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TRANSFER FEE COVENANTS

SECTION 27-1-70. Real property transfer fee covenants unenforceable; definitions; policy; requirements for enforceability of prior transfer fee covenants.

(A) As used in this section:

(1) "Association" means a nonprofit, mandatory membership organization comprised of owners of homes, condominiums, cooperatives, manufactured homes, or any interest in real property, created pursuant to a declaration, covenant, or other applicable law.

(2) "Transfer" means the sale, gift, grant, conveyance, assignment, inheritance, or other transfer of an interest in real property located in this State.

(3) "Transfer fee" means a fee or charge imposed by a transfer fee covenant, but does not include any tax, assessment, fee, or charge imposed by a governmental authority pursuant to applicable laws, ordinances, or regulations.

(4) "Transfer fee covenant" means a provision in a document, whether recorded or not and however denominated, which purports to run with the land or bind current owners or successors in title to specified real property located in this State, and which obligates a transferee or transferor of all or part of the property to pay a fee or charge to a third person upon transfer of an interest in all or part of the property, or in consideration for permitting this transfer. A "transfer fee covenant" does not include:

(a) a provision of a purchase contract, option, mortgage, security agreement, real property listing agreement, or other agreement which obligates one party to the agreement to pay the other, as full or partial consideration for the agreement or for a waiver of rights under the agreement, an amount determined by the agreement, if that amount:

(i) is payable on a one-time basis only upon the next transfer of an interest in the specified real property and, once paid, does not bind successors in title to the property;

(ii) constitutes a loan assumption or similar fee charged by a lender holding a lien on the property;

(iii) constitutes a fee or commission paid to a licensed real estate broker for brokerage services rendered in connection with the transfer of the property for which the fee or commission is paid; or

(iv) is the actual cost to copy governing documents of a community association and is charged by the association to a transferee or transferor for governing documents delivered to a real estate closing, provided cost is not passed through to a third party other than the agent of the association;

(b) any provision in a deed, memorandum, or other document recorded for the purpose of providing record notice of an agreement described in subsection (A)(4)(a);

(c) a provision of a document requiring payment of a fee or charge to an association to be used exclusively for purposes authorized in the document if no portion of the fee is required to be passed through to a third party designated or identifiable by description in the document or another document referenced in it;

(d) a provision of a document requiring payment of a fee or charge to an organization described in Section 501(c)(3), 501(c)(4), or 501(c)(7) of the Internal Revenue Code, to be used exclusively to support cultural, educational, charitable, recreational, environmental, conservation, social, or other similar activities benefiting the real property affected by the provision or the community of which the property is a part; or

(e) any fee, charge, assessment, or other amount payable in connection with a "conservation easement" as defined in Section 27-8-80 in the Conservation Easement Act, or a preservation easement as described in Sections 170 (h)(4)(B) and (C) of the Internal Revenue Code of 1986, as amended, whether the conservation easement or preservation easement is donated or purchased, or part donated and part purchased; whether paid contemporaneously with the recording of the conservation easement or the preservation easement or at some future date during its term and existence; and whether paid by the original grantor or any successor or assign in the legal chain of title to the real property subject to the conservation easement or preservation easement.

(B) The General Assembly finds:

(1) the public policy of this State favors the transferability of interests in real property free from unreasonable restraints on alienation and covenants or servitudes that do not touch and concern the property; and

(2) a transfer fee covenant violates this public policy by impairing the marketability of title to the affected real property and constitutes an unreasonable restraint on alienation, regardless of the duration of the covenant or the amount of the transfer fee set forth in the covenant.

(C) A transfer fee covenant recorded after the effective date of this section, or a lien to the extent that it purports to secure the payment of a transfer fee, is not binding on or enforceable against the affected real property or any subsequent owner, purchaser, or mortgagee of an interest in the property.

(D) In order for a transfer fee covenant recorded before the effective date of this section to be valid and enforceable, a separate document that complies with the following requirements of this subsection must be filed in each county in which the real property subject to the transfer fee covenant is located within one hundred eighty days of the effective date of this section.

(1) The title of the document must be "Notice of Transfer Fee Covenant" in at least fourteen-point boldface type.

(2) The document must list the amount or basis by which the transfer fee covenant is calculated.

(3) The actual dollar-cost examples for a home priced at two hundred fifty thousand dollars, five hundred thousand dollars, and seven hundred fifty thousand dollars must be included in the document.

(4) The document must contain the date or circumstances under which the transfer fee covenant expires, if any.

(5) The document must contain instructions and contact information concerning the payment of the fee required by the transfer fee covenant.

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