

Representative Rebecca D. Lockhart proposes the following substitute bill:

REAL PROPERTY - TRANSFER FEES

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca D. Lockhart

Senate Sponsor: Mark B. Madsen

LONG TITLE

General Description:

This bill enacts a provision relating to fees associated with the transfer of real property.

Highlighted Provisions:

This bill:

- ▶ declares certain covenants, restrictions, agreements, and other instruments and documents that obligate a future buyer or seller to make a payment upon the transfer of real property to be void and unenforceable;
- ▶ provides for reinvestment fee covenants by common interest associations;
- ▶ requires a notice to be filed for a prior transfer fee covenant and for reinvestment fee covenants; and
- ▶ provides limits on the enforcement of a reinvestment fee covenant.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:

ENACTS:



26 **57-1-46**, Utah Code Annotated 1953



27
28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **57-1-46** is enacted to read:

30 **57-1-46. Transfer fee and reinvestment fee covenants.**

31 (1) As used in this section:

32 (a) "Association expenses" means expenses incurred by a common interest association
33 for:

34 (i) the administration of the common interest association;

35 (ii) the purchase, ownership, leasing, construction, operation, use, administration,
36 maintenance, improvement, repair, or replacement of association facilities, including expenses
37 for taxes, insurance, operating reserves, capital reserves, and emergency funds;

38 (iii) providing, establishing, creating, or managing a facility, activity, service, or
39 program for the benefit of property owners, tenants, common areas, the burdened property, or
40 property governed by the common interest association; or

41 (iv) other facilities, activities, services, or programs that are required or permitted
42 under the common interest association's organizational documents.

43 (b) "Association facilities" means any real property, improvements on real property, or
44 personal property owned, leased, constructed, developed, managed, or used by a common
45 interest association, including common areas.

46 (c) "Burdened property" means the real property that is subject to a reinvestment fee
47 covenant or transfer fee covenant.

48 (d) "Common areas" means areas described within:

49 (i) the definition of "common areas and facilities" under Section 57-8-3; and

50 (ii) the definition of "common areas" under Section 57-8a-102.

51 (e) "Common interest association":

52 (i) means:

53 (A) an association, as defined in Section 57-8a-102;

54 (B) an association of unit owners, as defined in Section 57-8-3; or

55 (C) a nonprofit association; and

56 (ii) includes a person authorized by an association, association of unit owners, or

57 nonprofit association, as the case may be.

58 (f) "Large master planned development" means an approved development:

59 (i) of at least 500 acres or 500 units; and

60 (ii) that includes a commitment to fund, construct, develop, or maintain:

61 (A) common infrastructure;

62 (B) association facilities;

63 (C) community programming;

64 (D) resort facilities;

65 (E) open space; or

66 (F) recreation amenities.

67 (g) "Nonprofit association" means a nonprofit corporation organized under Title 16,

68 Chapter 6a, Utah Revised Nonprofit Corporation Act, to benefit, enhance, preserve, govern,

69 manage, or maintain burdened property.

70 (h) "Organizational documents":

71 (i) for an association, as defined in Section 57-8a-102, means governing documents as
72 defined in Section 57-8a-102;

73 (ii) for an association of unit owners, as defined in Section 57-8-3, means a declaration
74 as defined in Section 57-8-3; and

75 (iii) for a nonprofit association:

76 (A) means a written instrument by which the nonprofit association exercises powers or
77 manages, maintains, or otherwise affects the property under the jurisdiction of the nonprofit
78 association; and

79 (B) includes articles of incorporation, bylaws, plats, charters, the nonprofit
80 association's rules, and declarations of covenants, conditions, and restrictions.

81 (i) "Reinvestment fee covenant" means a covenant, restriction, or agreement that:

82 (i) affects real property; and

83 (ii) upon and as a result of a transfer of the real property, obligates a future buyer or
84 seller of the real property to pay to a common interest association a fee that is dedicated to
85 benefitting the burdened property, including payment for:

86 (A) common planning, facilities, and infrastructure;

87 (B) obligations arising from an environmental covenant;

88 (C) community programming;

89 (D) resort facilities;

90 (E) open space;

91 (F) recreation amenities;

92 (G) charitable purposes; or

93 (H) association expenses.

94 (j) "Transfer fee covenant":

95 (i) means an obligation, however denominated, expressed in a covenant, restriction,

96 agreement, or other instrument or document:

97 (A) that affects real property;

98 (B) that is imposed on a future buyer or seller of real property, other than a person who

99 is a party to the covenant, restriction, agreement, or other instrument or document; and

100 (C) to pay a fee upon and as a result of a transfer of the real property; and

101 (ii) does not include:

102 (A) an obligation imposed by a court judgment, order, or decree;

103 (B) an obligation imposed by the federal government or a state or local government

104 entity; or

105 (C) a reinvestment fee covenant.

106 (2) A transfer fee covenant recorded on or after the effective date of this section is void

107 and unenforceable.

108 (3) (a) Except as provided in Subsection (3)(b), a reinvestment fee covenant may not

109 be sold, assigned, or conveyed unless the sale, assignment, or conveyance is to a common

110 interest association that was formed to benefit the burdened property.

111 (b) A common interest association may assign or pledge to a lender the right to receive

112 payment under a reinvestment fee covenant if:

113 (i) the assignment or pledge is as collateral for a credit facility; and

114 (ii) the lender releases the collateral interest upon payment in full of all amounts that

115 the common interest association owes to the lender under the credit facility.

116 (4) A reinvestment fee covenant recorded on or after the effective date of this section is

117 not enforceable if the reinvestment fee covenant is intended to affect property that is the subject

118 of a previously recorded transfer fee covenant or reinvestment fee covenant.

119 (5) A reinvestment fee covenant recorded on or after the effective date of this section
120 may not obligate the payment of a fee that exceeds .5% of the value of the burdened property,
121 unless the burdened property is part of a large master planned development.

122 (6) (a) A reinvestment fee covenant recorded on or after the effective date of this
123 section is void and unenforceable unless a notice of reinvestment fee covenant, separate from
124 the reinvestment fee covenant, is recorded in the office of the recorder of each county in which
125 any of the burdened property is located.

126 (b) A notice under Subsection (6)(a) shall:

127 (i) state the name and address of the common interest association to which the fee
128 under the reinvestment fee covenant is required to be paid;

129 (ii) include the notarized signature of the common interest association's authorized
130 representative;

131 (iii) state that the burden of the reinvestment fee covenant is intended to run with the
132 land and to bind successors in interest and assigns;

133 (iv) state that the existence of the reinvestment fee covenant precludes the imposition
134 of an additional reinvestment fee covenant on the burdened property;

135 (v) state the duration of the reinvestment fee covenant;

136 (vi) state the purpose of the fee required to be paid under the reinvestment fee
137 covenant; and

138 (vii) state that the fee required to be paid under the reinvestment fee covenant is
139 required to benefit the burdened property.

140 (c) A recorded notice of reinvestment fee covenant that substantially complies with the
141 requirements of Subsection (6)(b) is valid and effective.

142 (7) (a) A reinvestment fee covenant or transfer fee covenant recorded before the
143 effective date of this section is not enforceable unless:

144 (i) a notice that is consistent with the notice described in Subsection (6) is recorded in
145 the office of the recorder of each county in which any of the burdened property is located; or

146 (ii) a notice of reinvestment fee covenant or transfer fee covenant, as described in
147 Subsection (7)(b), is recorded in the office of the recorder of each county in which any of the
148 burdened property is located.

149 (b) A notice under Subsection (7)(a)(ii) shall:

150 (i) include the notarized signature of the beneficiary of the reinvestment fee covenant
151 or transfer fee covenant, or the beneficiary's authorized representative;

152 (ii) state the name and current address of the beneficiary under the reinvestment fee
153 covenant or transfer fee covenant;

154 (iii) state that the burden of the reinvestment fee covenant or transfer fee covenant is
155 intended to run with the land and to bind successors in interest and assigns; and

156 (iv) state the duration of the reinvestment fee covenant or transfer fee covenant.

157 (c) A recorded notice of reinvestment fee covenant or transfer fee covenant that
158 substantially complies with the requirements of Subsection (7)(b) is valid and effective.

159 (8) A reinvestment fee covenant recorded on or after the effective date of this section
160 may not be enforced upon:

161 (a) an involuntary transfer;

162 (b) a transfer that results from a court order;

163 (c) a bona fide transfer to a family member of the seller within three degrees of
164 consanguinity who, before the transfer, provides adequate proof of consanguinity;

165 (d) a transfer or change of interest due to death, whether provided in a will, trust, or
166 decree of distribution; or

167 (e) the transfer of burdened property by a financial institution.

168 **Section 2. Effective date.**

169 If approved by two-thirds of all the members elected to each house, this bill takes effect
170 upon approval by the governor, or the day following the constitutional time limit of Utah
171 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
172 the date of veto override.

173 **Section 3. Revisor instructions.**

174 It is the intent of the Legislature that the Office of Legislative Research and General
175 Counsel, in preparing the Utah Code database for publication, replace the language "the
176 effective date of this section" where it appears in Section 57-1-46, as enacted in this bill, with
177 the actual effective date of this bill.