

HOUSE BILL 1644

By Dennis

AN ACT to amend Tennessee Code Annotated, Title 66,
relative to the prohibition of covenants providing
for fees upon transfer of real property.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 66, is amended by adding Sections 2 and 3 of this act as a new chapter.

SECTION 2. This chapter shall be known and may be cited as the "Prohibition of Covenants Providing for Transfer Fees Act of 2011."

SECTION 3. As used in this chapter:

(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 imposed by a transfer fee covenant, but does not include any tax, assessment, fee or charge imposed by a governmental authority pursuant to applicable laws, ordinances, or regulations; and

(4) "Transfer fee covenant" means a provision in a document, whether recorded or not and however denominated, that purports to run with the land or bind current owners or successors in title to specified real property located in this state, and that 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. "Transfer fee covenant" does not include:

(A) Any provision of a purchase contract, option, mortgage, security agreement, real property listing agreement, or other agreement that obligates one 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:

(i) Is 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;

(ii) Constitutes a loan assumption or similar fee charged by a lender holding a lien on the property; or

(iii) Constitutes a fee or commission paid to a licensed real estate broker for brokerage services rendered in connection with the transfer of the property for which the fee or commission is paid;

(B) Any provision in a deed, memorandum, or other document recorded for the purpose of providing record notice of an agreement described in subdivision (a)(4)(A);

(C) Any provision of a document requiring payment of a fee or charge to an association to be used exclusively for purposes authorized in the document, as 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

(D) Any provision of a document requiring payment of a fee or charge to an organization described in § 501(c)(3) or § 501(c)(4) of the Internal Revenue Code, to be used exclusively to support cultural, educational, charitable,

recreational, environmental, conservation, or other similar activities benefiting the real property affected by the provision or the community of which the property is a part.

(b) The general assembly makes the following 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; and

(2) A transfer fee covenant violates this public policy 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.

(c) A transfer fee covenant recorded after the effective date of this act, or any lien to the extent that it purports to secure the payment of a transfer fee, is not binding on or enforceable against the affected real property or any subsequent owner, purchaser, or mortgagee of any interest in the property.

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

SECTION 4. This act shall take effect upon becoming law, the public welfare requiring it.