

AN ACT concerning real property.

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

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

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

Section 10. Definitions. As used in this Act:

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

"Transfer fee" means a fee or charge required by a transfer fee covenant and 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 are not transfer fees for purposes of this Act:

(1) 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. For the purposes of this paragraph (1), an interest in real property may include a separate mineral estate and its appurtenant surface access rights;

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

(3) any interest, charges, fees, or other amounts payable by a borrower to a lender under 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;

(4) 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;

(5) 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;

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

(7) any 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, including, but not limited to, fees or charges payable for estoppel letters or certificates issued by the association or its authorized agent; or

(8) Any fee, charge, assessment or other amount payable to an entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code whose purpose includes the conservation of land, natural areas, open space or water areas or the preservation of native plants or animals, biotic communities or geographic formations located within the same subdivision or planned unit development or within one-half mile of the real property to which the transfer fee covenant attaches for the exclusive or non-exclusive use and benefit of the owners of that real property.

"Transfer fee covenant" means a declaration or covenant purporting to affect real property which 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.

Section 15. Transfer fee covenant prohibition. A transfer fee covenant recorded in this State on or after the effective date of this Act 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. Any lien purporting to secure the payment of a transfer fee under a transfer fee covenant recorded in this State on or after the effective date of this Act is void and unenforceable. This Section does not mean that a transfer fee covenant or lien recorded in this State before the effective date of this Act is presumed valid and enforceable.