

**REAL PROPERTY TRANSFER FEE AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE**

**General Description:**

This bill enacts a provision relating to fees associated with the transfer of real property.

**Highlighted Provisions:**

This bill:

- ▶ declares a restriction, covenant, or agreement that obligates a future buyer or seller to make a payment upon the transfer of real property and any lien purporting to secure that payment to be void and unenforceable;

- ▶ makes an exception for certain costs and expenses charged by a common interest association, as defined, under certain circumstances;

- ▶ requires a notice of an association covenant to be recorded;

- ▶ requires a seller of a unit subject to an association covenant to indicate on the deed that the unit is subject to the covenant; and

- ▶ specifies requirements for a notice of an association covenant requiring the payment of association expenses or transfer costs upon the sale of a unit.

**Monies Appropriated in this Bill:**



30 None

31 **Other Special Clauses:**

32 This bill provides an immediate effective date.

33 This bill provides revisor instructions.

34 **Utah Code Sections Affected:**

35 ENACTS:

36 **57-1-46**, Utah Code Annotated 1953



38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section **57-1-46** is enacted to read:

40 **57-1-46. Transfer fee covenants void -- Exception -- Common interest community**  
41 **expenses and transfer costs -- Notice of association covenant.**

42 (1) As used in this section:

43 (a) "Association" has the same meaning as defined in Section 57-8a-102.

44 (b) "Association covenant" means a covenant, restriction, or agreement:

45 (i) contained in a common interest association's organizational document;

46 (ii) affecting real property in a common interest association; and

47 (iii) that obligates a future buyer or seller of a unit in a common interest association to  
48 pay association expenses or association transfer costs.

49 (c) "Association expenses" means expenses that a common interest association incurs  
50 for:

51 (i) the administration of the common interest association;

52 (ii) the purchase, operation, use, administration, maintenance, improvement, repair, or  
53 replacement of common areas, including expenses for taxes, insurance, operating reserves,  
54 capital reserves, and emergency funds; and

55 (iii) providing, establishing, creating, or managing an activity, service, or program:

56 (A) for the benefit of:

57 (I) property owners;

58 (II) tenants;

59 (III) common areas; or

60 (IV) property governed by the common interest association; or

61 (B) as provided in the organizational document in addition to items under Subsection  
62 (1)(c)(iii)(A).

63 (d) "Association of unit owners" has the same meaning as defined in Section 57-8-3.

64 (e) "Association transfer costs" means costs that a common interest association incurs  
65 because of a transfer of ownership of a unit within the common interest association.

66 (f) "Common areas":

67 (i) has the same meaning as:

68 (A) defined in Section 57-8a-102, for an association; and

69 (B) "common areas and facilities," as defined in Section 57-8-3, for an association of  
70 unit owners; and

71 (ii) for a nonprofit association:

72 (A) means:

73 (I) everything included under Subsections (1)(f)(i); and

74 (II) any personal or real property that the common interest association owns, leases,  
75 administers, or maintains under an organizational document for the benefit of the owners and  
76 tenants of units, lots, or parcels; and

77 (B) includes a private street, utility system, parking area, lighting, service area, loading  
78 and unloading area, drive, sign, landscaping, open space, park, trail, community area,  
79 recreational facility, building, and amenity.

80 (g) "Common interest association":

81 (i) means an association, an association of unit owners, or a nonprofit association; and

82 (ii) includes a person authorized by an association, association of unit owners, or  
83 nonprofit association, as the case may be.

84 (h) "Continuing association covenant for association expenses" means an association  
85 covenant that:

86 (i) is recorded on or after the effective date of this section;

87 (ii) requires the payment of association expenses;

88 (iii) results from an extension or amendment of a previously recorded association  
89 covenant; and

90 (iv) applies to real property that is a later phase in a development containing real  
91 property already affected by the previously recorded association covenant.

92 (i) "Management committee" has the same meaning as defined in Section 57-8-3.

93 (j) "Nonprofit association" means a nonprofit corporation under Title 16, Chapter 6a,

94 Utah Revised Nonprofit Corporation Act, other than an association or association of unit

95 owners, organized for the purpose of administering covenants, conditions, and restrictions, or

96 similar organizational documents, for the benefit of units, lots, or parcels.

97 (k) "Notice of association covenant" means a written notice described in Subsection

98 (3)(c).

99 (l) "Organizational document":

100 (i) for an association, means governing documents as defined in Section 57-8a-102;

101 (ii) for an association of unit owners, means a declaration as defined in Section 57-8-3;

102 and

103 (iii) for a nonprofit association:

104 (A) means a written instrument by which the nonprofit association exercises powers or

105 manages, maintains, or otherwise affects the property under the jurisdiction of the nonprofit

106 association; and

107 (B) includes:

108 (I) articles of incorporation;

109 (II) bylaws;

110 (III) plats;

111 (IV) charters;

112 (V) declarations of covenants, conditions, and restrictions; and

113 (VI) the nonprofit association's rules.

114 (m) "Transfer fee" means a fee or charge required to be paid in connection with or as a

115 result of a transfer of real property.

116 (n) "Transfer fee covenant":

117 (i) means a covenant, restriction, or agreement:

118 (A) affecting real property; and

119 (B) that obligates a future buyer or seller of the real property, other than a person who

120 is a party to the covenant, restriction, or agreement, to pay a transfer fee; and

121 (ii) does not include an obligation imposed by:

122 (A) a court judgment, order, or decree; or

123 (B) the federal government or a state or local government entity.  
124 (2) (a) Except as provided in Subsection (3), a transfer fee covenant, whether recorded  
125 before, on, or after May 11, 2010, is:  
126 (i) against public policy; and  
127 (ii) void and unenforceable.  
128 (b) A lien purporting to encumber real property to secure a transfer fee covenant that is  
129 void under Subsection (2)(a) is void and unenforceable.  
130 (3) (a) Notwithstanding Subsection (2) and subject to Subsection (3)(b), an association  
131 covenant is valid and enforceable if the association covenant:  
132 (i) is recorded before the effective date of this section; or  
133 (ii) (A) is recorded on or after the effective date of this section; and  
134 (B) (I) is a continuing association covenant for association expenses; or  
135 (II) requires only the payment of reasonable association transfer costs that do not  
136 exceed \$500, and does not require the payment of association expenses.  
137 (b) An association covenant is not valid or enforceable:  
138 (i) after January 1, 2011, if:  
139 (A) the association covenant was recorded before the effective date of this section; and  
140 (B) a notice of association covenant is not recorded before January 1, 2011; or  
141 (ii) until a notice of association covenant is recorded, if the association covenant is  
142 recorded on or after the effective date of this section.  
143 (c) A notice of association covenant shall:  
144 (i) be titled, in at least 14-point boldface type, "Notice of Payment Required Upon the  
145 Transfer of Property";  
146 (ii) identify the real property to which the association covenant applies, including the  
147 property's legal description and tax identification number;  
148 (iii) for each association covenant, include:  
149 (A) the name of the common interest association imposing the association covenant on  
150 the real property; and  
151 (B) the name, address, telephone number, and, if available, email address of the  
152 common interest association or management committee designated to receive the required  
153 payment under the association covenant for association expenses or association transfer costs;

154 (iv) specify the amount of the payment required by the association covenant; and  
155 (v) include the specific terms of the association covenant.

156 (d) (i) Except as provided in Subsection (3)(d)(ii), a common interest association may  
157 not assign the revenue from an association covenant or the right to receive revenue from an  
158 association covenant.

159 (ii) A common interest association may assign to a lender revenue from an association  
160 covenant for association expenses or the right to receive that revenue if:

161 (A) the common interest association obtains and uses proceeds from the loan solely for  
162 the purpose of funding association expenses;

163 (B) the lender is not permitted to receive revenue from an association covenant in an  
164 amount greater than the principal and debt service for the loan; and

165 (C) the lender's right to receive the revenue terminates upon full payment of the loan.

166 (e) A buyer of real property subject to an association covenant under this Subsection  
167 (3) may not be required to make a payment required by the association covenant unless the  
168 seller gives the buyer written notice of the association covenant:

169 (i) before the buyer makes an offer to purchase the real property; or

170 (ii) at a time that is sufficiently before the seller accepts an offer from the buyer that the  
171 buyer has a reasonable opportunity to withdraw or modify the buyer's offer.

172 (f) A seller of a unit that is subject to an association covenant shall prominently  
173 indicate on the face of the deed conveying ownership of the unit that the unit is subject to a  
174 covenant requiring a payment upon the transfer of ownership of the unit.

175 **Section 2. Effective date.**

176 If approved by two-thirds of all the members elected to each house, this bill takes effect  
177 upon approval by the governor, or the day following the constitutional time limit of Utah  
178 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
179 the date of veto override.

180 **Section 3. Revisor instructions.**

181 It is the intent of the Legislature that the Office of Legislative Research and General  
182 Counsel, in preparing the Utah Code database for publication, replace the language "the  
183 effective date of this section" where it appears in Section 57-1-46, as enacted in this bill, with  
184 the actual effective date of this bill.

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**Legislative Review Note**  
**as of 2-17-10 9:04 AM**

**Office of Legislative Research and General Counsel**

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**S.B. 161 - Real Property Transfer Fee Amendments**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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