
A BILL FOR AN ACT

RELATING TO RESIDENTIAL REAL PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 501, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§501- Prohibition of transfer fees. (a) No deed
5 restriction or other covenant running with the land applicable
6 to the transfer of residential real property shall require a
7 transferee of residential real property, or the transferee's
8 heirs, successors, or assigns, to pay:

9 (1) A declarant or other person imposing the deed
10 restriction or covenant on the property; or

11 (2) A third party designated by a transferor of the
12 property,

13 a fee in connection with a future transfer of the property. A
14 deed restriction or other covenant running with the land that
15 violates this section or a lien purporting to encumber the land
16 to secure a right under a deed restriction or other covenant
17 running with the land that violates this section is void and
18 unenforceable.



1 (b) This section shall not apply to any of the following
2 fees or charges required by a deed restriction or other covenant
3 running with the land in connection with the transfer of
4 residential real property:

5 (1) Any interest, charge, fee, or other amounts payable by
6 a borrower to a lender pursuant to a loan secured by
7 residential real property, including any fee payable
8 to the lender for consenting to an assumption of the
9 loan or transfer of the residential real property, for
10 providing an estoppel letter or certificate, or for
11 any shared appreciation interest or profit
12 participation or other consideration payable to the
13 lender in connection with the loan;

14 (2) Any fee or charge payable to a residential real
15 property homeowners', condominium, cooperative, or
16 property owners' association, pursuant to a
17 declaration, covenant, or law applicable to such
18 association, including a fee or charge to change the
19 association's records as to the owner of the
20 residential real property or to provide an estoppel
21 letter or certificate;



1 (3) Any fee or charge payable to a landlord under a lease
2 of residential real property, including a fee or
3 charge payable to the landlord for consenting to an
4 assignment of the lease, for providing an estoppel
5 letter or certificate, or to change the landlord's
6 records as to the owner of the lessee's interest in
7 the lease;

8 (4) Any consideration payable to the holder of an option
9 to purchase an interest in residential real property
10 or the holder of a right of first refusal or first
11 offer to purchase an interest in residential real
12 property for waiving, releasing, or not exercising the
13 option or right upon transfer of the residential real
14 property to another person; or

15 (5) Any fee or charge payable to a government entity.

16 (c) As used in this section, unless the context otherwise
17 requires, "residential real property" means fee simple or
18 leasehold property on which is currently situated:

19 (1) From one to four dwelling units; or

20 (2) A residential condominium or cooperative apartment,
21 the primary use of which is occupancy as a residence."



1 SECTION 2. Chapter 502, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§502- Prohibition of transfer fees. (a) No deed
5 restriction or other covenant running with the land applicable
6 to the transfer of residential real property shall require a
7 transferee of residential real property, or the transferee's
8 heirs, successors, or assigns, to pay:

9 (1) A declarant or other person imposing the deed
10 restriction or covenant on the property; or

11 (2) A third party designated by a transferor of the
12 property,

13 a fee in connection with a future transfer of the property. A
14 deed restriction or other covenant running with the land that
15 violates this section or a lien purporting to encumber the land
16 to secure a right under a deed restriction or other covenant
17 running with the land that violates this section is void and
18 unenforceable.

19 (b) This section shall not apply to any of the following
20 fees or charges required by a deed restriction or other covenant
21 running with the land in connection with the transfer of
22 residential real property:



- 1 (1) Any interest, charge, fee, or other amounts payable by
2 a borrower to a lender pursuant to a loan secured by
3 residential real property, including any fee payable
4 to the lender for consenting to an assumption of the
5 loan or transfer of the residential real property, for
6 providing an estoppel letter or certificate, or for
7 any shared appreciation interest or profit
8 participation or other consideration payable to the
9 lender in connection with the loan;
- 10 (2) Any fee or charge payable to a residential real
11 property homeowners', condominium, cooperative, or
12 property owners' association, pursuant to a
13 declaration, covenant, or law applicable to such
14 association, including a fee or charge to change the
15 association's records as to the owner of the
16 residential real property or to provide an estoppel
17 letter or certificate;
- 18 (3) Any fee or charge payable to a landlord under a lease
19 of residential real property, including a fee or
20 charge payable to the landlord for consenting to an
21 assignment of the lease, for providing an estoppel
22 letter or certificate, or to change the landlord's



1 records as to the owner of the lessee's interest in
2 the lease;

3 (4) Any consideration payable to the holder of an option
4 to purchase an interest in residential real property
5 or the holder of a right of first refusal or first
6 offer to purchase an interest in residential real
7 property for waiving, releasing, or not exercising the
8 option or right upon transfer of the residential real
9 property to another person; or

10 (5) Any fee or charge payable to a government entity.

11 (c) As used in this section, unless the context otherwise
12 requires, "residential real property" means fee simple or
13 leasehold property on which is currently situated:

14 (1) From one to four dwelling units; or

15 (2) A residential condominium or cooperative apartment,
16 the primary use of which is occupancy as a residence."

17 SECTION 3. New statutory material is underscored.

18 SECTION 4. This Act shall take effect on November 1, 2009.



Report Title:

Residential Real Property; Prohibition on Transfer Fees

Description:

Prohibits residential real property transfer fees required by a deed restriction or covenant, with certain exceptions.

Effective 11/1/09. (HB874 HD1)

