

SB3747



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3747

Introduced 2/11/2010, by Sen. A. J. Wilhelmi

SYNOPSIS AS INTRODUCED:

New Act

Creates the Transfer Fee Covenant Act. States legislative findings and declares that transfer fee covenants violate the public policy of favoring the transferability of real property free of unreasonable restraints. Defines transfer, transfer fee, and transfer fee covenant. Provides that a transfer fee covenant or a lien to secure the payment of a transfer fee that is recorded after the effective date is void, unenforceable, and does not run with the title to the real property. Provides that it cannot be presumed that the provisions of this Act mean that a transfer fee covenant or lien recorded before the effective date is valid and enforceable.

LRB096 18779 AJO 34164 b

A BILL FOR

1 AN ACT concerning real property.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Transfer Fee Covenant Act.

6 Section 5. Legislative findings. The General Assembly
7 finds and declares that the public policy of this State favors
8 the marketability of real property and the transferability of
9 interests in real property free of title defects or
10 unreasonable restraints on alienation. The General Assembly
11 further finds and declares that transfer fee covenants violate
12 this public policy by impairing the marketability and
13 transferability of real property and by constituting an
14 unreasonable restraint on alienation regardless of the
15 duration of the covenants or the amount of the transfer fees,
16 and do not run with the title to the property or bind
17 subsequent owners of the property under common law or equitable
18 principles.

19 Section 10. Definitions. As used in this Act:

20 "Transfer" means the sale, gift, conveyance, assignment,
21 inheritance, or other transfer of an ownership interest in real
22 property located in this State.

1 "Transfer fee" means a fee or charge required by a transfer
2 fee covenant and payable upon the transfer of an interest in
3 real property, or payable for the right to make or accept such
4 transfer, regardless of whether the fee or charge is a fixed
5 amount or is determined as a percentage of the value of the
6 property, the purchase price, or other consideration given for
7 the transfer. The following are not transfer fees for purposes
8 of this Act:

9 (1) any consideration payable by the grantee to the
10 grantor for the interest in real property being
11 transferred, including any subsequent additional
12 consideration for the property payable by the grantee based
13 upon any subsequent appreciation, development, or sale of
14 the property. For the purposes of this paragraph (1), an
15 interest in real property may include a separate mineral
16 estate and its appurtenant surface access rights;

17 (2) any commission payable to a licensed real estate
18 broker for the transfer of real property under an agreement
19 between the broker and the grantor or the grantee,
20 including any subsequent additional commission for that
21 transfer payable by the grantor or the grantee based upon
22 any subsequent appreciation, development, or sale of the
23 property;

24 (3) any interest, charges, fees, or other amounts
25 payable by a borrower to a lender under a loan secured by a
26 mortgage against real property, including but not limited

1 to any fee payable to the lender for consenting to an
2 assumption of the loan or a transfer of the real property
3 subject to the mortgage, any fees or charges payable to the
4 lender for estoppel letters or certificates, and any other
5 consideration allowed by law and payable to the lender in
6 connection with the loan;

7 (4) any rent, reimbursement, charge, fee, or other
8 amount payable by a lessee to a lessor under a lease,
9 including but not limited to any fee payable to the lessor
10 for consenting to an assignment, subletting, encumbrance,
11 or transfer of the lease;

12 (5) any consideration payable to the holder of an
13 option to purchase an interest in real property or the
14 holder of a right of first refusal or first offer to
15 purchase an interest in real property for waiving,
16 releasing, or not exercising the option or right upon the
17 transfer of the property to another person;

18 (6) any tax, fee, charge, assessment, fine, or other
19 amount payable to or imposed by a governmental authority,
20 as long as such tax, fee, charge, assessment, fine, or
21 other amount payable is not imposed or payable by virtue of
22 a covenant or declaration; or

23 (7) any fee, charge, assessment, fine, or other amount
24 payable to a homeowners', condominium, cooperative, mobile
25 home, or property owners' association pursuant to a
26 declaration or covenant or law applicable to such

1 association, including, but not limited to, fees or charges
2 payable for estoppel letters or certificates issued by the
3 association or its authorized agent.

4 "Transfer fee covenant" means a declaration or covenant
5 purporting to affect real property which requires or purports
6 to require the payment of a transfer fee to the declarant or
7 other person specified in the declaration or covenant or to
8 their successors or assigns upon a subsequent transfer of an
9 interest in the real property.

10 Section 15. Transfer fee covenant prohibition. A transfer
11 fee covenant recorded in this State on or after the effective
12 date of this Act shall not run with the title to real property
13 and is not binding on or enforceable at law or in equity
14 against any subsequent owner, purchaser, or mortgagee of any
15 interest in real property as an equitable servitude or
16 otherwise. Any lien purporting to secure the payment of a
17 transfer fee under a transfer fee covenant recorded in this
18 State on or after the effective date of this Act is void and
19 unenforceable. This Section does not mean that a transfer fee
20 covenant or lien recorded in this State before the effective
21 date of this Act is presumed valid and enforceable.