

REAL PROPERTY REINVESTMENT FEE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies a provision relating to reinvestment fee covenants.

Highlighted Provisions:

This bill:

► modifies the definition of reinvestment fee covenant to include a fee paid to a nonprofit entity.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-1-46, as enacted by Laws of Utah 2010, Chapter 16

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

Section 1. Section **57-1-46** is amended to read:

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

(1) As used in this section:

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

for:



- 28 (i) the administration of the common interest association;
- 29 (ii) the purchase, ownership, leasing, construction, operation, use, administration,
30 maintenance, improvement, repair, or replacement of association facilities, including expenses
31 for taxes, insurance, operating reserves, capital reserves, and emergency funds;
- 32 (iii) providing, establishing, creating, or managing a facility, activity, service, or
33 program for the benefit of property owners, tenants, common areas, the burdened property, or
34 property governed by the common interest association; or
- 35 (iv) other facilities, activities, services, or programs that are required or permitted
36 under the common interest association's organizational documents.
- 37 (b) "Association facilities" means any real property, improvements on real property, or
38 personal property owned, leased, constructed, developed, managed, or used by a common
39 interest association, including common areas.
- 40 (c) "Burdened property" means the real property that is subject to a reinvestment fee
41 covenant or transfer fee covenant.
- 42 (d) "Common areas" means areas described within:
 - 43 (i) the definition of "common areas and facilities" under Section 57-8-3; and
 - 44 (ii) the definition of "common areas" under Section 57-8a-102.
- 45 (e) "Common interest association":
 - 46 (i) means:
 - 47 (A) an association, as defined in Section 57-8a-102;
 - 48 (B) an association of unit owners, as defined in Section 57-8-3; or
 - 49 (C) a nonprofit association; and
 - 50 (ii) includes a person authorized by an association, association of unit owners, or
51 nonprofit association, as the case may be.
- 52 (f) "Large master planned development" means an approved development:
 - 53 (i) of at least 500 acres or 500 units; and
 - 54 (ii) that includes a commitment to fund, construct, develop, or maintain:
 - 55 (A) common infrastructure;
 - 56 (B) association facilities;
 - 57 (C) community programming;
 - 58 (D) resort facilities;

- 59 (E) open space; or
- 60 (F) recreation amenities.
- 61 (g) "Nonprofit association" means a nonprofit corporation organized under Title 16,
- 62 Chapter 6a, Utah Revised Nonprofit Corporation Act, to benefit, enhance, preserve, govern,
- 63 manage, or maintain burdened property.
- 64 (h) "Organizational documents":
- 65 (i) for an association, as defined in Section 57-8a-102, means governing documents as
- 66 defined in Section 57-8a-102;
- 67 (ii) for an association of unit owners, as defined in Section 57-8-3, means a declaration
- 68 as defined in Section 57-8-3; and
- 69 (iii) for a nonprofit association:
- 70 (A) means a written instrument by which the nonprofit association exercises powers or
- 71 manages, maintains, or otherwise affects the property under the jurisdiction of the nonprofit
- 72 association; and
- 73 (B) includes articles of incorporation, bylaws, plats, charters, the nonprofit
- 74 association's rules, and declarations of covenants, conditions, and restrictions.
- 75 (i) "Reinvestment fee covenant" means a covenant, restriction, or agreement that:
- 76 (i) affects real property; and
- 77 (ii) obligates a future buyer or seller of the real property to pay to a common interest
- 78 association or to a nonprofit entity, upon and as a result of a transfer of the real property, a fee
- 79 that is dedicated to benefitting the burdened property, including payment for:
- 80 (A) common planning, facilities, and infrastructure;
- 81 (B) obligations arising from an environmental covenant;
- 82 (C) community programming;
- 83 (D) resort facilities;
- 84 (E) open space;
- 85 (F) recreation amenities;
- 86 (G) charitable purposes; or
- 87 (H) association expenses.
- 88 (j) "Transfer fee covenant":
- 89 (i) means an obligation, however denominated, expressed in a covenant, restriction,

90 agreement, or other instrument or document:

91 (A) that affects real property;

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

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

95 (ii) does not include:

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

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

99 (C) a reinvestment fee covenant.

100 (2) A transfer fee covenant recorded on or after March 16, 2010 is void and
101 unenforceable.

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

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

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

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

110 (4) A reinvestment fee covenant recorded on or after March 16, 2010 is not enforceable
111 if the reinvestment fee covenant is intended to affect property that is the subject of a previously
112 recorded transfer fee covenant or reinvestment fee covenant.

113 (5) A reinvestment fee covenant recorded on or after March 16, 2010 may not obligate
114 the payment of a fee that exceeds .5% of the value of the burdened property, unless the
115 burdened property is part of a large master planned development.

116 (6) (a) A reinvestment fee covenant recorded on or after March 16, 2010 is void and
117 unenforceable unless a notice of reinvestment fee covenant, separate from the reinvestment fee
118 covenant, is recorded in the office of the recorder of each county in which any of the burdened
119 property is located.

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

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

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

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

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

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

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

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

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

136 (7) (a) A reinvestment fee covenant or transfer fee covenant recorded before March 16,
137 2010 is not enforceable after May 31, 2010, unless:

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

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

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

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

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

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

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

151 (c) A recorded notice of reinvestment fee covenant or transfer fee covenant that

152 substantially complies with the requirements of Subsection (7)(b) is valid and effective.

153 (8) A reinvestment fee covenant recorded on or after March 16, 2010 may not be
154 enforced upon:

155 (a) an involuntary transfer;

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

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

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

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

Legislative Review Note

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Office of Legislative Research and General Counsel