

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 53rd Legislature (2011)

4 HOUSE BILL 1594

 By: Martin (Steve)

7 AS INTRODUCED

8 An Act relating to property; defining terms; stating
9 legislative findings; prohibiting transfer fees;
10 providing for codification; and declaring an
11 emergency.

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

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

17 A. As used in this section:

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

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

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

8 4. "Transfer fee covenant" means a provision in a document,
9 whether recorded or not and however denominated, which purports to
10 run with the land or bind current owners, purchasers or successors
11 in title to specified real property located in this state, and which
12 obligates a transferee or transferor of all or part of the property
13 or any interest thereon to pay a fee or charge to a third person or
14 entity upon transfer of an interest in all or part of the property,
15 or in consideration for permitting any such transfer. The term
16 "transfer fee covenant" shall not include:

17 a. any provision of a purchase contract, option,
18 mortgage, security agreement, real property listing
19 agreement, or other agreement that obligates one party
20 to the agreement to pay the other party as full or
21 partial consideration for the agreement or for a
22 waiver of rights under the agreement if the amount to
23 be paid is:

1 (1) a loan assumption fee or similar fee charged by a
2 lender that holds a mortgage on the property, and
3 (2) a fee or commission paid to a licensed real
4 estate broker for brokerage services rendered in
5 connection with the transfer of the property for
6 which the fee or commission is paid,

7 b. any provision in a deed, memorandum or other document
8 recorded for the purpose of providing record notice of
9 an agreement prescribed in subparagraph a of paragraph
10 4 of subsection A of this section,

11 c. any rent, reimbursement, charge, fee or other amount
12 payable by a lessee to a lessor under a lease,
13 including any fee payable to the lessor for consenting
14 to an assignment, sublease, encumbrance or transfer of
15 the lease,

16 d. any consideration payable to the holder of an option
17 to purchase an interest in the real property or to the
18 holder of a right of first refusal or first offer to
19 purchase an interest in real property and paid for
20 waiving, releasing or not exercising the option or
21 right on transfer of the property to another person,
22 provided that the payment is on a one-time basis upon
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1 the next transfer, and once paid shall not bind
2 successors in title to the property,

3 e. any fee, charge, assessment, dues, contribution or
4 other amount relating to the purchase or transfer of a
5 club membership related to the real property owner by
6 the transferor,

7 f. any provision of a document requiring payment of a fee
8 or charge to an association comprised of owners of
9 properties described therein to be used exclusively
10 for purposes authorized in the document, as long as no
11 portion of the fee is required to be passed through to
12 a third party or entity designated or identifiable by
13 description in the document or another document
14 referenced therein, and

15 g. any fee that is charged as a typical real estate
16 closing cost, including but not limited to escrow
17 fees, settlement fees, abstracting fees, legal fees or
18 title insurance premiums.

19 B. The Legislature makes the following findings:

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

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

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

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

18 SECTION 2. It being immediately necessary for the preservation
19 of the public peace, health and safety, an emergency is hereby
20 declared to exist, by reason whereof this act shall take effect and
21 be in full force from and after its passage and approval.

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23 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03-01-2011 - DO
24 PASS.