

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

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14 TO PROHIBIT CERTAIN TRANSFER FEE
15 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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