

## Private Transfer Fees

**EFFECTIVE DATE: 09-06-2019**

First Guaranty Mortgage Corporation is releasing this communication as a reminder of the FHFA [Private Transfer Fee Regulation](#).

Properties encumbered by impermissible private transfer fee covenants created on or after February 8, 2011 are not eligible. An impermissible private transfer fee is a transfer fee, charge or payment, imposed by a covenant, restriction, or other similar document that is:

- Required to be paid with a transfer of title to real estate; and
- Is payable on a continuing basis each time the property is transferred over a period of time, or indefinitely.

A private transfer fee does not include fees, charges, payments, or other obligations that are imposed by or payable to the federal, state or local government; or that defray actual costs of the transfer of the property, including transfer of membership in the relevant covered association, as defined below.

Some private transfer fees are excepted from the general definition and are permissible. An *excepted transfer fee covenant* is a private transfer fee covenant that requires payment of a private transfer fee to a *covered association* and limits the use of such transfer fees exclusively to purposes which provide a *direct benefit* to the real property encumbered by the private transfer fee covenants.

- A *covered association* is a nonprofit mandatory membership organization comprised of owners of homes, condominiums, cooperatives, manufactured homes, or any interest in real property and created pursuant to a declaration, covenant or other applicable law; or a “non-profit” organization under sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code. A covered association may include master and sub-associations, each of which is also a covered association.
- A *direct benefit* means that the private transfer fees are used exclusively to support maintenance and improvements to the encumbered properties, and acquisition, improvement, administration, and maintenance of property owned by the covered association of which the owners of the burdened property are members and used primarily for their benefit. Direct benefit also includes cultural, educational,

charitable, recreational, environmental, conservation or other similar activities that are conducted in or protect the burdened community or adjacent or contiguous property, or are conducted on other property that is used primarily by residents of the burdened community.

This guidance is effective immediately for all loans in process.