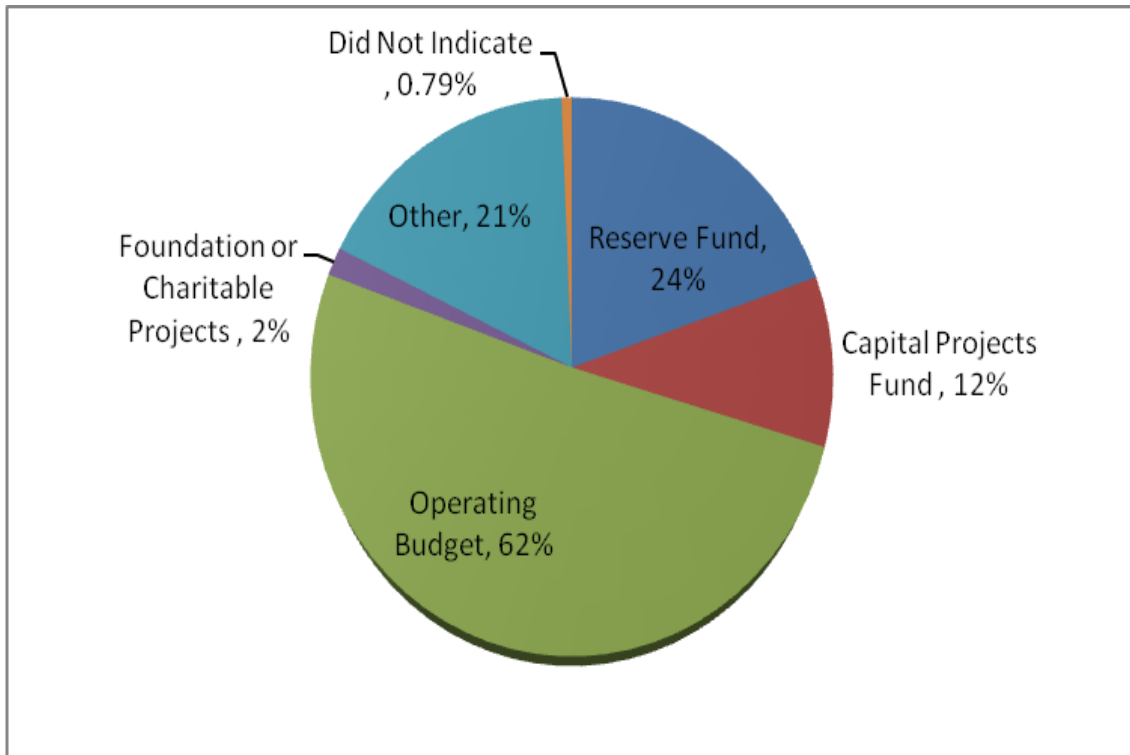
Community Transfer Fees are levied as follows:

1. Fixed fee – 74%.
 - \$100 or less – 23%
 - \$100 to \$250 – 33%
 - \$250 to \$500 – 22%
 - \$500 to \$750 – 5%
 - “Other⁶” – 16%
2. A percentage of sale price – 9%.
 - One-quarter of a percent or less – 35%
 - One-quarter of a percent to one-half of a percent – 36%
 - One-half of a percent to three-quarters of a percent – 12%
 - Three-quarters of a percent to 1 percent – 16%
3. Multiple of monthly association assessments –17%.

Typically 2 to 3 months of the association assessment.

⁶ The response of “other” indicates communities that have a fixed fee that varies depending on the type of unit within the community, e.g., \$250 for a townhome and \$350 for a single family home.

How are funds from Community Transfer Fees used?



“Other” includes communities who allocate funds to reserves, capital projects *and* operating expenses.

Of communities with Community Transfer Fees, 60 percent report that they would have to increase assessments to recover revenue lost if their ability to collect such fees was prohibited.⁷

Community Transfer Fees are disclosed to purchasers prior to closing by 96.3% of responding communities. Disclosure is accomplished through state disclosure laws, closing letters, action of the association or its agents, notice by the title company, realtor or escrow agent

Community associations with Community Transfer Fees report that such fees result in a loss of sale in less than 1 percent of all transactions.⁸

Failure to pay a community payable, deed-based transfer fee results in the association seeking a lien in 6 percent of reported cases.⁹

⁷ An important distinction with the proposed FHFA regulation is that it does NOT ban such fees; however, it renders properties encumbered with any deed-based fee unqualified for 90 percent of available mortgages. Thus, the impact on a community with such fees would be far more devastating than an increase in assessments.

⁸ This figure represents the data as reported to CAI. Associations may not be party to reasons for the cancellation of an individual home sale. As this is an issue raised by the National Association of Realtors, we anticipate their data may supplement our members’ reports on the impact of such fees on home sales in community associations.

⁹ This figure does not measure if a lien was filed, only if the association began the lien process. American Land Title Association may be able to provide claims experience as to the number of instances where such fees, regardless of beneficiary, have resulted in action against title.

Application of Survey Findings to National Community Association Data¹⁰

Up to 11 million homes have a Community Transfer Fee in place.

Nearly 45 percent of homes have had a Community Transfer Fee in place for 10 or more years.

Such fees generate up to \$3 billion annually to fund community association projects, reserves or otherwise benefit community association residents.

Approximately 7.7 million homes with Community Transfer Fees would require two-thirds or greater consent of all property owners to remove such fees.¹¹

The approximate value of all homes with Community Transfer Fees is \$1.2 trillion.

¹⁰ CAI industry data is available at <http://www.caionline.org/info/research/Pages/default.aspx>.

¹¹ Based on industry practice, obtaining a two-thirds or greater approval of all property owners for deed changes is extremely rare, thus, the proposed regulation issued by FHFA would render many of these homes unmarketable.