

IN THE SENATE

SENATE BILL NO. 1123, As Amended

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE PROHIBITION OF REAL ESTATE TRANSFER FEES; AMENDING TITLE 55,
2 IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 31, TITLE 55, IDAHO CODE,
3 TO PROVIDE FOR LEGISLATIVE FINDINGS, TO DEFINE TERMS AND TO MAKE UNLAW-
4 FULL THE IMPLEMENTATION AND COLLECTION OF CERTAIN FEES; AND DECLARING AN
5 EMERGENCY.
6

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Title 55, Idaho Code, be, and the same is hereby amended
9 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
10 ter 31, Title 55, Idaho Code, and to read as follows:

11 CHAPTER 31

12 PROHIBITION OF TRANSFER FEE COVENANTS

13 55-3101. LEGISLATIVE FINDINGS. (1) The public policy of this state fa-
14 vors the transferability of interests in real property free from unreason-
15 able restraints on alienation and covenants or servitudes that do not touch
16 and concern the property.

17 (2) A transfer fee covenant violates the public policy of this state
18 by impairing the marketability of title to the affected real property and
19 constitutes an unreasonable restraint on alienation, regardless of the du-
20 ration of the covenant or the amount of the transfer fee set forth in the
21 covenant.

22 55-3102. DEFINITIONS. As used in this section:

23 (1) "Association" means a nonprofit, mandatory membership organiza-
24 tion comprised of owners of homes, condominiums, cooperatives, manufactured
25 homes or any interest in real property, created pursuant to a declaration,
26 covenant or other applicable law.

27 (2) "Transfer" means the sale, gift, grant, conveyance, assignment,
28 inheritance or other transfer of an interest in real property located in this
29 state.

30 (3) "Transfer fee" means a fee or charge payable upon the transfer of
31 an interest in real property or payable for the right to make or accept such
32 transfer, regardless of whether the fee or charge is a fixed amount or is de-
33 termined as a percentage of the value of the property, the purchase price or
34 other consideration given, but shall not include any tax, assessment, fee
35 or charge imposed by a governmental authority or taxing district pursuant to
36 applicable laws, ordinances or regulations or any obligation imposed by a
37 court order, judgment or decree.

38 (4) "Transfer fee covenant" means a provision in a document, whether
39 recorded or not and however denominated, which purports to run with the land
40 or bind current owners or successors in title to specified real property lo-

1 cated in this state, and which obligates a transferee or transferor of all or
2 part of the property to pay a fee or charge to a third person upon transfer of
3 an interest in all or part of the property, or in consideration for permit-
4 ting any such transfer. The term "transfer fee covenant" shall not include:

5 (a) Any provision of a purchase contract, option, mortgage, security
6 agreement, real property listing agreement, lease or other agreement
7 which obligates one (1) party to the agreement to pay the other, as full
8 or partial consideration for the agreement or for a waiver of rights un-
9 der the agreement, an amount determined by the agreement, if that amount
10 is: (i) payable on a one-time basis only upon the next transfer of an
11 interest in the specified real property and, once paid, shall not bind
12 successors in title to the property; and (ii) constitutes a loan assump-
13 tion or similar fee charged by a lender holding a lien on the property;
14 or

15 (b) Any provision in a deed, memorandum or other document recorded for
16 the purpose of providing record notice of an agreement described in
17 paragraph (a) of this subsection; or

18 (c) Any provision in a mortgage, deed of trust or promissory note se-
19 cured by a mortgage or deed of trust; or

20 (d) Any commission payable to a licensed real estate broker for the
21 transfer of real property pursuant to an agreement between the broker
22 and the transferor or transferee; or

23 (e) Any fee charged that is a typical or common real estate closing
24 cost, including closing or escrow fees, settlement fees, attorney's
25 fees or title insurance premiums and fees; or

26 (f) Any provision of a document requiring payment of a fee or charge to
27 an association or any entity that operates for the benefit of the asso-
28 ciation, its members or property of the association or its members to be
29 used exclusively for purposes authorized in the document, so long as no
30 portion of the fee is required to be passed through to a third-party des-
31 ignated or identifiable by description in the document or another docu-
32 ment referenced therein; or

33 (g) Any provision of a document requiring payment of any fee or charge
34 under the housing or financing programs of the Idaho housing and finance
35 association; or

36 (h) Any provision in any purchase contract, option, mortgage, security
37 agreement, real property listing agreement or lease that obligates one
38 (1) party to the agreement to pay the other consideration for assignment
39 or transfer of the agreement.

40 55-3103. REAL ESTATE TRANSFER FEES UNLAWFUL. (1) A transfer fee
41 covenant recorded after the effective date of this section, or any lien to
42 the extent that it purports to secure the payment of a transfer fee, is not
43 binding upon or enforceable against the affected real property or any subse-
44 quent owner, purchaser or mortgagee of any interest in the property.

45 (2) Nothing in this section shall imply that a transfer fee covenant
46 recorded prior to the effective date of this section is valid or enforceable.

47 (3) A person who records a transfer fee covenant, files a lien that pur-
48 ports to secure payment of a transfer fee or enters into an agreement impos-
49 ing a private transfer fee obligation shall be liable for:

1 (a) Any and all damages resulting from the imposition of the transfer
2 fee obligation on the transfer of an interest in the real property, in-
3 cluding the amount of any transfer fee paid by a party to the transfer.

4 (b) All attorney's fees, expenses and costs incurred by a party to the
5 transfer or mortgagee of the real property to recover the transfer fee
6 paid or in connection with an action to quiet title.

7 SECTION 2. An emergency existing therefor, which emergency is hereby
8 declared to exist, this act shall be in full force and effect on and after its
9 passage and approval.