

1 SENATE BILL 504

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Phil A. Griego

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9  
10 AN ACT

11 RELATING TO REAL PROPERTY; PROHIBITING TRANSFER FEE COVENANTS;  
12 PROVIDING PENALTIES.

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. SHORT TITLE.--This act may be cited as the  
16 "Prohibition of Transfer Fee Covenants Act".

17 SECTION 2. LEGISLATIVE FINDINGS.--The legislature finds:

18 A. the public policy of this state favors the  
19 transferability of interests in real property free from  
20 unreasonable restraints on alienation and covenants or  
21 servitudes that do not touch or concern the property; and

22 B. a transfer fee covenant violates this public  
23 policy by impairing the marketability of the title to the  
24 affected real property and constitutes an unreasonable  
25 restraint on alienation, regardless of the duration of the

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1 covenant or the amount of the transfer fee set forth in the  
2 covenant.

3 SECTION 3. DEFINITIONS.--As used in the Prohibition of  
4 Transfer Fee Covenants Act:

5 A. "association" means a nonprofit, mandatory  
6 membership organization composed of owners of homes,  
7 condominiums, cooperatives, manufactured homes or any interest  
8 in real property and created pursuant to a declaration,  
9 covenant or other applicable law;

10 B. "transfer" means the sale, gift, grant,  
11 conveyance, assignment, inheritance or other transfer of an  
12 interest in real property located in this state;

13 C. "transfer fee" means a fee or charge imposed by  
14 a transfer fee covenant, but does not include any tax,  
15 assessment, fee or charge imposed by a governmental authority  
16 pursuant to applicable laws, ordinances or regulations; and

17 D. "transfer fee covenant" means a provision in a  
18 document, whether recorded or not and however denominated, that  
19 purports to run with the land or bind current owners or  
20 successors in title to specified real property located in this  
21 state and that obligates a transferee or transferor of all or  
22 part of the property to pay a fee or charge to a third person  
23 upon transfer of an interest in all or part of the property, or  
24 in consideration for permitting any such transfer. The term  
25 "transfer fee covenant" does not include:

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1 (1) any provision of a purchase contract,  
2 option, mortgage, security agreement, real property listing  
3 agreement or other agreement that obligates one party to the  
4 agreement to pay the other, as full or partial consideration  
5 for the agreement or for a waiver of rights under the  
6 agreement, an amount determined by the agreement, if that  
7 amount:

8 (a) is payable on a one-time basis only  
9 upon the next transfer of an interest in the specified real  
10 property and, once paid, does not bind successors in title to  
11 the property;

12 (b) constitutes a loan assumption or  
13 similar fee charged by a lender holding a lien on the property;  
14 or

15 (c) constitutes a fee or commission paid  
16 to a licensed real estate broker for brokerage services  
17 rendered in connection with the transfer of the property for  
18 which the fee or commission is paid;

19 (2) any provision in a deed, memorandum or  
20 other document recorded for the purpose of providing record  
21 notice of an agreement described in Paragraph (1) of this  
22 subsection;

23 (3) any provision of a document requiring  
24 payment of a fee or charge to an association to be used  
25 exclusively for purposes authorized in the document, as long as

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1 no portion of the fee is required to be passed through to a  
2 third party designated or identifiable by description in the  
3 document or another document referenced therein; or

4 (4) any provision of a document requiring  
5 payment of a fee or charge to an organization described in  
6 Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of  
7 1986, to be used exclusively to support cultural, educational,  
8 charitable, recreational, environmental, conservation or other  
9 similar activities benefiting the real property affected by the  
10 provision or the community of which the property is a part.

11 SECTION 4. PROHIBITED PRACTICE.--A transfer fee covenant  
12 recorded after the effective date of the Prohibition of  
13 Transfer Fee Covenants Act, or any lien to the extent that it  
14 purports to secure the payment of a transfer fee, is not  
15 binding on or enforceable against the affected real property or  
16 any subsequent owner, purchaser or mortgagee of any interest in  
17 the property.

18 SECTION 5. PENALTIES.--A violation of the Prohibition of  
19 Transfer Fee Covenants Act constitutes a violation of the  
20 Unfair Practices Act.

21 SECTION 6. SEVERABILITY.--If any part or application of  
22 the provisions of this act is held invalid, the remainder or  
23 its application to other situations or persons shall not be  
24 affected.

25 SECTION 7. APPLICABILITY.--The provisions of this act

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1 apply to transfer fee covenants recorded prior to July 1, 2011,  
2 which covenants shall be invalid and unenforceable.

3 SECTION 8. EFFECTIVE DATE.--The effective date of the  
4 provisions of this act is July 1, 2011.