

ACT 169

H.B. NO. 2288

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 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.

(b) This section shall not apply to the following fees or 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 real property, including any fee payable to the lender for consenting to an assumption of the loan or transfer of the 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, charge, assessment, or fine payable to an association of apartment owners as defined in section 514A-3, an association as defined in section 514B-3, a cooperative housing corporation as described in section 421I-1, a limited-equity housing cooperative as defined in section 421H-1, or a planned community association as defined in section 607-14 and described in chapter 421J, pursuant to a declaration, covenant, or law applicable to such association or corporation, including a fee or charge to change the association or corporation's records as to the owner of the real property or to provide an estoppel letter or certificate;
- (3) Any fee or charge payable to a lessor under a lease of real property, including a fee or charge payable to the lessor for consenting to an assignment of the lease, for providing an estoppel letter or certificate, or to change the lessor's records as to the holder of the lessee's interest in the lease;
- (4) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon transfer of the real property to another person;
- (5) Any fee, charge, shared appreciation interest, profit participation, or other consideration, payable by:
 - (A) A person engaged in the business of the development of real property for resale to others and not for the person's own use or the use of the person's parent, affiliates, subsidiaries, or relatives;
 - (B) A person who acquires the real property for the purpose of engaging in the business of the development of real property for resale to others or for the purpose of reselling the real property to a person engaged in the business of the development of real property for resale to others; or
 - (C) A person who purchases real property initially transferred at a price below the then prevailing market value of the real property pursuant to an affordable housing program established by the seller; provided that such fee, charge, shared appreciation interest, profit participation, or other consideration becomes payable, if ever, within ten years of the recording of the deed restriction or other covenant running with the land imposing the fee or charge on the real property;
- (6) Any fee or charge payable to a government entity;

- (7) Any fee, charge, assessment, or other amount payable pursuant to a deed restriction or other covenant running with the land, regardless of when filed or recorded, that was required by a litigation settlement that was approved by a court of competent jurisdiction before the effective date of Act , Session Laws of Hawaii 2010; or
- (8) Any reasonable fee payable to a qualified organization for:
 - (A) The qualified organization’s management, stewardship, or enforcement of a qualified real property interest in the real property, granted exclusively for a conservation purpose; or
 - (B) Educating new owners of the real property on the restrictions imposed by the qualified real property interest granted exclusively for a conservation purpose.

As used in this paragraph, “qualified real property interest,” “qualified organization,” and “conservation purpose” have the same meaning as in Section 170(h)(2), (3), and (4), respectively, of the Internal Revenue Code.

- (c) Any:
 - (1) Deed restriction;
 - (2) Covenant running with the land; or
 - (3) Lien;

to the extent that it purports to secure the payment of a transfer fee prohibited by this section, and that is created or filed on or after the effective date of Act , Session Laws of Hawaii 2010, shall be void and shall not be binding on or enforceable against the subject real property or any subsequent owner, purchaser, or mortgagee of any interest in the real property. This subsection shall not imply that any particular deed restriction, covenant running with the land, or lien that is created or filed prior to the effective date of Act , Session Laws of Hawaii 2010, is valid per se.

(d) No person shall be entitled to recover from the recipient or payee any fee, charge, or assessment required by a deed restriction or other covenant running with the land in connection with the transfer of real property to the extent that the fee, charge, or assessment was paid prior to the effective date of Act , Session Laws of Hawaii 2010.

(e) For purposes of this section:

“Filed” means filed in the office of the assistant registrar of the land court.

“Recorded” means the same as defined in section 502-7.”

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 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.

(b) This section shall not apply to the following fees or 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 real property, including any fee payable to the lender for consenting to an assumption of the loan or transfer of the 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, charge, assessment, or fine payable to an association of apartment owners as defined in section 514A-3, an association as defined in section 514B-3, a cooperative housing corporation as described in section 421I-1, a limited-equity housing cooperative as defined in section 421H-1, or a planned community association as defined in section 607-14 and described in chapter 421J, pursuant to a declaration, covenant, or law applicable to such association or corporation, including a fee or charge to change the association or corporation's records as to the owner of the real property or to provide an estoppel letter or certificate;
- (3) Any fee or charge payable to a lessor under a lease of real property, including a fee or charge payable to the lessor for consenting to an assignment of the lease, for providing an estoppel letter or certificate, or to change the lessor's records as to the holder of the lessee's interest in the lease;
- (4) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon transfer of the real property to another person;
- (5) Any fee, charge, shared appreciation interest, profit participation, or other consideration, payable by:
 - (A) A person engaged in the business of the development of real property for resale to others and not for the person's own use or the use of the person's parent, affiliates, subsidiaries, or relatives;
 - (B) A person who acquires the real property for the purpose of engaging in the business of the development of real property for resale to others or for the purpose of reselling the real property to a person engaged in the business of the development of real property for resale to others; or
 - (C) A person who purchases real property initially transferred at a price below the then prevailing market value of the real property pursuant to an affordable housing program established by the seller; provided that such fee, charge, shared appreciation interest, profit participation, or other consideration becomes payable, if ever, within ten years of the recording of the deed restriction or other covenant running with the land imposing the fee or charge on the real property;
- (6) Any fee or charge payable to a government entity;
- (7) Any fee, charge, assessment, or other amount payable pursuant to a deed restriction or other covenant running with the land, regardless of when recorded or filed, that was required by a litigation settlement

that was approved by a court of competent jurisdiction before the effective date of Act , Session Laws of Hawaii 2010; or

- (8) Any reasonable fee payable to a qualified organization for:
 - (A) The qualified organization's management, stewardship, or enforcement of a qualified real property interest in the real property, granted exclusively for a conservation purpose; or
 - (B) Educating new owners of the real property on the restrictions imposed by the qualified real property interest granted exclusively for a conservation purpose.

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

- (c) Any:
 - (1) Deed restriction;
 - (2) Covenant running with the land; or
 - (3) Lien;

to the extent that it purports to secure the payment of a transfer fee prohibited by this section, and that is created or recorded on or after the effective date of Act , Session Laws of Hawaii 2010, shall be void and shall not be binding on or enforceable against the subject real property or any subsequent owner, purchaser, or mortgagee of any interest in the real property. This subsection shall not imply that any particular deed restriction, covenant running with the land, or lien that is created or recorded prior to the effective date of Act , Session Laws of Hawaii 2010, is valid per se.

(d) No person shall be entitled to recover from the recipient or payee any fee, charge, or assessment required by a deed restriction or other covenant running with the land in connection with the transfer of real property to the extent that the fee, charge, or assessment was paid prior to the effective date of Act , Session Laws of Hawaii 2010.

(e) For purposes of this section, "filed" means filed in the office of the assistant registrar of the land court pursuant to chapter 501."

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

SECTION 4. New statutory material is underscored.¹

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

(Approved June 22, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.