

Real Property Transfer Fee Covenants

This Act prohibits the running of a transfer fee covenant with the title to real property. The Act defines a transfer fee to mean a fee or charge payable upon the transfer of an interest in real property, or payable for the right to make or accept a transfer of an interest in real property, 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 Act defines a transfer fee covenant to mean a declaration or covenant purporting to affect real property which requires or purports to require the payment of a transfer fee to the declarant or other person specified in the covenant or declaration, or to their successors or assigns, upon a subsequent transfer of an interest in real property.

The Act provides that a transfer fee covenant shall 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. Any lien purporting to secure the payment of a transfer fee under a transfer fee covenant is void and unenforceable.

The Act specifies various types of consideration, commissions, interests, charges, fees, rent, reimbursement, taxes, assessments, or fines that do not constitute a transfer fee and are not subject to the prohibition.

Submitted as:

Iowa

[SF 2192 \(Enrolled version\)](#)

Status: Enacted into law in 2010.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*.] This Act shall be cited as “An Act Prohibiting the Running of a
2 Transfer Fee Covenant with the Title to Real Property.”

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4 Section 2. [*Transfer Fee Covenant Prohibition*.]

5 (A) For purposes of this section, unless the context otherwise requires:

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

8 (2) (a) “Transfer fee” means a fee or charge payable upon the transfer of an
9 interest in real property, or payable for the right to make or accept a transfer of an interest in real
10 property, regardless of whether the fee or charge is a fixed amount or is determined as a
11 percentage of the value of the property, the purchase price, or other consideration given for the
12 transfer.

13 (b) “Transfer fee” does not include any of the following:

14 (I) Any consideration payable by the transferee to the transferor for
15 the interest in real property being transferred.

16 (II) Any commission payable to a licensed real estate broker for
17 the transfer of real property under an agreement between the broker and the transferee or
18 transferor.

19 (III) Any interest, charges, fees, or other amounts payable by a
20 borrower to a lender under a loan secured by a mortgage against real property, including but not

21 limited to any fee payable to the lender for consenting to an assumption of the loan or a transfer
22 of the real property subject to the mortgage, any fees or charges payable to the lender for
23 estoppel letters or certificates, and any other consideration allowed by law and payable to the
24 lender in connection with the loan.

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

28 (V) Any consideration payable to the holder of an option to
29 purchase an interest in real property or the holder of a right of first refusal or first offer to
30 purchase an interest in real property for waiving, releasing, or not exercising the option or right
31 upon the transfer of the property to another person.

32 (VI) Any tax, fee, charge, assessment, fine, or other amount
33 payable to or imposed by a governmental authority.

34 (c) “Transfer fee covenant” means a declaration or covenant purporting to
35 affect real property which requires or purports to require the payment of a transfer fee to the
36 declarant or other person specified in the covenant or declaration, or to their successors or
37 assigns, upon a subsequent transfer of an interest in the real property.

38 (B) A transfer fee covenant shall not run with the title to real property and is not binding
39 on or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee of
40 any interest in the real property as an equitable servitude or otherwise. Any lien purporting to
41 secure the payment of a transfer fee under a transfer fee covenant is void and unenforceable.

42

43 Section 3. [*Severability.*] [Insert severability clause.]

44

45 Section 4. [*Repealer.*] [Insert repealer clause.]

46

47 Section 5. [*Effective Date.*] [Insert effective date.]