

Chapter 333

(House Bill 1298)

AN ACT concerning

Real Property – Transfer Fees – Prohibition

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

BY adding to

Article – Real Property

Section 10–708

Annotated Code of Maryland

(2003 Replacement Volume and 2009 Supplement)

Preamble

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

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

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

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

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

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

Article – Real Property

10-708.

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

(B) THIS SECTION DOES NOT APPLY TO:

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

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

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

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

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

(I) A PUBLIC BODY;

(II) AN AGENCY OF THE FEDERAL GOVERNMENT;

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

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

(V) A CONSUMER HOUSING COOPERATIVE; OR

(VI) A FEDERALLY RECOGNIZED INDIAN TRIBE;

(6) A FEE REQUIRED TO BE PAID TO:

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

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

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

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

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

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

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

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

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

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

Approved by the Governor, May 4, 2010.