

House Bill 3488

Sponsored by Representatives ESQUIVEL, DOHERTY, KENNEMER

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**.

Exempts specified instruments that condition transfer of fee simple interest in real property from prohibition on fee, commission or other payment to declarant or other person upon transfer of interest in real property. Requires for exemption that proceeds of fee, commission or payment directly benefit property subject to instrument or support activities that directly benefit residents of property subject to instrument and that certain entities execute instrument.

A BILL FOR AN ACT

1
2 Relating to prohibitions on payments required under instruments that condition a transfer of an in-
3 terest in real property; amending ORS 93.269.

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

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

6 93.269. (1) An instrument [*conveying, or contracting*] **that conveys, or contracts** to convey, a
7 fee simple interest in real property may not cause, or purport to cause, a declaration or covenant
8 to be filed or recorded against the title to the real property if the declaration or covenant requires,
9 or purports to require, the payment of a fee, commission or other payment to the declarant or to
10 another person specified in the declaration or covenant, or to the declarant's or other person's
11 successors or assigns, upon a transfer of a fee simple interest in the property.

12 (2) A declaration or covenant that requires, or purports to require, the payment of a fee, com-
13 mission or other payment upon the transfer of a fee simple interest in real property to the declarant
14 or other person specified in the declaration or covenant, or to the declarant's or other person's
15 successors or assigns, upon a transfer of a fee simple interest in the property or that otherwise vi-
16 olates subsection (1) of this section, is void.

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

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

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

25 (c) A limited liability company, limited liability partnership, corporation, joint venture or part-
26 nership agreement in which a member, shareholder, joint venturer or partner contributes real
27 property to the limited liability company, limited liability partnership, corporation, joint venture or
28 partnership.

29 (d) An agreement [*providing*] **that provides** for a series of related transfers of the fee simple
30 interest in a real property, if the agreement identifies with specificity the price of the transferred

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 interest, all consideration given, party names and other essential terms for each transfer of interest
 2 that is part of the series.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (D) Any other owners' association that is governed by recorded covenants, conditions and re-
 28 strictions; or

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

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