

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1298

(Delegate Glenn, *et al.*)

Environmental Matters

Judicial Proceedings

Real Property - Transfer Fees - Prohibition

This emergency bill prohibits a person who conveys a fee simple interest in real property from recording a covenant against the title to the real property for the payment of a transfer fee. The bill establishes that a covenant that requires the payment of a transfer fee on the conveyance of a fee simple interest in real property is void. The bill applies prospectively to any instrument conveying real property that is signed by a vendor on or after the bill takes effect.

Fiscal Summary

State Effect: The bill does not directly affect State finances or operations.

Local Effect: The bill does not directly affect local finances or operations.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill defines a “transfer fee” to mean 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. The bill’s prohibition does not apply to:

- 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;
- the payment of principal, interest, or fees under a mortgage loan agreement;

- a specified business entity agreement in which a member, shareholder, or partner contributes real property;
- an agreement providing for a series of related transfers of a fee simple interest in real property if the agreement includes specified terms including the price of the transferred interest, consideration paid, names of the vendor and purchaser, and any other essential terms for each transfer of interest;
- an affordable housing covenant or similar restriction in a deed or similar document executed by a public body, an agency of the federal government, specified business entities whose purposes include providing low- and moderate-income affordable housing, a consumer housing cooperative, or a federally recognized Indian tribe;
- a fee to be paid to specified individuals and entities including a homeowners association or a council of unit owners of a condominium; or
- a specified agreement with a person licensed to provide real estate brokerage services to pay a commission to the licensee for the services provided.

Current Law: The State imposes a transfer tax of 0.5% of the consideration payable for an instrument of writing conveying title to, or a leasehold interest in, real property (0.25% for first-time Maryland homebuyers). In some jurisdictions, a local property transfer tax may be imposed on instruments transferring title to real property. State law does not currently prohibit the recording of private transfer fee covenants. (*See Tax-Property Article § 13-203.*)

Emergency legislation in the 2007 session prohibited the creation of new residential ground rents. As of January 22, 2007, the owner of a fee simple or leasehold estate in residential real property with four or fewer dwelling units may not create a reversionary interest in the property under a ground lease or ground sublease for a term of years that is renewable forever subject to the payment of a periodic ground rent. (*See Real Property Article § 8-111.2.*)

Background: Private transfer fees are similar to ground rents and are typically created as a 99-year deed restriction. The covenant is recorded against the title to the property and requires the buyer, and all future buyers, to pay the original seller a fee of up to 1.5% of the purchase price upon each transfer of the property.

Additional Information

Prior Introductions: None.

Cross File: SB 666 (Senator Muse, *et al.*) - Judicial Proceedings.
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Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - March 3, 2010
mpc/kdm

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