

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2119

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 33-442, Arizona Revised Statutes, is amended to  
3 read:

4 33-442. Prohibition on transfer fees; exceptions; definitions

5 A. A provision in a declaration, a covenant or any other document  
6 relating to real property in this state is not binding or enforceable  
7 against the real property or against any subsequent owner, purchaser,  
8 lienholder or other claimant on the property if it purports to do both of  
9 the following:

10 1. Bind successors in title to the specified real property.

11 2. Obligate the transferee or transferor of all or part of the  
12 property to pay a fee or other charge to a declarant or a third person on  
13 transfer of an interest in the property or in consideration for permitting  
14 such a transfer. Regularly scheduled fees or charges shall not be  
15 considered payable on transfer of an interest if the fees or charges will  
16 be payable by the owner of the property regardless of whether or not the  
17 property is transferred, even if the obligation to pay does not commence  
18 until the trustee, declarant, builder or developer first conveys the  
19 property to a retail purchaser.

20 B. A transfer fee provision prescribed by subsection A of this  
21 section is unenforceable whether or not recorded and does not create a lien  
22 right and any lien purportedly arising out of an unenforceable provision  
23 prescribed by subsection A of this section is invalid and unenforceable.

1 C. This section does not apply to any of the following:

2 1. Any provision of a purchase contract, option, mortgage, security  
3 agreement, real property listing agreement or other agreement that  
4 obligates one party to the agreement to pay the other party as full or  
5 partial consideration for the agreement or for a waiver of rights under the  
6 agreement if the amount to be paid is:

7 (a) A loan assumption fee or similar fee charged by a lender that  
8 holds a lien on the property.

9 (b) A fee or commission paid to a licensed real estate broker for  
10 brokerage services rendered in connection with the transfer of the property  
11 for which the fee or commission is paid.

12 2. Any provision in a deed, memorandum or other document recorded  
13 for the purpose of providing record notice of an agreement prescribed in  
14 paragraph 1, subdivision (a) of this subsection.

15 3. Any provision of a document that requires payment of a fee or  
16 charge to an association to be used exclusively for the purpose authorized  
17 in the document if both of the following apply:

18 (a) The fee being charged touches and concerns the land.

19 (b) No portion of the charge or fee is required to be passed through  
20 to a third party or declarant designated or identifiable by description in  
21 the document or in another document that is referenced in the document  
22 unless the third party is authorized in the document to manage real  
23 property within the association or was part of an approved development  
24 plan.

25 4. Any rent, reimbursement, charge, fee or other amount payable by a  
26 lessee to a lessor under a lease, including any fee payable to the lessor  
27 for consenting to an assignment, sublease, encumbrance or transfer of the  
28 lease.

29 5. Any consideration payable to the holder of an option to purchase  
30 an interest in the real property or to the holder of a right of first  
31 refusal or first offer to purchase an interest in real property and paid

1 for waiving, releasing or not exercising the option or right on transfer of  
2 the property to another person.

3 6. Any fee, charge, assessment, dues, contribution or other amount  
4 relating to the purchase or transfer of a club membership related to the  
5 real property owner by the transferor.

6 7. Any fee or charge that is imposed by a document and that is  
7 payable to a nonprofit corporation for the sole purpose of supporting  
8 recreational activities within the association.

9 8. Any fee, tax, assessment or other charge imposed by a  
10 governmental authority pursuant to applicable laws, ordinances or  
11 regulations.

12 9. Any consideration payable by the transferee to the transferor for  
13 the interest in real property being transferred including any subsequent  
14 additional consideration for the property payable by the transferee based  
15 on any subsequent appreciation, development or sale of the property.

16 D. Notwithstanding any provision in the document or purported lien,  
17 a transfer fee covenant or other document prescribed by subsection A of  
18 this section or a lien purporting to secure payment under a transfer fee  
19 covenant or document prescribed by subsection A of this section that is  
20 executed after July 29, 2010 is not binding or enforceable. This section  
21 shall not be construed to imply that a transfer fee covenant or other  
22 document prescribed by subsection A of this section that is executed before  
23 July 29, 2010 is enforceable or valid.

24 E. AN ASSOCIATION SHALL NOT CHARGE A FEE AUTHORIZED UNDER SUBSECTION  
25 C OF THIS SECTION FOR ANY CONVEYANCE BETWEEN PARTIES PRESCRIBED BY SECTION  
26 11-1134, SUBSECTION B, PARAGRAPHS 3 OR 7, EXCEPT FOR SERVICE FEES  
27 AUTHORIZED IN ANY DOCUMENT TO MANAGE REAL PROPERTY WITHIN THE ASSOCIATION.

28 ~~E.~~ F. For the purposes of this section:

29 1. "Association" means a nonprofit organization that is qualified  
30 under section 501(c)(3) or section 501(c)(4) of the United States internal  
31 revenue code or a nonprofit mandatory membership organization that is  
32 created pursuant to a declaration, covenant or other applicable law and

1 that is composed of the owners of homes, condominiums, cooperatives or  
2 manufactured homes or any other interest in real property.

3 2. "Transfer" means the sale, gift, conveyance, assignment,  
4 inheritance or other transfer of an interest in real property located in  
5 this state."

6 Amend title to conform

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