

JAN 18 2019

A BILL FOR AN ACT

RELATING TO TRANSFER FEES.

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

1 SECTION 1. The legislature finds that condominium
2 associations, homeowners associations, other housing cooperative
3 entities, and property management companies may charge a
4 transfer fee to cover the expenses of the necessary
5 transitioning activities and paperwork from the seller to the
6 buyer during a real estate transaction. The association or
7 property management company is responsible for providing
8 accurate and current information to an escrow company in a
9 timely manner and collecting all amounts due upon closing. The
10 transfer fee may include the costs of providing: liability for
11 information provided; verification of account balance;
12 identification of any past due or outstanding amounts; research
13 to verify identification of the selling party, as needed;
14 identification of any outstanding covenant violations or fines;
15 identification of any outstanding architectural review issues or
16 violations; determination of working capital, if applicable; and



1 any other information pertinent to the closing and transfer of
2 property at a particular community.

3 The purpose of this Act is to require an itemized
4 accounting of the services covered by transfer fees to increase
5 transparency in the transaction of real estate managed by
6 homeowners associations and property management companies.

7 SECTION 2. Section 501-232, Hawaii Revised Statutes, is
8 amended by amending subsection (b) to read as follows:

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

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



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

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



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

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

13 (7) Any fee, charge, assessment, or other amount payable
14 pursuant to a deed restriction or other covenant
15 running with the land, regardless of when filed or
16 recorded, that was required by a litigation settlement
17 that was approved by a court of competent jurisdiction
18 before June 22, 2010;

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



1 (A) The qualified organization's management,
2 stewardship, or enforcement of a qualified real
3 property interest in the real property, granted
4 exclusively for a conservation purpose; or

5 (B) Educating new owners of the real property on the
6 restrictions imposed by the qualified real
7 property interest granted exclusively for a
8 conservation purpose.

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

14 SECTION 3. Section 502-112, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

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

19 (1) Any interest, charge, fee, or other amount payable by
20 a borrower to a lender pursuant to a loan secured by
21 real property, including any fee payable to the lender

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

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



- 1 (3) Any fee or charge payable to a lessor under a lease of
- 2 real property, including a fee or charge payable to
- 3 the lessor for consenting to an assignment of the
- 4 lease, for providing an estoppel letter or
- 5 certificate, or to change the lessor's records as to
- 6 the holder 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 the real property for the
- 21 purpose of engaging in the business of the



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

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

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

18 (7) Any fee, charge, assessment, or other amount payable
19 pursuant to a deed restriction or other covenant
20 running with the land, regardless of when recorded or
21 filed, that was required by a litigation settlement



1 that was approved by a court of competent jurisdiction
2 before June 22, 2010; or

3 (8) Any reasonable fee payable to a qualified organization
4 for:

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

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

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

18 SECTION 4. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:

Anna Mercedes Kim

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S.B. NO. 508

Report Title:

Real Property Transfer Fee; Itemized Accounting

Description:

Requires real property transfer fees assessed by a condominium association, a cooperative housing corporation, a limited-equity housing cooperative, or a planned community association to include an itemized accounting of services rendered and covered by the transfer fees.

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

