

REAL PROPERTY TRANSFER FEE AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark B. Madsen

House Sponsor: Rebecca D. Lockhart

6	Cosponsors:	Patricia W. Jones	Ross I. Romero
7	J. Stuart Adams	Peter C. Knudson	Howard A. Stephenson
8	Curtis S. Bramble	Karen Mayne	Jerry W. Stevenson
9	D. Chris Buttars	Benjamin M. McAdams	Dennis E. Stowell
10	Gene Davis	Wayne L. Niederhauser	John L. Valentine
11	Brent H. Goodfellow	Ralph Okerlund	Kevin T. Van Tassell
12	Jon J. Greiner	Luz Robles	Michael G. Waddoups
13	Scott K. Jenkins		

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.

32 **Utah Code Sections Affected:**

33 ENACTS:

34 **57-1-46**, Utah Code Annotated 1953

35

36 *Be it enacted by the Legislature of the state of Utah:*

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

38 **57-1-46. Transfer fee and reinvestment fee covenants.**

39 (1) As used in this section:

40 (a) "Association expenses" means expenses incurred by a common interest association
41 for:

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

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

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

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

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

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

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

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

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

59 (e) "Common interest association":

- 60 (i) means:
- 61 (A) an association, as defined in Section 57-8a-102;
- 62 (B) an association of unit owners, as defined in Section 57-8-3; or
- 63 (C) a nonprofit association; and
- 64 (ii) includes a person authorized by an association, association of unit owners, or
- 65 nonprofit association, as the case may be.
- 66 (f) "Large master planned development" means an approved development:
- 67 (i) of at least 500 acres or 500 units; and
- 68 (ii) that includes a commitment to fund, construct, develop, or maintain:
- 69 (A) common infrastructure;
- 70 (B) association facilities;
- 71 (C) community programming;
- 72 (D) resort facilities;
- 73 (E) open space; or
- 74 (F) recreation amenities.
- 75 (g) "Nonprofit association" means a nonprofit corporation organized under Title 16,
- 76 Chapter 6a, Utah Revised Nonprofit Corporation Act, to benefit, enhance, preserve, govern,
- 77 manage, or maintain burdened property.
- 78 (h) "Organizational documents":
- 79 (i) for an association, as defined in Section 57-8a-102, means governing documents as
- 80 defined in Section 57-8a-102;
- 81 (ii) for an association of unit owners, as defined in Section 57-8-3, means a
- 82 declaration as defined in Section 57-8-3; and
- 83 (iii) for a nonprofit association:
- 84 (A) means a written instrument by which the nonprofit association exercises powers or
- 85 manages, maintains, or otherwise affects the property under the jurisdiction of the nonprofit
- 86 association; and
- 87 (B) includes articles of incorporation, bylaws, plats, charters, the nonprofit

88 association's rules, and declarations of covenants, conditions, and restrictions.

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

90 (i) affects real property; and

91 (ii) obligates a future buyer or seller of the real property to pay to a common interest

92 association, upon and as a result of a transfer of the real property, a fee that is dedicated to

93 benefitting the burdened property, including payment for:

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

95 (B) obligations arising from an environmental covenant;

96 (C) community programming;

97 (D) resort facilities;

98 (E) open space;

99 (F) recreation amenities;

100 (G) charitable purposes; or

101 (H) association expenses.

102 (j) "Transfer fee covenant":

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

104 agreement, or other instrument or document:

105 (A) that affects real property;

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

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

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

109 (ii) does not include:

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

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

112 entity; or

113 (C) a reinvestment fee covenant.

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

115 void and unenforceable.

116 (3) (a) Except as provided in Subsection (3)(b), a reinvestment fee covenant may not
117 be sold, assigned, or conveyed unless the sale, assignment, or conveyance is to a common
118 interest association that was formed to benefit the burdened property.

119 (b) A common interest association may assign or pledge to a lender the right to receive
120 payment under a reinvestment fee covenant if:

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

122 (ii) the lender releases the collateral interest upon payment in full of all amounts that
123 the common interest association owes to the lender under the credit facility.

124 (4) A reinvestment fee covenant recorded on or after the effective date of this section
125 is not enforceable if the reinvestment fee covenant is intended to affect property that is the
126 subject of a previously recorded transfer fee covenant or reinvestment fee covenant.

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

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

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

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

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

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

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

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

- 144 (vi) state the purpose of the fee required to be paid under the reinvestment fee
145 covenant; and
- 146 (vii) state that the fee required to be paid under the reinvestment fee covenant is
147 required to benefit the burdened property.
- 148 (c) A recorded notice of reinvestment fee covenant that substantially complies with the
149 requirements of Subsection (6)(b) is valid and effective.
- 150 (7) (a) A reinvestment fee covenant or transfer fee covenant recorded before the
151 effective date of this section is not enforceable after May 31, 2010, unless:
- 152 (i) a notice that is consistent with the notice described in Subsection (6) is recorded in
153 the office of the recorder of each county in which any of the burdened property is located; or
- 154 (ii) a notice of reinvestment fee covenant or transfer fee covenant, as described in
155 Subsection (7)(b), is recorded in the office of the recorder of each county in which any of the
156 burdened property is located.
- 157 (b) A notice under Subsection (7)(a)(ii) shall:
- 158 (i) include the notarized signature of the beneficiary of the reinvestment fee covenant
159 or transfer fee covenant, or the beneficiary's authorized representative;
- 160 (ii) state the name and current address of the beneficiary under the reinvestment fee
161 covenant or transfer fee covenant;
- 162 (iii) state that the burden of the reinvestment fee covenant or transfer fee covenant is
163 intended to run with the land and to bind successors in interest and assigns; and
- 164 (iv) state the duration of the reinvestment fee covenant or transfer fee covenant.
- 165 (c) A recorded notice of reinvestment fee covenant or transfer fee covenant that
166 substantially complies with the requirements of Subsection (7)(b) is valid and effective.
- 167 (8) A reinvestment fee covenant recorded on or after the effective date of this section
168 may not be enforced upon:
- 169 (a) an involuntary transfer;
- 170 (b) a transfer that results from a court order;
- 171 (c) a bona fide transfer to a family member of the seller within three degrees of

172 consanguinity who, before the transfer, provides adequate proof of consanguinity;

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

175 (e) the transfer of burdened property by a financial institution, except to the extent that
176 the reinvestment fee covenant requires the payment of a common interest association's costs
177 directly related to the transfer of the burdened property, not to exceed \$250.

178 Section 2. **Effective date.**

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

183 Section 3. **Revisor instructions.**

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