

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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

A BILL FOR AN ACT

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

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.

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 JULY 1,
6 2011, REQUIRING PAYMENT OF A FEE, CHARGE, ASSESSMENT, FINE, OR
7 OTHER AMOUNT ONLY TO THE EXTENT PAYABLE TO OR COLLECTED BY AN
8 ASSOCIATION OF UNIT OWNERS, HOMEOWNERS, PROPERTY OWNERS,
9 CONDOMINIUM OWNERS, OR SIMILAR MANDATORY MEMBERSHIP
10 ORGANIZATION, INCLUDING A COOPERATIVE, MOBILE HOME, TIME SHARE
11 UNIT, OR COMMON INTEREST COMMUNITY ASSOCIATION;

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

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

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

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

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

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

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

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

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

1 COVENANT SHALL NOT INCLUDE, NOR SHALL THIS SECTION APPLY TO, AN
2 EXCLUDED PROVISION.

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

12 (b) ANY PERSON WHO RECORDS, OR CAUSES OR SUFFERS TO BE
13 RECORDED, A TRANSFER FEE COVENANT ON OR AFTER JULY 1, 2011, AND
14 FAILS TO RELEASE SUCH COVENANT AND ANY LIEN PURPORTING TO SECURE
15 THE PAYMENT OF A TRANSFER FEE WITHIN THIRTY DAYS AFTER WRITTEN
16 REQUEST FOR THE RELEASE IS SENT TO THE LAST-KNOWN ADDRESS OF THE
17 PAYEE AS SPECIFIED IN THE TRANSFER FEE COVENANT PERSONALLY OR BY
18 CERTIFIED MAIL, FIRST-CLASS POSTAGE PREPAID, RETURN RECEIPT
19 REQUESTED, SHALL BE LIABLE FOR ALL OF THE FOLLOWING:

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

24 (II) ALL REASONABLE ACTUAL ATTORNEY FEES, EXPENSES, AND
25 COSTS INCURRED BY A PARTY TO THE CONVEYANCE OR BY A HOLDER OF A
26 MORTGAGE, DEED OF TRUST, OR OTHER SECURITY INTEREST ENCUMBERING
27 THE RESIDENTIAL REAL PROPERTY SUBJECT TO THE TRANSFER FEE

1 COVENANT IN CONNECTION WITH AN ACTION TO:

2 (A) RECOVER A TRANSFER FEE PAID;

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

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

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

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

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

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

25 (III) PROVIDE ACTUAL COST EXAMPLES OF THE TRANSFER FEE FOR
26 A HOME PRICED AT TWO HUNDRED FIFTY THOUSAND DOLLARS, A HOME
27 PRICED AT FIVE HUNDRED THOUSAND DOLLARS, AND A HOME PRICED AT

1 SEVEN HUNDRED FIFTY THOUSAND DOLLARS;

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

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

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

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

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

14 (IX) SPECIFY THE METHOD OF RELEASING ANY LIEN RECORDED
15 AGAINST THE RESIDENTIAL REAL PROPERTY PURSUANT TO THE TRANSFER
16 FEE COVENANT.

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

25 (d) THE OFFICE OF THE COUNTY CLERK AND RECORDER SHALL
26 INDEX THE NOTICE OF TRANSFER FEE UNDER THE NAMES OF THE PERSONS,
27 ENTITIES, OR ORGANIZATIONS IDENTIFIED IN PARAGRAPH (b) OF THIS

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

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

14 (6) (a) UPON WRITTEN REQUEST MADE BY THE OWNER, OR THE
15 OWNER'S DESIGNEE, DELIVERED PERSONALLY OR BY CERTIFIED MAIL,
16 FIRST-CLASS POSTAGE PREPAID, RETURN RECEIPT REQUESTED, TO THE
17 PAYEE'S ADDRESS SHOWN ON THE NOTICE OF TRANSFER FEE OR ANY
18 AMENDMENT TO THE NOTICE, THE PAYEE SHALL FURNISH TO THE OWNER
19 OR THE OWNER'S DESIGNEE A WRITTEN STATEMENT SPECIFYING THE
20 AMOUNT OF THE TRANSFER FEE PAYABLE. IF THE PAYEE FAILS TO PROVIDE
21 SUCH STATEMENT WITHIN THIRTY DAYS AFTER THE DATE A WRITTEN
22 REQUEST FOR THE SAME IS SENT TO THE ADDRESS SHOWN IN THE NOTICE
23 OF TRANSFER FEE IN ORDER TO OBTAIN A RELEASE OF SUCH FEE, THEN THE
24 OWNER OR THE OWNER'S DESIGNEE, ON RECORDING OF THE AFFIDAVIT
25 REQUIRED UNDER SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS
26 SUBSECTION (6), MAY CONVEY ANY INTEREST IN THE RESIDENTIAL REAL
27 PROPERTY TO ANY GRANTEE WITHOUT PAYMENT OF THE TRANSFER FEE

1 AND SUCH CONVEYANCE SHALL NOT BE SUBJECT TO THE TRANSFER FEE
2 AND TRANSFER FEE COVENANT.

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

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

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

22 (B) THE PAYEE FAILED TO PROVIDE THE WRITTEN STATEMENT OF
23 THE TRANSFER FEE PAYABLE WITHIN THIRTY DAYS OF THE DATE OF THE
24 NOTICE SENT TO THE ADDRESS SHOWN IN THE NOTICE OF TRANSFER FEE OR
25 IN ANY AMENDMENT TO SUCH NOTICE.

26 (III) AN AFFIDAVIT FILED UNDER SUBPARAGRAPH (I) OF THIS
27 PARAGRAPH (b) SHALL STATE THAT THE AFFIANT HAS ACTUAL

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

11 (IV) THE OFFICE OF THE COUNTY CLERK AND RECORDER SHALL
12 INDEX THE AFFIDAVIT IN THE NAME OF THE RECORD OWNER SHOWN
13 THEREIN.

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

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

1 (8) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
2 SUBSECTIONS (4), (5), AND (6) OF THIS SECTION SHALL NOT APPLY TO A
3 NONPROFIT ORGANIZATION FORMED PRIOR TO THE EFFECTIVE DATE OF THIS
4 SECTION IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 30 OF TITLE
5 7, C.R.S., ARTICLE 40 OF TITLE 7, C.R.S., OR ARTICLES 121 TO 137 OF
6 TITLE 7, C.R.S., THAT IS A PAYEE UNDER A TRANSFER FEE COVENANT
7 RECORDED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION.

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

12
13 **SECTION 2. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.