

FHFA Proposed Ban on Private Transfer Fees FAQ

What is the FHFA Proposed Ban on “Private Transfer Fees”?

On August 13, 2010, 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.

How does FHFA define a “Private Transfer Fee”?

The definition of a deed-based transfer fee used by FHFA is fairly broad. For purposes of this document, we interpret this to mean the following:

Private Transfer Fee: Any fee or payment required at time of sale of a property by a deed or covenant restriction.

The full FHFA announcement may be accessed [here](#).

When will this regulation be implemented?

At this time, it is unknown when or even if the FHFA will issue a final regulation on this matter. While the August announcement clearly indicated that FHFA’s current position on the matter, as well as its areas of concern, its position may change before any final, binding regulation is issued.

Currently, the only definitive deadline is October 15, 2010, for all comments about the proposal to be received.

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 mortgages¹. 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 will survey its members to gather data on how communities utilize deed-based transfer fees. This data will support our arguments and counter FHFA's misperception of these fees.

Next, we will send out a template to our members so that communities with deed-based transfer fees can submit their own comments to FHFA on how they use these funds. Thus, they will have CAI's national perspective, as well as individual community perspectives.

Finally, we will also provide our members with sample letters and instructions on how to contact their Congressional Representatives and Senators to alert them to the potential effects of FHFA's actions.

What can my association do to help?

Look for CAI alerts on the FHFA issue. They will provide CAI members with information on steps they can take to ensure that this regulatory proposal is not implemented as draft.

ⁱ Subject to conforming mortgage limits set by these entities, e.g. Fannie Mae 2010 conforming loan limitations may be found [here](#).