

1 **SENATE FLOOR VERSION**

2 April 11, 2011

3 As Amended

4 ENGROSSED HOUSE

5 BILL NO. 1594

6 By: Martin (Steve) and Cooksey
7 of the House

8 and

9 Crain of the Senate

10 An Act relating to property; defining terms; stating
11 legislative findings; prohibiting transfer fees;
12 **prohibiting registration of certain property or**
13 **assessment of certain fees; declaring certain laws**
14 **unenforceable;** providing for codification; and
15 declaring an emergency.

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

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

20 A. As used in this section:

21 1. "Association" means a nonprofit mandatory membership
22 organization comprised of owners of homes, condominiums,
23 cooperatives, manufactured homes, or any interest in real property,
24 created pursuant to a declaration, covenant, or other applicable
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
23 the next transfer, and once paid shall not bind
24 successors in title to the property,

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

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

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

17 B. The Legislature makes the following findings:

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

22 2. A transfer fee covenant violates this public policy by
23 impairing the marketability of title to the affected real property
24 and constitutes an unreasonable restraint on alienation, regardless

1 of the duration of the covenant or the amount of the transfer fee
2 set forth in the covenant.

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

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

15 **SECTION 2. NEW LAW A new section of law to be codified**
16 **in the Oklahoma Statutes as Section 351 of Title 60, unless there is**
17 **created a duplication in numbering, reads as follows:**

18 In no event shall any political subdivision of this state enact
19 any ordinance, rule or law to require the registration of
20 residential rental property or to assess or charge any fee for the
21 lease, rental, occupancy, or lease purchase of any residential
22 property. Any such ordinance, rule or law enacted prior to or after
23 the effective date of this section is void and unenforceable against
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1 any owner, subsequent owner, purchaser or mortgagee of any interest
2 in the real property.

3 SECTION 3. It being immediately necessary for the preservation
4 of the public peace, health and safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

7 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS & COMMERCE, dated 4-7-11
8 - DO PASS, As Amended.

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