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

H.B. NO. <sup>2288</sup> 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:

SECTION 1. Chapter 501, Hawaii Revised Statutes, is 1 2 amended by adding a new section to the part entitled "Miscellaneous Provisions" to be appropriately designated and to 3 4 read as follows: 5 "§501- Prohibition of transfer fees. (a) A deed 6 restriction or other covenant running with the land applicable to the transfer of real property that requires a transferee of 7 8 real property or the transferee's heirs, successors, or assigns to pay a fee in connection with a future transfer of the 9 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 deed restriction or other covenant running with the land that 13 violates this section or a lien purporting to encumber the land 14 to secure a right under a deed restriction or other covenant 15 running with the land that violates this section is void and 16

17 <u>unenforceable</u>.



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1	<u>(b)</u>	This section shall not apply to the following fees or
2	<u>charges</u> r	equired 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 4211-1, 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





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1		corporation's records as to the owner of the real
2		property or to provide an estoppel letter or
3		certificate;
4	<u>(3)</u>	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		<u>relatives;</u>
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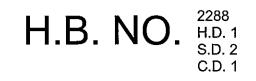
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1		<u>(B)</u>	A person who acquires the real property for the
2			purpose of engaging in the business of the
3			development of real property for resale to others
4			or for the purpose of reselling the real property
5			to a person engaged in the business of the
6			development of real property for resale to
7			others; or
8		<u>(C)</u>	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	<u>(7)</u>	Any	fee, charge, assessment, or other amount payable
21		purs	uant to a deed restriction or other covenant
22		runn	ing with the land, regardless of when filed or
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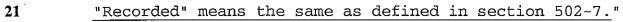
1		recorded, that was required by a litigation settlement
2		that was approved by a court of competent jurisdiction
3		before the effective date of Act , Session Laws
4		of Hawaii 2010; or
5	(8)	Any reasonable fee payable to a qualified organization
6		for:
7		(A) The qualified organization's management,
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	<u>(1)</u>	Deed restriction;
22	(2)	Covenant running with the land; or

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1 <u>(3)</u> Lien	;
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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.
	"Decended" money the same of defined in contine 500.7."





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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: Prohibition of transfer fees. (a) A deed "§502restriction or other covenant running with the land applicable to the transfer of real property that requires a transferee of real property or the transferee's heirs, successors, or assigns, to pay a fee in connection with a future transfer of the property to 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 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. This section shall not apply to the following fees or (b) charges required by a deed restriction or other covenant running with the land in connection with the transfer of real property: (1) Any interest, charge, fee, or other amount payable by

a borrower to a lender pursuant to a loan secured by

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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 4211-1, 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



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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
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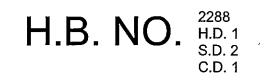
1		development of real property for resale to
2		others; or
3		(C) A person who purchases real property initially
4		transferred at a price below the then prevailing
5		market value of the real property pursuant to an
6		affordable housing program established by the
7		seller; provided that such fee, 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



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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 ex	tent 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
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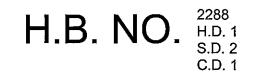
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1	Laws of Hawaii 2010, shall be void and shall not be binding on
2	or enforceable against the subject real property or any
3	subsequent owner, purchaser, or mortgagee of any interest in the
4	real property. This subsection shall not imply that any
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.



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



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**Report Title:** Real Property; Transfer Fees

## Description:

Prohibits the imposition of fees for a future transfer of real property. Specifies exceptions. Sunsets June 30, 2015. (HB2288 CD1)

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

