

STAND. COM. REP. NO. 704

Honolulu, Hawaii

March 6, 2009

RE: H.B. No. 874
H.D. 2

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 874, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO RESIDENTIAL REAL PROPERTY,"

begs leave to report as follows:

The purpose of this bill is to prohibit residential real property deed restrictions or other covenants running with the land from requiring the payment of fees for the future transfer of the property, except certain fees or charges relating to:

- (1) Payments to a lender on a mortgage loan secured by the property;
- (2) Payments to homeowners', condominium, cooperative, or property owners' associations pursuant to a declaration, covenant, or law applicable to the association;
- (3) Lease payments and charges to landlords;
- (4) Payments to the holder of an option to purchase an interest in residential real property, or holder of a right of first refusal or first offer to purchase such interest, for waiving the option or right upon transfer of the property to another person; and
- (5) Payments to a government entity.

HB874 HD2 HSCR JUD HMS 2009-2503



The Hawaii Association of Realtors supported the intent of this bill.

Your Committee has amended this bill by:

- (1) Changing the effective date to January 1, 2046, to encourage further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 874, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 874, H.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,



JAN RIKI KARAMATSU, Chair



A BILL FOR AN ACT

RELATING TO RESIDENTIAL REAL PROPERTY.

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 be appropriately designated
3 and to read as follows:

4 "§501- Prohibition of transfer fees. (a) No deed
5 restriction or other covenant running with the land applicable
6 to the transfer of residential real property shall require a
7 transferee of residential real property, or the transferee's
8 heirs, successors, or assigns, to pay:

9 (1) A declarant or other person imposing the deed
10 restriction or covenant on the property; or

11 (2) A third party designated by a transferor of the
12 property,

13 a fee in connection with a future transfer of the property. A
14 deed restriction or other covenant running with the land that
15 violates this section or a lien purporting to encumber the land
16 to secure a right under a deed restriction or other covenant
17 running with the land that violates this section is void and
18 unenforceable.



1 (b) This section shall not apply to any of the following
2 fees or charges required by a deed restriction or other covenant
3 running with the land in connection with the transfer of
4 residential real property:

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

14 (2) Any fee or charge payable to a residential real
15 property homeowners', condominium, cooperative, or
16 property owners' association, pursuant to a
17 declaration, covenant, or law applicable to the
18 association, including a fee or charge to change the
19 association's records as to the owner of the
20 residential real property or to provide an estoppel
21 letter or certificate;

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

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

15 (5) Any fee or charge payable to a government entity.

16 (c) As used in this section, unless the context otherwise
17 requires, "residential real property" means fee simple or
18 leasehold property on which is currently situated:

19 (1) One to four dwelling units; or

20 (2) A residential condominium or cooperative apartment,

21 the primary use of which is occupancy as a residence."



1 SECTION 2. Chapter 502, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§502- Prohibition of transfer fees. (a) No deed
5 restriction or other covenant running with the land applicable
6 to the transfer of residential real property shall require a
7 transferee of residential real property, or the transferee's
8 heirs, successors, or assigns, to pay:

9 (1) A declarant or other person imposing the deed
10 restriction or covenant on the property; or

11 (2) A third party designated by a transferor of the
12 property,

13 a fee in connection with a future transfer of the property. A
14 deed restriction or other covenant running with the land that
15 violates this section or a lien purporting to encumber the land
16 to secure a right under a deed restriction or other covenant
17 running with the land that violates this section is void and
18 unenforceable.

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



- 1 (1) Any interest, charge, fee, or other amounts payable by
2 a borrower to a lender pursuant to a loan secured by
3 residential real property, including any fee payable
4 to the lender for consenting to an assumption of the
5 loan or transfer of the residential real property, for
6 providing an estoppel letter or certificate, or for
7 any shared appreciation interest or profit
8 participation or other consideration payable to the
9 lender in connection with the loan;
- 10 (2) Any fee or charge payable to a residential real
11 property homeowners', condominium, cooperative, or
12 property owners' association, pursuant to a
13 declaration, covenant, or law applicable to the
14 association, including a fee or charge to change the
15 association's records as to the owner of the
16 residential real property or to provide an estoppel
17 letter or certificate;
- 18 (3) Any fee or charge payable to a landlord under a lease
19 of residential real property, including a fee or
20 charge payable to the landlord for consenting to an
21 assignment of the lease, for providing an estoppel
22 letter or certificate, or to change the landlord's



1 records as to the owner of the lessee's interest in
2 the lease;

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

10 (5) Any fee or charge payable to a government entity.

11 (c) As used in this section, unless the context otherwise
12 requires, "residential real property" means fee simple or
13 leasehold property on which is currently situated:

14 (1) One to four dwelling units; or

15 (2) A residential condominium or cooperative apartment,
16 the primary use of which is occupancy as a residence."

17 SECTION 3. New statutory material is underscored.

18 SECTION 4. This Act shall take effect on January 1, 2046.



Report Title:

Residential Real Property; Prohibition on Transfer Fees

Description:

Prohibits residential real property transfer fees required by a deed restriction or covenant, with certain exceptions. Takes effect January 1, 2046. (HB874 HD2)



March 21, 2009

The Honorable Rosalyn Baker, Chair

Senate Committee on Commerce and Consumer Protection
State Capitol, Room 231
Honolulu, Hawaii 96813

RE: H.B 874, H.D. 2 - Relating to Residential Real Property

HEARING DATE: Monday, March 23, 2009 at 10:00 a.m.

Aloha Chair Baker and Members of the Committee:

I am Gary Slovin with Goodwill Anderson Quinn & Stifel, here to testify on behalf of the Hawai'i Association of REALTORS® (HAR) and its 9,600 members in Hawai'i. HAR **supports the intent** of H.B. 874 H.D. 2, which prohibits private transfer fees required by a deed restriction or covenant, with certain exceptions.

Private transfer fees are deed restrictions or covenants imposed by an owner of real property, which require a fee to be paid to a specific individual or entity every time the property is sold. These restrictions run with the land and, oftentimes, are not disclosed to subsequent buyers until the closing of a property sale. Sometimes, such fees may be imposed as part of a new housing development upon the buyer and subsequent purchasers of the property. Presently, there is no regulation over the imposition of such fees, no limitation on the application of the fees, and no accountability or oversight of the recipients of the fees.

HAR believes that private transfer fees may create significant barriers to homeownership, particularly because these fees are typically imposed at the closing of a transaction. This puts a burden on the homeowner, at a critical time when money may already be short.

HAR supports the intent of H.B. 874, H.D.2, but prefers S.B. 1241, S.D. 2. The Senate bill has a broader title, which would enable the bill to apply to commercial transactions as well as residential transactions. The rationale behind this is that private transfer fees might also affect properties that do not fit into the "residential" categories (for example, resort condominiums), but still would be harmed by imposing such fees. We do in the meantime continue to support passage of H.B. 874, H.D. 2 at this time.

Mahalo for the opportunity to testify on this bill.