

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 35

Rules and Operations of the Senate Committee Substitute Adopted 2/19/09  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S35-PCS75393-SU-90

Short Title: Reconveyance Fees Prohibited.

(Public)

Sponsors:

Referred to:

February 4, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE THAT TRANSFER FEE COVENANTS DO NOT RUN WITH THE  
3 TITLE TO REAL PROPERTY AND ARE NOT BINDING ON OR ENFORCEABLE  
4 AGAINST ANY SUBSEQUENT OWNER, PURCHASER, OR MORTGAGEE.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. The General Statutes are amended by adding a new Chapter to read:

7 **"Chapter 39A.**

8 **"Transfer Fee Covenants Prohibited.**

9 **"§ 39A-1. Public policy.**

10 (a) The public policy of this State favors the marketability of real property and the  
11 transferability of interests in real property free from title defects, unreasonable restraints on  
12 alienation, and covenants or servitudes that do not touch and concern the property.

13 (b) A transfer fee covenant violates this public policy by impairing the marketability of  
14 title to the affected real property and constitutes an unreasonable restraint on alienation and  
15 transferability of property, regardless of the duration of the covenant or the amount of the  
16 transfer fee set forth in the covenant.

17 **"§ 39A-2. Definitions.**

18 As used in this Chapter:

19 (1) "Transfer" means the sale, gift, conveyance, assignment, inheritance, or  
20 other transfer of an ownership interest in real property located in this State.

21 (2) "Transfer fee" means a fee or charge payable upon the transfer of an interest  
22 in real property or payable for the right to make or accept such transfer,  
23 regardless of whether the fee or charge is a fixed amount or is determined as  
24 a percentage of the value of the property, the purchase price, or other  
25 consideration given for the transfer. The following shall not be considered a  
26 "transfer fee" for the purposes of this Chapter:

27 a. Any consideration payable by the grantee to the grantor for the  
28 interest in real property being transferred, including any subsequent  
29 additional consideration for the property payable by the grantee  
30 based upon any subsequent appreciation, development, or sale of the  
31 property that, once paid, shall not bind successors in title to the  
32 property.



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- 1                   b.     Any commission payable to a licensed real estate broker for the  
2                   transfer of real property pursuant to an agreement between the  
3                   transferor and transferee and the real estate broker, including any  
4                   subsequent additional commission payable by the transferor based  
5                   upon any subsequent appreciation, development, or sale of the  
6                   property.
- 7                   c.     Any interest, charges, fees, or other amounts payable by a borrower  
8                   to a lender pursuant to a loan secured by a mortgage against real  
9                   property, including, but not limited to, any fee payable to the lender  
10                  for consenting to an assumption of the loan or a transfer of the real  
11                  property subject to the mortgage, any fees or charges payable to the  
12                  lender for estoppel letters or certificates, and any other consideration  
13                  allowed by law and payable to the lender in connection with the loan.
- 14                  d.     Any rent, reimbursement, charge, fee, or other amount payable by a  
15                  lessee to a lessor under a lease, including, but not limited to, any fee  
16                  payable to the lessor for consenting to an assignment, subletting,  
17                  encumbrance, or transfer of the lease.
- 18                  e.     Any consideration payable to the holder of an option to purchase an  
19                  interest in real property or the holder of a right of first refusal or first  
20                  offer to purchase an interest in real property for waiving, releasing,  
21                  or not exercising the option or right upon the transfer of the property  
22                  to another person.
- 23                  f.     Any tax, fee, charge, assessment, fine, or other amount payable to or  
24                  imposed by a governmental authority.
- 25                  g.     Any fee charged that is a typical real estate closing cost, including  
26                  escrow fees, settlement fees, attorney fees, or title insurance  
27                  premiums and fees.
- 28                  h.     Any reasonable fee charged for the preparation of statements of  
29                  unpaid assessments pursuant to G.S. 47F-3-102(13) or resale  
30                  certificates or statements of unpaid assessments pursuant to  
31                  G.S. 47C-3-102(12).
- 32                  i.     Any reasonable fee payable by the original transferee to a unit  
33                  owners' association, as defined in G.S. 47C-1-103(3) or  
34                  G.S. 47F-1-103(3), as long as no portion of the fee is required to be  
35                  passed through to a third party designated or identifiable by  
36                  description in the document or another document referenced therein.
- 37                  (3)    "Transfer fee covenant" means a declaration or covenant purporting to affect  
38                  real property that requires or purports to require the payment of a transfer fee  
39                  to the declarant or other person specified in the declaration or covenant or to  
40                  their successors or assigns, upon a subsequent transfer of an interest in the  
41                  real property.

42    **"§ 39A-3. Transfer fee covenants prohibited.**

43                  (a)    Any transfer fee covenant that is recorded after the effective date of this act, or any  
44                  lien that is filed after the effective date of this act that purports to secure payment of a transfer  
45                  fee, shall not run with the title to real property and is not binding on or enforceable at law or in  
46                  equity against any subsequent owner, purchaser, or mortgagee of any interest in real property as  
47                  an equitable servitude or otherwise.

48                  (b)    A person who records a transfer fee covenant, files a lien that purports to secure  
49                  payment of a transfer fee, or enters into an agreement imposing a private transfer fee obligation  
50                  after the effective date of this act shall be liable for:

- 1           (1)   Any and all damages resulting from the imposition of the transfer fee  
2           obligation on the transfer of an interest in the real property, including,  
3           without limitation, the amount of any transfer fee paid by a party to the  
4           transfer.
- 5           (2)   All attorney fees, expenses, and costs incurred by a party to the transfer or  
6           mortgagee of the real property to recover the transfer fee paid or in  
7           connection with an action to quiet title or register the title or a proceeding  
8           subsequent to initial registration. If an agent acts on behalf of a principal to  
9           file or secure a private transfer fee obligation, liability shall be assessed to  
10          the principal, but not to the agent."

11           **SECTION 2.** Nothing in this act shall imply that a transfer fee covenant recorded  
12 prior to the effective date of this act is valid or enforceable.

13           **SECTION 3.** This act is effective when it becomes law.