February 15, 2011

HOUSE BILL No. 1541

DIGEST OF HB 1541 (Updated February 14, 2011 12:10 pm - DI 107)

Citations Affected: IC 32-21.

Synopsis: Transfer fee covenants. Defines "transfer fee covenant" as a declaration or covenant that: (1) purports to affect an interest in real property in Indiana; and (2) requires the payment of a transfer fee to a specified person upon a subsequent transfer of the interest in real property. Provides that a transfer fee covenant recorded in Indiana after June 30, 2011: (1) does not run with the title of the real property interest purported to be affected; and (2) is not binding or enforceable against any subsequent owner, purchaser, or mortgagee of the real property interest. Provides that any lien purporting to secure the payment of a transfer fee under a transfer fee covenant recorded in Indiana after June 30, 2011, is void and unenforceable.

Effective: July 1, 2011.

Speedy, Heuer

January 20, 2011, read first time and referred to Committee on Judiciary.
February 15, 2011, amended, reported — Do Pass.

C o p y

February 15, 2011

First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

C o p y

HOUSE BILL No. 1541

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 32-21-14 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 14. Transfer Fee Covenants

Sec. 1. As used in this section, "transfer" means the transfer of an interest in real property located in Indiana by:

(1) sale;

(2) gift;

(3) conveyance;

(4) assignment;

(5) inheritance; or

(6) other means of transfer.

Sec. 2. (a) As used in this section, "transfer fee" means a fee or charge that:

(1) is required under a transfer fee covenant; and

(2) is payable:

(A) upon the transfer of an interest in real property; or

(B) for the right to make or accept a transfer of an interest in real property;

regardless of whether the fee or charge is in a fixed amount or is determined as a percentage of the value of the property, of the purchase price of the property, or of any consideration given for the transfer of the property.

(b) The term does not include any of the following:

(1) Any consideration payable by the transferee to the transferor for the interest in the real property being transferred, including any consideration payable for a separate mineral estate and its appurtenant surface access rights.

(2) Any commission to a real estate broker or salesperson licensed under IC 25-34.1 payable:

(A) in connection with the transfer of an interest in real property; and

(B) under an agreement between the real estate broker or salesperson and the transferor or transferee.

(3) Any interest, charges, fees, or other amounts payable by a borrower to a lender under a loan secured by a mortgage against an interest in real property, including the following:

(A) Any fee payable to the lender for consenting to an assumption of the loan or to a transfer of the property interest subject to the mortgage.

(B) Any fees or charges payable to the lender for estoppel letters or certificates.

(C) Any other consideration allowed by law and payable to the lender in connection with the loan.

(4) Any rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease, including any fee payable to the lessor for consenting to an assignment, subletting, encumbrance, or transfer of the lease.

(5) Any consideration payable to the holder of:

(A) an option to purchase an interest in real property; or

(B) 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 interest to another person.

(6) Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental entity.

(7) Any fee, charge, assessment, fine, or other amount payable to:

C o p y

(A) a homeowners association;
(B) a condominium association;
(C) a cooperative association;
(D) a mobile home association;
(E) another property owners association; or
(F) an agent representing an association described in clauses (A) through (E);

under a covenant or law applicable to the association.

Sec. 3. As used in this chapter, "transfer fee covenant" means a declaration or covenant, however denominated and regardless of whether it is recorded, that:

(1) purports to affect an interest in real property located in Indiana; and

(2) requires or purports to require the payment of a transfer fee to:

(A) the declarant;
(B) another person specified in the declaration or covenant; or
(C) the successors or assigns of a person described in clause (A) or (B);

upon a subsequent transfer of the interest in real property.

Sec. 4. (a) A transfer fee covenant recorded in Indiana after June 30, 2011:

(1) does not run with the title of the interest in real property the transfer fee covenant purports to affect; and

(2) is not binding or enforceable at law or in equity, as an equitable servitude or otherwise, against any subsequent owner, purchaser, or mortgagee of the interest in the real property the transfer fee covenant purports to affect.

(b) Any lien purporting to secure the payment of a transfer fee payable under a transfer fee covenant recorded in Indiana after June 30, 2011, is void and unenforceable.

(c) A:

(1) transfer fee covenant; or

(2) lien purporting to secure the payment of a transfer fee payable under a transfer fee covenant;

recorded in Indiana before July 1, 2011, is not presumed to be valid and enforceable.

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1541, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 4, delete "or".

Page 3, line 5, after "association;" insert "**or**

(F) an agent representing an association described in clauses (A) through (E);".

and when so amended that said bill do pass.

(Reference is to HB 1541 as introduced.)

FOLEY, Chair

Committee Vote: yeas 8, nays 0.

C o p y