
A BILL FOR AN ACT

RELATING TO PRIVATE TRANSFER FEES.

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 the part entitled
3 "Miscellaneous Provisions" to be appropriately designated and to
4 read as follows:

5 "§501- Prohibition of transfer fees. (a) A deed
6 restriction or other covenant running with the land applicable
7 to the transfer of real property that requires a transferee of
8 real property or the transferee's heirs, successors, or assigns
9 to pay a fee in connection with a future transfer of the
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
13 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 the following fees or
2 charges required 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
14 condominium associations as defined by chapter 514A or
15 chapter 514B, cooperative housing corporations as
16 defined by chapter 421I or chapter 421H, and planned
17 community associations as defined by chapter 421J,
18 pursuant to a declaration, covenant, or law applicable
19 to such association or corporation, including a fee or
20 charge to change the association or corporation's
21 records as to the owner of the real property or to
22 provide an estoppel letter or certificate;



- 1 (3) Any fee or charge payable to a landlord under a lease
2 of real property, including a fee or charge payable to
3 the landlord for consenting to an assignment of the
4 lease, for providing an estoppel letter or
5 certificate, or to change the landlord's records as to
6 the owner 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
22 development of real property for resale to others



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

5 (C) A person who purchases real property initially
6 transferred at a price below the then prevailing
7 market value of the real property pursuant to an
8 affordable housing program established by the
9 seller;

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

11 (7) Any fee, charge, assessment, or other amount payable
12 pursuant to a deed restriction or other covenant
13 running with the land, regardless of when filed or
14 recorded, that was required by a litigation settlement
15 that was approved by the court before the effective
16 date of Act _____, Session Laws of Hawaii 2010; or

17 (8) Any reasonable fee payable to a qualified organization
18 for:

19 (A) The qualified organization's management,
20 stewardship or enforcement of a qualified real
21 property interest in the real property, granted
22 exclusively for a conservation purpose; or



1 (B) Educating new owners of the real property on the
2 restrictions imposed by the qualified real
3 property interest granted exclusively for a
4 conservation purpose.

5 As used in this paragraph, "qualified real property
6 interest," "qualified organization," and "conservation
7 purpose" have the same meaning as in section
8 170(h) (2), (3), and (4), respectively, of the Internal
9 Revenue Code;

10 (c) A deed restriction or other covenant running with the
11 land filed after the effective date of Act _____, Session Laws
12 of Hawaii 2010, or any lien to the extent that it purports to
13 secure the payment of a transfer fee prohibited by this section,
14 shall not be binding on or enforceable against the subject real
15 property or any subsequent owner, purchaser, or mortgagee of any
16 interest in the real property. This subsection shall not imply
17 that any particular deed restriction, covenant running with the
18 land, or lien, filed prior to the effective date of Act _____,
19 Session Laws of Hawaii 2010, is valid per se;

20 (d) No person shall be entitled to recover from the
21 recipient or payee any fee, charge, or assessment required by a
22 deed restriction or other covenant running with the land in



1 connection with the transfer of real property to the extent that
2 the fee, charge, or assessment was paid prior to the effective
3 date of Act _____, Session Laws of Hawaii 2010."

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

8 "§502- Prohibition of transfer fees. (a) A deed
9 restriction or other covenant running with the land applicable
10 to the transfer of real property that requires a transferee of
11 real property or the transferee's heirs, successors, or assigns,
12 to pay a fee in connection with a future transfer of the
13 property to a declarant or other person imposing the deed
14 restriction or covenant on the property or a third party
15 designated by a transferor of the property is prohibited. A
16 deed restriction or other covenant running with the land that
17 violates this section or a lien purporting to encumber the land
18 to secure a right under a deed restriction or other covenant
19 running with the land that violates this section is void and
20 unenforceable.



1 (b) This section shall not apply to the following fees or
2 charges required 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
14 condominium associations as defined by chapter 514A or
15 chapter 514B, cooperative housing corporations as
16 defined by chapter 421I or chapter 421H, and planned
17 community associations as defined by chapter 421J,
18 pursuant to a declaration, covenant, or law applicable
19 to such association or corporation, including a fee or
20 charge to change the association or corporation's
21 records as to the owner of the real property or to
22 provide an estoppel letter or certificate;



1 (3) Any fee or charge payable to a landlord under a lease
2 of real property, including a fee or charge payable to
3 the landlord for consenting to an assignment of the
4 lease, for providing an estoppel letter or
5 certificate, or to change the landlord's records as to
6 the owner 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
22 development of real property for resale to others



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

5 (C) A person who purchases real property initially
6 transferred at a price below the then prevailing
7 market value of the real property pursuant to an
8 affordable housing program established by the
9 seller;

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

11 (7) Any fee, charge, assessment, or other amount payable
12 pursuant to a deed restriction or other covenant
13 running with the land, regardless of when recorded or
14 filed, that was required by a litigation settlement
15 that was approved by the court before the effective
16 date of Act , Session Laws of Hawaii 2010; or

17 (8) Any reasonable fee payable to a qualified organization
18 for:

19 (A) The qualified organization's management,
20 stewardship, or enforcement of a qualified real
21 property interest in the real property, granted
22 exclusively for a conservation purpose; or



1 (B) Educating new owners of the real property on the
2 restrictions imposed by the qualified real
3 property interest granted exclusively for a
4 conservation purpose.

5 As used in this paragraph, "qualified real property
6 interest", "qualified organization", and "conservation
7 purpose" have the same meaning as in section
8 170(h)(2), (3), and (4), respectively, of the Internal
9 Revenue Code.

10 (c) A deed restriction or other covenant running with the
11 land recorded after the effective date of Act , Session
12 Laws of Hawaii 2010, or any lien to the extent that it purports
13 to secure the payment of a transfer fee prohibited by this
14 section, shall not be binding on or enforceable against the
15 subject real property or any subsequent owner, purchaser, or
16 mortgagee of any interest in the property. This subsection
17 shall not be construed to imply that any deed restriction,
18 covenant running with the land, or lien, recorded prior to the
19 effective date of Act , Session Laws of Hawaii 2010, is
20 valid per se.

21 (d) No person shall be entitled to recover from the
22 recipient or payee any fee, charge, or assessment required by a



1 deed restriction or other covenant running with the land in
2 connection with the transfer of real property to the extent that
3 the fee, charge, or assessment was paid prior to the effective
4 date of Act _____, Session Laws of Hawaii 2010."

5 SECTION 3. In printing this Act, the revisor of statutes
6 shall substitute in sections 501- and 502- , Hawaii Revised
7 Statutes, in sections 1 and 2 of this Act, respectively, the
8 corresponding act number of this Act.

9 SECTION 4. New statutory material is underscored.

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

11



Report Title:

Real Property; Transfer Fees

Description:

Prohibits the imposition of fees for a future transfer of real property. Specifies exceptions. Effective upon approval.
(SD1)

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

