CALIFORNIA ASSOCIATION OF REALTORS®

March 18, 2011

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590-AA41
Federal Housing Finance Agency
1700 G Street, NW
Washington, DC 20552

2011 OFFICERS

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Re: Regulation on Private Transfer Fee Covenants; RIN 2590-AA41

Dear Mr. Pollard:

I am writing on behalf of the California Association of REALTORS® (C.A.R.) and its 168,000 members to comment on the Federal Housing Finance Agency's (FHFA) proposed regulation on private transfer fees (PTFs).

C.A.R. strongly supports FHFA prohibiting Fannie Mae, Freddie Mac, and the Federal Home Loan Banks from dealing in mortgages on properties encumbered by private transfer fee covenants. I was extremely pleased to see FHFA issue its proposed rule; specifically, language that grandfathered in existing PTFs so current owners of properties burdened by these covenants are not further harmed.

However, while the proposal is a step in the right direction in that in purports to ban PTFs, C.A.R. believes the exemptions and loose definitions are huge loopholes rendering the prohibition useless. The proposed exception for nonprofits effectively "swallows the rule" thereby eviscerating the prohibition on PTFs and inviting the extortion of developers by non-profits. In other words, all of the problems FHFA has identified as being associated with PTFs will continue..

As a result, C.A.R. is asking the FHFA to reinstate language proposed within its Guidance on Private Transfer Fee Covenants (No 2010-N-11) prohibiting all entities from burdening a property with a private transfer fee.

For over twenty-years developers in the state of California have faced outright extortion from nonprofits who threaten legal action to block construction. These nonprofits are quick to drop their legal action following an agreement to establish PTFs to fund their cause. The developer is happy to agree to this since the PTF is paid for by home buyers – not the developer

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Even if FHFA were to allow PTFs that "directly benefit" HOA developments C.A.R. would oppose; the existence of PTFs threaten the financial stability of HOA reserve accounts because HOAs with PTFs will come to rely on PTFs as a source of revenue which is only generated by sales. This can, and we believe will, create a false feeling of security leading HOAs to underfund their reserve accounts believing that PTFs assessed on sales will make up the "negative."

As stated in our letter to FHFA dated October 15, 2010, C.A.R. continues to oppose PTFs and would like to reiterate our beliefs that there are a number of problems associated with them, including:

• **The fees put homeownership farther out of reach for more families.** According to a recent study by the C.A.R., every time the cost of a home increases by $10,000, another 200,000 purchasers can't afford to buy a home.

• **The fees are imposed on buyers every time the property sells – and can last forever.** PTFs are collected for as long as mandated by the deed. There are no limits – the fee can be imposed indefinitely. And, every time the typical home is sold, the beneficiary of the fee collects a hefty sum – up to $10,000 or more.

• **There are no limits on the amount of the fee.** The highest rate C.A.R. is aware of is currently 1.75% of the home's value – but there's no limit!

• **Allowing non-profits to collect the fee invites extortion of the fee from developers.** Non-profit groups have threatened developers with legal action to block construction. The establishment of a PTF payable to the non-profit is the resulting compromise which the developer is happy to agree to since the PTF is paid for by home buyers – not the developer.

• **There are few controls over how the collected revenue is spent.** The entity levying the PTF is largely free to decide how the money is spent – with no control by government, and no requirement that the fee benefit homeowners who paid the PTF in a manner desired by those homeowners. Generally speaking, if said homeowners want specific benefits to accrue to their properties, there are any number of ways in which those homeowners can assess themselves to pay for those benefits.

• **The lack of sufficient disclosure results in potential home buyers not understanding the cost of the fee.** California's law addresses FHFA's concern that "disclosures may be insufficient and add costs not fully understood by consumers." Under California law (Civil Code, Section

1098.5), a PTF on a residential property must present actual dollar-cost examples of the fee for a home priced at $250,000, $500,000, and $750,000. (Note: C.A.R. pursued this disclosure legislation only after being unable to prohibit PTFs outright.)

For the foregoing reasons, C.A.R. is strongly opposed to allowing the continued imposition of PTFs. California law is currently silent as to the legality of PTFs and C.A.R. will continue to seek legislation in California to outlaw their imposition on home buyers.

Thank you for your consideration of this request. Please do not hesitate to contact me if you have any questions.

Sincerely,

Beth L. Peerce
C.A.R. President