

558.48 Transfer fee covenant — prohibition.

1. For purposes of this section, unless the context otherwise requires:

a. “*Transfer*” means the sale, gift, conveyance, assignment, inheritance, or other transfer of ownership interest in real property located in this state.

b. (1) “*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 a transfer of an interest in real property, 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.

(2) “*Transfer fee*” does not include any of the following:

(a) Any consideration payable by the transferee to the transferor for the interest in real property being transferred.

(b) Any commission payable to a licensed real estate broker for the transfer of real property under an agreement between the broker and the transferee or transferor.

(c) Any interest, charges, fees, or other amounts payable by a borrower to a lender under 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 other consideration allowed by law and payable to the lender in connection with the loan.

(d) 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.

(e) 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.

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

c. “*Transfer fee covenant*” means a declaration or covenant purporting to affect real property which requires or purports to require the payment of a transfer fee to the declarant or other person specified in the covenant or declaration, or to their successors or assigns, upon a subsequent transfer of an interest in the real property.

2. A transfer fee covenant shall not run with the title to real property and is not binding on or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in the real property as an equitable servitude or otherwise. Any lien purporting to secure the payment of a transfer fee under a transfer fee covenant is void and unenforceable.

2010 Acts, ch 1152, §1, 2

[SP] Section takes effect April 23, 2010, and applies to any lien purporting to secure the payment of a transfer fee under a transfer fee covenant which is filed in this state on or after April 23, 2010; 2010 Acts, ch 1152, §2