

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2010-32
SENATE BILL 35

AN ACT TO PROVIDE THAT TRANSFER FEE COVENANTS DO NOT RUN WITH THE TITLE TO REAL PROPERTY AND ARE NOT BINDING ON OR ENFORCEABLE AGAINST ANY SUBSEQUENT OWNER, PURCHASER, OR MORTGAGEE.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 39A.

"Transfer Fee Covenants Prohibited.

"§ 39A-1. Public policy.

(a) The public policy of this State favors the marketability of real property and the transferability of interests in real property free from title defects, unreasonable restraints on alienation, and covenants or servitudes that do not touch and concern the property.

(b) 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 and transferability of property, regardless of the duration of the covenant or the amount of the transfer fee set forth in the covenant.

"§ 39A-2. Definitions.

As used in this Chapter:

- (1) "Transfer" means the sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property located in this State.
- (2) "Transfer fee" means a fee or charge payable upon the transfer of an interest in real property or payable for the right to make or accept such transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price, or other consideration given for the transfer. The following shall not be considered a "transfer fee" for the purposes of this Chapter:
 - a. Any consideration payable by the grantee to the grantor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the grantee based upon any subsequent appreciation, development, or sale of the property that, once paid, shall not bind successors in title to the property.
 - b. Any commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the transferor or transferee, including any subsequent additional commission for the transfer payable by the transferor or the transferee based upon any subsequent additional commission payable by the transferor based upon any subsequent appreciation, development, or sale of the property.
 - c. Any interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage against real property, including any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage, any fees or charges payable to the lender for estoppel letters or certificates, and any other consideration allowed by law and payable to the lender in connection with the loan.
 - d. Any rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease, including any fee payable to the



- lessor for consenting to an assignment, subletting, encumbrance, or transfer of the lease.
 - e. 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 the transfer of the property to another person.
 - f. Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority.
 - g. Any fee charged that is a typical real estate closing cost, including closing or escrow fees, settlement fees, attorney fees, or title insurance premiums and fees.
 - h. Any reasonable fee charged for the preparation of statements of unpaid assessments pursuant to G.S. 47F-3-102(13) or resale certificates or statements of unpaid assessments pursuant to G.S. 47C-3-102(12).
 - i. Any reasonable fee payable by the original transferee to a unit owners' association as defined in G.S. 47C-1-103(3), or owners' association as defined in G.S. 47F-1-103(3), as long as 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 therein.
 - j. Any fee payable as part of a conservation or preservation agreement as provided in G.S. 121-38(e).
- (3) "Transfer fee covenant" means a declaration or covenant purporting to affect real property that requires or purports to require the payment of a transfer fee to the declarant or other person specified in the declaration or covenant or to their successors or assigns, upon a subsequent transfer of an interest in the real property.

"§ 39A-3. Transfer fee covenants prohibited.

(a) Any transfer fee covenant or any lien that is filed to enforce a transfer fee covenant or purports to secure payment of a transfer fee, shall not run with the title to real property and is not binding on or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in real property as an equitable servitude or otherwise.

(b) A person who records a transfer fee covenant, files a lien that purports to secure payment of a transfer fee, or enters into an agreement imposing a private transfer fee obligation shall be liable for:

- (1) Any and all damages resulting from the imposition of the transfer fee obligation on the transfer of an interest in the real property, including the amount of any transfer fee paid by a party to the transfer.
- (2) All attorney fees, expenses, and costs incurred by a party to the transfer or mortgagee of the real property to recover the transfer fee paid or in connection with an action to quiet title or register the title or a proceeding subsequent to initial registration. If an agent acts on behalf of a principal to file or secure a private transfer fee obligation, liability shall be assessed to the principal, but not to the agent."

SECTION 2. Nothing in this act shall be interpreted to mean that a transfer fee covenant recorded prior to the effective date of this act is valid or enforceable.

SECTION 3. This act is effective when it becomes law and applies to: (i) any transfer fee covenant that is recorded after the effective date of this act; (ii) any lien that is filed to enforce a transfer fee covenant that is recorded after the effective date of this act or purports to secure payment of a transfer fee that is recorded after the effective date of this act; and (iii) any agreement imposing a private transfer fee obligation entered into after the effective date of this act.

In the General Assembly read three times and ratified this the 24th day of June, 2010.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 9:00 a.m. this 1st day of July, 2010