

Senator Mark B. Madsen proposes the following substitute bill:

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
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9	Gene Davis	Benjamin M. McAdams	Dennis E. Stowell
10	Brent H. Goodfellow	Wayne L. Niederhauser	John L. Valentine
11	Jon J. Greiner	Ralph Okerlund	Kevin T. Van Tassell
12	Scott K. Jenkins	Luz Robles	Michael G. Waddoups



LONG TITLE

General Description:

This bill enacts a provision relating to fees association 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



28 **Other Special Clauses:**

29 This bill provides an immediate effective date.

30 This bill provides revisor instructions.

31 **Utah Code Sections Affected:**

32 ENACTS:

33 **57-1-46**, Utah Code Annotated 1953



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

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

37 **57-1-46. Transfer fee and reinvestment fee covenants.**

38 (1) As used in this section:

39 (a) "Association expenses" means expenses incurred by a common interest association

40 for:

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

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

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

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

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

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

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

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

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

58 (e) "Common interest association":

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

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

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

94 (B) obligations arising from an environmental covenant;

95 (C) community programming;

96 (D) resort facilities;

97 (E) open space;

98 (F) recreation amenities;

99 (G) charitable purposes; or

100 (H) association expenses.

101 (j) "Transfer fee covenant":

102 (i) means an obligation, however denominated, expressed in a covenant, restriction,
103 agreement, or other instrument or document:

104 (A) that affects real property;

105 (B) that is imposed on a future buyer or seller of real property, other than a person who
106 is a party to the covenant, restriction, agreement, or other instrument or document; and

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

108 (ii) does not include:

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

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

112 (C) a reinvestment fee covenant.

113 (2) A transfer fee covenant recorded on or after the effective date of this section is void
114 and unenforceable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

151 (i) a notice that is consistent with the notice described in Subsection (6) is recorded in

152 the office of the recorder of each county in which any of the burdened property is located; or
153 (ii) a notice of reinvestment fee covenant or transfer fee covenant, as described in
154 Subsection (7)(b), is recorded in the office of the recorder of each county in which any of the
155 burdened property is located.

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

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

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

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

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

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

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

168 (a) an involuntary transfer;

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

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

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

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

175 **Section 2. Effective date.**

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

180 **Section 3. Revisor instructions.**

181 It is the intent of the Legislature that the Office of Legislative Research and General
182 Counsel, in preparing the Utah Code database for publication, replace the language "the

183 effective date of this section" where it appears in Section 57-1-46, as enacted in this bill, with
184 the actual effective date of this bill.

S.B. 161 1st Sub. (Green) - Real Property Transfer Fee Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
