



GOV. MSG. NO. 629

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

June 22, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 22, 2010, the following bill was signed into law:

HB2288 HD1 SD2 CD1

A BILL FOR AN ACT
RELATING TO PRIVATE TRANSFER FEES.
ACT 169 (10)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

Approved by the Governor

on JUN 22 2010

ACT 169

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

H.B. NO. 2288
H.D. 1
S.D. 2
C.D. 1

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 housing cooperative
18 as defined in section 421H-1, or 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) Any:

21 (1) Deed restriction;

22 (2) Covenant running with the land; or



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

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

18 (e) For purposes of this section:
 19 "Filed" means filed in the office of the assistant
 20 registrar of the land court.

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

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

5 "§502- 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.

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

21 (1) Any interest, charge, fee, or other amount payable by
22 a borrower to a lender pursuant to a loan secured by



1 real property, including any fee payable to the lender
2 for consenting to an assumption of the loan or
3 transfer of the real property, for providing an
4 estoppel letter or certificate, or for any shared
5 appreciation interest or profit participation or other
6 consideration payable to the lender in connection with
7 the loan;

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

21 (3) Any fee or charge payable to a lessor under a lease of
22 real property, including a fee or charge payable to



1 the lessor for consenting to an assignment of the
2 lease, for providing an estoppel letter or
3 certificate, or to change the lessor's records as to
4 the holder of the lessee's interest in the lease;

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

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

13 (A) A person engaged in the business of the
14 development of real property for resale to others
15 and not for the person's own use or the use of
16 the person's parent, affiliates, subsidiaries, or
17 relatives;

18 (B) A person who acquires the real property for the
19 purpose of engaging in the business of the
20 development of real property for resale to others
21 or for the purpose of reselling the real property
22 to a person engaged in the business of the



1 development of real property for resale to
2 others; or
3 (C) A person who purchases real property initially
4 transferred at a price below the then prevailing
5 market value of the real property pursuant to an
6 affordable housing program established by the
7 seller; provided that such fee, charge, shared
8 appreciation interest, profit participation, or
9 other consideration becomes payable, if ever,
10 within ten years of the recording of the deed
11 restriction or other covenant running with the
12 land imposing the fee or charge on the real
13 property;
14 (6) Any fee or charge payable to a government entity;
15 (7) Any fee, charge, assessment, or other amount payable
16 pursuant to a deed restriction or other covenant
17 running with the land, regardless of when recorded or
18 filed, that was required by a litigation settlement
19 that was approved by a court of competent jurisdiction
20 before the effective date of Act , Session Laws
21 of Hawaii 2010; or

- 1 (8) Any reasonable fee payable to a qualified organization
- 2 for:
- 3 (A) The qualified organization's management,
- 4 stewardship, or enforcement of a qualified real
- 5 property interest in the real property, granted
- 6 exclusively for a conservation purpose; or
- 7 (B) Educating new owners of the real property on the
- 8 restrictions imposed by the qualified real
- 9 property interest granted exclusively for a
- 10 conservation purpose.

11 As used in this paragraph, "qualified real property
 12 interest", "qualified organization", and "conservation
 13 purpose" have the same meaning as in Section
 14 170(h) (2), (3), and (4), respectively, of the Internal
 15 Revenue Code.

- 16 (c) Any:
- 17 (1) Deed restriction;
- 18 (2) Covenant running with the land; or
- 19 (3) Lien;

20 to the extent that it purports to secure the payment of a
 21 transfer fee prohibited by this section, and that is created or
 22 recorded on or after the effective date of Act _____, Session



1 Laws of Hawaii 2010, shall be void and shall not be binding on
2 or enforceable against the subject real property or any
3 subsequent owner, purchaser, or mortgagee of any interest in the
4 real property. This subsection shall not imply that any
5 particular deed restriction, covenant running with the land, or
6 lien that is created or recorded prior to the effective date of
7 Act _____, Session Laws of Hawaii 2010, is valid per se.

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

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

17 SECTION 3. In printing this Act, the revisor of statutes
18 shall substitute in sections 501- and 502- , Hawaii Revised
19 Statutes, in sections 1 and 2 of this Act, respectively, the
20 corresponding act number of this Act.

21 SECTION 4. New statutory material is underscored.



1 SECTION 5. This Act shall take effect upon its approval,
2 and shall be repealed on June 30, 2015.

APPROVED this 22 day of JUN , 2010



GOVERNOR OF THE STATE OF HAWAII

