

TITLE 55
PROPERTY IN GENERAL

CHAPTER 31
PROHIBITION OF TRANSFER FEE COVENANTS

55-3101. LEGISLATIVE FINDINGS. (1) The public policy of this state favors the transferability of interests in real property free from unreasonable restraints on alienation and covenants or servitudes that do not touch and concern the property.

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

[55-3101, added 2011, ch. 107, sec. 1, p. 273.]

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

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

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

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

(4) "Transfer fee covenant" means a provision in a document, whether recorded or not and however denominated, which purports to run with the land or bind current owners or successors in title to specified real property located in this state, and which obligates a transferee or transferor of all or part of the property to pay a fee or charge to a third person upon transfer of an interest in all or part of the property, or in consideration for permitting any such transfer. The term "transfer fee covenant" shall not include:

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

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

- (c) Any provision in a mortgage, deed of trust or promissory note secured by a mortgage or deed of trust; or
- (d) Any commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the transferor or transferee; or
- (e) Any fee charged that is a typical or common real estate closing cost, including closing or escrow fees, settlement fees, attorney's fees or title insurance premiums and fees; or
- (f) Any provision of a document requiring payment of a fee or charge to an association or any entity that operates for the benefit of the association, its members or property of the association or its members to be used exclusively for purposes authorized in the document, so long as no portion of the fee is required to be passed through to a third-party designated or identifiable by description in the document or another document referenced therein; or
- (g) Any provision of a document requiring payment of any fee or charge under the housing or financing programs of the Idaho housing and finance association; or
- (h) Any provision in any purchase contract, option, mortgage, security agreement, real property listing agreement or lease that obligates one (1) party to the agreement to pay the other consideration for assignment or transfer of the agreement.

[55-3102, added 2011, ch. 107, sec. 1, p. 274.]

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

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

(3) A person who records a transfer fee covenant, files a lien that purports to secure payment of a transfer fee or enters into an agreement imposing a private transfer fee obligation shall be liable for:

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

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

[55-3103, added 2011, ch. 107, sec. 1, p. 275.]