TRANSFER FEE COVENANTS ATTACHING TO NONRESIDENTIAL REAL PROPERTY
Act 34 of 2011

AN ACT to prohibit certain covenants attaching to nonresidential real property; to prohibit the imposition of certain fees upon transfer of that real property; and to provide for remedies.

History: 2011, Act 34, Imd. Eff. May 24, 2011.

The People of the State of Michigan enact:

565.881 Definitions.

Sec. 1. As used in this act:

(a) "Transfer fee" means a fee or charge payable upon the subsequent sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in nonresidential real property located in this state, or payable for the right to make or accept such a 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 for the transfer. Transfer fee does not include any of the following:

(*i*) Any consideration payable by the grantee to the grantor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the grantee based upon any subsequent appreciation, development, or sale of the property, provided such additional consideration is payable on a 1-time basis only and the obligation to make such payment does not bind successors in title to the property. For the purposes of this subdivision, an interest in real property may include a separate mineral estate and its appurtenant surface access rights.

(*ii*) Any commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the grantor or the grantee, including any subsequent additional commission for that transfer payable by the grantor or the grantee based upon any subsequent appreciation, development, or sale of the property.

(*iii*) Any interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage against real property, including, but not limited to, any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage, any fees or charges payable to the lender for estoppel letters or certificates, and any shared appreciation interest or profit participation or other consideration payable to the lender in connection with the loan.

(*iv*) Any rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease, including, but not limited to, any fee payable to the lessor for consenting to an assignment, subletting, encumbrance, or transfer of the lease.

(*v*) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon the transfer of the property to another person.

(*vi*) Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority.

(*vii*) Any fee, charge, assessment, fine, or other amount payable to a homeowners', condominium, cooperative, mobile home, or property owners' association pursuant to a declaration or covenant or law applicable to such association, including, but not limited to, fees or charges payable for estoppel letters or certificates issued by the association or its authorized agent.

(*viii*) Any fee, charge, assessment, dues, contribution, or other amount imposed by a declaration or covenant encumbering a community, and payable to a nonprofit or charitable organization for the purpose of supporting cultural, educational, charitable, recreational, environmental, conservation, or other similar activities benefiting the community that is subject to the declaration or covenant.

(*ix*) Any fee, charge, assessment, dues, contribution, or other amount pertaining to the purchase or transfer of a club membership relating to real property owned by the member, including, but not limited to, any amount determined by reference to the value, purchase price, or other consideration given for the transfer of the real property.

(b) "Transfer fee covenant" means a declaration or covenant that requires or purports to require the payment of a transfer fee to the declarant or other person specified in the declaration or covenant or to that person's successors or assigns.

History: 2011, Act 34, Imd. Eff. May 24, 2011.

565.882 Transfer fee covenant; effect.

Sec. 2. A transfer fee covenant that is executed on or after the effective date of this section, whether or not

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recorded, does not run with the title to real property and is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee of any interest in the real property as an equitable servitude or otherwise.

History: 2011, Act 34, Imd. Eff. May 24, 2011.

565.883 Lien as void.

Sec. 3. Any lien purporting to secure the payment of a transfer fee under a transfer fee covenant that is executed on or after the effective date of this section is void.

History: 2011, Act 34, Imd. Eff. May 24, 2011.

565.884 Action to clear title; other equitable relief; attorney fees and costs.

Sec. 4. (1) Any person aggrieved by the imposition of a transfer fee, whether the original or subsequent transferee or purchaser, may bring an action to clear the title and void the transfer fee and for other equitable relief.

(2) In a successful action brought under subsection (1), the court may award actual reasonable attorney fees and other costs of bringing the action.

History: 2011, Act 34, Imd. Eff. May 24, 2011.

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