

An Act

ENROLLED HOUSE

BILL NO. 1594

By: Martin (Steve) and Cooksey
of the House

and

Crain of the Senate

An Act relating to property; defining terms; stating legislative findings; prohibiting transfer fees; and providing for codification.

SUBJECT: Real property transfer fees

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 350 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Association" means a nonprofit mandatory membership organization comprised of owners of homes, condominiums, cooperatives, manufactured homes, or any interest in real property, created pursuant to a declaration, covenant, or other applicable law;

2. "Transfer" means the sale, gift, grant, conveyance, assignment, inheritance, or other transfer of an interest in real property located in this state;

3. "Transfer fee" means a fee or charge imposed by a transfer fee covenant, but shall not include any tax, assessment, fee or charge imposed by a governmental authority pursuant to applicable laws, ordinances, or regulations; and

4. "Transfer fee covenant" means a provision in a document, whether recorded or not and however denominated, which purports to run with the land or bind current owners, purchasers or successors

in title to specified real property located in this state, and which obligates a transferee or transferor of all or part of the property or any interest thereon to pay a fee or charge to a third person or entity upon transfer of an interest in all or part of the property, or in consideration for permitting any such transfer. The term "transfer fee covenant" shall not include:

- a. any provision of a purchase contract, option, mortgage, security agreement, real property listing agreement, or other agreement that obligates one party to the agreement to pay the other party as full or partial consideration for the agreement or for a waiver of rights under the agreement if the amount to be paid is:
 - (1) a loan assumption fee or similar fee charged by a lender that holds a mortgage on the property, and
 - (2) a fee or commission paid to a licensed real estate broker for brokerage services rendered in connection with the transfer of the property for which the fee or commission is paid,
- b. any provision in a deed, memorandum or other document recorded for the purpose of providing record notice of an agreement prescribed in subparagraph a of paragraph 4 of subsection A of this section,
- c. any rent, reimbursement, charge, fee or other amount payable by a lessee to a lessor under a lease, including any fee payable to the lessor for consenting to an assignment, sublease, encumbrance or transfer of the lease,
- d. any consideration payable to the holder of an option to purchase an interest in the real property or to the holder of a right of first refusal or first offer to purchase an interest in real property and paid for waiving, releasing or not exercising the option or right on transfer of the property to another person, provided that the payment is on a one-time basis upon the next transfer, and once paid shall not bind successors in title to the property,

- e. any fee, charge, assessment, dues, contribution or other amount relating to the purchase or transfer of a club membership related to the real property owner by the transferor,
- f. any provision of a document requiring payment of a fee or charge to an association comprised of owners of properties described therein to be used exclusively for purposes authorized in the document, as long as no portion of the fee is required to be passed through to a third party or entity designated or identifiable by description in the document or another document referenced therein, and
- g. any fee that is charged as a typical real estate closing cost, including but not limited to escrow fees, settlement fees, abstracting fees, legal fees or title insurance premiums.

B. The Legislature makes the following findings:

1. The public policy of this state favors the transferability of interest in real property free from unreasonable restraints on alienation and covenants or servitudes that do not touch and concern the property; and

2. A transfer fee covenant violates this public policy by impairing the marketability of title to the affected real property and constitutes an unreasonable restraint on alienation, regardless of the duration of the covenant or the amount of the transfer fee set forth in the covenant.

C. A transfer fee recorded, filed or entered into in this state on or after the effective date of this section does not run with the title to real property and is not binding on or enforceable at law or in equity against any owner, subsequent owner, purchaser or mortgagee of any interest in real property as an equitable servitude, personal obligation or otherwise. Any private transfer fee obligation that is recorded, filed or entered into in this state on or after the effective date of this section is void and unenforceable.

D. Nothing in this section shall imply that a transfer fee covenant recorded prior to the effective date of this section is valid or enforceable.

Passed the House of Representatives the 12th day of May, 2011.

Presiding Officer of the House of
Representatives

Passed the Senate the 16th day of May, 2011.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this _____
day of _____, 20____,
at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma the _____ day of
_____, 20____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this _____
_____ day of _____, 20____,
at _____ o'clock _____ M.

By: _____