
A BILL FOR AN ACT

RELATING TO REAL PROPERTY TRANSACTIONS.

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

1 SECTION 1. 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; covenants. (a) A
5 deed restriction or other covenant running with the land
6 applicable to the sale of residential real property that
7 requires a transferee of residential real property, or the
8 transferee's heirs, successors, and assigns, to pay to a
9 declarant or other person imposing a deed restriction or
10 covenant on the property or a third party designated by a
11 transferor of the property, a fee in connection with a future
12 transfer of the property shall be prohibited and unenforceable.
13 A deed restriction or other covenant running with the land that
14 violates this section, or a lien purporting to encumber the land
15 to secure a right under a deed restriction or other covenant
16 running with the land that violates this section is void and
17 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 amount 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, 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' association, condominium
16 association, cooperative association, or property
17 owners' association pursuant to a declaration,
18 covenant, or law applicable to the association,
19 including a fee or charge for association records for
20 the owner of the residential real property or to
21 provide an estoppel 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 requires
17 otherwise, "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 primarily used for occupancy as a residence."

1 SECTION 2. Chapter 518, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 **"§518- Prohibition on transfer fees; covenants. (a) A**
5 deed restriction or other covenant running with the land
6 applicable to the sale of residential real property that
7 requires a transferee of residential real property, or the
8 transferee's heirs, successors, and assigns, to pay to a
9 declarant or other person imposing a deed restriction or
10 covenant on the property or a third party designated by a
11 transferor of the property, a fee in connection with a future
12 transfer of the property shall be prohibited and unenforceable.
13 A deed restriction or other covenant running with the land that
14 violates this section, or a lien purporting to encumber the land
15 to secure a right under a deed restriction or other covenant
16 running with the land that violates this section is void and
17 unenforceable.

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

- 1 (1) Any interest, charge, fee, or other amount 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, 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' association, condominium
12 association, cooperative association, or property
13 owners' association pursuant to a declaration,
14 covenant, or law applicable to such association,
15 including a fee or charge for association records for
16 the owner of the residential real property or to
17 provide an estoppel 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 requires
12 otherwise, "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 primarily used for occupancy as a residence."

17 SECTION 3. Chapter 518, Hawaii Revised Statutes, is
18 amended by amending its title to read as follows:

19 **"COVENANTS IN [~~LEASES~~] REAL PROPERTY TRANSACTIONS"**

20 SECTION 4. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22 SECTION 5. This Act shall take effect on November 1, 2009.

Report Title:

Real Property; Covenants

Description:

Prohibits a deed restriction or covenant that requires a transferee of real property to pay a transfer fee to the person imposing the deed restriction or covenant, in connection with a transfer of real property. (SD1)