
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
14 condominium associations as defined by chapter 514A or
15 chapter 514B, cooperative housing corporations as
16 defined by chapter 421I or chapter 421H, and planned
17 community associations as defined by chapter 421J,
18 pursuant to a declaration, covenant, or law applicable
19 to an association, including a fee or charge to change
20 the association's records as to the owner of the real
21 property or to provide an estoppel letter or
22 certificate;

- 1 (3) Any fee or charge payable to a landlord under a lease
2 of real property, including a fee or charge payable to
3 the landlord for consenting to an assignment of the
4 lease, for providing an estoppel letter or
5 certificate, or to change the landlord's records as to
6 the owner of the lessee's interest in the lease;
- 7 (4) Any consideration payable to the holder of an option
8 to purchase an interest in real property or the holder
9 of a right of first refusal or first offer to purchase
10 an interest in real property for waiving, releasing,
11 or not exercising the option or right upon transfer of
12 the real property to another person;
- 13 (5) Any fee, charge, shared appreciation interest, profit
14 participation, or other consideration, payable by:
- 15 (A) A person engaged in the business of the
16 development of real property for resale to others
17 and not for the person's own use or the use of
18 the person's parent, affiliates, subsidiaries, or
19 relatives;
- 20 (B) A person who acquires real property for the
21 purpose of engaging in the business of the
22 development of real property for resale to others

1 or for the purpose of reselling the real property
2 to a person engaged in the business of the
3 development of real property for resale to
4 others; or

5 (C) A person who purchases real property initially
6 transferred at a price below the then prevailing
7 market value of the real property pursuant to an
8 affordable housing program established by the
9 seller;

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

11 (7) Any fee, charge, or assessment payable pursuant to a
12 deed restriction or other covenant running with the
13 land that was required by a litigation settlement that
14 was approved by the court before the effective date of
15 this section.

16 (c) A deed restriction or other covenant running with the
17 land filed after the effective date of this section, or any lien
18 to the extent that it purports to secure the payment of a
19 transfer fee prohibited by this section, shall not be binding on
20 or enforceable against the subject real property or any
21 subsequent owner, purchaser, or mortgagee of any interest in the
22 real property. This subsection shall not be construed to imply

1 that any particular deed restriction, covenant running with the
2 land, or lien filed prior to the effective date of this section
3 is valid per se.

4 (d) No person shall be entitled to recover from the
5 recipient or payee any fee, charge, or assessment required by a
6 deed restriction or other covenant running with the land in
7 connection with the transfer of real property to the extent that
8 the fee, charge, or assessment was paid prior to the effective
9 date of this section."

10 SECTION 2. Chapter 502, Hawaii Revised Statutes, is
11 amended by adding a new section to the part entitled "Other
12 Provisions" to be appropriately designated and to read as
13 follows:

14 **"§502- Prohibition of transfer fees.** (a) A deed
15 restriction or other covenant running with the land applicable
16 to the transfer of real property that requires a transferee of
17 real property or the transferee's heirs, successors, or assigns
18 to pay a fee in connection with a future transfer of the
19 property to a declarant or other person imposing the deed
20 restriction or covenant on the property or a third party
21 designated by a transferor of the property is prohibited. A
22 deed restriction or other covenant running with the land that

1 violates this section or a lien purporting to encumber the land
2 to secure a right under a deed restriction or other covenant
3 running with the land that violates this section is void and
4 unenforceable.

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

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

17 (2) Any fee, charge, assessment, or fine payable to
18 condominium associations as defined by chapter 514A or
19 chapter 514B, cooperative housing corporations as
20 defined by chapter 421I or chapter 421H, and planned
21 community associations as defined by chapter 421J,
22 pursuant to a declaration, covenant, or law applicable

1 to an association, including a fee or charge to change
2 the association's records as to the owner of the real
3 property or to provide an estoppel letter or
4 certificate;

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

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

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

19 (A) A person engaged in the business of the
20 development of real property for resale to others
21 and not for the person's own use or the use of

1 the person's parent, affiliates, subsidiaries, or
2 relatives;

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

10 (C) A person who purchases real property initially
11 transferred at a price below the then prevailing
12 market value of the real property pursuant to an
13 affordable housing program established by the
14 seller;

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

16 (7) Any fee, charge, or assessment payable pursuant to a
17 deed restriction or other covenant running with the
18 land that was required by a litigation settlement that
19 was approved by the court before the effective date of
20 this section.

21 (c) A deed restriction or other covenant running with the
22 land filed after the effective date of this section, or any lien

1 to the extent that it purports to secure the payment of a
2 transfer fee prohibited by this section, shall not be binding on
3 or enforceable against the subject real property or any
4 subsequent owner, purchaser, or mortgagee of any interest in the
5 real property. This subsection shall not be construed to imply
6 that any particular deed restriction, covenant running with the
7 land, or lien filed prior to the effective date of this section
8 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 this section."

15 SECTION 3. New statutory material is underscored.

16 SECTION 4. This Act shall take effect on July 1, 2010.

17

Report Title:

Real Property; Transfer Fees

Description:

Prohibits the imposition of fees for a future transfer of real property. Specifies exceptions. (SD1)

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