


Colorado Legislative Council Staff Fiscal Note
FINAL
FISCAL NOTE

Drafting Number: LLS 11-0799
Prime Sponsor(s): Sen. Jahn
 Rep. Massey

Date: June 28, 2011
Bill Status: Signed into Law
Fiscal Analyst: Harry Zeid (303-866-4753)

TITLE: CONCERNING RESIDENTIAL REAL PROPERTY TRANSFER FEE COVENANTS.

Fiscal Impact Summary	FY 2011-2012	FY 2012-2013
State Revenue		
State Expenditures		
FTE Position Change		
Effective Date: The bill was signed into law by the Governor and took effect on May 23, 2011.		
Appropriation Summary for FY 2011-2012: None required.		
Local Government Impact: See the Local Government Impact section.		

Summary of Legislation

The bill prohibits the application of new transfer fee covenants and liens on residential property transfers recorded after the effective date of the bill. These covenants require sellers to pay a fee upon selling residential real property. Any person who records, or causes or suffers to be recorded, a covenant, is liable for actual damages and attorney fees, expenses, and costs under certain circumstances.

The bill makes private transfer fees on residential real property non-binding and unenforceable in Colorado after the effective date of the bill. For residential private transfer fee covenants that existed prior to that date, the bill requires that covenant details and payee information be recorded in the grantee-grantor index with the office of the county clerk and recorder in the county where the property is located.

For residential property to which a transfer fee covenant was attached prior to the effective date of the bill, the person to which the fee is to be paid (payee) must file a notice of transfer fee with the county clerk and recorder by October 1, 2011. Elements of the notice are specified in the bill. If the payee fails to comply fully with the notice requirements, the seller may proceed with the conveyance and shall not be subject to any obligations under the covenant. If the payee complies with the notice requirement, the seller must pay the transfer fee but subsequent owners are exempted.

Upon written request of the property owner, the payee must provide a written statement within 30 days specifying the amount of the transfer fee payable. If the statement is not received within 30 days, the seller may convey the property without payment of the transfer fee.

Background

Residential transfer fee covenants impose a fee upon the conveyance of the property, often for a period of 99 years. The fee can be up to one percent of the sale price, and is paid to whoever placed the covenant on the property - usually the developer or another entity working with the developer. Homeowners are required to pay the transfer fee at the time of the property sale.

Local Government Impact

Residential transfer fee covenants are legal arrangements between private parties. State and local revenue and expenditures are not directly affected by the covenants. To the extent that a residential transfer fee covenant was recorded in the office of the county clerk and recorder prior to the effective date of the bill, an additional notice of transfer fee record must be filed against the property burdened by the transfer fee covenant by October 1, 2011. This action may drive additional workload and additional fee revenue at the county level to record additional documents. No estimate of the fiscal impact can be made at this time.

Departments Contacted

Local Affairs

Judicial