

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 11-0799.01 Bob Lackner

SENATE BILL 11-234

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

Senate Committees
Local Government

House Committees
Local Government

HOUSE
3rd Reading Unam ended
May 6, 2011

A BILL FOR AN ACT

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

HOUSE
2nd Reading Unam ended
May 5, 2011

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>.)

SENATE
3rd Reading Unam ended
April 29, 2011

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

SENATE
Am ended 2nd Reading
April 28, 2011

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.

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:

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16 (A) PRINCIPAL, INTEREST, CHARGES, FEES, OR OTHER AMOUNTS TO
17 THE EXTENT PAYABLE BY A BORROWER TO A LENDER, INCLUDING SELLER
18 CARRY-BACK FINANCING, PURSUANT TO A LOAN SECURED BY A
19 MORTGAGE, DEED OF TRUST, OR OTHER SECURITY AGREEMENT
20 ENCUMBERING RESIDENTIAL REAL PROPERTY, INCLUDING, WITHOUT
21 LIMITATION, ANY FEE PAYABLE TO THE LENDER FOR CONSENTING TO AN
22 ASSUMPTION OF THE LOAN OR A CONVEYANCE SUBJECT TO THE SECURITY
23 AGREEMENT, ANY FEES OR CHARGES PAYABLE TO THE LENDER FOR
24 ESTOPPEL LETTERS OR CERTIFICATES, AND ANY SHARED APPRECIATION
25 INTEREST OR PROFIT PARTICIPATION OR OTHER CONSIDERATION PAYABLE
26 TO THE LENDER IN CONNECTION WITH THE LOAN;

27 (B) COMPENSATION OR EXPENSE REIMBURSEMENT PAID TO A

1 LICENSED REAL ESTATE BROKER FOR BROKERAGE SERVICES RENDERED IN
2 CONNECTION WITH THE CONVEYANCE FOR WHICH THE COMPENSATION IS
3 EARNED OR A ONE-TIME FEE PAID TO A CLOSING AGENT, TITLE INSURANCE
4 COMPANY, PROPERTY MANAGEMENT COMPANY, MANAGEMENT COMPANY
5 FOR AN ASSOCIATION OF UNIT OWNERS, MORTGAGE LOAN ORIGINATOR,
6 MORTGAGE BROKER, OR OTHER PARTY FOR SERVICES RENDERED IN
7 CONNECTION WITH THE CONVEYANCE FOR WHICH THE FEE IS EARNED; OR

8 (C) ANY RENT, REIMBURSEMENT, CHARGE, FEE, OR OTHER
9 AMOUNT TO THE EXTENT PAYABLE BY A LESSEE TO A LESSOR UNDER A
10 LEASE, INCLUDING, WITHOUT LIMITATION, ANY FEE PAYABLE TO THE
11 LESSOR FOR CONSENTING TO AN ASSIGNMENT, SUBLETTING,
12 ENCUMBRANCE, OR TRANSFER OF THE LEASE;

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

17 (III) TO THE EXTENT PERMITTED BY LAW, ANY PROVISION IN A
18 DOCUMENT IMPOSING A TAX, FEE, CHARGE, ASSESSMENT, FINE, OR OTHER
19 AMOUNT, TO THE EXTENT PAYABLE TO OR IMPOSED, DIRECTLY OR
20 INDIRECTLY, BY A GOVERNMENTAL AUTHORITY OR A
21 QUASI-GOVERNMENTAL ENTITY OR TO SUCH AUTHORITY'S OR ENTITY'S
22 SUCCESSORS AND ASSIGNS, AND INCLUDING, WITHOUT LIMITATION, AN
23 AMOUNT IMPOSED BY ANY OWNER OF RESIDENTIAL REAL PROPERTY AS THE
24 DECLARANT PURSUANT TO A RECORDED DECLARATION OF TRANSFER FEE
25 COVENANTS THAT ASSIGNS OR OTHERWISE DESIGNATES THE RIGHT TO
26 RECEIVE AND UTILIZE THE PROCEEDS OF SUCH TRANSFER FEE TO A
27 GOVERNMENTAL AUTHORITY OR QUASI-GOVERNMENTAL ENTITY, OR TO

1 SUCH AUTHORITY'S OR ENTITY'S SUCCESSORS AND ASSIGNS, INCLUDING
2 ANY BOND TRUSTEE OR LENDER WITH RESPECT TO FINANCING
3 TRANSACTIONS OF SUCH AUTHORITY OR ENTITY;

4 (IV) ANY PROVISION IN A RECORDED DOCUMENT, REGARDLESS OF
5 WHETHER THE DOCUMENT IS RECORDED BEFORE, ON, OR AFTER THE
6 EFFECTIVE DATE OF THIS SECTION _____ REQUIRING PAYMENT OF A FEE,
7 CHARGE, ASSESSMENT, FINE, OR OTHER AMOUNT ONLY TO THE EXTENT
8 PAYABLE TO OR COLLECTED BY AN ASSOCIATION OF UNIT OWNERS,
9 HOMEOWNERS, PROPERTY OWNERS, CONDOMINIUM OWNERS, OR SIMILAR
10 MANDATORY MEMBERSHIP ORGANIZATION, INCLUDING A COOPERATIVE,
11 MOBILE HOME, TIME SHARE UNIT, OR COMMON INTEREST COMMUNITY
12 ASSOCIATION;

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

24 (VI) ANY PROVISION IN A DOCUMENT REQUIRING PAYMENT OF AN
25 AMOUNT TO THE EXTENT REQUIRED PURSUANT TO A RECORDED _____
26 COVENANT OR SERVITUDE THAT IMPOSES LIMITATIONS ON THE USE OF
27 RESIDENTIAL REAL PROPERTY PURSUANT TO AN ENVIRONMENTAL

1 REMEDIATION PROJECT PERTAINING TO SUCH PROPERTY; OR

2 (VII) ANY PROVISION IN A RECORDED DEED, MEMORANDUM,
3 SHORT FORM, OR OTHER RECORDED DOCUMENT REQUIRING PAYMENT OF
4 AN AMOUNT THAT, ONCE PAID, SHALL NOT BIND ANY SUCCESSOR IN TITLE
5 TO THE INTEREST IN RESIDENTIAL REAL PROPERTY AND THAT SHALL IN NO
6 EVENT BE PAYABLE BY A GRANTEE UPON THE CONVEYANCE OF
7 RESIDENTIAL REAL PROPERTY UPON WHICH THERE ARE RESIDENTIAL
8 IMPROVEMENTS.

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

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

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

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

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

25 (h) "TRANSFER FEE COVENANT" MEANS A PROVISION IN A
26 DOCUMENT, WHETHER RECORDED OR NOT AND HOWEVER DENOMINATED,
27 THAT REQUIRES OR PURPORTS TO REQUIRE THE PAYMENT OF A TRANSFER

1 FEE, OR PART OF A TRANSFER FEE, TO A PAYEE. A TRANSFER FEE
2 COVENANT SHALL NOT INCLUDE, NOR SHALL THIS SECTION APPLY TO, AN
3 EXCLUDED PROVISION.

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

14 (b) ANY PERSON WHO RECORDS, OR CAUSES OR SUFFERS TO BE
15 RECORDED, A TRANSFER FEE COVENANT ON OR AFTER THE EFFECTIVE DATE
16 OF THIS SECTION AND FAILS TO RELEASE SUCH COVENANT AND ANY LIEN
17 PURPORTING TO SECURE THE PAYMENT OF A TRANSFER FEE WITHIN THIRTY
18 DAYS AFTER WRITTEN REQUEST FOR THE RELEASE IS SENT TO THE
19 LAST-KNOWN ADDRESS OF THE PAYEE AS SPECIFIED IN THE TRANSFER FEE
20 COVENANT PERSONALLY OR BY CERTIFIED MAIL, FIRST-CLASS POSTAGE
21 PREPAID, RETURN RECEIPT REQUESTED, SHALL BE LIABLE FOR ALL OF THE
22 FOLLOWING:

23 (I) ANY ACTUAL DAMAGES RESULTING FROM THE IMPOSITION OF
24 THE TRANSFER FEE COVENANT ON A CONVEYANCE, INCLUDING THE
25 AMOUNT OF ANY TRANSFER FEE PAID BY A PARTY TO THE CONVEYANCE;
26 AND

27 (II) ALL REASONABLE ACTUAL ATTORNEY FEES, EXPENSES, AND

1 COSTS INCURRED BY A PARTY TO THE CONVEYANCE OR BY A HOLDER OF A
2 MORTGAGE, DEED OF TRUST, OR OTHER SECURITY INTEREST ENCUMBERING
3 THE RESIDENTIAL REAL PROPERTY SUBJECT TO THE TRANSFER FEE
4 COVENANT IN CONNECTION WITH AN ACTION TO:

5 (A) RECOVER A TRANSFER FEE PAID;

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

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

11 (4) (a) IN THE CASE OF ANY TRANSFER FEE COVENANT, OR ANY
12 AMENDMENT TO SUCH COVENANT, RECORDED PRIOR TO THE EFFECTIVE
13 DATE OF THIS SECTION, THE PAYEE, AS A CONDITION OF PAYMENT OF THE
14 TRANSFER FEE, SHALL RECORD AGAINST THE RESIDENTIAL REAL PROPERTY
15 BURDENED BY THE TRANSFER FEE COVENANT, IN THE OFFICE OF THE
16 COUNTY CLERK AND RECORDER FOR THE COUNTY IN WHICH THE
17 RESIDENTIAL REAL PROPERTY IS SITUATED, NOT LATER THAN OCTOBER 1,
18 2011, A NOTICE OF TRANSFER FEE.

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

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

23 (II) SPECIFY THE AMOUNT OF THE TRANSFER FEE IF THE TRANSFER
24 FEE IS A FLAT AMOUNT OR THE PERCENTAGE OF THE SALES PRICE
25 CONSTITUTING THE TRANSFER FEE IF THE TRANSFER FEE IS DETERMINED AS
26 A PERCENTAGE OF THE VALUE OF THE RESIDENTIAL REAL PROPERTY, OR
27 SUCH OTHER BASIS BY WHICH THE TRANSFER FEE IS TO BE CALCULATED;

1 (III) PROVIDE ACTUAL COST EXAMPLES OF THE TRANSFER FEE FOR
2 A HOME PRICED AT TWO HUNDRED FIFTY THOUSAND DOLLARS, A HOME
3 PRICED AT FIVE HUNDRED THOUSAND DOLLARS, AND A HOME PRICED AT
4 SEVEN HUNDRED FIFTY THOUSAND DOLLARS;

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

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

9 (VI) IDENTIFY THE NAME OF THE PAYEE AND SPECIFIC CONTACT
10 INFORMATION FOR THE PAYEE, INCLUDING MAILING ADDRESS, REGARDING
11 WHERE THE MONEYS ARE TO BE SENT;

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

13 (VIII) IDENTIFY THE NAME OF THE OWNER AND THE LEGAL
14 DESCRIPTION OF THE RESIDENTIAL REAL PROPERTY BURDENED BY THE
15 TRANSFER FEE COVENANT, AS DISCLOSED BY THE RECORDS OF THE
16 COUNTY CLERK AND RECORDER; AND

17 (IX) SPECIFY THE METHOD OF RELEASING ANY LIEN RECORDED
18 AGAINST THE RESIDENTIAL REAL PROPERTY PURSUANT TO THE TRANSFER
19 FEE COVENANT.

20 (c) THE PAYEE MAY FILE AN AMENDMENT TO THE NOTICE OF
21 TRANSFER FEE CONTAINING NEW CONTACT INFORMATION, AND SUCH
22 AMENDMENT SHALL CONTAIN THE RECORDING INFORMATION OF THE
23 NOTICE OF TRANSFER FEE THAT IT AMENDS, THE NAME OF THE OWNER, AND
24 THE LEGAL DESCRIPTION OF THE RESIDENTIAL REAL PROPERTY BURDENED
25 BY THE TRANSFER FEE COVENANT AS CONTAINED IN THE RECORDS OF THE
26 COUNTY CLERK AND RECORDER AT THE TIME OF THE RECORDING OF THE
27 AMENDMENT.

1 (d) THE OFFICE OF THE COUNTY CLERK AND RECORDER SHALL
2 INDEX THE NOTICE OF TRANSFER FEE UNDER THE NAMES OF THE PERSONS,
3 ENTITIES, OR ORGANIZATIONS IDENTIFIED IN PARAGRAPH (b) OF THIS
4 SUBSECTION (4) OR AS SUCH NAMES MAY BE IDENTIFIED IN A NOTICE THAT
5 HAS BEEN AMENDED UNDER PARAGRAPH (c) OF THIS SUBSECTION (4). THE
6 OFFICE OF THE COUNTY CLERK AND RECORDER SHALL NOT BE REQUIRED TO
7 EXAMINE ANY OTHER INFORMATION CONTAINED IN THE NOTICE OF
8 TRANSFER FEE OR ANY AMENDMENT TO SUCH NOTICE.

9 (5) IF THE PAYEE FAILS TO COMPLY FULLY WITH PARAGRAPH (a)
10 OR (b) OF SUBSECTION (4) OF THIS SECTION, THE GRANTOR OF ANY
11 RESIDENTIAL REAL PROPERTY BURDENED BY THE TRANSFER FEE
12 COVENANT MAY PROCEED WITH THE CONVEYANCE TO ANY GRANTEE AND
13 IN DOING SO SHALL BE DEEMED TO HAVE ACTED IN GOOD FAITH AND SHALL
14 NOT BE SUBJECT TO ANY OBLIGATIONS UNDER THE TRANSFER FEE
15 COVENANT. ALL CONVEYANCES THEREAFTER SHALL BE FREE AND CLEAR
16 OF ANY SUCH TRANSFER FEE AND TRANSFER FEE COVENANT.

17 (6) (a) UPON WRITTEN REQUEST MADE BY THE OWNER, OR THE
18 OWNER'S DESIGNEE, DELIVERED PERSONALLY OR BY CERTIFIED MAIL,
19 FIRST-CLASS POSTAGE PREPAID, RETURN RECEIPT REQUESTED, TO THE
20 PAYEE'S ADDRESS SHOWN ON THE NOTICE OF TRANSFER FEE OR ANY
21 AMENDMENT TO THE NOTICE, THE PAYEE SHALL FURNISH TO THE OWNER
22 OR THE OWNER'S DESIGNEE A WRITTEN STATEMENT SPECIFYING THE
23 AMOUNT OF THE TRANSFER FEE PAYABLE. IF THE PAYEE FAILS TO PROVIDE
24 SUCH STATEMENT WITHIN THIRTY DAYS AFTER THE DATE A WRITTEN
25 REQUEST FOR THE SAME IS SENT TO THE ADDRESS SHOWN IN THE NOTICE
26 OF TRANSFER FEE IN ORDER TO OBTAIN A RELEASE OF SUCH FEE, THEN THE
27 OWNER OR THE OWNER'S DESIGNEE, ON RECORDING OF THE AFFIDAVIT

1 REQUIRED UNDER SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS
2 SUBSECTION (6), MAY CONVEY ANY INTEREST IN THE RESIDENTIAL REAL
3 PROPERTY TO ANY GRANTEE WITHOUT PAYMENT OF THE TRANSFER FEE
4 AND SUCH CONVEYANCE SHALL NOT BE SUBJECT TO THE TRANSFER FEE
5 AND TRANSFER FEE COVENANT.

6 (b) (I) AN AFFIDAVIT, EXECUTED UNDER PENALTY OF PERJURY,
7 STATING THE FACTS SPECIFIED UNDER PARAGRAPH (a) OF THIS SUBSECTION
8 (6) AND CONTAINING, AT A MINIMUM, THE INFORMATION SET OUT IN
9 SUBPARAGRAPH (III) OF THIS PARAGRAPH (b), AND MADE BY ONE OR MORE
10 PERSONS, IF APPLICABLE, WHO HAS ACTUAL KNOWLEDGE OF, AND IS
11 COMPETENT TO TESTIFY IN A COURT OF COMPETENT JURISDICTION ABOUT,
12 THE FACTS IN SUCH AFFIDAVIT, SHALL BE RECORDED PRIOR TO,
13 SIMULTANEOUSLY WITH, OR WITHIN FORTY-FIVE DAYS AFTER A DEED OR
14 OTHER INSTRUMENT CONVEYING THE INTEREST IN THE RESIDENTIAL REAL
15 PROPERTY BURDENED BY THE TRANSFER FEE COVENANT IS RECORDED IN
16 THE OFFICE OF THE COUNTY CLERK AND RECORDER IN THE COUNTY IN
17 WHICH THE RESIDENTIAL REAL PROPERTY IS SITUATED.

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

21 (A) A REQUEST FOR THE WRITTEN STATEMENT OF THE TRANSFER
22 FEE PAYABLE IN ORDER TO OBTAIN A RELEASE OF THE FEE IMPOSED BY THE
23 TRANSFER FEE COVENANT WAS SENT TO THE ADDRESS SHOWN IN THE
24 NOTICE OF TRANSFER FEE OR IN ANY AMENDMENT TO SUCH NOTICE; AND

25 (B) THE PAYEE FAILED TO PROVIDE THE WRITTEN STATEMENT OF
26 THE TRANSFER FEE PAYABLE WITHIN THIRTY DAYS OF THE DATE OF THE
27 NOTICE SENT TO THE ADDRESS SHOWN IN THE NOTICE OF TRANSFER FEE OR

1 IN ANY AMENDMENT TO SUCH NOTICE.

2 (III) AN AFFIDAVIT FILED UNDER SUBPARAGRAPH (I) OF THIS
3 PARAGRAPH (b) SHALL STATE THAT THE AFFIANT HAS ACTUAL
4 KNOWLEDGE OF, AND IS COMPETENT TO TESTIFY TO, THE FACTS IN THE
5 AFFIDAVIT AND SHALL INCLUDE THE LEGAL DESCRIPTION OF THE
6 RESIDENTIAL REAL PROPERTY BURDENED BY THE TRANSFER FEE
7 COVENANT; THE NAME OF THE PERSON APPEARING WHO IS ON RECORD AS
8 THE OWNER OF SUCH RESIDENTIAL REAL PROPERTY AT THE TIME OF THE
9 SIGNING OF SUCH AFFIDAVIT; THE NAME OF THE GRANTEE OF THE
10 CONVEYANCE TO BE RECORDED; A REFERENCE, BY RECORDING
11 INFORMATION, TO THE INSTRUMENT OF RECORD CONTAINING THE
12 TRANSFER FEE COVENANT; AND AN ACKNOWLEDGMENT THAT THE AFFIANT
13 IS TESTIFYING UNDER PENALTY OF PERJURY.

14 (IV) THE OFFICE OF THE COUNTY CLERK AND RECORDER SHALL
15 INDEX THE AFFIDAVIT IN THE NAME OF THE RECORD OWNER SHOWN
16 THEREIN.

17 (V) IN NO EVENT SHALL THE LIABILITY OF THE AFFIANT TO ANY
18 PAYEE FOR NONPAYMENT OF THE TRANSFER FEE EXCEED THE AMOUNT
19 STATED IN THE NOTICE OF TRANSFER FEE COVENANT FOR THAT
20 PARTICULAR CONVEYANCE; EXCEPT THAT NOTHING IN THIS SECTION SHALL
21 CONFER ANY LIABILITY UPON ANY PERSON OR TITLE COMPANY, OR ANY
22 AGENT OR EMPLOYEE OF SUCH COMPANY, THAT EXECUTES AN AFFIDAVIT
23 ON REQUEST OF ANY GRANTOR WHEN THE PERSON OR TITLE COMPANY HAS
24 ACTUAL KNOWLEDGE OF SOME OR ALL OF THE MATTERS CONTAINED IN THE
25 AFFIDAVIT, UNLESS THAT PERSON OR TITLE COMPANY IS PROVEN TO HAVE
26 ACTED IN BAD FAITH OR WITH GROSS NEGLIGENCE.

27 (7) NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THE

1 TRANSFER FEE COVENANT, ANY NOTICE GIVEN UNDER THIS SECTION SHALL
2 BE SENT TO THE LAST-KNOWN ADDRESS OF THE PAYEE AS SPECIFIED IN THE
3 NOTICE OF TRANSFER FEE OR IN ANY AMENDMENT TO THE NOTICE.

4 (8) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
5 SUBSECTIONS (4), (5), AND (6) OF THIS SECTION SHALL NOT APPLY TO A
6 NONPROFIT ORGANIZATION FORMED PRIOR TO THE EFFECTIVE DATE OF THIS
7 SECTION THAT IS EITHER DESCRIBED IN SECTIONS 501 (c) (3), 501 (c) (4),
8 OR 501 (c) (7) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS
9 AMENDED, OR THAT IS ORGANIZED IN ACCORDANCE WITH THE PROVISIONS
10 OF ARTICLE 30 OF TITLE 7, C.R.S., ARTICLE 40 OF TITLE 7, C.R.S., OR
11 ARTICLES 121 TO 137 OF TITLE 7, C.R.S., AND THAT IS A PAYEE UNDER A
12 TRANSFER FEE COVENANT RECORDED PRIOR TO THE EFFECTIVE DATE OF
13 THIS SECTION.

14 (9) THIS SECTION SHALL NOT BE CONSTRUED TO IMPLY THAT ANY
15 TRANSFER FEE COVENANT OR EXCLUDED PROVISION IS VALID OR
16 ENFORCEABLE SOLELY AS THE RESULT OF THE ENACTMENT OF THIS
17 SECTION.

18 ==
19 **SECTION 2. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, and safety.