

House Bill 2703

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

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 **as introduced**.

Prohibits enforcement of transfer fee covenant included in documents transferring interest in real property to extent that covenant runs with land or title.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to transfer fee covenants on real property; and declaring an emergency.

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

4 **SECTION 1. The Legislative Assembly finds and declares that:**

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

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

12 (3) **A transfer fee covenant, to the extent that it purports to run with the land or the**
13 **title to land, is void and unenforceable as contrary to public policy.**

14 **SECTION 2. As used in sections 1 to 3 of this 2011 Act:**

15 (1) **"Transfer" means the sale, gift, conveyance, assignment, inheritance or other trans-**
16 **fer of an ownership interest in real property located in this state.**

17 (2) **"Transfer fee" means a charge payable upon the transfer of an interest in real prop-**
18 **erty or payable for the right to make or accept a transfer, without regard to whether the**
19 **charge is a fixed amount or a calculated amount determined as a percentage of the value of**
20 **the property or the purchase price.**

21 (3) **"Transfer fee" does not mean:**

22 (a) **Consideration payable by the grantee to the grantor for the interest in real property**
23 **being transferred, including subsequent additional consideration for the property payable by**
24 **the grantee based upon subsequent appreciation, development or sale of the property that,**
25 **once paid, does not bind successors in title to the property.**

26 (b) **A commission payable to a licensed real estate broker for the transfer of real prop-**
27 **erty pursuant to an agreement between the broker and either the transferor or transferee,**
28 **including any subsequent additional commission for the transfer payable by the transferor**
29 **or the transferee based upon subsequent additional commission payable by the transferor**
30 **based upon subsequent appreciation, development or sale of the property.**

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 (c) Interest, charges, fees or other amounts payable by a borrower to a lender pursuant
2 to a loan secured by a mortgage against real property, including a fee payable to the lender
3 for consenting to an assumption of the loan or a transfer of the real property subject to the
4 mortgage, fees or charges payable to the lender for estoppel letters or certificates and other
5 consideration allowed by law and payable to the lender in connection with the loan.

6 (d) Rent, reimbursement, charge, fee or other amount payable by a lessee to a lessor
7 under a lease, including a fee payable to the lessor for consenting to an assignment, sublet,
8 encumbrance or transfer of the lease.

9 (e) Consideration payable to the holder of an option to purchase an interest in real
10 property or the holder of a right of first refusal or first offer to purchase an interest in real
11 property for waiving, releasing or not exercising the option or right upon the transfer of the
12 property to another person.

13 (f) A tax, fee, charge, assessment, fine or other amount imposed by or payable to a gov-
14 ernmental authority.

15 (g) A fee charged that is a typical real estate closing cost, including closing fees, escrow
16 fees, settlement fees, attorney fees, title insurance premiums and title insurance fees.

17 (h) Reasonable assessments imposed or levied by:

18 (A) A homeowners association on or against an owner or lot pursuant to the provisions
19 of the declaration or the bylaws of the planned community or provisions of ORS 94.550 to
20 94.783.

21 (B) An association of unit owners on or against an owner or lot pursuant to the pro-
22 visions of the declaration or the bylaws of the planned community or provisions of ORS
23 chapter 100.

24 (4) "Transfer fee covenant" means a declaration or covenant that, by its terms, purports
25 to affect real property by requiring, upon a subsequent transfer of an interest in the real
26 property, the payment of a transfer fee to the declarant, to another person specified in the
27 declaration or covenant or to the successors or assigns of the declarant or other person.

28 **SECTION 3.** (1) A transfer fee covenant or a lien filed to secure payment of or enforce
29 a transfer fee covenant:

30 (a) Does not run with the land or the title to the land.

31 (b) Is not binding on or enforceable against a subsequent owner, purchaser or mortgagee
32 of any interest in real property as an equitable servitude or otherwise.

33 (2) A person that records a transfer fee covenant, files a lien to secure payment of or
34 enforce a transfer fee or enters into an agreement imposing a private transfer fee obligation
35 is liable for:

36 (a) Any and all damages resulting from the imposition of the transfer fee on the transfer
37 of an interest in the real property, including the amount of the transfer fee paid by a party
38 to the transfer.

39 (b) Attorney fees, expenses and costs incurred by a party to the transfer or mortgagee
40 of the real property to recover the transfer fee paid or in connection with an action to quiet
41 title or register the title or a proceeding subsequent to initial registration.

42 (3) Liability under this section attaches to a principal and not to an agent who acts in
43 violation of this section on behalf of the principal.

44 **SECTION 4.** Sections 1 to 3 of this 2011 Act apply to transfer fee covenants entered into
45 before, on and after the effective date of this 2011 Act.

1 **SECTION 5. This 2011 Act being necessary for the immediate preservation of the public**
2 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
3 **on its passage.**

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