

By the Committee on Judiciary; and Senator Aronberg

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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 ss. 689.01 and 692.01, F.S.;  
10 clarifying that corporations may execute conveyances;  
11 providing an effective date.

12  
13 Be It Enacted by the Legislature of the State of Florida:

14  
15 Section 1. Subsection 689.28, Florida Statutes, is created  
16 to read:

17 689.28 Prohibition against transfer fee covenants.--

18 (1) INTENT.--The Legislature finds and declares that the  
19 public policy of this state favors the marketability of real  
20 property and the transferability of interests in real property  
21 free of title defects or unreasonable restraints on alienation.  
22 The Legislature further finds and declares that transfer fee  
23 covenants violate this public policy by impairing the  
24 marketability and transferability of real property and by  
25 constituting an unreasonable restraint on alienation regardless  
26 of the duration of such covenants or the amount of such transfer  
27 fees, and do not run with the title to the property or bind  
28 subsequent owners of the property under common law or equitable  
29 principles.

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

31       (a) "Environmental covenant" means a covenant or servitude  
32 that imposes limitations on the use of real property pursuant to  
33 an environmental remediation project pertaining to the property.  
34 An environmental covenant is not a transfer fee covenant.

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

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

46       1. Any consideration payable by the grantee to the grantor  
47 for the interest in real property being transferred, including  
48 any subsequent additional consideration for the property payable  
49 by the grantee based upon any subsequent appreciation,  
50 development, or sale of the property. For the purposes of this  
51 subparagraph an interest in real property may include a separate  
52 mineral estate and its appurtenant surface access rights.

53       2. Any commission payable to a licensed real estate broker  
54 for the transfer of real property pursuant to an agreement  
55 between the broker and the grantor or the grantee, including any  
56 subsequent additional commission for that transfer payable by the  
57 grantor or the grantee based upon any subsequent appreciation,  
58 development, or sale of the property.

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

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

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

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

79       7. Any fee, charge, assessment, fine, or other amount  
80 payable to a homeowners', condominium, cooperative, mobile home,  
81 or property owners' association pursuant to a declaration or  
82 covenant or law applicable to such association, including, but  
83 not limited to, fees or charges payable for estoppel letters or  
84 certificates issued by the association or its authorized agent.

85       8. Any fee, charge, assessment, dues, contribution, or  
86 other amount imposed by a declaration or covenant encumbering  
87 four or more parcels in a community, as defined in s. 720.301,

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88 and payable to a nonprofit or charitable organization for the  
89 purpose of supporting cultural, educational, charitable,  
90 recreational, environmental, conservation, or other similar  
91 activities benefiting the community that is subject to the  
92 declaration or covenant.

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

99 10. Any payment required pursuant to an environmental  
100 covenant.

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

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

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117 valid and enforceable.

118 Section 2. Section 689.01, Florida Statutes, is amended to  
119 read:

120 689.01 How real estate conveyed.--No estate or interest of  
121 freehold, or for a term of more than 1 year, or any uncertain  
122 interest of, in or out of any messuages, lands, tenements or  
123 hereditaments shall be created, made, granted, transferred or  
124 released in any other manner than by instrument in writing,  
125 signed in the presence of two subscribing witnesses by the party  
126 creating, making, granting, conveying, transferring or releasing  
127 such estate, interest, or term of more than 1 year, or by the  
128 party's ~~agent thereunto~~ lawfully authorized agent, unless by will  
129 and testament, or other testamentary appointment, duly made  
130 according to law; and no estate or interest, either of freehold,  
131 or of term of more than 1 year, or any uncertain interest of, in,  
132 to, or out of any messuages, lands, tenements or hereditaments,  
133 shall be assigned or surrendered unless it be by instrument  
134 signed in the presence of two subscribing witnesses by the party  
135 so assigning or surrendering, or by the party's ~~agent thereunto~~  
136 lawfully authorized agent, or by the act and operation of law. No  
137 seal shall be necessary to give validity to any instrument  
138 executed in conformity with this section. Corporations may  
139 execute any and all conveyances ~~convey~~ in accordance with the  
140 provisions of this section or ~~in accordance with the provisions~~  
141 ~~of~~ ss. 692.01 and 692.02.

142 Section 3. Section 692.01, Florida Statutes, is amended to  
143 read:

144 692.01 Conveyances executed by corporations.--Any  
145 corporation may execute instruments conveying, mortgaging, or

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

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