



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Financial Practices
Bureau of Consumer Protection

Joel Winston
Associate Director

Telephone
(202) 326-3153

November 4, 2011

BY EMAIL AND FIRST-CLASS MAIL

Mr. Ugo Colella, Esq.
Patton Boggs LLP
2550 M St., NW, 7th Floor
Washington, DC 20037

Re: Freehold Capital Partners, LLC

Dear Mr. Colella:

As you know, the staff of the Federal Trade Commission's Division of Financial Practices has conducted a non-public investigation into whether your client, Freehold Capital Partners, LLC ("Freehold"), violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended. Specifically, the investigation focused on whether Freehold engaged in unfair or deceptive acts or practices in its advertising, marketing, promotion, licensing and distribution to developers of private transfer fee covenants that are placed on residential properties to run for a period of 99 years. Private transfer fee covenants require that all future consumer sellers of an encumbered residential property pay a fee of one percent of the gross sales price upon each sale of the property. Under Freehold's licensing agreement entered into with developers, the private transfer fee is generally split 50:50 between the developer and Freehold.

Specifically, our inquiry considered whether Freehold made representations or omissions relating to the imposition of covenants with private transfer fees that were likely to mislead consumers. Our inquiry also evaluated whether Freehold's acts and practices relating to the imposition of private transfer fee covenants caused or were likely to cause substantial injury to consumers that was not reasonably avoidable and not outweighed by benefits to competition or consumers.

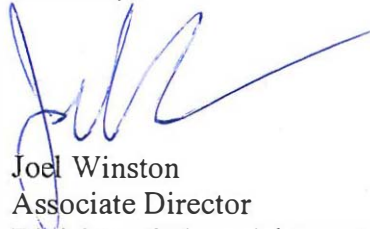
Upon careful review of this matter, including information submitted to the staff from Freehold and other sources, we have decided not to recommend enforcement action at this time.

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Among the factors we considered is that the practices at issues are regulated extensively at the federal and state levels. For example, thirty-five states ban private transfer fees and one other state imposes rigorous disclosure requirements. In addition, the Federal Housing Finance Agency is considering a rule that limits the involvement of Fannie Mae, Freddie Mac, and the Federal Home Loan Banks in mortgages on properties encumbered by private transfer fees,¹ and the Federal Housing Administration has taken the position that private transfer fees violate the U.S. Department of Housing and Development's regulations.² Mortgages subject to these federal regulations account for approximately ninety percent of the mortgage market in the United States.

The closing of this investigation is not to be construed as a determination that a violation of law did not occur, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require.

Sincerely,



Joel Winston
Associate Director
Division of Financial Practices

¹ Private transfer fees, 76 Fed. Reg. 6702 (proposed Feb. 8, 2011) (to be codified at 12 C.F.R. pt. 1228).

² Letter from Margaret E. Burns, Director, Office of Single Family Program Development, HUD, to Vicki Cox Golder, President, National Association of Realtors, April 14, 2010: "Our General Counsel has confirmed that private transfer fees would clearly violate HUD's regulations at 24 CFR 203.41, which prohibit 'legal restrictions on conveyance,' defined to include limits on the amount of sales proceeds retainable by the seller."