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# 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 the 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. (SD2)