NATION'S HOUSING

Transfer fee ban could have big effect

Proposal to prohibit the private charges on federally backed mortgages could hit many groups.

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REPORTING FROM WASHINGTON

A federal agency is moving to prohibit "private transfer fees" on all mortgages funded by Fannie Mae and Freddie Mac. But its proposed ban may extend to transfer fees routinely collected by community associations across the country — potentially forcing some of them to raise assessments.

The Federal Housing Finance Agency, which oversees the two mortgage giants in conservatorship, issued proposed "guidance" this month that would prohibit Fannie and Freddie and the federal home loan banks from investing in mortgages carrying private-transfer-fee covenants.

Private transfer fees differ from fees imposed by local-government authorities to raise revenue for public services when properties change hands. In a private-transfer-fee arrangement, a developer or property owner records a long-term covenant requiring payments to trustees or other private parties every time a resale occurs.

A widely used version of this plan is promoted by Freehold Capital Partners of New York. The Freehold program, which the company says has attracted the participation of development projects around the country, imposes a 1% fee that must be paid by the seller every time a house is resold during the next 99 years. The money flows from the closing to a trustee, who distributes shares of it to private investors and others, including the developer in some cases.

WEEKLY MORTGAGE RATES

Survey of 20 Orange and L.A. County lenders as of 8/18/2010

Loans to $417,000	Week ended 8/18/2010	Week ended 8/11/2010	Week ended 2/17/2010
30-year fixed	4.53%+.32pt	4.54%+.37pt	5.09%+.25pt
15-year fixed	4.05%+.32pt	4.04%+.35pt	4.53%+.28pt
$417,000 and up			
30-year fixed	5.19%+.51pt	5.25%+.53pt	5.85%+.46pt
15-year fixed	4.89%+.39pt	4.96%+.43pt	5.41%+.38pt
Home equity lines	5.68%	5.68%	6.06%
Home equity loans	8.11%	8.11%	8.82%
6-month LIBOR	.57%	.60%	.39%
1-year Treasury	.25%	.27%	.35%
6-month Treasury	.19%	.20%	.18%
6-month CD	.45%	.51%	.30%
Prime rate	3.25%	3.25%	3.25%
11th District cost of funds	**6/2010**	**5/2010**	**12/2009**
	1.797%	1.791%	1.828%

Compiled by HSH Associates, Financial Publishers; www.hsh.com

Freehold's activities have raised widespread opposition — 18 state legislatures have either restricted or banned the use of private transfer fees in varying forms. The proposal from the Federal Housing Finance Agency seeks to cut off federally related funding or guarantees for the underlying conventional mortgages that support private-transfer-fee programs such as Freehold's.

Under conservatorship, Fannie Mae and Freddie Mac still account for a large share of new conventional mortgages. Along with the Federal Housing Administration, which had earlier indicated opposition to private-transfer-fee plans, the entities are responsible for more than 95% of mortgage market volume, according to industry estimates.

Edward J. DeMarco, acting director of the Federal Housing Finance Agency, said the proposed ban — pending a 60-day public-comment period — is necessary because the fees "may impede the marketability and the valuation of properties," may raise homeownership costs and "contribute to reduced transparency for consumers because the fees are not disclosed by sellers and are difficult to discover through customary title searches."

The wording of the ban, however, appears to reach well beyond Freehold-type fees to include mortgages in which covenants require payments to homeowner associations, affordable-housing groups or other community or nonprofit organizations upon each resale of the property.

Many housing development projects come with not-for-profit homeowner associations that collect assessments from owners to fund community improvements and property management. Some also receive covenanted transfer-fee payments to fund part of their work. Still others impose long-term transfer fees designed to benefit specific charities.

For example, home builder Lennar Corp., which is based in Miami, has imposed mandatory transfer fees on thousands of homes constructed in its California projects. The fees, which amount to one-twentieth of a percent of the price of the home each time it resells, support the efforts of the Lennar Charitable Housing Foundation's anti-homeless and low-income shelter activities, according to a spokesman for the firm, Marshall Ames.

But the housing finance agency's proposal explicitly includes a broad spectrum of such programs in the ban. It says "even where such fees are payable to a homeowners association," they are "likely to be unrelated to the value rendered and at times may apply even if the property's value has significantly diminished since the time the covenant was imposed."

Andrew Fortin, vice president of government affairs for the 30,000-member Community Associations Institute, which represents homeowners and association managers nationwide, said that banning investments in mortgages on properties with transfer fees payable to associations "is potentially a big problem." Among other negatives, it could force associations to increase annual assessments on individual homeowners.

The agency needs to better distinguish between profit-motivated transfer fees and those that benefit public-interest and nonprofit organizations, Fortin said.

Denouncing the housing finance agency's proposal, Bryan J. Cohen, Freehold Capital Partners' executive vice president and general counsel, said private transfer fees provide crucial financial support for developers and their customers.

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