

Committee Substitute for Senate Bill No. 464

An act relating to real estate conveyances; creating s. 689.28, F.S.; providing legislative intent regarding transfer fee covenants; providing definitions; providing that certain transfer fee covenants are unenforceable against subsequent owners, purchasers, and mortgagees; providing that a presumption is not created in favor of transfer fee covenants recorded before the effective date of the act; amending ss. 689.01 and 692.01, F.S.; clarifying that corporations may execute conveyances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection 689.28, Florida Statutes, is created to read:

689.28 Prohibition against transfer fee covenants.—

(1) INTENT.—The Legislature finds and declares that the public policy of this state favors the marketability of real property and the transferability of interests in real property free of title defects or unreasonable restraints on alienation. The Legislature further finds and declares that transfer fee covenants violate this public policy by impairing the marketability and transferability of real property and by constituting an unreasonable restraint on alienation regardless of the duration of such covenants or the amount of such transfer fees, and do not run with the title to the property or bind subsequent owners of the property under common law or equitable principles.

(2) DEFINITIONS.—As used in this section, the term:

(a) “Environmental covenant” means a covenant or servitude that imposes limitations on the use of real property pursuant to an environmental remediation project pertaining to the property. An environmental covenant is not a transfer fee covenant.

(b) “Transfer” means the sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property located in this state.

(c) “Transfer fee” means a fee or charge required by a transfer fee covenant and payable upon the transfer of an interest in real property, or payable for the right to make or accept such transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price, or other consideration given for the transfer. The following are not transfer fees for purposes of this section:

1. Any consideration payable by the grantee to the grantor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the grantee based upon any subsequent appreciation, development, or sale of the property. For the purposes

of this subparagraph an interest in real property may include a separate mineral estate and its appurtenant surface access rights.

2. Any commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the grantor or the grantee, including any subsequent additional commission for that transfer payable by the grantor or the grantee based upon any subsequent appreciation, development, or sale of the property.

3. Any interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage against real property, including, but not limited to, any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage, any fees or charges payable to the lender for estoppel letters or certificates, and any shared appreciation interest or profit participation or other consideration described in s. 687.03(4) and payable to the lender in connection with the loan.

4. Any rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease, including, but not limited to, any fee payable to the lessor for consenting to an assignment, subletting, encumbrance, or transfer of the lease.

5. Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon the transfer of the property to another person.

6. Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority.

7. Any fee, charge, assessment, fine, or other amount payable to a homeowners', condominium, cooperative, mobile home, or property owners' association pursuant to a declaration or covenant or law applicable to such association, including, but not limited to, fees or charges payable for estoppel letters or certificates issued by the association or its authorized agent.

8. Any fee, charge, assessment, dues, contribution, or other amount imposed by a declaration or covenant encumbering four or more parcels in a community, as defined in s. 720.301, and payable to a nonprofit or charitable organization for the purpose of supporting cultural, educational, charitable, recreational, environmental, conservation, or other similar activities benefiting the community that is subject to the declaration or covenant.

9. Any fee, charge, assessment, dues, contribution, or other amount pertaining to the purchase or transfer of a club membership relating to real property owned by the member, including, but not limited to, any amount determined by reference to the value, purchase price, or other consideration given for the transfer of the real property.

10. Any payment required pursuant to an environmental covenant.

(d) "Transfer fee covenant" means a declaration or covenant recorded against the title to real property which requires or purports to require the

payment of a transfer fee to the declarant or other person specified in the declaration or covenant or to their successors or assigns upon a subsequent transfer of an interest in the real property.

(3) PROHIBITION.—A transfer fee covenant recorded in this state on or after July 1, 2008, does not run with the title to real property and is not binding on or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in real property as an equitable servitude or otherwise. Any liens purporting to secure the payment of a transfer fee under a transfer fee covenant that is recorded in this state on or after July 1, 2008, are void and unenforceable. This subsection does not mean that transfer fee covenants or liens recorded in this state before July 1, 2008, are presumed valid and enforceable.

Section 2. Section 689.01, Florida Statutes, is amended to read:

689.01 How real estate conveyed.—No estate or interest of freehold, or for a term of more than 1 year, or any uncertain interest of, in or out of any messuages, lands, tenements or hereditaments shall be created, made, granted, transferred or released in any other manner than by instrument in writing, signed in the presence of two subscribing witnesses by the party creating, making, granting, conveying, transferring or releasing such estate, interest, or term of more than 1 year, or by the party's ~~agent thereunto~~ lawfully authorized agent, unless by will and testament, or other testamentary appointment, duly made according to law; and no estate or interest, either of freehold, or of term of more than 1 year, or any uncertain interest of, in, to, or out of any messuages, lands, tenements or hereditaments, shall be assigned or surrendered unless it be by instrument signed in the presence of two subscribing witnesses by the party so assigning or surrendering, or by the party's ~~agent thereunto~~ lawfully authorized agent, or by the act and operation of law. No seal shall be necessary to give validity to any instrument executed in conformity with this section. Corporations may execute any and all conveyances convey in accordance with the provisions of this section or ~~in accordance with the provisions of~~ ss. 692.01 and 692.02.

Section 3. Section 692.01, Florida Statutes, is amended to read:

692.01 Conveyances executed by corporations.—Any corporation may execute instruments conveying, mortgaging, or affecting any interest in its lands by instruments sealed with the common or corporate seal and signed in its name by its president or any vice president or chief executive officer. Assignments, satisfactions, or partial releases of mortgages and acquittances for debts may be similarly executed by any corporate officer. No corporate resolution need be recorded to evidence the authority of the person executing the deed, mortgage, or other instrument for the corporation, and an instrument so executed ~~is~~ shall be valid whether or not the officer signing for the corporation was authorized to do so by the board of directors, in the absence of fraud in the transaction by the person receiving it. In cases of fraud, subsequent transactions with good faith purchasers for value and without notice of the fraud shall be valid and binding on the corporation.

Section 4. This act shall take effect July 1, 2008.

Approved by the Governor May 28, 2008.

Filed in Office Secretary of State May 28, 2008.