

SUBSTITUTE FOR  
HOUSE BILL NO. 4227

A bill to prohibit certain covenants attaching to nonresidential real property; to prohibit the imposition of certain fees upon transfer of that real property; and to provide for remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. As used in this act:

2       (a) "Transfer fee" means a fee or charge payable upon the  
3       subsequent sale, gift, conveyance, assignment, inheritance, or  
4       other transfer of an ownership interest in nonresidential real  
5       property located in this state, or payable for the right to make or  
6       accept such a transfer, regardless of whether the fee or charge is  
7       a fixed amount or is determined as a percentage of the value of the

1 property, the purchase price, or other consideration given for the  
2 transfer. Transfer fee does not include any of the following:

3 (i) Any consideration payable by the grantee to the grantor for  
4 the interest in real property being transferred, including any  
5 subsequent additional consideration for the property payable by the  
6 grantee based upon any subsequent appreciation, development, or  
7 sale of the property, provided such additional consideration is  
8 payable on a 1-time basis only and the obligation to make such  
9 payment does not bind successors in title to the property. For the  
10 purposes of this subdivision, an interest in real property may  
11 include a separate mineral estate and its appurtenant surface  
12 access rights.

13 (ii) Any commission payable to a licensed real estate broker  
14 for the transfer of real property pursuant to an agreement between  
15 the broker and the grantor or the grantee, including any subsequent  
16 additional commission for that transfer payable by the grantor or  
17 the grantee based upon any subsequent appreciation, development, or  
18 sale of the property.

19 (iii) Any interest, charges, fees, or other amounts payable by a  
20 borrower to a lender pursuant to a loan secured by a mortgage  
21 against real property, including, but not limited to, any fee  
22 payable to the lender for consenting to an assumption of the loan  
23 or a transfer of the real property subject to the mortgage, any  
24 fees or charges payable to the lender for estoppel letters or  
25 certificates, and any shared appreciation interest or profit  
26 participation or other consideration payable to the lender in  
27 connection with the loan.

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

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

10          (vi) Any tax, fee, charge, assessment, fine, or other amount  
11 payable to or imposed by a governmental authority.

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

18          (viii) Any fee, charge, assessment, dues, contribution, or other  
19 amount imposed by a declaration or covenant encumbering a  
20 community, and payable to a nonprofit or charitable organization  
21 for the purpose of supporting cultural, educational, charitable,  
22 recreational, environmental, conservation, or other similar  
23 activities benefiting the community that is subject to the  
24 declaration or covenant.

25          (ix) Any fee, charge, assessment, dues, contribution, or other  
26 amount pertaining to the purchase or transfer of a club membership  
27 relating to real property owned by the member, including, but not

1 limited to, any amount determined by reference to the value,  
2 purchase price, or other consideration given for the transfer of  
3 the real property.

4 (b) "Transfer fee covenant" means a declaration or covenant  
5 that requires or purports to require the payment of a transfer fee  
6 to the declarant or other person specified in the declaration or  
7 covenant or to that person's successors or assigns.

8 Sec. 2. A transfer fee covenant that is executed on or after  
9 the effective date of this section, whether or not recorded, does  
10 not run with the title to real property and is not binding on or  
11 enforceable against any subsequent owner, purchaser, or mortgagee  
12 of any interest in the real property as an equitable servitude or  
13 otherwise.

14 Sec. 3. Any lien purporting to secure the payment of a  
15 transfer fee under a transfer fee covenant that is executed on or  
16 after the effective date of this section is void.

17 Sec. 4. (1) Any person aggrieved by the imposition of a  
18 transfer fee, whether the original or subsequent transferee or  
19 purchaser, may bring an action to clear the title and void the  
20 transfer fee and for other equitable relief.

21 (2) In a successful action brought under subsection (1), the  
22 court may award actual reasonable attorney fees and other costs of  
23 bringing the action.