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A BILL FOR AN ACT

RELATING TO REAL PROPERTY TRANSACTIONS.

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

1 SECTION 1. Chapter 518, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§518- Prohibition on transfer fees; covenants. (a) A
5 deed restriction or other covenant running with the land
6 applicable to the sale of residential real property that
7 requires a transferee of residential real property, or the
8 transferee's heirs, successors, and assigns, to pay to a
9 declarant or other person imposing a deed restriction or
10 covenant on the property or a third party designated by a
11 transferor of the property, a fee in connection with a future
12 transfer of the property shall be prohibited and unenforceable.
13 A 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 a deed restriction or
2 other covenant running with the land that requires a fee
3 associated with the conveyance of property that is payable to a
4 government entity."

5 SECTION 2. Chapter 518, Hawaii Revised Statutes, is
6 amended by amending its title to read as follows:

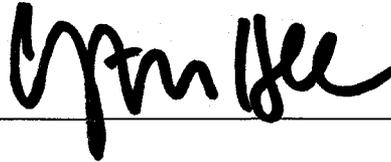
7 **"COVENANTS IN [~~LEASES~~] REAL PROPERTY TRANSACTIONS"**

8 SECTION 3. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 4. This Act shall take effect upon its approval.

11

INTRODUCED BY: _____



Report Title:

Real Property; Covenants

Description:

Prohibits a deed restriction or covenant that requires a transferee of real property to pay a transfer fee to the person imposing the deed restriction or covenant, in connection with a transfer of real property.



February 16, 2009

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce & Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

RE: S.B. 1241 Relating to Real Property Transactions

Hearing date: February 17, 2009 @ 8:30 a.m.

Aloha Chair Baker, Vice Chair Ige and Members of the Committee:

I am Gary Slovin, here to testify on behalf of the Hawai'i Association of REALTORS® (HAR) and its 9,600 members. HAR **supports S.B. 1241**, but proposes an SD1 to address concerns that, in its present form, S.B. 1241 is too broad and covers legitimate fees.

S.B. 1241 would prohibit certain private transfer fees required by deed restrictions or covenants. 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.

A proposed SD1 is attached for the consideration of the Committee. HAR offers to continue to work with interested parties to address any remaining concerns.

Mahalo for the opportunity to testify.

A BILL FOR AN ACT

RELATING TO PRIVATE TRANSFER FEES.

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

SECTION 1. Chapter 501, Hawaii Revised Statutes, is amended by adding a new section to the part entitled "Miscellaneous Provisions" to be appropriately designated and to read as follows:

§501- Prohibition of transfer fees.

(a) A deed restriction or other covenant running with the land applicable to the transfer of residential real property that requires a transferee of residential real property, or the transferee's heirs, successors or assigns, to pay a declarant or other person imposing the deed restriction or covenant on the property or a third party designated by a transferor of the property a fee in connection with a future transfer of the property is prohibited. A deed restriction or other covenant running with the land that violates this section or a lien purporting to encumber the land to secure a right under a deed restriction or other covenant running with the land that violates this section is void and unenforceable.

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

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

(2) Any fee or charge payable to a residential real property homeowners', condominium, cooperative, or property owners' association, pursuant to a declaration, covenant, or law applicable to such association, including a fee or charge to association's records as to the owner of the residential real property or to provide an estoppel letter or certificate;

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

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

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

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

(1) From one to four dwelling units; or

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

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

§502 - Prohibition of transfer fees.

(a) A deed restriction or other covenant running with the land applicable to the transfer of residential real property that requires a transferee of residential real property, or the transferee's heirs, successors or assigns, to pay a declarant or other person imposing the deed restriction or covenant on the property or a third party designated by a transferor of the property a fee in connection with a future transfer of the property is prohibited. A deed restriction or other covenant running with the land that violates this section or a lien purporting to encumber the land to secure a right under a deed restriction or other covenant running with the land that violates this section is void and unenforceable.

(b) This section does not apply to any of the following fees or charges required by a deed restriction or other covenant running with the land associated with the transfer of residential real property:

(1) Any interest, charge, fee, or other amounts payable by a borrower to a lender pursuant to a loan secured by residential real property, including any fee payable to the lender for consenting to an assumption of the loan or transfer of the residential real property, for providing an estoppel letter or certificate, or for any shared appreciation

interest or profit participation or other consideration payable to the lender in connection with the loan;

(2) Any fee or charge payable to a residential real property homeowners', condominium, cooperative, or property owners' association, pursuant to a declaration, covenant, or law applicable to such association, including a fee or charge to association's records as to the owner of the residential real property or to provide an estoppel letter or certificate;

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

(iv) Any fees or charges payable to a government entity.

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

(1) From one to four dwelling units; or

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

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on November 1, 2009.



Mililani Town Association

95-303 Kaloapau Street
Mililani Town, HI 96789
Phone (808) 623-7300

February 14, 2009

Senator Rosalyn Baker, Chair
Senator David Ige, Vice-Chair
Committee on Commerce & Consumer
Protection
State Capitol
Honolulu, HI 96813

VIA E-Mail: CPNTestimony@capitol.hawaii.gov

Re: S.B. No. 1241 – Relating to Real Property Transactions
Hearing: Tuesday, February 17, 2009, 8:30 am, Conf Room 229

Dear Chair Baker, Vice-Chair Ige and Committee Members:

My name is Eric Matsumoto, Vice-President of the Mililani Town Association (MTA). I have served in MTA leadership capacities for 24 of the last 30 years serving on the board. MTA encompasses 16,000 plus units involving both single family units and townhouse projects.

We urge this bill be deferred. While MTA does not have “transfer fees” that are tied to the deed that is conveyed through real property transactions, we do have fees charged to cover administrative costs to include the new homeowners into the various systems to accomplish the requirements imposed by the governing documents. While this bill only speaks to fees required by governing documents in deeds tied to land conveyances, the concept of charging fees for these transfers is really the issue. I

It is very striking that this bill does not prohibit governmental agency transfer fees, but chooses to selectively target planned communities and AOAOs that have the requirement to include all homeowners who live in units under the documents contained in the deeds conveyed with the land. To strip associations of the ability to charge these fees is discrimination against planned communities and AOAOs at its highest level. If the feeling is that fees are not needed by associations, why are the fees needed by governmental agencies, for both as a cost of doing business? Ultimately, understanding that these fees are a cost for doing business mandated by the governing documents in deeds conveyed with the land, homeowners have the choice of not living in communities that have associations charged with mandated requirements for inclusion of all homeowners in the associations’ various systems.

We therefore, strongly urge this bill be deferred.

Sincerely yours,

Eric M. Matsumoto
Vice-President, Board of Directors

Cc: Senator Kidani
Senator Bunda

Representative Lee
Representative Yaman

Steve Glanstein
P. O. Box 22885
Honolulu, HI 96823-2885

February 16, 2009

Sen. Rosalyn Baker, Chair
Sen. David Ige, Vice-Chair
Committee on Commerce and Consumer Protection
Hawai'i State Capitol, Room 016
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony opposing SB 1241; Hearing Date: February 17, 2009; sent via facsimile to 586-6659; e-mail to: CPNTestimony@Capitol.hawaii.gov.

Dear Chair Baker, Vice-Chair Ige, and Members of the Committee:

I am an experienced Professional Registered Parliamentarian and have worked with community associations every year since I began my practice in 1983.

It has been my custom for many years to provide the community with the benefit of my experience with numerous condominium, cooperative, and planned community association meetings (about 1,200 in 25 years). This testimony is provided strictly in that capacity.

SB 1241 proposes to prohibit a deed restriction or covenant that requires a transferee of real property to pay a transfer fee to the person imposing the deed restriction or covenant in connection with a transfer of real property.

I am opposed to the bill in its current form for several reasons. They are enumerated below:

1. The bill is essentially a legislative mandated covenant amendment without a compelling public interest. It amounts to a taking of property without compensation.

An example of a compelling public interest that affects covenants would be the mandated removal of discrimination clauses in covenants such as restrictions based upon sex, race, religion, etc.

2. The bill proposes that the prohibition doesn't apply to a fee that must be payable to a government entity. This supports (1) above that there is no compelling public interest for this bill.

There is currently a companion House Bill (HB874) being considered to accomplish a similar objective.

I understand that changes to the House bill are being considered to prevent developers from enriching themselves by charging endless transfer fees from future home sales and apartments. However, there has been no published Committee decision and there are some good amendments recommended by CAI-Hawaii to HB 874.

Please consider the consequences of applying this law to every property in the state of Hawaii. Consider that there are covenants for numerous types of land, including condominium property regimes, planned community associations, cooperatives, limited-equity cooperatives, lease-held interests, and even timesharing.

I urge the committees to defer, hold, or significantly amend this bill. Thank you for the opportunity to present testimony on this subject.

Sincerely,



Steve Glanstein
Professional Registered Parliamentarian