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# A BILL FOR AN ACT

RELATING TO PRIVATE TRANSFER FEES.

**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 the part entitled  
3 "Miscellaneous Provisions" to be appropriately designated and to  
4 read as follows:

5           "§501- Prohibition of transfer fees. (a) A deed  
6 restriction or other covenant running with the land applicable  
7 to the transfer of real property that requires a transferee of  
8 real property or the transferee's heirs, successors, or assigns  
9 to pay a fee in connection with a future transfer of the  
10 property to a declarant or other person imposing the deed  
11 restriction or covenant on the property or a third party  
12 designated by a transferor of the property is prohibited. A  
13 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 the following fees or  
2 charges required by a deed restriction or other covenant running  
3 with the land in connection with the transfer of real property:

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

13        (2) Any fee, charge, assessment, or fine payable to an  
14 association of apartment owners as defined in section  
15 514A-3, an association as defined in section 514B-3, a  
16 cooperative housing corporation as described in  
17 section 421I-1, a limited-equity cooperative as  
18 defined in section 421H-1, and a planned community  
19 association as defined in section 607-14 and described  
20 in chapter 421J, pursuant to a declaration, covenant,  
21 or law applicable to such association or corporation,  
22 including a fee or charge to change the association or



1 corporation's records as to the owner of the real  
2 property or to provide an estoppel letter or  
3 certificate;

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

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

16 (5) Any fee, charge, shared appreciation interest, profit  
17 participation, or other consideration, payable by:

18 (A) A person engaged in the business of the  
19 development of real property for resale to others  
20 and not for the person's own use or the use of  
21 the person's parent, affiliates, subsidiaries, or  
22 relatives;



1           (B) A person who acquires the real property for the  
2           purpose of engaging in the business of the  
3           development of real property for resale to others  
4           or for the purpose of reselling the real property  
5           to a person engaged in the business of the  
6           development of real property for resale to  
7           others; or

8           (C) A person who purchases real property initially  
9           transferred at a price below the then prevailing  
10          market value of the real property pursuant to an  
11          affordable housing program established by the  
12          seller; provided that such fee, charge, shared  
13          appreciation interest, profit participation, or  
14          other consideration becomes payable, if ever,  
15          within ten years of the recording of the deed  
16          restriction or other covenant running with the  
17          land imposing the fee or charge on the real  
18          property;

19          (6) Any fee or charge payable to a government entity;

20          (7) Any fee, charge, assessment, or other amount payable  
21          pursuant to a deed restriction or other covenant  
22          running with the land, regardless of when filed or



1 recorded, that was required by a litigation settlement  
2 that was approved by a court of competent jurisdiction  
3 before the effective date of Act \_\_\_\_\_, Session Laws  
4 of Hawaii 2010; or

5 (8) Any reasonable fee payable to a qualified organization  
6 for:

7 (A) The qualified organization's management,  
8 stewardship, or enforcement of a qualified real  
9 property interest in the real property, granted  
10 exclusively for a conservation purpose; or

11 (B) Educating new owners of the real property on the  
12 restrictions imposed by the qualified real  
13 property interest granted exclusively for a  
14 conservation purpose.

15 As used in this paragraph, "qualified real property  
16 interest," "qualified organization," and "conservation  
17 purpose" have the same meaning as in section  
18 170(h)(2), (3), and (4), respectively, of the Internal  
19 Revenue Code;

20 (c) A deed restriction or other covenant running with the  
21 land filed on or after the effective date of Act \_\_\_\_\_, Session  
22 Laws of Hawaii 2010, or any lien to the extent that it purports



1 to secure the payment of a transfer fee prohibited by this  
2 section, shall be void and shall not be binding on or  
3 enforceable against the subject real property or any subsequent  
4 owner, purchaser, or mortgagee of any interest in the real  
5 property. This subsection shall not imply that any particular  
6 deed restriction, covenant running with the land, or lien, filed  
7 prior to the effective date of Act \_\_\_\_\_, Session Laws of Hawaii  
8 2010, is valid per se;

9 (d) No person shall be entitled to recover from the  
10 recipient or payee any fee, charge, or assessment required by a  
11 deed restriction or other covenant running with the land in  
12 connection with the transfer of real property to the extent that  
13 the fee, charge, or assessment was paid prior to the effective  
14 date of Act \_\_\_\_\_, Session Laws of Hawaii 2010.

15 (e) For purposes of this section:

16 "Filed" means filed in the office of the assistant  
17 registrar of the land court.

18 "Recorded" means the same as defined in section 502-7."

19 SECTION 2. Chapter 502, Hawaii Revised Statutes, is  
20 amended by adding a new section to the part entitled "Other  
21 Provisions" to be appropriately designated and to read as  
22 follows:



1        "§502- Prohibition of transfer fees. (a) A deed  
2 restriction or other covenant running with the land applicable  
3 to the transfer of real property that requires a transferee of  
4 real property or the transferee's heirs, successors, or assigns,  
5 to pay a fee in connection with a future transfer of the  
6 property to a declarant or other person imposing the deed  
7 restriction or covenant on the property or a third party  
8 designated by a transferor of the property is prohibited. A  
9 deed restriction or other covenant running with the land that  
10 violates this section or a lien purporting to encumber the land  
11 to secure a right under a deed restriction or other covenant  
12 running with the land that violates this section is void and  
13 unenforceable.

14        (b) This section shall not apply to the following fees or  
15 charges required by a deed restriction or other covenant running  
16 with the land in connection with the transfer of real property:

17        (1) Any interest, charge, fee, or other amount payable by  
18 a borrower to a lender pursuant to a loan secured by  
19 real property, including any fee payable to the lender  
20 for consenting to an assumption of the loan or  
21 transfer of the real property, for providing an  
22 estoppel letter or certificate, or for any shared



1 appreciation interest or profit participation or other  
2 consideration payable to the lender in connection with  
3 the loan;

4 (2) Any fee, charge, assessment, or fine payable to an  
5 association of apartment owners as defined in section  
6 514A-3, an association as defined in section 514B-3, a  
7 cooperative housing corporation as described in  
8 section 421I-1, a limited-equity cooperative as  
9 defined in section 421H-1, and a planned community  
10 association as defined in section 607-14 and described  
11 in chapter 421J, pursuant to a declaration, covenant,  
12 or law applicable to such association or corporation,  
13 including a fee or charge to change the association or  
14 corporation's records as to the owner of the real  
15 property or to provide an estoppel letter or  
16 certificate;

17 (3) Any fee or charge payable to a lessor under a lease of  
18 real property, including a fee or charge payable to  
19 the lessor for consenting to an assignment of the  
20 lease, for providing an estoppel letter or  
21 certificate, or to change the lessor's records as to  
22 the holder of the lessee's interest in the lease;





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

7       (5) Any fee, charge, shared appreciation interest, profit  
8       participation, or other consideration, payable by:

9       (A) A person engaged in the business of the  
10       development of real property for resale to others  
11       and not for the person's own use or the use of  
12       the person's parent, affiliates, subsidiaries, or  
13       relatives;

14       (B) A person who acquires the real property for the  
15       purpose of engaging in the business of the  
16       development of real property for resale to others  
17       or for the purpose of reselling the real property  
18       to a person engaged in the business of the  
19       development of real property for resale to  
20       others; or

21       (C) A person who purchases real property initially  
22       transferred at a price below the then prevailing



1           market value of the real property pursuant to an  
2           affordable housing program established by the  
3           seller; provided that such fee, charge, shared  
4           appreciation interest, profit participation, or  
5           other consideration becomes payable, if ever,  
6           within ten years of the recording of the deed  
7           restriction or other covenant running with the  
8           land imposing the fee or charge on the real  
9           property;

10       (6) Any fee or charge payable to a government entity;

11       (7) Any fee, charge, assessment, or other amount payable  
12       pursuant to a deed restriction or other covenant  
13       running with the land, regardless of when recorded or  
14       filed, that was required by a litigation settlement  
15       that was approved by a court of competent jurisdiction  
16       before the effective date of Act \_\_\_\_\_, Session Laws  
17       of Hawaii 2010; or

18       (8) Any reasonable fee payable to a qualified organization  
19       for:

20       (A) The qualified organization's management,  
21       stewardship, or enforcement of a qualified real



1 property interest in the real property, granted  
2 exclusively for a conservation purpose; or  
3 (B) Educating new owners of the real property on the  
4 restrictions imposed by the qualified real  
5 property interest granted exclusively for a  
6 conservation purpose.

7 As used in this paragraph, "qualified real property  
8 interest", "qualified organization", and "conservation  
9 purpose" have the same meaning as in section  
10 170(h)(2), (3), and (4), respectively, of the Internal  
11 Revenue Code.

12 (c) A deed restriction or other covenant running with the  
13 land recorded on or after the effective date of Act ,  
14 Session Laws of Hawaii 2010, or any lien to the extent that it  
15 purports to secure the payment of a transfer fee prohibited by  
16 this section, shall be void and shall not be binding on or  
17 enforceable against the subject real property or any subsequent  
18 owner, purchaser, or mortgagee of any interest in the property.  
19 This subsection shall not be construed to imply that any deed  
20 restriction, covenant running with the land, or lien, recorded  
21 prior to the effective date of Act , Session Laws of Hawaii  
22 2010, is valid per se.



1        (d) No person shall be entitled to recover from the  
2 recipient or payee any fee, charge, or assessment required by a  
3 deed restriction or other covenant running with the land in  
4 connection with the transfer of real property to the extent that  
5 the fee, charge, or assessment was paid prior to the effective  
6 date of Act           , Session Laws of Hawaii 2010.

7        (e) For purposes of this section, "filed" means filed in  
8 the office of the assistant registrar of the land court pursuant  
9 to chapter 501."

10       SECTION 3. In printing this Act, the revisor of statutes  
11 shall substitute in sections 501-    and 502-   , Hawaii Revised  
12 Statutes, in sections 1 and 2 of this Act, respectively, the  
13 corresponding act number of this Act.

14       SECTION 4. New statutory material is underscored.

15       SECTION 5. This Act shall take effect upon its approval.

16



**Report Title:**

Real Property; Transfer Fees

**Description:**

Prohibits the imposition of fees for a future transfer of real property. Specifies exceptions. Effective upon approval.  
(SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

