

STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

HOUSE BILL 1594

By: Martin (Steve)

AS INTRODUCED

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

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;

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

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

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

- 21 (1) a loan assumption fee or similar fee charged by a
22 lender that holds a mortgage on the property, and
23 (2) a fee or commission paid to a licensed real
24 estate broker for brokerage services rendered in

1 connection with the transfer of the property for
2 which the fee or commission is paid,

3 b. any provision in a deed, memorandum or other document
4 recorded for the purpose of providing record notice of
5 an agreement prescribed in subparagraph a of paragraph
6 4 of subsection A of this section,

7 c. any rent, reimbursement, charge, fee or other amount
8 payable by a lessee to a lessor under a lease,
9 including any fee payable to the lessor for consenting
10 to an assignment, sublease, encumbrance or transfer of
11 the lease,

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

21 e. any fee, charge, assessment, dues, contribution or
22 other amount relating to the purchase or transfer of a
23 club membership related to the real property owner by
24 the transferor,

- 1 f. any provision of a document requiring payment of a fee
2 or charge to an association comprised of owners of
3 properties described therein to be used exclusively
4 for purposes authorized in the document, as long as no
5 portion of the fee is required to be passed through to
6 a third party or entity designated or identifiable by
7 description in the document or another document
8 referenced therein, and
- 9 g. any fee that is charged as a typical real estate
10 closing cost, including but not limited to escrow
11 fees, settlement fees, abstracting fees, legal fees or
12 title insurance premiums.

13 B. The Legislature makes the following findings:

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

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

23 C. A transfer fee recorded, filed or entered into in this state
24 on or after the effective date of this section does not run with the

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

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

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

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