

By Senator Aronberg

27-00394-08

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1 A bill to be entitled

2 An act relating to transfer fee covenants; creating s.  
3 689.28, F.S.; providing legislative intent regarding  
4 transfer fee covenants; providing definitions; providing  
5 that certain transfer fee covenants are unenforceable  
6 against subsequent owners, purchasers, and mortgagees;  
7 providing that a presumption is not created in favor of  
8 transfer fee covenants recorded before the effective date  
9 of the act; providing an effective date.

10  
11 Be It Enacted by the Legislature of the State of Florida:

12  
13 Section 1. Subsection 689.28, Florida Statutes, is created  
14 to read:

15 689.28 Prohibition against transfer fee covenants.--

16 (1) INTENT.--The Legislature finds and declares that the  
17 public policy of this state favors the marketability of real  
18 property and the transferability of interests in real property  
19 free of title defects, unreasonable restraints on alienation, and  
20 covenants and servitudes that do not touch and concern the  
21 property. The Legislature further finds and declares that  
22 transfer fee covenants violate this public policy by impairing  
23 the marketability and transferability of real property,  
24 constituting an unreasonable restraint on alienation regardless  
25 of the duration of such covenants or the amount of such transfer  
26 fees, and do not touch and concern the real property for the  
27 purposes of running with the title to the property or for binding  
28 subsequent owners of the property under common law or equitable  
29 principles.

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30       (2) DEFINITIONS.--As used in this section, the term:

31       (a) "Environmental covenant" means a covenant or servitude  
32 that imposes limitations on the use of real property pursuant to  
33 an environmental remediation project pertaining to the property.  
34 An environmental covenant is not a transfer fee covenant.

35       (b) "Transfer" means the sale, gift, conveyance,  
36 assignment, inheritance, or other transfer of an ownership  
37 interest in real property located in this state.

38       (c) "Transfer fee" means a fee or charge payable upon the  
39 transfer of an interest in real property, or payable for the  
40 right to make or accept such transfer, regardless of whether the  
41 fee or charge is a fixed amount or is determined as a percentage  
42 of the value of the property, the purchase price, or other  
43 consideration given for the transfer. The following are not  
44 transfer fees for purposes of this section:

45       1. Any consideration payable by the grantee to the grantor  
46 for the interest in real property being transferred, including  
47 any subsequent additional consideration for the property payable  
48 by the grantee based upon any subsequent appreciation,  
49 development, or sale of the property.

50       2. Any commission payable to a licensed real estate broker  
51 for the transfer of real property pursuant to an agreement  
52 between the broker and the grantor or the grantee, including any  
53 subsequent additional commission payable by the grantor or the  
54 grantee based upon any subsequent appreciation, development, or  
55 sale of the property.

56       3. Any interest, charges, fees, or other amounts payable by  
57 a borrower to a lender pursuant to a loan secured by a mortgage  
58 against real property, including, but not limited to, any fee

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59 payable to the lender for consenting to an assumption of the loan  
60 or a transfer of the real property subject to the mortgage, any  
61 fees or charges payable to the lender for estoppel letters or  
62 certificates, and any shared appreciation interest or profit  
63 participation or other consideration described in s. 687.03(4)  
64 and payable to the lender in connection with the loan.

65 4. Any rent, reimbursement, charge, fee, or other amount  
66 payable by a lessee to a lessor under a lease, including, but not  
67 limited to, any fee payable to the lessor for consenting to an  
68 assignment, subletting, encumbrance, or transfer of the lease.

69 5. Any consideration payable to the holder of an option to  
70 purchase an interest in real property or the holder of a right of  
71 first refusal or first offer to purchase an interest in real  
72 property for waiving, releasing, or not exercising the option or  
73 right upon the transfer of the property to another person.

74 6. Any tax, fee, charge, assessment, fine, or other amount  
75 payable to or imposed by a governmental authority.

76 7. Any fee, charge, assessment, fine, or other amount  
77 payable to a homeowners', condominium, cooperative, mobile home,  
78 or property owners' association pursuant to a declaration or  
79 covenant or law applicable to such association, including, but  
80 not limited to, fees or charges payable for estoppel letters or  
81 certificates issued by or on behalf of the association.

82 8. Any fee, charge, assessment, dues, contribution, or  
83 other amount imposed by a declaration or covenant encumbering  
84 four or more parcels in a community, as defined in s. 720.301,  
85 and payable to a nonprofit organization for the purpose of  
86 supporting cultural, educational, charitable, recreational, or  
87 other similar activities benefiting the community that is subject

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88 | to the declaration or covenant.

89 | 9. Any payment required pursuant to an environmental  
90 | covenant.

91 | (d) "Transfer fee covenant" means a declaration or covenant  
92 | purporting to affect real property which requires or purports to  
93 | require the payment of a transfer fee to the declarant or other  
94 | person specified in the declaration or covenant or to their  
95 | successors or assigns upon a subsequent transfer of an interest  
96 | in the real property.

97 | (3) PROHIBITION.--A transfer fee covenant recorded in this  
98 | state on or after July 1, 2008, may not run with the title to  
99 | real property and is not binding on or enforceable at law or in  
100 | equity against any subsequent owner, purchaser, or mortgagee of  
101 | any interest in real property as an equitable servitude or  
102 | otherwise. Any lien purporting to secure the payment of a  
103 | transfer fee under a transfer fee covenant recorded in this state  
104 | on or after July 1, 2008, is void and unenforceable. This  
105 | subsection does not mean that transfer fee covenants or liens  
106 | recorded in this state before July 1, 2008, are presumed valid  
107 | and enforceable.

108 | Section 2. This act shall take effect July 1, 2008.