

HOUSE BILL No. 4227

February 10, 2011, Introduced by Reps. Opsommer, O'Brien, Rendon, Zorn, Bumstead,
Lyons and Franz and referred to the Committee on Regulatory Reform.

A bill to prohibit certain covenants attaching to 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, "capital recovery fee" means any
2 legacy covenant fee or charge imposed upon a parcel of
3 nonresidential real property, for any period of time, that requires
4 any subsequent seller or transferor of that real property to pay a
5 fee to the developer, whether a flat fee or a fee based upon a
6 percentage of the selling price or other quantitative numerical
7 figure or sum. However, capital recovery fee does not include any
8 of the following:

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

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

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

26 (d) Any rent, reimbursement, charge, fee, or other amount
27 payable by a lessee to a lessor under a lease, including, but not

1 limited to, any fee payable to the lessor for consenting to an
2 assignment, subletting, encumbrance, or transfer of the lease.

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

8 (f) Any tax, fee, charge, assessment, fine, or other amount
9 payable to or imposed by a governmental authority.

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

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

23 (i) Any fee, charge, assessment, dues, contribution, or other
24 amount pertaining to the purchase or transfer of a club membership
25 relating to real property owned by the member, including, but not
26 limited to, any amount determined by reference to the value,
27 purchase price, or other consideration given for the transfer of

1 the real property.

2 Sec. 2. The owner or developer, or both, of residential real
3 property shall not impose directly or indirectly, by means of a
4 covenant or contract, a capital recovery fee.

5 Sec. 3. (1) Any person aggrieved by the imposition of a
6 capital recovery fee, whether the original or subsequent transferee
7 or purchaser, may bring an action in a court of competent
8 jurisdiction for clearing the title and voiding the capital
9 recovery fee, including any other equitable relief requested and
10 granted by the court.

11 (2) In a successful action brought under subsection (1), the
12 court may award costs of bringing and completing the action and
13 actual reasonable attorney fees.