

A-Engrossed
House Bill 2481

Ordered by the House March 19
Including House Amendments dated March 19

Sponsored by Representative HOLVEY; Representative WINGARD (at the request of Oregon Association of Realtors)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Prohibits agreement for transfer of real property that reserves right to payment or profit upon, or as condition or result of, future transfer of fee simple interest in property.

Prohibits servitude on real property that reserves right to payment or profit upon, or as condition or result of, future transfer of fee simple interest in property.

[Allows award of attorney fees and costs to defendant prevailing in action for enforcement of prohibited reservation of right.]

Creates exceptions.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to transfers of real property interests; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) An agreement that transfers, or purports to transfer, a fee simple in-**
5 **terest in real property may not reserve to any person the right to a share of property value**
6 **appreciation, a fee, commission or other payment or profit upon, or as a condition or result**
7 **of, a future transfer of a fee simple interest or purported fee simple interest in the property.**

8 **(2) A covenant, condition, restriction or other agreement that imposes a servitude on**
9 **real property may not reserve to any person the right to a share of property value appreci-**
10 **ation, a fee, commission or other payment or profit upon, or as a condition or result of, a**
11 **future transfer of a fee simple interest or purported fee simple interest in the property.**

12 **(3) A covenant, condition, restriction or agreement provision that violates subsection (1)**
13 **or (2) of this section is void.**

14 **(4) Subsections (1) and (2) of this section do not apply to the following:**

15 **(a) A judgment of marital annulment, dissolution or separation that gives a spouse an**
16 **interest in receiving proceeds from a future sale of real property by the other spouse.**

17 **(b) A mortgage loan agreement that requires payment of mortgage principal, interest and**
18 **fees upon sale of the property by the mortgagee.**

19 **(c) A joint venture or partnership agreement in which a joint venturer or partner con-**
20 **tributes real property to the joint venture or partnership.**

21 **(d) An agreement providing for a series of related transfers of the fee simple interest in**
22 **a real property, if the agreement identifies with specificity the price of the transferred in-**
23 **terest, all consideration given, party names and other essential terms for each transfer of**
24 **interest that is part of the series.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (e) An affordable housing covenant, servitude, easement, condition or restriction in a
2 deed, declaration, land sale contract, loan agreement, promissory note, trust deed, mortgage,
3 security agreement or other instrument, including but not limited to instruments created
4 as provided under ORS 456.270 to 456.295, that are executed by:

5 (A) A public body as defined in ORS 174.109;

6 (B) An agency of the United States;

7 (C) A public benefit corporation, religious corporation or foreign corporation, all as de-
8 fined in ORS 65.001, if the purposes of the corporation include providing affordable housing
9 for low income households and moderate income households as those terms are defined in
10 ORS 456.270;

11 (D) A limited liability company as defined in ORS 63.001 having a membership composed
12 of one or more corporations described in subparagraph (C) of this paragraph;

13 (E) A consumer housing cooperative as defined in ORS 456.548;

14 (F) A manufactured dwelling park nonprofit cooperative as defined in ORS 62.803; or

15 (G) A federally recognized Indian tribe.

16 (f) A requirement for the payment of a fee to:

17 (A) A homeowners association as defined in ORS 94.550;

18 (B) An association of unit owners as defined in ORS 100.005;

19 (C) A managing entity of a timeshare plan, as those terms are defined in ORS 94.803;

20 (D) Any other owners' association that is governed by recorded covenants, conditions and
21 restrictions; or

22 (E) An agent for an association or managing entity described in subparagraphs (A) to (D)
23 of this paragraph.

24 **SECTION 2.** Section 1 of this 2009 Act applies to an agreement transferring an interest
25 in real property that is signed by the transferee of the interest on or after the effective date
26 of this 2009 Act. Section 1 of this 2009 Act applies to a covenant, condition, restriction or
27 other agreement imposing a servitude on real property that is filed on or after the effective
28 date of this 2009 Act.

29 **SECTION 3.** This 2009 Act being necessary for the immediate preservation of the public
30 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
31 on its passage.
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