



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 4227 (Substitute H-3 as passed by the House)
House Bill 4228 (Substitute H-3 as passed by the House)
Sponsor: Representative Paul Opsommer (H.B. 4227)
Representative Bruce Rendon (H.B. 4228)
House Committee: Regulatory Reform
Senate Committee: Regulatory Reform

Date Completed: 4-14-11

CONTENT

The bills would create two new acts to prohibit transfer fee covenants from attaching to the title of real property, and to void any lien purporting to secure payment of a transfer fee. The bills also would allow an aggrieved person to bring an action to clear the title to the real property and void a transfer fee, and to seek other equitable relief.

House Bill 4227 (H-3) would apply to nonresidential property and House Bill 4228 (H-3) would apply to residential property.

Under each bill, a transfer fee covenant that was executed on or after the bill's effective date, whether or not it was recorded, could not run with the title to the real property and would not be binding on or enforceable against any subsequent owner, purchaser, or mortgagee of any interest in the real property as an equitable servitude or otherwise.

Any lien purporting to secure the payment of a transfer fee under a transfer fee covenant that was executed on or after the bill's effective date would be void.

Any person aggrieved by the imposition of a transfer fee, whether the original or subsequent transferee or purchaser, could bring an action to clear the title and void the transfer fee and for other equitable relief. In a successful action, the court could award actual reasonable attorney fees and other costs of bringing the action.

"Transfer fee covenant" would mean a declaration or covenant that 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 that person's successors or assigns.

"Transfer fee" would mean a fee or charge payable upon the subsequent sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property located in Michigan, or payable for the right to make or accept a 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.

"Transfer fee" would not include any of the following:

- 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, provided the additional consideration is payable on a one-time basis only and the obligation to make the payment does not bind successors in title to the property.
- 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.
- 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.
- Any rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease.
- 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.
- Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority.
- 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 an association.
- Any fee, charge, assessment, dues, contribution, or other amount imposed by a declaration or covenant encumbering a community, 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.
- 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.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Matthew Grabowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.