

**As Reported by the House Civil and Commercial Law Committee**

**128th General Assembly**

**Regular Session**

**2009-2010**

**Sub. H. B. No. 292**

**Representatives Letson, Oelslager**

**Cosponsors: Representatives Yuko, Phillips, Ujvagi, Harwood, Domenick,**

**Stebelton, Chandler, Luckie, Foley**

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**A B I L L**

To amend sections 5307.11, 5307.12, 5307.13, 5307.14, 1  
and 5307.16 and to enact section 5301.057 of the 2  
Revised Code to prohibit transfer fee covenants in 3  
certain real estate transactions and to enable a 4  
court of common pleas to order a licensed 5  
auctioneer to conduct a sale of real property 6  
pursuant to a writ of partition. 7

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 5307.11, 5307.12, 5307.13, 5307.14, 8  
and 5307.16 be amended and section 5301.057 of the Revised Code be 9  
enacted to read as follows: 10

**Sec. 5301.057.** (A) As used in this section: 11

(1) "Environmental covenant" means a servitude that imposes 12  
activity and use limitations on real property and meets the 13  
requirements of section 5301.82 of the Revised Code. 14

(2) "Transfer" means the sale, gift, conveyance, assignment, 15  
inheritance, or other transfer of an ownership interest in real 16  
property located in this state. 17

(3) "Transfer fee" means a fee or charge required by a 18  
transfer fee covenant and payable upon the transfer of an interest 19  
in real property, or payable for the right to make or accept such 20  
a transfer, regardless of whether the fee or charge is a fixed 21  
amount or is determined as a percentage of the value of the 22  
property, the purchase price, or other consideration given for the 23  
transfer. The following are not transfer fees for purposes of this 24  
section: 25

(a) Any consideration payable by the grantee to the grantor 26  
for the interest in real property being transferred. For the 27  
purposes of division (A)(3)(a) of this section, an interest in 28  
real property includes a separate mineral estate and its 29  
appurtenant surface access rights. 30

(b) Any commission payable to a licensed real estate broker 31  
or salesperson for the transfer of real property pursuant to an 32  
agreement between the broker or salesperson and the grantor or the 33  
grantee; 34

(c) Any interest, charges, fees, or other amounts payable by 35  
a borrower to a lender pursuant to a loan secured by a mortgage 36  
against real property; 37

(d) Any rent, reimbursement, charge, fee, or other amount 38  
payable by a lessee to a lessor under a lease; 39

(e) Any consideration payable to the holder of an option to 40  
purchase an interest in real property or the holder of a right of 41  
first refusal or first offer to purchase an interest in real 42  
property for waiving, releasing, or not exercising the option or 43  
right upon the transfer of the property to another person; 44

(f) Any tax, fee, charge, assessment, fine, or other amount 45  
payable to or imposed by a governmental authority; 46

(g) Any fee, charge, assessment, fine, or other amount 47  
payable to a homeowners, condominium, cooperative, mobile home, or 48

property owners association pursuant to a declaration or covenant 49  
or law applicable to the association; 50

(h) Any payment required pursuant to an environmental 51  
covenant. 52

(4) "Transfer fee covenant" means a declaration or covenant 53  
recorded against the title to real property that requires or 54  
purports to require the payment of a transfer fee to the declarant 55  
or other person specified in the declaration or covenant or to 56  
their successors or assigns upon a subsequent transfer of an 57  
interest in the real property. 58

(B) A transfer fee covenant recorded in this state on or 59  
after the effective date of this section does not run with the 60  
title to real property and is not binding on or enforceable 61  
against any subsequent owner, purchaser, or mortgagee of any 62  
interest in real property as an equitable servitude or otherwise. 63

(C) Any lien purporting to secure the payment of a transfer 64  
fee under a transfer fee covenant that is recorded in this state 65  
on or after the effective date of this section is void. 66

**Sec. 5307.11.** If no election party elects to take the estate 67  
is made, at the instance insistence of a party, the court of 68  
common pleas may order a sale of the estate at public auction, by 69  
the one of the following: 70

(A) The sheriff who executed the writ of partition, or his 71  
the sheriff's successor in office; 72

(B) An auctioneer who is licensed under Chapter 4707. of the 73  
Revised Code and who is qualified under section 4707.021 of the 74  
Revised Code to conduct an auction of real property. 75

**Sec. 5307.12.** (A) A sale of an estate under section 5307.11 76  
of the Revised Code shall be made at as follows: 77

(1) If the sale is made by a sheriff, the sale shall be made 78  
at the door of the courthouse, unless for good cause the court of 79  
common pleas directs it to be made on the premises. The sale shall 80  
be conducted as upon execution, except that it is unnecessary to 81  
appraise the estate; but it. 82

(2) If the sale is made by a licensed auctioneer, the sale 83  
shall be made pursuant to Chapter 4707. of the Revised Code. 84

(B) No property shall not be sold for less than two thirds of 85  
the value returned by the commissioner or commissioners. Unless by 86  
special order, on good cause shown, the court directs the entire 87  
payment to be made in cash, the purchase money shall be payable 88  
one third on the day of sale, one third in one year after the 89  
sale, and one third in two years after the sale, with interest. 90

**Sec. 5307.13.** On the ~~sheriff's~~ return of his the proceedings 91  
to sell the estate, the court of common pleas shall examine them. 92  
If a sale has been made, and the court approves it, the sheriff 93  
shall execute and deliver a deed to the purchaser on receiving 94  
payment of the consideration money, or taking sufficient security 95  
~~therefor~~ for that payment, to the satisfaction of the court. 96

**Sec. 5307.14.** The (A) Subject to division (B) of this 97  
section, the money or securities arising from a sale of, or an 98  
election to take an estate, shall be distributed and paid, by 99  
order of the court of common pleas, to the parties entitled 100  
~~thereto~~ to the money or securities, in lieu of their respective 101  
parts and proportions of the estate, according to their rights 102  
~~therein~~ in the estate. All 103

(B) When a sale is made by a licensed auctioneer, the 104  
auctioneer shall receive compensation and reimbursement for 105  
expenses as described in section 2335.021 of the Revised Code, 106  
that the court shall apportion as costs to the parties as the 107

court finds reasonable and proper. 108

(C) All receipts of such money or securities by the sheriff 109  
arising from a sale or election are in ~~his~~ the sheriff's official 110  
capacity, and ~~his~~ the sureties on ~~his~~ the sheriff's official bond 111  
are liable for any misapplication ~~thereof~~ of those receipts. 112

**Sec. 5307.16.** ~~When a conveyance of~~ If an officer or 113  
auctioneer has not conveyed land sold, or elected to be taken in a 114  
proceeding for partition, ~~is not made by the officer who made the~~ 115  
~~sale,~~ the court of common pleas on being first satisfied that such 116  
sale or election was regularly made, and that the purchase money 117  
~~is~~ has been fully paid or secured, on motion, may order the 118  
sheriff of the county, or officer performing the duties of 119  
sheriff, to execute and deliver to the purchaser, or person 120  
electing to take the property, a deed ~~therefor~~ for the property. 121

**Section 2.** That existing sections 5307.11, 5307.12, 5307.13, 122  
5307.14, and 5307.16 of the Revised Code are hereby repealed. 123