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MEMORANDUM

DATE: December 4, 2010

TO: All House Members

FROM: Sue Helm, Member
104th Legislative District 

SUBJECT: Private Transfer Fees

I invite you to co-sponsor legislation that prohibits the imposition of private transfer fees that allow the developer or builder of a property to collect a percentage of the sales price from the seller every time the property changes hands for the next 99 years. This is an important consumer protection issue and one that should help to stabilize a housing market in rebound.

Private transfer fees, also called resale fees or capital recovery fees, are a new tool companies (developers and builders) use to gain access to cash in the depressed housing market. In some states, a declaration of covenants, conditions and restrictions is not included in the closing papers and does not require a signature. Therefore, someone with no ownership stake or interest in a property can continue to collect revenue from that property built, in some cases, almost a century ago.

Additional legal concerns are involved in the imposition of such fees. For example, it is questionable whether the covenants and private transfer fees are enforceable because they erode fee simple title.

My legislation will prohibit the imposition of private transfer fees. Any person who records or enters into a private transfer fee agreement in their favor after that date is liable for any damages resulting from that obligation including transfer fees, attorney's fees and other costs to quiet title.

The bill also requires full disclosure of existing private transfer fees to buyers. Failure to do so would result in an unenforceable agreement. The bill also sets up a process to free the property of that obligation.

Finally, the bill requires that a person entitled to the private transfer fee must register their contact information with the county recorder of deeds and respond to inquiries promptly. Failure to comply would result in an action to quiet title.

As you may know, the Senate introduced similar legislation near the end of our previous legislative session. That bill, Senate Bill 1481, passed the Senate unanimously on October 14; however, the House did not consider it.

If you would like to join me in cosponsoring this legislation, please contact Brandy Brown at bbrown@pahousegop.com or call my office at 7-1230.