

1 SB417
2 115768-2
3 By Senators Keahey and Little (Z)
4 RFD: Judiciary
5 First Read: 11-FEB-10

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8 SYNOPSIS: This bill would prohibit transfer fee
9 covenants.

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11 A BILL
12 TO BE ENTITLED
13 AN ACT
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15 Section 35-4-77 is added to the Code of Alabama
16 1975, relating to fee covenants; to prohibit transfer fee
17 covenants.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. This bill shall be known and may be cited
20 as the Alabama Prohibition Against Transfer Fee Covenants Act.

21 Section 2. The Legislature hereby finds that
22 transfer fee covenants violate the public policy of this state
23 by impairing the marketability and transferability of real
24 property and by constituting an unreasonable restraint on the
25 alienation of real property regardless of the duration of such
26 covenants, the manner in which the fees are used, or the
27 amount of such transfer fees. Transfer fee covenants do not

1 constitute covenants that run with the title to land or bind
2 subsequent owners of the property under common law or
3 equitable principles.

4 Section 3. Section 35-4-77 is added to the Code of
5 Alabama 1975, to read as follows:

6 §35-4-77.

7 (a) AS used in this act, the following terms shall
8 have the following meanings:

9 (1) ENVIRONMENTAL COVENANT. A covenant or servitude
10 that imposes limitations on the use of real property pursuant
11 to an environmental remediation project pertaining to the
12 property or pursuant to Section 35-19-1 et seq. An
13 environmental covenant is not a transfer fee covenant.

14 (2) TRANSFER. The sale, gift, conveyance,
15 assignment, inheritance, or other transfer of an ownership
16 interest in real property located in this state.

17 (3) TRANSFER FEE. A fee or charge required by a
18 transfer fee covenant and payable upon the transfer of an
19 interest in real property, or payable for the right to make or
20 accept such transfer, regardless of whether the fee or charge
21 is a fixed amount or is determined as a percentage of the
22 value of the property, the purchase price, or other
23 consideration given for the transfer, regardless of any other
24 method or basis for the computation of any such fee. The
25 following are not transfer fees for purposes of this act:

26 a. Any consideration payable by the immediate
27 grantee in a conveyance to the immediate grantor in the same

1 conveyance for the interest in real property being
2 transferred, including any subsequent additional consideration
3 for the property payable by the grantee based upon any
4 subsequent appreciation, development, or sale of the property.
5 For the purposes of this subparagraph, an interest in real
6 property may include a separate mineral estate and its
7 appurtenant surface access rights, the interest created by a
8 contract for deed, and the interest created by a vendor's lien
9 deed.

10 b. Any commission payable to a licensed real estate
11 broker for the transfer of real property pursuant to an
12 agreement between the broker and the grantor or the grantee,
13 including any subsequent additional commission for that
14 transfer payable by the grantor or the grantee based upon any
15 subsequent appreciation, development, or sale of the property.

16 c. Any interest, charges, fees, or other amounts and
17 obligations of a borrower or mortgagor to a lender or
18 mortgagee pursuant to a loan or other obligation secured by a
19 mortgage against real property, including, but not limited to,
20 any fee payable to the lender for consenting to an assumption
21 of the loan or a transfer of the real property subject to the
22 mortgage, any fees or charges payable to the lender for
23 estoppel letters or certificates, and shared appreciation
24 interest or profit participation, and any other consideration
25 payable to the lender in connection with the loan.

26 d. Any rent, reimbursement, charge, fee, or other
27 amount payable by a lessee to a lessor under a lease,

1 including, but not limited to, any fee payable to the lessor
2 for consenting to an assignment, subletting, encumbrance, or
3 transfer of the lease.

4 e. Any consideration payable to the holder of an
5 option to purchase an interest in real property or the holder
6 of a right of first refusal or first offer to purchase an
7 interest in real property for waiving, releasing, or not
8 exercising the option or right upon the transfer of the
9 property to another person.

10 f. Any tax, fee, charge, assessment, fine, or other
11 amount payable to or imposed by a governmental authority.

12 g. Any fee, charge, assessment, fine, or other
13 amount payable to a homeowners' condominium, cooperative, time
14 share, or property owners' association pursuant to a
15 declaration or covenant or law applicable to such association,
16 including, but not limited to, fees or charges payable for
17 estoppel letters or certificates issued by the association or
18 its authorized agent.

19 h. Any fee, charge, assessment, dues, contribution,
20 or other amount pertaining to the purchase or transfer of a
21 club membership relating to real property owned by the member,
22 including, but not limited to, any amount determined by
23 reference to the value, purchase price, or other consideration
24 given for the transfer of the real property.

25 i. Any payment required pursuant to an environmental
26 covenant.

1 (4) TRANSFER FEE COVENANT. A declaration or covenant
2 recorded against the title to real property which requires or
3 purports to require the payment of a transfer fee to the
4 declarant or other person specified in the declaration or
5 covenant or to their successors or assigns upon a subsequent
6 transfer of an interest in the real property.

7 (b) The recording of a transfer fee covenant is
8 prohibited. A transfer fee covenant recorded in this state on
9 or after the effective date of this act, does not run with the
10 title to real property and is not binding on or enforceable at
11 law or in equity against any subsequent owner, purchaser, or
12 mortgagee of any interest in real property as an equitable
13 servitude or otherwise. Any liens purporting to secure the
14 payment of a transfer fee under a transfer fee covenant that
15 is recorded in this state on or after the effective date, are
16 void and unenforceable. This subsection does not mean that
17 transfer fee covenants or liens recorded in this state before
18 the effective date of this act are presumed valid and
19 enforceable.

20 Section 4. This act shall become effective
21 immediately following its passage and approval by the
22 Governor, or its otherwise becoming law.