

58-3821. Transfer fee covenant; definitions; not enforceable. (a) As used in this section:

(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 section:

(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;

(B) any commission payable to an individual licensed by the state as a real estate salesperson or broker for the transfer of real property pursuant to an agreement between the grantor or grantee and the real estate salesperson or broker, including any subsequent additional commission payable by the grantor or the grantee 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, but not limited to, 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, but not limited to, 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 tax, fee, charge, assessment, fine or other amount payable to a homeowners', condominium, cooperative, mobile home or property owners' association pursuant to a declaration or covenant or law applicable to such association; or

(H) any fee charged that is a typical real estate closing cost, including escrow fees, settlement fees or title insurance premiums charged by a real estate title company licensed by the state;

(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.

(b) Any transfer fee covenant recorded in this state on or after July 1, 2009, shall not run with the title to real property and is not binding 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.

History: L. 2009, ch. 14, § 1; July 1.