House Engrossed

FILED

KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 40

HOUSE BILL 2768

AN ACT

AMENDING TITLE 33, CHAPTER 4, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-442; RELATING TO CONVEYANCES OF REAL PROPERTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 33, chapter 4, article 3, Arizona Revised Statutes, is amended by adding section 33-442, to read:

33-442. Prohibition on transfer fees; exceptions; definitions

A. A PROVISION IN A DECLARATION, COVENANT OR ANY OTHER DOCUMENT RELATING TO REAL PROPERTY IN THIS STATE IS NOT BINDING OR ENFORCEABLE AGAINST THE REAL PROPERTY OR AGAINST ANY SUBSEQUENT OWNER, PURCHASER, LIENHOLDER OR OTHER CLAIMANT ON THE PROPERTY IF IT PURPORTS TO DO BOTH OF THE FOLLOWING:

1. BIND SUCCESSORS IN TITLE TO THE SPECIFIED REAL PROPERTY.

2. OBLIGATE THE TRANSFEREE OR TRANSFEROR OF ALL OR PART OF THE PROPERTY TO PAY A FEE OR OTHER CHARGE TO A DECLARANT OR A THIRD PERSON ON TRANSFER OF AN INTEREST IN THE PROPERTY OR IN CONSIDERATION FOR PERMITTING SUCH A TRANSFER. REGULARLY SCHEDULED FEES OR CHARGES SHALL NOT BE CONSIDERED PAYABLE ON TRANSFER OF AN INTEREST IF THE FEES OR CHARGES WILL BE PAYABLE BY THE OWNER OF THE PROPERTY REGARDLESS OF WHETHER OR NOT THE PROPERTY IS TRANSFERRED, EVEN IF THE OBLIGATION TO PAY DOES NOT COMMENCE UNTIL THE TRUSTEE, DECLARANT, BUILDER OR DEVELOPER FIRST CONVEYS THE PROPERTY TO A RETAIL PURCHASER.

B. A TRANSFER FEE PROVISION PRESCRIBED BY SUBSECTION A IS UNENFORCEABLE WHETHER OR NOT RECORDED AND DOES NOT CREATE A LIEN RIGHT AND ANY LIEN PURPORTEDLY ARISING OUT OF AN UNENFORCEABLE PROVISION PRESCRIBED BY SUBSECTION A IS INVALID AND UNENFORCEABLE.

C. THIS SECTION DOES NOT APPLY TO ANY OF THE FOLLOWING:

1. 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:

(a) A LOAN ASSUMPTION FEE OR SIMILAR FEE CHARGED BY A LENDER THAT HOLDS A LIEN ON THE PROPERTY.

(b) 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.

2. ANY PROVISION IN A DEED, MEMORANDUM OR OTHER DOCUMENT RECORDED FOR THE PURPOSE OF PROVIDING RECORD NOTICE OF AN AGREEMENT PRESCRIBED IN PARAGRAPH 1, SUBDIVISION (a) OF THIS SUBSECTION.

3. ANY PROVISION OF A DOCUMENT THAT REQUIRES PAYMENT OF A FEE OR CHARGE TO AN ASSOCIATION TO BE USED EXCLUSIVELY FOR THE PURPOSE AUTHORIZED IN THE DOCUMENT IF BOTH OF THE FOLLOWING APPLY:

(a) THE FEE BEING CHARGED TOUCHES AND CONCERNS THE LAND.

(b) NO PORTION OF THE CHARGE OR FEE IS REQUIRED TO BE PASSED THROUGH TO A THIRD PARTY OR DECLARANT DESIGNATED OR IDENTIFIABLE BY DESCRIPTION IN THE DOCUMENT OR IN ANOTHER DOCUMENT THAT IS REFERENCED IN THE DOCUMENT UNLESS THE THIRD PARTY IS AUTHORIZED IN THE DOCUMENT TO MANAGE REAL PROPERTY WITHIN THE ASSOCIATION OR WAS PART OF AN APPROVED DEVELOPMENT PLAN.

4. 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.

5. 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.

6. 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.

7. ANY FEE OR CHARGE THAT IS IMPOSED BY A DOCUMENT AND THAT IS PAYABLE TO A NONPROFIT CORPORATION FOR THE SOLE PURPOSE OF SUPPORTING RECREATIONAL ACTIVITIES WITHIN THE ASSOCIATION.

8. ANY FEE, TAX, ASSESSMENT OR OTHER CHARGE IMPOSED BY A GOVERNMENTAL AUTHORITY PURSUANT TO APPLICABLE LAWS, ORDINANCES OR REGULATIONS.

9. ANY CONSIDERATION PAYABLE BY THE TRANSFEREE TO THE TRANSFEROR FOR THE INTEREST IN REAL PROPERTY BEING TRANSFERRED INCLUDING ANY SUBSEQUENT ADDITIONAL CONSIDERATION FOR THE PROPERTY PAYABLE BY THE TRANSFEREE BASED ON ANY SUBSEQUENT APPRECIATION, DEVELOPMENT OR SALE OF THE PROPERTY.

D. NOTWITHSTANDING ANY PROVISION IN THE DOCUMENT OR PURPORTED LIEN, A TRANSFER FEE COVENANT OR OTHER DOCUMENT PRESCRIBED BY SUBSECTION A OR A LIEN PURPORTING TO SECURE PAYMENT UNDER A TRANSFER FEE COVENANT OR DOCUMENT PRESCRIBED BY SUBSECTION A THAT IS EXECUTED AFTER THE EFFECTIVE DATE OF THIS SECTION IS NOT BINDING OR ENFORCEABLE. THIS SECTION SHALL NOT BE CONSTRUED TO IMPLY THAT A TRANSFER FEE COVENANT OR OTHER DOCUMENT PRESCRIBED BY SUBSECTION A THAT IS EXECUTED BEFORE THE EFFECTIVE DATE OF THIS SECTION IS ENFORCEABLE OR VALID.

E. FOR THE PURPOSES OF THIS SECTION:

1. "ASSOCIATION" MEANS A NONPROFIT MANDATORY MEMBERSHIP ORGANIZATION THAT IS CREATED PURSUANT TO A DECLARATION, COVENANT OR OTHER APPLICABLE LAW AND THAT IS COMPRISED OF THE OWNERS OF HOMES, CONDOMINIUMS, COOPERATIVES OR MANUFACTURED HOMES OR ANY OTHER INTEREST IN REAL PROPERTY.

2. "TRANSFER" MEANS THE SALE, GIFT, CONVEYANCE, ASSIGNMENT, INHERITANCE OR OTHER TRANSFER OF AN INTEREST IN REAL PROPERTY LOCATED IN THIS STATE.

Sec. 2. Legislative findings and intent

The legislature finds that the public policy of this state favors the transferability of interests in real property free from unreasonable restraints on alienation and covenants or servitudes that do not touch and concern the property. A transfer fee covenant proscribed in section 33-442, subsection A, Arizona Revised Statutes, as added by this act, violates this public policy by impairing the marketability of title to the affected real property and constitutes an unreasonable restraint on alienation of property, regardless of the duration of the covenant or the amount of the transfer fee set forth in the covenant.

APPROVED BY THE GOVERNOR APRIL 9, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 9, 2010.