

Bill No. SB 464



826148

CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
3/18/2008	.	
	.	
	.	

1 The Committee on Judiciary (Geller) recommended the following
 2 **amendment:**

3
 4 **Senate Amendment (with title amendment)**

5 Delete everything after the enacting clause
 6 and insert:

7
 8 Section 1. Subsection 689.28, Florida Statutes, is created
 9 to read:

10 689.28 Prohibition against transfer fee covenants.--

11 (1) INTENT.--The Legislature finds and declares that the
 12 public policy of this state favors the marketability of real
 13 property and the transferability of interests in real property
 14 free of title defects or unreasonable restraints on alienation.
 15 The Legislature further finds and declares that transfer fee



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16 covenants violate this public policy by impairing the
17 marketability and transferability of real property and by
18 constituting an unreasonable restraint on alienation regardless
19 of the duration of such covenants or the amount of such transfer
20 fees, and do not run with the title to the property or bind
21 subsequent owners of the property under common law or equitable
22 principles.

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

24 (a) "Environmental covenant" means a covenant or servitude
25 that imposes limitations on the use of real property pursuant to
26 an environmental remediation project pertaining to the property.
27 An environmental covenant is not a transfer fee covenant.

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

31 (c) "Transfer fee" means a fee or charge required by a
32 transfer fee covenant and payable upon the transfer of an
33 interest in real property, or payable for the right to make or
34 accept such transfer, regardless of whether the fee or charge is
35 a fixed amount or is determined as a percentage of the value of
36 the property, the purchase price, or other consideration given
37 for the transfer. The following are not transfer fees for
38 purposes of this section:

39 1. Any consideration payable by the grantee to the grantor
40 for the interest in real property being transferred, including
41 any subsequent additional consideration for the property payable
42 by the grantee based upon any subsequent appreciation,
43 development, or sale of the property. For the purposes of this

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44 subparagraph an interest in real property may include a separate
45 mineral estate and its appurtenant surface access rights.

46 2. Any commission payable to a licensed real estate broker
47 for the transfer of real property pursuant to an agreement
48 between the broker and the grantor or the grantee, including any
49 subsequent additional commission for that transfer payable by
50 the grantor or the grantee based upon any subsequent
51 appreciation, development, or sale of the property.

52 3. Any interest, charges, fees, or other amounts payable
53 by a borrower to a lender pursuant to a loan secured by a
54 mortgage against real property, including, but not limited to,
55 any fee payable to the lender for consenting to an assumption of
56 the loan or a transfer of the real property subject to the
57 mortgage, any fees or charges payable to the lender for estoppel
58 letters or certificates, and any shared appreciation interest or
59 profit participation or other consideration described in s.
60 687.03(4) and payable to the lender in connection with the loan.

61 4. Any rent, reimbursement, charge, fee, or other amount
62 payable by a lessee to a lessor under a lease, including, but
63 not limited to, any fee payable to the lessor for consenting to
64 an assignment, subletting, encumbrance, or transfer of the
65 lease.

66 5. Any consideration payable to the holder of an option to
67 purchase an interest in real property or the holder of a right
68 of first refusal or first offer to purchase an interest in real
69 property for waiving, releasing, or not exercising the option or
70 right upon the transfer of the property to another person.

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

73 7. Any fee, charge, assessment, fine, or other amount
74 payable to a homeowners', condominium, cooperative, mobile home,
75 or property owners' association pursuant to a declaration or
76 covenant or law applicable to such association, including, but
77 not limited to, fees or charges payable for estoppel letters or
78 certificates issued by the association or its authorized agent.

79 8. Any fee, charge, assessment, dues, contribution, or
80 other amount imposed by a declaration or covenant encumbering
81 four or more parcels in a community, as defined in s. 720.301,
82 and payable to a nonprofit or charitable organization for the
83 purpose of supporting cultural, educational, charitable,
84 recreational, environmental, conservation, or other similar
85 activities benefiting the community that is subject to the
86 declaration or covenant.

87 9. Any fee, charge, assessment, dues, contribution, or
88 other amount pertaining to the purchase or transfer of a club
89 membership relating to real property owned by the member,
90 including, but not limited to, any amount determined by
91 reference to the value, purchase price, or other consideration
92 given for the transfer of the real property.

93 10. Any payment required pursuant to an environmental
94 covenant.

95 (d) "Transfer fee covenant" means a declaration or
96 covenant recorded against the title to real property which
97 requires or purports to require the payment of a transfer fee to
98 the declarant or other person specified in the declaration or

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99 covenant or to their successors or assigns upon a subsequent
100 transfer of an interest in the real property.

101 (3) PROHIBITION.--A transfer fee covenant recorded in this
102 state on or after July 1, 2008, does not run with the title to
103 real property and is not binding on or enforceable at law or in
104 equity against any subsequent owner, purchaser, or mortgagee of
105 any interest in real property as an equitable servitude or
106 otherwise. Any liens purporting to secure the payment of a
107 transfer fee under a transfer fee covenant that is recorded in
108 this state on or after July 1, 2008, are void and unenforceable.
109 This subsection does not mean that transfer fee covenants or
110 liens recorded in this state before July 1, 2008, are presumed
111 valid and enforceable.

112 Section 2. Section 689.01, Florida Statutes, is amended to
113 read:

114 689.01 How real estate conveyed.--No estate or interest of
115 freehold, or for a term of more than 1 year, or any uncertain
116 interest of, in or out of any messuages, lands, tenements or
117 hereditaments shall be created, made, granted, transferred or
118 released in any other manner than by instrument in writing,
119 signed in the presence of two subscribing witnesses by the party
120 creating, making, granting, conveying, transferring or releasing
121 such estate, interest, or term of more than 1 year, or by the
122 party's ~~agent thereunto~~ lawfully authorized agent, unless by
123 will and testament, or other testamentary appointment, duly made
124 according to law; and no estate or interest, either of freehold,
125 or of term of more than 1 year, or any uncertain interest of,
126 in, to, or out of any messuages, lands, tenements or

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127 hereditaments, shall be assigned or surrendered unless it be by
128 instrument signed in the presence of two subscribing witnesses
129 by the party so assigning or surrendering, or by the party's
130 ~~agent thereunto~~ lawfully authorized agent, or by the act and
131 operation of law. No seal shall be necessary to give validity to
132 any instrument executed in conformity with this section.
133 Corporations may execute any and all conveyances ~~convey~~ in
134 accordance with the provisions of this section or ~~in accordance~~
135 ~~with the provisions of~~ ss. 692.01 and 692.02.

136 Section 3. Section 692.01, Florida Statutes, is amended to
137 read:

138 692.01 Conveyances executed by corporations.--Any
139 corporation may execute instruments conveying, mortgaging, or
140 affecting any interest in ~~its~~ lands by instruments sealed with
141 the common or corporate seal and signed in its name by its
142 president or any vice president or chief executive officer.
143 Assignments, satisfactions, or partial releases of mortgages and
144 acquittances for debts may be similarly executed by any
145 corporate officer. No corporate resolution need be recorded to
146 evidence the authority of the person executing the deed,
147 mortgage, or other instrument for the corporation, and an
148 instrument so executed is ~~shall be~~ valid whether or not the
149 officer signing for the corporation was authorized to do so by
150 the board of directors, in the absence of fraud in the
151 transaction by the person receiving it. In cases of fraud,
152 subsequent transactions with good faith purchasers for value and
153 without notice of the fraud shall be valid and binding on the
154 corporation.



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

156

157 ===== T I T L E A M E N D M E N T =====

158 And the title is amended as follows:

159 Delete everything before the enacting clause

160 and insert:

161 A bill to be entitled

162 An act relating to real estate conveyances; creating s.

163 689.28, F.S.; providing legislative intent regarding

164 transfer fee covenants; providing definitions; providing

165 that certain transfer fee covenants are unenforceable

166 against subsequent owners, purchasers, and mortgagees;

167 providing that a presumption is not created in favor of

168 transfer fee covenants recorded before the effective date

169 of the act; amending ss. 689.01 and 692.01, F.S.;

170 clarifying that corporations may execute conveyances;

171 providing an effective date.