



AN ACT DECLARING THAT CERTAIN TRANSFER FEE COVENANTS DO NOT RUN WITH THE TITLE TO REAL PROPERTY AND ARE UNENFORCEABLE AT LAW OR IN EQUITY AGAINST A SUBSEQUENT OWNER, PURCHASER, OR MORTGAGEE OF REAL PROPERTY AS A COVENANT, AN EQUITABLE SERVITUDE, OR OTHERWISE; DECLARING THAT A LIEN FILED AGAINST REAL PROPERTY TO ENFORCE THE PAYMENT OF A TRANSFER FEE IS VOID AND UNENFORCEABLE; AMENDING SECTION 70-17-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1. Findings -- purpose.** The legislature finds and declares that transfer fee covenants, as defined in [section 2], impair the marketability and transferability of real property by constituting an unreasonable restraint on alienation regardless of the duration of the covenants or the amount of the transfer fees. The purpose of [sections 1 and 2] is to prohibit transfer fee covenants from running with the title to real property or binding subsequent owners of the property under common law or equitable principles.

**Section 2. Transfer fee covenants -- void.** (1) A transfer fee covenant or any lien that is recorded or filed to enforce a transfer fee under a transfer fee covenant does not run with the title to real property and is not binding upon or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in the real property as a covenant, an equitable servitude, or otherwise.

(2) For purposes of this section, the following definitions apply:

(a) "Transfer" has the meaning provided in 70-1-501.

(b) "Transfer fee" means a fee or charge payable upon the transfer of legal or equitable title to an interest in real property regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the real property, the purchase price, or other consideration given for the transfer. For purposes of this section, a transfer fee does not include the following:

(i) consideration payable by the transferee to the transferor for the interest in real property being

transferred, including any subsequent additional consideration for the property payable by the transferee based upon any subsequent appreciation, development, or sale of the property, if the additional consideration is payable on a one-time basis only and the obligation to make the payment does not bind the original transferee's successors in interest to the property;

(ii) a commission payable to a licensed real estate salesperson or broker for the transfer of real property pursuant to an agreement between the broker and the transferor or the transferee, including any subsequent additional commission for the transfer payable by the transferor or the transferee based upon any subsequent appreciation, development, or sale of the property;

(iii) interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage, deed of trust, trust indenture, or other security interest against real property, including but not limited to a fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage or other security interest, fees, or charges payable to the lender;

(iv) consideration payable by a buyer under a contract for deed as a condition of allowing a buyer to acquire equitable title to the real property described in the contract for deed;

(v) any fee, charge, assessment, dues, contribution, or other amount payable to:

(A) an association of unit owners as defined in 70-23-102, or any association of homeowners, mobile home owners, townhouse owners, or other property owners created pursuant to a recorded declaration that has the power to require owners to pay the costs and expenses incurred in the performance of the association's obligations; or

(B) a nonprofit corporation as provided in Title 35, chapter 2, that is exempt from taxation under section 501(c)(3), 501(c)(4), or 528 of the Internal Revenue Code.

(c) "Transfer fee covenant" means a covenant or declaration recorded or filed against the title to real property that requires the payment of a transfer fee to the declarant or other person specified in the covenant or declaration or to the declarant's or other person's successors or assigns upon each subsequent transfer of a legal or equitable interest the real property.

(3) This section does not apply to any easement granted pursuant to Title 77.

**Section 3.** Section 70-17-203, MCA, is amended to read:

**"70-17-203. Covenants that run with land.** (1) Except as provided in 70-1-522; and [section 2], every

covenant contained in a grant of an estate in real property that is made for the direct benefit of the property or some part of the property then in existence runs with the land.

(2) Subsection (1) includes:

(a) covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee; and

(b) conservation easements pursuant to 76-6-209.

(3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed to the property, when contained in a grant of an estate in the property and made by the covenantor expressly for the covenantor's assigns or to the assigns of the covenantee, runs with the land so far as the assigns mentioned are concerned."

**Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 70, chapter 17, part 2, and the provisions of Title 70, chapter 17, part 2, apply to [sections 1 and 2].

**Section 5. Effective date.** [This act] is effective on passage and approval.

**Section 6. Applicability.** [This act] applies to transfer fee covenants filed on or after [the effective date of this act].

- END -

I hereby certify that the within bill,  
SB 0146, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

SENATE BILL NO. 146  
INTRODUCED BY B. LAKE

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