

First Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0799.01 Bob Lackner

SENATE BILL 11-234

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**SENATE SPONSORSHIP**

**Jahn**, Boyd, Cadman, Grantham, Hodge, King S., Kopp, Lundberg, Morse, Nicholson, Scheffel, Shaffer B., Spence, Steadman, Tochtrop, White, Williams S.

**HOUSE SPONSORSHIP**

**Massey**, Kerr J., Liston, Pace, Schafer S., Scott, Swerdfeger, Todd

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**Senate Committees**  
Local Government

**House Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING RESIDENTIAL REAL PROPERTY TRANSFER FEE**  
102 **COVENANTS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

**Residential transfer fee covenants**

The bill addresses, among other things, the recording of transfer fee covenants (covenant) asserted against residential real property. These covenants create an obligation, specifically, the payment of a transfer fee (fee), which is a fee or charge paid upon the conveyance of residential

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

real property that runs with the land.

**Prohibitions on new transfer fee covenants and liens**

The bill prohibits any covenant recorded on or after July 1, 2011, or any lien recorded on or after July 1, 2011, to the extent that it purports to secure the payment of a fee, from being, upon conveyance, binding on or enforceable against the affected real property or from being payable for the right to make or accept such conveyance. The bill also prohibits any covenant or lien from being binding on or enforceable against any subsequent owner, purchaser, or holder of any mortgage, deed of trust, or other security interest encumbering the affected real property. The bill makes any person who records, or causes or suffers to be recorded, a covenant on or after July 1, 2011, liable for actual damages and attorney fees, expenses, and costs under circumstances specified in the bill.

**Existing residential transfer fee covenants**

In the case of any covenant, or any amendment to such covenant, recorded prior to July 1, 2011, the bill requires a person or entity to whom a fee is to be paid (payee), as a condition of payment of the fee, to record against the residential real property burdened by the covenant, in the office of the county clerk and recorder for the county in which the residential real property is situated, not later than October 1, 2011, a notice of transfer fee (notice). The bill specifies the required elements of the notice.

If the payee fails to comply fully with the requirements of the bill concerning the notice, the grantor of any residential real property burdened by the covenant may proceed with the conveyance to any grantee and in doing so shall be deemed to have acted in good faith and shall not be subject to any obligations under the covenant. All conveyances thereafter shall be free and clear of any such fee and covenant.

**Written statement of transfer fee payable and affidavit**

Upon written request made by the owner, or the owner's designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the payee's address shown on the notice of transfer fee or any amendment to the notice, the bill requires the payee to furnish to the owner or the owner's designee a written statement specifying the amount of the transfer fee payable. If the payee fails to provide such statement within 30 days after the date a written request for the same is sent in order to obtain a release of such fee, then the owner or the owner's designee, on recording of the affidavit required by the bill, may convey any interest in the residential real property to any grantee without payment of the fee and such conveyance shall not be subject to the fee and covenant.

The bill requires an affidavit, executed under penalty of perjury, satisfying certain requirements specified in the bill to be recorded prior to, simultaneously with, or within 45 days after a deed or other instrument

conveying the interest in the residential real property burdened by the covenant is recorded in the office of the county clerk and recorder in the county in which the residential real property is situated. The bill specifies the evidence the affidavit shall support and the required contents of the affidavit.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2           **SECTION 1.** Part 1 of article 35 of title 38, Colorado Revised  
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
4 read:

5           **38-35-127. Unenforceability of prospective residential transfer**  
6 **fee covenants - notice requirements for existing residential transfer**  
7 **fee covenants - written statement of transfer fee payable - affidavit -**  
8 **legislative declaration - definitions.** (1) THE GENERAL ASSEMBLY  
9 HEREBY FINDS, DETERMINES, AND DECLARES THAT:

10           (a) THE PUBLIC POLICY OF THIS STATE FAVORS THE  
11 TRANSFERABILITY AND MARKETABILITY OF INTERESTS IN RESIDENTIAL  
12 REAL PROPERTY FREE FROM UNREASONABLE RESTRAINTS ON ALIENATION  
13 AND COVENANTS OR SERVITUDES THAT DO NOT TOUCH AND CONCERN THE  
14 RESIDENTIAL REAL PROPERTY; AND

15           (b) A TRANSFER FEE COVENANT AS APPLIED TO RESIDENTIAL REAL  
16 PROPERTY VIOLATES THIS PUBLIC POLICY BY IMPAIRING THE  
17 TRANSFERABILITY AND MARKETABILITY OF TITLE TO AFFECTED  
18 RESIDENTIAL REAL PROPERTY AND CONSTITUTES AN UNREASONABLE  
19 RESTRAINT ON ALIENATION, REGARDLESS OF THE DURATION OF THE  
20 TRANSFER FEE COVENANT OR THE AMOUNT OF THE TRANSFER FEE SET  
21 FORTH IN THE TRANSFER FEE COVENANT.

22           (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE  
23 REQUIRES:

1           (a) "CONVEYANCE" MEANS THE SALE, GIFT, CONVEYANCE,  
2           ASSIGNMENT, INHERITANCE, OR OTHER TRANSFER OF AN OWNERSHIP  
3           INTEREST IN RESIDENTIAL REAL PROPERTY LOCATED IN THIS STATE EITHER  
4           UPON WHICH THERE ARE RESIDENTIAL IMPROVEMENTS OR UPON WHICH  
5           THE CONSTRUCTION OF RESIDENTIAL IMPROVEMENTS HAS COMMENCED.

6           (b) "EXCLUDED PROVISION" MEANS ANY ONE OF THE FOLLOWING:

7           (I) ANY PROVISION OF A PURCHASE CONTRACT, OPTION,  
8           MORTGAGE, DEED OF TRUST, SECURITY AGREEMENT, AGREEMENT  
9           ENGAGING A REAL ESTATE BROKER FOR BROKERAGE SERVICES, LEASE, OR  
10          OTHER AGREEMENT THAT OBLIGATES ONE PARTY TO THE AGREEMENT TO  
11          PAY THE OTHER, AS FULL OR PARTIAL CONSIDERATION FOR THE  
12          AGREEMENT OR FOR A WAIVER OF RIGHTS UNDER THE AGREEMENT, AN  
13          AMOUNT DETERMINED UNDER THE AGREEMENT, IF THE AMOUNT  
14          CONSTITUTES:

15          (A) AN AMOUNT PAYABLE ON A ONE-TIME BASIS ONLY THAT, ONCE  
16          PAID, SHALL NOT BIND ANY SUCCESSOR IN TITLE TO THE INTEREST IN  
17          RESIDENTIAL REAL PROPERTY AND THAT SHALL IN NO EVENT BE PAYABLE  
18          BY A GRANTEE UPON A CONVEYANCE OF RESIDENTIAL REAL PROPERTY  
19          EITHER UPON WHICH THERE ARE RESIDENTIAL IMPROVEMENTS OR UPON  
20          WHICH THE CONSTRUCTION OF RESIDENTIAL IMPROVEMENTS HAS  
21          COMMENCED;

22          (B) INTEREST, CHARGES, FEES, OR OTHER AMOUNTS TO THE  
23          EXTENT PAYABLE BY A BORROWER TO A LENDER, INCLUDING SELLER  
24          CARRY-BACK FINANCING, PURSUANT TO A LOAN SECURED BY A  
25          MORTGAGE, DEED OF TRUST, OR OTHER SECURITY AGREEMENT  
26          ENCUMBERING RESIDENTIAL REAL PROPERTY, INCLUDING, WITHOUT  
27          LIMITATION, ANY FEE PAYABLE TO THE LENDER FOR CONSENTING TO AN

1 ASSUMPTION OF THE LOAN OR A CONVEYANCE SUBJECT TO THE SECURITY  
2 AGREEMENT, ANY FEES OR CHARGES PAYABLE TO THE LENDER FOR  
3 ESTOPPEL LETTERS OR CERTIFICATES, AND ANY SHARED APPRECIATION  
4 INTEREST OR PROFIT PARTICIPATION OR OTHER CONSIDERATION PAYABLE  
5 TO THE LENDER IN CONNECTION WITH THE LOAN;

6 (C) COMPENSATION OR EXPENSE REIMBURSEMENT PAID TO A  
7 LICENSED REAL ESTATE BROKER FOR BROKERAGE SERVICES RENDERED IN  
8 CONNECTION WITH THE CONVEYANCE FOR WHICH THE COMPENSATION IS  
9 EARNED OR A ONE-TIME FEE PAID TO A CLOSING AGENT, TITLE INSURANCE  
10 COMPANY, PROPERTY MANAGEMENT COMPANY, MANAGEMENT COMPANY  
11 FOR AN ASSOCIATION OF UNIT OWNERS, MORTGAGE LOAN ORIGINATOR,  
12 MORTGAGE BROKER, OR OTHER PARTY FOR SERVICES RENDERED IN  
13 CONNECTION WITH THE CONVEYANCE FOR WHICH THE FEE IS EARNED; OR

14 (D) ANY RENT, REIMBURSEMENT, CHARGE, FEE, OR OTHER  
15 AMOUNT TO THE EXTENT PAYABLE BY A LESSEE TO A LESSOR UNDER A  
16 LEASE, INCLUDING, WITHOUT LIMITATION, ANY FEE PAYABLE TO THE  
17 LESSOR FOR CONSENTING TO AN ASSIGNMENT, SUBLETTING,  
18 ENCUMBRANCE, OR TRANSFER OF THE LEASE;

19 (II) ANY PROVISION IN A DEED, MEMORANDUM, SHORT FORM, OR  
20 OTHER DOCUMENT RECORDED FOR THE PURPOSE OF PROVIDING RECORD  
21 NOTICE OF AN AGREEMENT DESCRIBED IN SUBPARAGRAPH (I) OF THIS  
22 PARAGRAPH (b);

23 (III) TO THE EXTENT PERMITTED BY LAW, ANY PROVISION IN A  
24 DOCUMENT IMPOSING A TAX, FEE, CHARGE, ASSESSMENT, FINE, OR OTHER  
25 AMOUNT, TO THE EXTENT PAYABLE TO OR IMPOSED, DIRECTLY OR  
26 INDIRECTLY, BY A GOVERNMENTAL AUTHORITY OR A  
27 QUASI-GOVERNMENTAL ENTITY OR TO SUCH AUTHORITY'S OR ENTITY'S

1 SUCCESSORS AND ASSIGNS, AND INCLUDING, WITHOUT LIMITATION, AN  
2 AMOUNT IMPOSED BY ANY OWNER OF RESIDENTIAL REAL PROPERTY AS THE  
3 DECLARANT PURSUANT TO A RECORDED DECLARATION OF TRANSFER FEE  
4 COVENANTS THAT ASSIGNS OR OTHERWISE DESIGNATES THE RIGHT TO  
5 RECEIVE AND UTILIZE THE PROCEEDS OF SUCH TRANSFER FEE TO A  
6 GOVERNMENTAL AUTHORITY OR QUASI-GOVERNMENTAL ENTITY, OR TO  
7 SUCH AUTHORITY'S OR ENTITY'S SUCCESSORS AND ASSIGNS, INCLUDING  
8 ANY BOND TRUSTEE OR LENDER WITH RESPECT TO FINANCING  
9 TRANSACTIONS OF SUCH AUTHORITY OR ENTITY;

10 (IV) ANY PROVISION IN A RECORDED DOCUMENT, REGARDLESS OF  
11 WHETHER THE DOCUMENT IS RECORDED BEFORE, ON, OR AFTER JULY 1,  
12 2011, REQUIRING PAYMENT OF A FEE, CHARGE, ASSESSMENT, FINE, OR  
13 OTHER AMOUNT ONLY TO THE EXTENT PAYABLE TO OR COLLECTED BY AN  
14 ASSOCIATION OF UNIT OWNERS, HOMEOWNERS, PROPERTY OWNERS,  
15 CONDOMINIUM OWNERS, OR SIMILAR MANDATORY MEMBERSHIP  
16 ORGANIZATION, INCLUDING A COOPERATIVE, MOBILE HOME, TIME SHARE  
17 UNIT, OR COMMON INTEREST COMMUNITY ASSOCIATION;

18 (V) ANY PROVISION IN A DOCUMENT REQUIRING PAYMENT OF A  
19 FEE, CHARGE, ASSESSMENT, DUES, CONTRIBUTION, OR OTHER AMOUNT,  
20 ONLY TO THE EXTENT PAYABLE TO AN ORGANIZATION DESCRIBED IN  
21 SECTIONS 501 (c) (3), 501 (c) (4), OR 501 (c) (7) OF THE INTERNAL  
22 REVENUE CODE, FOR THE PURPOSE OF BENEFITING THE COMMUNITY IN  
23 WHICH THE AFFECTED REAL PROPERTY IS LOCATED AND SUPPORTING  
24 ACTIVITIES SUCH AS CULTURAL, EDUCATIONAL, CHARITABLE, AFFORDABLE  
25 HOUSING, PRESERVATION OF OPEN SPACE, RECREATIONAL,  
26 TRANSPORTATION, ENVIRONMENTAL, CONSERVATION, OR SIMILAR  
27 ACTIVITIES; OR

1 (VI) ANY PROVISION IN A DOCUMENT REQUIRING PAYMENT OF AN  
2 AMOUNT TO THE EXTENT REQUIRED PURSUANT TO A RECORDED TRANSFER  
3 FEE COVENANT OR SERVITUDE THAT IMPOSES LIMITATIONS ON THE USE OF  
4 RESIDENTIAL REAL PROPERTY PURSUANT TO AN ENVIRONMENTAL  
5 REMEDIATION PROJECT PERTAINING TO SUCH PROPERTY.

6 (c) "PAYEE" MEANS THE PERSON, ENTITY, OR ORGANIZATION, OR  
7 THEIR SUCCESSORS AND ASSIGNS, SPECIFIED IN THE TRANSFER FEE  
8 COVENANT TO WHICH A TRANSFER FEE IS TO BE PAID.

9 (d) "RESIDENTIAL IMPROVEMENTS" SHALL HAVE THE SAME  
10 MEANING AS SET FORTH IN SECTION 39-1-102 (14.3), C.R.S.

11 (e) "RESIDENTIAL REAL PROPERTY" SHALL HAVE THE SAME  
12 MEANING AS SET FORTH IN SECTION 39-1-102 (14.5), C.R.S.

13 (f) "TIME SHARE UNIT" SHALL HAVE THE SAME MEANING AS SET  
14 FORTH IN SECTION 38-33-110 (7).

15 (g) "TRANSFER FEE" MEANS A FEE OR CHARGE REQUIRED TO BE  
16 PAID BY A TRANSFER FEE COVENANT, ANY PORTION OF WHICH IS PAYABLE  
17 UPON CONVEYANCE OR PAYABLE FOR THE RIGHT TO MAKE OR ACCEPT  
18 SUCH CONVEYANCE, REGARDLESS OF WHETHER THE FEE OR CHARGE IS A  
19 FIXED AMOUNT OR IS DETERMINED AS A PERCENTAGE OF THE VALUE OF  
20 THE RESIDENTIAL REAL PROPERTY, THE PURCHASE PRICE, OR ANY OTHER  
21 FORM OF CONSIDERATION GIVEN FOR THE CONVEYANCE.

22 (h) "TRANSFER FEE COVENANT" MEANS A PROVISION IN A  
23 DOCUMENT, WHETHER RECORDED OR NOT AND HOWEVER DENOMINATED,  
24 THAT REQUIRES OR PURPORTS TO REQUIRE THE PAYMENT OF A TRANSFER  
25 FEE, OR PART OF A TRANSFER FEE, TO A PAYEE. A TRANSFER FEE  
26 COVENANT SHALL NOT INCLUDE, NOR SHALL THIS SECTION APPLY TO, AN  
27 EXCLUDED PROVISION.

1           (3) (a) ANY TRANSFER FEE COVENANT RECORDED ON OR AFTER  
2 JULY 1, 2011, OR ANY LIEN RECORDED ON OR AFTER JULY 1, 2011, TO THE  
3 EXTENT THAT IT PURPORTS TO SECURE THE PAYMENT OF A TRANSFER FEE,  
4 SHALL NOT, UPON CONVEYANCE, BE BINDING ON OR ENFORCEABLE  
5 AGAINST THE AFFECTED REAL PROPERTY OR BE PAYABLE FOR THE RIGHT  
6 TO MAKE OR ACCEPT SUCH CONVEYANCE, NOR SHALL SUCH COVENANT OR  
7 LIEN BE BINDING ON OR ENFORCEABLE AGAINST ANY SUBSEQUENT OWNER,  
8 PURCHASER, OR HOLDER OF ANY MORTGAGE, DEED OF TRUST, OR OTHER  
9 SECURITY INTEREST ENCUMBERING THE AFFECTED REAL PROPERTY.

10           (b) ANY PERSON WHO RECORDS, OR CAUSES OR SUFFERS TO BE  
11 RECORDED, A TRANSFER FEE COVENANT ON OR AFTER JULY 1, 2011, SHALL  
12 BE LIABLE FOR ALL OF THE FOLLOWING:

13           (I) ANY ACTUAL DAMAGES RESULTING FROM THE IMPOSITION OF  
14 THE TRANSFER FEE COVENANT ON A CONVEYANCE, INCLUDING THE  
15 AMOUNT OF ANY TRANSFER FEE PAID BY A PARTY TO THE CONVEYANCE;  
16 AND

17           (II) ALL REASONABLE ACTUAL ATTORNEY FEES, EXPENSES, AND  
18 COSTS INCURRED BY A PARTY TO THE CONVEYANCE OR BY A HOLDER OF A  
19 MORTGAGE, DEED OF TRUST, OR OTHER SECURITY INTEREST ENCUMBERING  
20 THE RESIDENTIAL REAL PROPERTY SUBJECT TO THE TRANSFER FEE  
21 COVENANT IN CONNECTION WITH AN ACTION TO:

22           (A) RECOVER A TRANSFER FEE PAID;

23           (B) QUIET TITLE TO THE RESIDENTIAL REAL PROPERTY BURDENED  
24 BY THE TRANSFER FEE COVENANT; OR

25           (C) SHOW CAUSE WHY THE TRANSFER FEE COVENANT, OR ANY LIEN  
26 PURPORTING TO SECURE THE PAYMENT OF A TRANSFER FEE, SHOULD NOT  
27 BE DECLARED INVALID.



1           (4) (a) IN THE CASE OF ANY TRANSFER FEE COVENANT, OR ANY  
2 AMENDMENT TO SUCH COVENANT, RECORDED PRIOR TO JULY 1, 2011, THE  
3 PAYEE, AS A CONDITION OF PAYMENT OF THE TRANSFER FEE, SHALL  
4 RECORD AGAINST THE RESIDENTIAL REAL PROPERTY BURDENED BY THE  
5 TRANSFER FEE COVENANT, IN THE OFFICE OF THE COUNTY CLERK AND  
6 RECORDER FOR THE COUNTY IN WHICH THE RESIDENTIAL REAL PROPERTY  
7 IS SITUATED, NOT LATER THAN OCTOBER 1, 2011, A NOTICE OF TRANSFER  
8 FEE.

9           (b) THE NOTICE OF TRANSFER FEE REQUIRED BY PARAGRAPH (a) OF  
10 THIS SUBSECTION (4) SHALL:

11           (I) BE ENTITLED "NOTICE OF TRANSFER FEE", WHICH TITLE SHALL  
12 BE IN AT LEAST FOURTEEN-POINT BOLDFACE TYPE;

13           (II) SPECIFY THE AMOUNT OF THE TRANSFER FEE IF THE TRANSFER  
14 FEE IS A FLAT AMOUNT OR THE PERCENTAGE OF THE SALES PRICE  
15 CONSTITUTING THE TRANSFER FEE IF THE TRANSFER FEE IS DETERMINED AS  
16 A PERCENTAGE OF THE VALUE OF THE RESIDENTIAL REAL PROPERTY, OR  
17 SUCH OTHER BASIS BY WHICH THE TRANSFER FEE IS TO BE CALCULATED;

18           (III) PROVIDE ACTUAL COST EXAMPLES OF THE TRANSFER FEE FOR  
19 A HOME PRICED AT TWO HUNDRED FIFTY THOUSAND DOLLARS, A HOME  
20 PRICED AT FIVE HUNDRED THOUSAND DOLLARS, AND A HOME PRICED AT  
21 SEVEN HUNDRED FIFTY THOUSAND DOLLARS;

22           (IV) SPECIFY THE DATE OR CIRCUMSTANCES UNDER WHICH THE  
23 TRANSFER FEE PAYMENT REQUIREMENT EXPIRES, IF ANY;

24           (V) DESCRIBE THE GENERAL PURPOSE FOR WHICH THE MONEYS  
25 FROM THE TRANSFER FEE WILL BE USED;

26           (VI) IDENTIFY THE NAME OF THE PAYEE AND SPECIFIC CONTACT  
27 INFORMATION FOR THE PAYEE, INCLUDING MAILING ADDRESS, REGARDING

1 WHERE THE MONEYS ARE TO BE SENT;

2 (VII) CONTAIN THE ACKNOWLEDGED SIGNATURE OF THE PAYEE;

3 (VIII) IDENTIFY THE NAME OF THE OWNER AND THE LEGAL  
4 DESCRIPTION OF THE RESIDENTIAL REAL PROPERTY BURDENED BY THE  
5 TRANSFER FEE COVENANT, AS DISCLOSED BY THE RECORDS OF THE  
6 COUNTY CLERK AND RECORDER; AND

7 (IX) SPECIFY THE METHOD OF RELEASING ANY LIEN RECORDED  
8 AGAINST THE RESIDENTIAL REAL PROPERTY PURSUANT TO THE TRANSFER  
9 FEE COVENANT.

10 (c) THE PAYEE MAY FILE AN AMENDMENT TO THE NOTICE OF  
11 TRANSFER FEE CONTAINING NEW CONTACT INFORMATION, AND SUCH  
12 AMENDMENT SHALL CONTAIN THE RECORDING INFORMATION OF THE  
13 NOTICE OF TRANSFER FEE THAT IT AMENDS, THE NAME OF THE OWNER, AND  
14 THE LEGAL DESCRIPTION OF THE RESIDENTIAL REAL PROPERTY BURDENED  
15 BY THE TRANSFER FEE COVENANT AS CONTAINED IN THE RECORDS OF THE  
16 COUNTY CLERK AND RECORDER AT THE TIME OF THE RECORDING OF THE  
17 AMENDMENT.

18 (d) THE OFFICE OF THE COUNTY CLERK AND RECORDER SHALL  
19 INDEX THE NOTICE OF TRANSFER FEE UNDER THE NAMES OF THE PERSONS,  
20 ENTITIES, OR ORGANIZATIONS IDENTIFIED IN PARAGRAPH (b) OF THIS  
21 SUBSECTION (4) OR AS SUCH NAMES MAY BE IDENTIFIED IN A NOTICE THAT  
22 HAS BEEN AMENDED UNDER PARAGRAPH (c) OF THIS SUBSECTION (4). THE  
23 OFFICE OF THE COUNTY CLERK AND RECORDER SHALL NOT BE REQUIRED TO  
24 EXAMINE ANY OTHER INFORMATION CONTAINED IN THE NOTICE OF  
25 TRANSFER FEE OR ANY AMENDMENT TO SUCH NOTICE.

26 (5) IF THE PAYEE FAILS TO COMPLY FULLY WITH PARAGRAPH (a)  
27 OR (b) OF SUBSECTION (4) OF THIS SECTION, THE GRANTOR OF ANY

1 RESIDENTIAL REAL PROPERTY BURDENED BY THE TRANSFER FEE  
2 COVENANT MAY PROCEED WITH THE CONVEYANCE TO ANY GRANTEE AND  
3 IN DOING SO SHALL BE DEEMED TO HAVE ACTED IN GOOD FAITH AND SHALL  
4 NOT BE SUBJECT TO ANY OBLIGATIONS UNDER THE TRANSFER FEE  
5 COVENANT. ALL CONVEYANCES THEREAFTER SHALL BE FREE AND CLEAR  
6 OF ANY SUCH TRANSFER FEE AND TRANSFER FEE COVENANT.

7 (6) (a) UPON WRITTEN REQUEST MADE BY THE OWNER, OR THE  
8 OWNER'S DESIGNEE, DELIVERED PERSONALLY OR BY CERTIFIED MAIL,  
9 FIRST-CLASS POSTAGE PREPAID, RETURN RECEIPT REQUESTED, TO THE  
10 PAYEE'S ADDRESS SHOWN ON THE NOTICE OF TRANSFER FEE OR ANY  
11 AMENDMENT TO THE NOTICE, THE PAYEE SHALL FURNISH TO THE OWNER  
12 OR THE OWNER'S DESIGNEE A WRITTEN STATEMENT SPECIFYING THE  
13 AMOUNT OF THE TRANSFER FEE PAYABLE. IF THE PAYEE FAILS TO PROVIDE  
14 SUCH STATEMENT WITHIN THIRTY DAYS AFTER THE DATE A WRITTEN  
15 REQUEST FOR THE SAME IS SENT TO THE ADDRESS SHOWN IN THE NOTICE  
16 OF TRANSFER FEE IN ORDER TO OBTAIN A RELEASE OF SUCH FEE, THEN THE  
17 OWNER OR THE OWNER'S DESIGNEE, ON RECORDING OF THE AFFIDAVIT  
18 REQUIRED UNDER SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS  
19 SUBSECTION (6), MAY CONVEY ANY INTEREST IN THE RESIDENTIAL REAL  
20 PROPERTY TO ANY GRANTEE WITHOUT PAYMENT OF THE TRANSFER FEE  
21 AND SUCH CONVEYANCE SHALL NOT BE SUBJECT TO THE TRANSFER FEE  
22 AND TRANSFER FEE COVENANT.

23 (b) (I) AN AFFIDAVIT, EXECUTED UNDER PENALTY OF PERJURY,  
24 STATING THE FACTS SPECIFIED UNDER PARAGRAPH (a) OF THIS SUBSECTION  
25 (6) AND CONTAINING, AT A MINIMUM, THE INFORMATION SET OUT IN  
26 SUBPARAGRAPH (III) OF THIS PARAGRAPH (b), AND MADE BY ONE OR MORE  
27 PERSONS, IF APPLICABLE, WHO HAS ACTUAL KNOWLEDGE OF, AND IS

1       COMPETENT TO TESTIFY IN A COURT OF COMPETENT JURISDICTION ABOUT,  
2       THE FACTS IN SUCH AFFIDAVIT, SHALL BE RECORDED PRIOR TO,  
3       SIMULTANEOUSLY WITH, OR WITHIN FORTY-FIVE DAYS AFTER A DEED OR  
4       OTHER INSTRUMENT CONVEYING THE INTEREST IN THE RESIDENTIAL REAL  
5       PROPERTY BURDENED BY THE TRANSFER FEE COVENANT IS RECORDED IN  
6       THE OFFICE OF THE COUNTY CLERK AND RECORDER IN THE COUNTY IN  
7       WHICH THE RESIDENTIAL REAL PROPERTY IS SITUATED.

8               (II)    WHEN RECORDED, AN AFFIDAVIT AS DESCRIBED IN  
9       SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL CONSTITUTE PRIMA  
10      FACIE EVIDENCE THAT:

11             (A)    A REQUEST FOR THE WRITTEN STATEMENT OF THE TRANSFER  
12      FEE PAYABLE IN ORDER TO OBTAIN A RELEASE OF THE FEE IMPOSED BY THE  
13      TRANSFER FEE COVENANT WAS SENT TO THE ADDRESS SHOWN IN THE  
14      NOTICE OF TRANSFER FEE OR IN ANY AMENDMENT TO SUCH NOTICE; AND

15             (B)    THE PAYEE FAILED TO PROVIDE THE WRITTEN STATEMENT OF  
16      THE TRANSFER FEE PAYABLE WITHIN THIRTY DAYS OF THE DATE OF THE  
17      NOTICE SENT TO THE ADDRESS SHOWN IN THE NOTICE OF TRANSFER FEE OR  
18      IN ANY AMENDMENT TO SUCH NOTICE.

19             (III) AN AFFIDAVIT FILED UNDER SUBPARAGRAPH (I) OF THIS  
20      PARAGRAPH (b) SHALL STATE THAT THE AFFIANT HAS ACTUAL  
21      KNOWLEDGE OF, AND IS COMPETENT TO TESTIFY TO, THE FACTS IN THE  
22      AFFIDAVIT AND SHALL INCLUDE THE LEGAL DESCRIPTION OF THE  
23      RESIDENTIAL REAL PROPERTY BURDENED BY THE TRANSFER FEE  
24      COVENANT; THE NAME OF THE PERSON APPEARING WHO IS ON RECORD AS  
25      THE OWNER OF SUCH RESIDENTIAL REAL PROPERTY AT THE TIME OF THE  
26      SIGNING OF SUCH AFFIDAVIT; THE NAME OF THE GRANTEE OF THE  
27      CONVEYANCE TO BE RECORDED; A REFERENCE, BY RECORDING

1 INFORMATION, TO THE INSTRUMENT OF RECORD CONTAINING THE  
2 TRANSFER FEE COVENANT; AND AN ACKNOWLEDGMENT THAT THE AFFIANT  
3 IS TESTIFYING UNDER PENALTY OF PERJURY.

4 (IV) THE OFFICE OF THE COUNTY CLERK AND RECORDER SHALL  
5 INDEX THE AFFIDAVIT IN THE NAME OF THE RECORD OWNER SHOWN  
6 THEREIN.

7 (V) IN NO EVENT SHALL THE LIABILITY OF THE AFFIANT TO ANY  
8 PAYEE FOR NONPAYMENT OF THE TRANSFER FEE EXCEED THE AMOUNT  
9 STATED IN THE NOTICE OF TRANSFER FEE COVENANT FOR THAT  
10 PARTICULAR CONVEYANCE; EXCEPT THAT NOTHING IN THIS SECTION SHALL  
11 CONFER ANY LIABILITY UPON ANY PERSON OR TITLE COMPANY, OR ANY  
12 AGENT OR EMPLOYEE OF SUCH COMPANY, THAT EXECUTES AN AFFIDAVIT  
13 ON REQUEST OF ANY GRANTOR WHEN THE PERSON OR TITLE COMPANY HAS  
14 ACTUAL KNOWLEDGE OF SOME OR ALL OF THE MATTERS CONTAINED IN THE  
15 AFFIDAVIT, UNLESS THAT PERSON OR TITLE COMPANY IS PROVEN TO HAVE  
16 ACTED IN BAD FAITH OR WITH GROSS NEGLIGENCE.

17 (7) NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THE  
18 TRANSFER FEE COVENANT, ANY NOTICE GIVEN UNDER THIS SECTION SHALL  
19 BE SENT TO THE LAST-KNOWN ADDRESS OF THE PAYEE AS SPECIFIED IN THE  
20 NOTICE OF TRANSFER FEE OR IN ANY AMENDMENT TO THE NOTICE.

21 (8) THIS SECTION SHALL NOT BE CONSTRUED TO IMPLY THAT ANY  
22 TRANSFER FEE COVENANT OR EXCLUDED PROVISION IS VALID OR  
23 ENFORCEABLE SOLELY AS THE RESULT OF THE ENACTMENT OF THIS  
24 SECTION.

25 **SECTION 2. Effective date - applicability.** This act shall take  
26 effect July 1, 2011, and shall apply to transactions undertaken prior to, on,  
27 or after said date.

1           **SECTION 3. Safety clause.** The general assembly hereby finds,  
2 determines, and declares that this act is necessary for the immediate  
3 preservation of the public peace, health, and safety.