

HOUSE BILL 1298

N1

EMERGENCY BILL

0lr2680
CF SB 666

By: **Delegates Glenn, Ali, Beidle, Frush, Healey, Holmes, Ivey, Lafferty,
Niemann, Serafini, Shewell, Stein, and Walker**
Introduced and read first time: February 18, 2010
Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Transfer Fees – Prohibition**

3 FOR the purpose of prohibiting a person who conveys a fee simple interest in real
4 property from recording a covenant for the payment of a transfer fee under
5 certain circumstances; establishing that a covenant that requires a certain
6 payment of a transfer fee is void under certain circumstances; defining a certain
7 term; providing for the application of this Act; making this Act an emergency
8 measure; and generally relating to the prohibition on transfer fees on real
9 property.

10 BY adding to

11 Article – Real Property
12 Section 10–708
13 Annotated Code of Maryland
14 (2003 Replacement Volume and 2009 Supplement)

15 Preamble

16 WHEREAS, It is the public policy of the State of Maryland to favor the
17 marketability of real property and the transferability of interests in real property free
18 of title defects or unreasonable restraints on alienation; and

19 WHEREAS, Certain private, nongovernmental transfer fee covenants violate
20 the public policy by impairing the marketability and transferability of real property by
21 constituting an unreasonable restraint on alienation regardless of the duration of such
22 covenants or the amount of such transfer fees; and

23 WHEREAS, Private transfer fees are an attempt to retain part of the fee simple
24 title without having any right of possession presently or in the future; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 WHEREAS, Courts consistently have turned back attempts by landowners to
2 create new estates in land beyond those recognized at common law; and

3 WHEREAS, In order to maintain the free alienability of real property in
4 Maryland; now, therefore,

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article – Real Property**

8 **10-708.**

9 (A) IN THIS SECTION, “TRANSFER FEE” MEANS A CHARGE PAYABLE ON
10 THE TRANSFER OF AN INTEREST IN REAL PROPERTY OR PAYABLE FOR THE
11 RIGHT TO ACCEPT A TRANSFER OF AN INTEREST IN REAL PROPERTY.

12 (B) THIS SECTION DOES NOT APPLY TO:

13 (1) AN INSTRUMENT CONVEYING A FEE SIMPLE INTEREST IN
14 REAL PROPERTY THAT PROVIDES FOR CONSIDERATION PAID BY THE
15 PURCHASER TO THE VENDOR FOR THE INTEREST BEING TRANSFERRED;

16 (2) THE PAYMENT OF PRINCIPAL, INTEREST, OR FEES UNDER A
17 MORTGAGE LOAN AGREEMENT ON THE SALE OF PROPERTY BY THE MORTGAGEE;

18 (3) A LIMITED LIABILITY COMPANY, LIMITED LIABILITY
19 PARTNERSHIP, CORPORATION, JOINT VENTURE, OR PARTNERSHIP AGREEMENT
20 IN WHICH A MEMBER, SHAREHOLDER, OR PARTNER CONTRIBUTES REAL
21 PROPERTY TO THE LIMITED LIABILITY COMPANY, LIMITED LIABILITY
22 PARTNERSHIP, CORPORATION, JOINT VENTURE, OR PARTNERSHIP AGREEMENT;

23 (4) AN AGREEMENT PROVIDING FOR A SERIES OF RELATED
24 TRANSFERS OF A FEE SIMPLE INTEREST IN REAL PROPERTY IF THE AGREEMENT
25 STATES THE PRICE OF THE TRANSFERRED INTEREST, ANY CONSIDERATION
26 EXCHANGED, THE NAME OF THE VENDOR, THE NAME OF THE PURCHASER, AND
27 ANY OTHER ESSENTIAL TERMS FOR EACH TRANSFER OF INTEREST;

28 (5) AN AFFORDABLE HOUSING COVENANT, SERVITUDE,
29 EASEMENT, CONDITION, OR RESTRICTION IN A DEED, DECLARATION, LAND SALE
30 CONTRACT, LOAN AGREEMENT, PROMISSORY NOTE, TRUST DEED, MORTGAGE,
31 SECURITY AGREEMENT, OR OTHER INSTRUMENT, INCLUDING INSTRUMENTS
32 EXECUTED BY:

33 (I) A PUBLIC BODY;

1 **(II) AN AGENCY OF THE FEDERAL GOVERNMENT;**

2 **(III) A CORPORATION WHOSE PURPOSES INCLUDE**
3 **PROVIDING AFFORDABLE HOUSING FOR LOW-INCOME AND MODERATE-INCOME**
4 **HOUSEHOLDS;**

5 **(IV) A LIMITED LIABILITY COMPANY WITH AT LEAST ONE**
6 **MEMBER THAT IS A CORPORATION DESCRIBED UNDER ITEM (III) OF THIS**
7 **PARAGRAPH;**

8 **(V) A CONSUMER HOUSING COOPERATIVE; OR**

9 **(VI) A FEDERALLY RECOGNIZED INDIAN TRIBE;**

10 **(6) A FEE REQUIRED TO BE PAID TO:**

11 **(I) A HOMEOWNERS ASSOCIATION AS DEFINED IN §**
12 **11B-101 OF THIS ARTICLE;**

13 **(II) A COUNCIL OF UNIT OWNERS AS DEFINED IN § 11-101**
14 **OF THIS ARTICLE;**

15 **(III) A MANAGING ENTITY OF A TIMESHARE PLAN AS**
16 **DEFINED IN § 11A-101 OF THIS ARTICLE;**

17 **(IV) ANY OTHER OWNERS ASSOCIATION THAT IS GOVERNED**
18 **BY RECORDED COVENANTS, CONDITIONS, AND RESTRICTIONS; OR**

19 **(V) AN AGENT FOR AN ASSOCIATION OR MANAGING ENTITY**
20 **DESCRIBED IN THIS PARAGRAPH; OR**

21 **(7) AN AGREEMENT WITH A PERSON LICENSED TO PROVIDE REAL**
22 **ESTATE BROKERAGE SERVICES UNDER TITLE 17 OF THE BUSINESS**
23 **OCCUPATIONS AND PROFESSIONS ARTICLE TO PAY A COMMISSION TO THE**
24 **LICENSEE FOR THE REAL ESTATE BROKERAGE SERVICES PROVIDED.**

25 **(C) (1) A PERSON WHO CONVEYS A FEE SIMPLE INTEREST IN REAL**
26 **PROPERTY MAY NOT RECORD A COVENANT AGAINST THE TITLE TO THE REAL**
27 **PROPERTY FOR THE PAYMENT OF A TRANSFER FEE.**

28 **(2) A COVENANT THAT REQUIRES THE PAYMENT OF A TRANSFER**
29 **FEE ON THE CONVEYANCE OF A FEE SIMPLE INTEREST IN REAL PROPERTY IS**
30 **VOID.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
2 construed to apply only prospectively and may not be applied or interpreted to have
3 any effect on or application to any instrument conveying an interest in real property
4 that is signed by the vendor before the effective date of this Act.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency
6 measure, is necessary for the immediate preservation of the public health or safety,
7 has been passed by a ye and nay vote supported by three-fifths of all the members
8 elected to each of the two Houses of the General Assembly, and shall take effect from
9 the date it is enacted.