



The War on Transfer Fees

Protecting Community Associations

In many states, and also on a federal level, there is movement to prohibit private transfer fees.

These are deed-based fees payable upon the resale or transfer of property. Such legislation has the good intention of preventing transfer fees that burden properties and offer no direct benefit to the land or property owner. Mostly, these prohibitions are geared toward real estate developers and other third-party investors not directly related to the property. There is, however, the unintended consequence of possibly prohibiting condominium associations from charging fees that are directly beneficial to associations and imperative to the funding of common interest communities. Community transfer fees that may be wrapped up into the prohibition include fees for resale certificates, “move-in and move-out” fees and the typical two-month working capital deposit fees.

In 2010, Community Associations Institute (CAI) lobbied vehemently against the proposed legislation by the Federal Housing Finance Agency (FHFA), which would have prohibited Federal Home Loan Banks, Freddie Mac and Fannie Mae from purchasing mortgages on properties burdened by “deed transfer fees.”

As a result of CAI’s continuous efforts, the final FHFA rule included an exception for community transfer fees, so long as the transfer fee provides a direct benefit to the property.

That is, CAI was successful in showing that there is an important distinction between a private transfer fee and a community transfer fee.

RILAC Opposes Bill

CAI’s Rhode Island Legislative Action Committee (RILAC) was on the lookout for any legislation aimed at prohibiting transfer fees that could be interpreted to also include community transfer fees. This year, Rhode Island Sen. Walter Felag introduced Senate Bill 2012-S 2215 with the intent of prohibiting transfer fees based solely on the resale or subsequent transfer of real property. The proposed bill, in its current form, is as follows:

34-11-42. Transfer fees prohibited. — No person or business entity who sells real property shall charge, collect, receive, or be entitled to a fee based solely on the subsequent resale or transfer of said property. This prohibition includes, but is not limited to, fees or charges imposed by a real estate developer based upon the subsequent resale or transfer of said real property. Any housing development that is covered by the definition in subdivision 45-53-3(9) is exempt from this section. Further, any fee or charge connected with the transfer of properties with a conservation restriction as defined in subsection 34-39-2(a) is exempt from the provisions of this section. Any covenant recorded on or after July 1, 2012, imposing any charge or fee inconsistent with this section shall be void and unenforceable against any subsequent owner, purchaser or mortgagee.

Once legislation was introduced, the RILAC developed a strategy to oppose the bill in its current form. We brought the issues to the Senate Judiciary Committee during a public hearing April 12, testifying on the detrimental impact the bill, in its current form, could have on associations, specifically addressing the distinction between private transfer fees that ben-

efit an investor and community fees necessary to an association.

The testimony addressed three major community transfer fees. First, resale certificates (required by the Rhode Island Condominium Act) are critical to give proposed condominium unit purchasers a clear idea of the physical and financial well-being of the condominium project. A thorough resale is consistent with the underlying consumer protection objectives of the Rhode Island Condominium Act. The fee to prepare a resale certificate should not be prohibited. Second, fees charged pursuant to the recorded declaration whenever unit owners move on or off the premises are in place to cover supervision costs with respect to preventing structural damage. Finally, the necessity of the working capital deposit used to shore up association reserves. These fees benefit the association and should not be prohibited.

The committee chairman suggested we meet with the bill’s sponsor regarding revisions. The bill was tabled for further study. We have written to Sen. Felag and hope to meet with him to incorporate our suggested changes.

We are hopeful Rhode Island will join the many other jurisdictions that realize the necessity of carving out an exception for community transfer fees in their anti-transfer fee legislation. Clearly, community associations are an innocent victim in the war on private transfer fees. ■

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