

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4

# A Bill

HOUSE BILL 1388

5 By: Representative Vines  
6 By: Senator Burnett  
7

## For An Act To Be Entitled

9 AN ACT TO PROHIBIT CERTAIN TRANSFER FEE COVENANTS;  
10 AND FOR OTHER PURPOSES.  
11

## Subtitle

12  
13 TO PROHIBIT CERTAIN TRANSFER FEE  
14 COVENANTS.  
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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20 SECTION 1. Arkansas Code Title 18, Chapter 12, Subchapter 1 is amended  
21 to add an additional section to read as follows:

22 18-12-107. Transfer fee covenants prohibited.

23 (a) As used in this section:

24 (1) "Association" means a nonprofit, mandatory-membership  
25 organization:

26 (A) Comprised of owners of homes, condominiums, units in a  
27 horizontal property regime, cooperatives, manufactured homes, or any other  
28 interest in real property; and

29 (B) Created pursuant to declaration, covenant, bill of  
30 assurance, master deed, or other applicable law;

31 (2) "Licensee" means a licensee as defined in § 17-42-103;

32 (3) "Transfer" means the sale, gift, grant, conveyance,  
33 assignment, inheritance, or other transfer of an ownership interest in real  
34 property located in this state;

35 (4)(A) "Transfer fee" means a fee or charge that obligates a  
36 transferee or transferor of real property to pay a fee or charge to a third



1 person:

2 (i) Upon a transfer of an interest in the real  
 3 property; or

4 (ii) For permitting the transfer.

5 (B) "Transfer fee" does not include a tax, assessment,  
 6 fee, or charge imposed by a governmental authority under applicable law; and

7 (5)(A) "Transfer fee covenant" means a provision in a recorded  
 8 document or an unrecorded document imposing a transfer fee that purports to  
 9 run with the land or bind current owners or successors in title to real  
 10 property located in this state.

11 (B) "Transfer fee covenant" includes a lien or claim of  
 12 lien to secure payment of a transfer fee.

13 (C) "Transfer fee covenant" does not include a provision:

14 (i) Of a purchase contract, option, mortgage,  
 15 security agreement, real property listing agreement, or other agreement that  
 16 obligates a party to the agreement to pay another party to the agreement as  
 17 full or partial consideration for the agreement or for a waiver of rights  
 18 under the agreement an amount determined by the agreement if the amount is:

19 (a) Payable on a one-time basis only upon the  
 20 next transfer of an interest in the specified real property and, once paid,  
 21 shall not bind successors in title to the property;

22 (b) A loan assumption fee or other fee charged  
 23 in connection with a transfer by a lender holding or obtaining a lien on the  
 24 transferred real property; or

25 (c) A fee or commission paid to a licensee for  
 26 services rendered in connection with a transfer of the property for which the  
 27 fee or commission is paid;

28 (ii) In a deed, memorandum, or other document  
 29 recorded for the purpose of providing record notice of an agreement described  
 30 in subdivision (5)(C)(i) of this section;

31 (iii) Of a document requiring payment of a fee or  
 32 charge to an association to be used exclusively for the purposes authorized  
 33 in the document, as long as no portion of the fee is required to be passed  
 34 through to a third party designated or identifiable by description in the  
 35 document or another document referenced in the document; or

36 (iv) Of a document affecting real property that

1 requires payment of a fee or charge to an organization described in §  
2 501(c)(3) or § 501(c)(4) of the Internal Revenue Code as it existed on  
3 January 1, 2011, to be used exclusively to support:

4 (a) Cultural, educational, charitable,  
5 recreational, environmental, conservational, or other similar activities  
6 benefiting the real property; or

7 (b) The community in which the property is  
8 located.

9 (b)(1) A transfer fee covenant recorded with respect to real property  
10 in this state after the effective date of this section:

11 (A) Does not run with the title to the real property; and

12 (B) Is not binding upon or enforceable at law or in equity

13 against:

14 (i) The real property; or

15 (ii) A subsequent owner, purchaser, or mortgagee of  
16 an interest in the real property.

17 (2) This section does not validate a transfer fee covenant  
18 recorded in this state before the effective date of this section.

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21 **APPROVED: 02/24/2011**  
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