

1 A bill to be entitled
 2 An act relating to real estate conveyances; creating s.
 3 689.28, F.S.; providing legislative intent regarding
 4 transfer fee covenants; providing definitions; providing
 5 that certain transfer fee covenants are unenforceable
 6 against subsequent owners, purchasers, and mortgagees;
 7 providing that a presumption is not created in favor of
 8 transfer fee covenants recorded before the effective date
 9 of the act; amending s. 692.01, F.S.; expanding authority
 10 of corporations to execute certain instruments relating to
 11 interests in lands; amending s. 689.01, F.S.; authorizing
 12 corporations to execute conveyances in accordance with
 13 certain requirements; providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

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 17 Section 1. Section 689.28, Florida Statutes, is created to
 18 read:

19 689.28 Prohibition against transfer fee covenants.--
 20 (1) INTENT.--The Legislature finds and declares that the
 21 public policy of this state favors the marketability of real
 22 property and the transferability of interests in real property
 23 free of title defects, unreasonable restraints on alienation,
 24 and covenants and servitudes that do not touch and concern the
 25 property. The Legislature further finds and declares that
 26 transfer fee covenants violate this public policy by impairing
 27 the marketability and transferability of real property,
 28 constituting an unreasonable restraint on alienation regardless

29 of the duration of such covenants or the amount of such transfer
30 fees, and do not touch and concern the real property for the
31 purposes of running with the title to the property or for
32 binding subsequent owners of the property under common law or
33 equitable principles.

34 (2) DEFINITIONS.--As used in this section, the term:

35 (a) "Environmental covenant" means a covenant or servitude
36 that imposes limitations on the use of real property pursuant to
37 an environmental remediation project pertaining to the property.
38 An environmental covenant is not a transfer fee covenant.

39 (b) "Transfer" means the sale, gift, conveyance,
40 assignment, inheritance, or other transfer of an ownership
41 interest in real property located in this state.

42 (c) "Transfer fee" means a fee or charge required under a
43 transfer fee covenant and payable upon the transfer of an
44 interest in real property, or payable for the right to make or
45 accept such transfer, regardless of whether the fee or charge is
46 a fixed amount or is determined as a percentage of the value of
47 the property, the purchase price, or other consideration given
48 for the transfer. The following are not transfer fees for
49 purposes of this section:

50 1. Any consideration payable by the grantee to the grantor
51 for the interest in real property being transferred, including
52 any subsequent additional consideration for the property payable
53 by the grantee based upon any subsequent appreciation,
54 development, or sale of the property.

55 2. Any commission payable to a licensed real estate broker
56 for the transfer of real property pursuant to an agreement

57 between the broker and the grantor or the grantee, including any
58 subsequent additional commission for that transfer payable by
59 the grantor or the grantee based upon any subsequent
60 appreciation, development, or sale of the property.

61 3. Any interest, charges, fees, or other amounts payable
62 by a borrower to a lender pursuant to a loan secured by a
63 mortgage against real property, including, but not limited to,
64 any fee payable to the lender for consenting to an assumption of
65 the loan or a transfer of the real property subject to the
66 mortgage, any fees or charges payable to the lender for estoppel
67 letters or certificates, and any shared appreciation interest or
68 profit participation or other consideration described in s.
69 687.03(4) and payable to the lender in connection with the loan.

70 4. Any rent, reimbursement, charge, fee, or other amount
71 payable by a lessee to a lessor under a lease, including, but
72 not limited to, any fee payable to the lessor for consenting to
73 an assignment, subletting, encumbrance, or transfer of the
74 lease.

75 5. Any consideration payable to the holder of an option to
76 purchase an interest in real property or the holder of a right
77 of first refusal or first offer to purchase an interest in real
78 property for waiving, releasing, or not exercising the option or
79 right upon the transfer of the property to another person.

80 6. Any tax, fee, charge, assessment, fine, or other amount
81 payable to or imposed by a governmental authority.

82 7. Any fee, charge, assessment, fine, or other amount
83 payable to a homeowners', condominium, cooperative, mobile home,
84 or property owners' association pursuant to a declaration or

85 covenant or law applicable to such association, including, but
86 not limited to, fees or charges payable for estoppel letters or
87 certificates issued by the association or its authorized agent.

88 8. Any fee, charge, assessment, dues, contribution, or
89 other amount imposed pursuant to a declaration or covenant
90 encumbering four or more parcels in a community, as defined in
91 s. 720.301, and payable to a nonprofit organization or
92 charitable organization for the purpose of supporting cultural,
93 educational, charitable, recreational, environmental,
94 conservation, or other similar activities benefiting the
95 community that is subject to the declaration or covenant.

96 9. Any fee, charge, assessment, dues, contribution, or
97 other amount pertaining to the purchase or transfer of a club
98 membership related to real property owned by the member,
99 including, but not limited to, any such amount determined by
100 reference to the value, purchase price, or other consideration
101 given for the transfer of the related real property.

102 10. Any payment required pursuant to an environmental
103 covenant.

104 (d) "Transfer fee covenant" means a declaration or
105 covenant recorded against the title to real property which
106 requires or purports to require the payment of a transfer fee to
107 the declarant or other person specified in the declaration or
108 covenant or to their successors or assigns upon a subsequent
109 transfer of an interest in the real property.

110 (3) PROHIBITION.--A transfer fee covenant recorded in this
111 state on or after July 1, 2008, does not run with the title to
112 real property and is not binding on or enforceable at law or in

113 equity against any subsequent owner, purchaser, or mortgagee of
 114 any interest in real property as an equitable servitude or
 115 otherwise. Any lien purporting to secure the payment of any
 116 transfer fee under a transfer fee covenant recorded in this
 117 state on or after July 1, 2008, is void and unenforceable. This
 118 subsection does not mean that transfer fee covenants or transfer
 119 fee liens recorded in this state before July 1, 2008, are
 120 presumed valid and enforceable.

121 Section 2. Section 692.01, Florida Statutes, is amended to
 122 read:

123 692.01 Conveyances executed by corporations.--Any
 124 corporation may execute instruments conveying, mortgaging, or
 125 affecting any interest in ~~its~~ lands by instruments sealed with
 126 the common or corporate seal and signed in its name by its
 127 president or any vice president or chief executive officer.
 128 Assignments, satisfactions, or partial releases of mortgages and
 129 acquittances for debts may be similarly executed by any
 130 corporate officer. No corporate resolution need be recorded to
 131 evidence the authority of the person executing the deed,
 132 mortgage, or other instrument for the corporation, and an
 133 instrument so executed shall be valid whether or not the officer
 134 signing for the corporation was authorized to do so by the board
 135 of directors, in the absence of fraud in the transaction by the
 136 person receiving it. In cases of fraud, subsequent transactions
 137 with good faith purchasers for value and without notice of the
 138 fraud shall be valid and binding on the corporation.

139 Section 3. Section 689.01, Florida Statutes, is amended to
 140 read:

CS/HB 391

2008

141 689.01 How real estate conveyed.--No estate or interest of
142 freehold, or for a term of more than 1 year, or any uncertain
143 interest of, in or out of any messuages, lands, tenements or
144 hereditaments shall be created, made, granted, transferred or
145 released in any other manner than by instrument in writing,
146 signed in the presence of two subscribing witnesses by the party
147 creating, making, granting, conveying, transferring or releasing
148 such estate, interest, or term of more than 1 year, or by the
149 party's agent thereunto lawfully authorized, unless by will and
150 testament, or other testamentary appointment, duly made
151 according to law; and no estate or interest, either of freehold,
152 or of term of more than 1 year, or any uncertain interest of,
153 in, to or out of any messuages, lands, tenements or
154 hereditaments, shall be assigned or surrendered unless it be by
155 instrument signed in the presence of two subscribing witnesses
156 by the party so assigning or surrendering, or by the party's
157 agent thereunto lawfully authorized, or by the act and operation
158 of law. No seal shall be necessary to give validity to any
159 instrument executed in conformity with this section.

160 Corporations may execute any conveyance ~~convey~~ in accordance
161 with the provisions of this section or in accordance with the
162 provisions of ss. 692.01 and 692.02.

163 Section 4. This act shall take effect July 1, 2008.