

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 35
Rules and Operations of the Senate Committee Substitute Adopted 2/19/09
House Committee Substitute Favorable 6/2/10

Short Title: Reconveyance Fees Prohibited.

(Public)

Sponsors:

Referred to:

February 4, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT TRANSFER FEE COVENANTS DO NOT RUN WITH THE
3 TITLE TO REAL PROPERTY AND ARE NOT BINDING ON OR ENFORCEABLE
4 AGAINST ANY SUBSEQUENT OWNER, PURCHASER, OR MORTGAGEE.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. The General Statutes are amended by adding a new Chapter to read:

7 **"Chapter 39A.**

8 **"Transfer Fee Covenants Prohibited.**

9 **"§ 39A-1. Public policy.**

10 (a) The public policy of this State favors the marketability of real property and the
11 transferability of interests in real property free from title defects, unreasonable restraints on
12 alienation, and covenants or servitudes that do not touch and concern the property.

13 (b) A transfer fee covenant violates this public policy by impairing the marketability of
14 title to the affected real property and constitutes an unreasonable restraint on alienation and
15 transferability of property, regardless of the duration of the covenant or the amount of the
16 transfer fee set forth in the covenant.

17 **"§ 39A-2. Definitions.**

18 As used in this Chapter:

19 (1) "Transfer" means the sale, gift, conveyance, assignment, inheritance, or
20 other transfer of an ownership interest in real property located in this State.

21 (2) "Transfer fee" means a fee or charge payable upon the transfer of an interest
22 in real property or payable for the right to make or accept such transfer,
23 regardless of whether the fee or charge is a fixed amount or is determined as
24 a percentage of the value of the property, the purchase price, or other
25 consideration given for the transfer. The following shall not be considered a
26 "transfer fee" for the purposes of this Chapter:

27 a. Any consideration payable by the grantee to the grantor for the
28 interest in real property being transferred, including any subsequent
29 additional consideration for the property payable by the grantee
30 based upon any subsequent appreciation, development, or sale of the
31 property that, once paid, shall not bind successors in title to the
32 property.

33 b. Any commission payable to a licensed real estate broker for the
34 transfer of real property pursuant to an agreement between the
35 transferor and transferee and the real estate broker, including any



- 1 subsequent additional commission payable by the transferor based
2 upon any subsequent appreciation, development, or sale of the
3 property.
- 4 c. Any interest, charges, fees, or other amounts payable by a borrower
5 to a lender pursuant to a loan secured by a mortgage against real
6 property, including, but not limited to, any fee payable to the lender
7 for consenting to an assumption of the loan or a transfer of the real
8 property subject to the mortgage, any fees or charges payable to the
9 lender for estoppel letters or certificates, and any other consideration
10 allowed by law and payable to the lender in connection with the loan.
- 11 d. Any rent, reimbursement, charge, fee, or other amount payable by a
12 lessee to a lessor under a lease, including, but not limited to, any fee
13 payable to the lessor for consenting to an assignment, subletting,
14 encumbrance, or transfer of the lease.
- 15 e. Any consideration payable to the holder of an option to purchase an
16 interest in real property or the holder of a right of first refusal or first
17 offer to purchase an interest in real property for waiving, releasing,
18 or not exercising the option or right upon the transfer of the property
19 to another person.
- 20 f. Any tax, fee, charge, assessment, fine, or other amount payable to or
21 imposed by a governmental authority.
- 22 g. Any fee charged that is a typical real estate closing cost, including
23 escrow fees, settlement fees, attorney fees, or title insurance
24 premiums and fees.
- 25 h. Any reasonable fee charged for the preparation of statements of
26 unpaid assessments pursuant to G.S. 47F-3-102(13) or resale
27 certificates or statements of unpaid assessments pursuant to
28 G.S. 47C-3-102(12).
- 29 i. Any reasonable fee payable by the original transferee to a unit
30 owners' association, as defined in G.S. 47C-1-103(3) or
31 G.S. 47F-1-103(3), as long as no portion of the fee is required to be
32 passed through to a third party designated or identifiable by
33 description in the document or another document referenced therein.
- 34 (3) "Transfer fee covenant" means a declaration or covenant purporting to affect
35 real property that requires or purports to require the payment of a transfer fee
36 to the declarant or other person specified in the declaration or covenant or to
37 their successors or assigns, upon a subsequent transfer of an interest in the
38 real property.

39 **"§ 39A-3. Transfer fee covenants prohibited.**

40 (a) Any transfer fee covenant that is recorded after the effective date of this act, or any
41 lien that is filed after the effective date of this act that purports to secure payment of a transfer
42 fee, shall not run with the title to real property and is not binding on or enforceable at law or in
43 equity against any subsequent owner, purchaser, or mortgagee of any interest in real property as
44 an equitable servitude or otherwise.

45 (b) A person who records a transfer fee covenant, files a lien that purports to secure
46 payment of a transfer fee, or enters into an agreement imposing a private transfer fee obligation
47 after the effective date of this act shall be liable for:

- 48 (1) Any and all damages resulting from the imposition of the transfer fee
49 obligation on the transfer of an interest in the real property, including,
50 without limitation, the amount of any transfer fee paid by a party to the
51 transfer.

1 (2) All attorney fees, expenses, and costs incurred by a party to the transfer or
2 mortgagee of the real property to recover the transfer fee paid or in
3 connection with an action to quiet title or register the title or a proceeding
4 subsequent to initial registration. If an agent acts on behalf of a principal to
5 file or secure a private transfer fee obligation, liability shall be assessed to
6 the principal, but not to the agent."

7 **SECTION 2.** Nothing in this act shall imply that a transfer fee covenant recorded
8 prior to the effective date of this act is valid or enforceable.

9 **SECTION 3.** This act is effective when it becomes law.