

**Enrolled**  
**House Bill 3488**

Sponsored by Representatives ESQUIVEL, DOHERTY, KENNEMER

CHAPTER .....

AN ACT

Relating to prohibitions on payments required under instruments that condition a transfer of an interest in real property; amending ORS 93.269.

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

**SECTION 1.** ORS 93.269 is amended to read:

93.269. (1) An instrument [*conveying, or contracting*] **that conveys, or contracts** to convey, a fee simple interest in real property may not cause, or purport to cause, a declaration or covenant to be filed or recorded against the title to the real property if the declaration or covenant requires, or purports to require, the payment of a fee, commission or other payment to the declarant or to another person specified in the declaration or covenant, or to the declarant's or other person's successors or assigns, upon a transfer of a fee simple interest in the property.

(2) A declaration or covenant that requires, or purports to require, the payment of a fee, commission or other payment upon the transfer of a fee simple interest in real property to the declarant or other person specified in the declaration or covenant, or to the declarant's or other person's successors or assigns, upon a transfer of a fee simple interest in the property or that otherwise violates subsection (1) of this section, is void.

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

(a) An instrument [*conveying or contracting*] **that conveys or contracts** to convey a fee simple interest in real property that provides for **a grantee to pay** [*any*] consideration [*payable by a grantee*] to a grantor for the interest in real property being transferred, including but not limited to any subsequent additional consideration for the property [*payable by*] the grantee **must pay** based upon any subsequent appreciation, development or sale of the property.

(b) A requirement in a mortgage loan agreement for [*the payment of*] **paying** mortgage principal, interest and fees upon sale of the property by the mortgagee.

(c) A limited liability company, limited liability partnership, corporation, joint venture or partnership agreement in which a member, shareholder, joint venturer or partner contributes real property to the limited liability company, limited liability partnership, corporation, joint venture or partnership.

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

(e) An affordable housing covenant, servitude, easement, condition or restriction in a deed, declaration, land sale contract, loan agreement, promissory note, trust deed, mortgage, security

agreement or other instrument, including but not limited to instruments created as provided under ORS 456.270 to 456.295[ *that are*] **if:**

**(A) The proceeds of any fee, commission or other payment to a declarant or to another person specified in the instrument, or to the declarant's or other person's successors or assigns, are used exclusively to benefit the property, or to support activities that directly benefit the residents of the property, that is subject to the instrument; and**

**(B) The instrument is** executed by:

[(A)] (i) A public body as defined in ORS 174.109;

[(B)] (ii) An agency of the United States;

[(C)] (iii) A public benefit corporation, religious corporation or foreign corporation, all as defined in ORS 65.001, if the purposes of the corporation include providing affordable housing for low income households and moderate income households as those terms are defined in ORS 456.270;

[(D)] (iv) A limited liability company, as defined in ORS 63.001, [*having*] **that has** a membership composed of one or more corporations described in [*subparagraph (C)*] **sub-subparagraph (iii)** of this [*paragraph*] **subparagraph;**

[(E)] (v) A consumer housing cooperative as defined in ORS 456.548;

[(F)] (vi) A manufactured dwelling park nonprofit cooperative, as defined in ORS 62.803; or

[(G)] (vii) A federally recognized Indian tribe.

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

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

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

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

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

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

(g) An agreement between a real estate licensee and a grantor or grantee [*providing*] **that provides** for any commission payable to the real estate licensee for the transfer of the real property.

**Passed by House April 23, 2015**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate June 4, 2015**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2015

**Approved:**

.....M.,....., 2015

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State