



# Ohio Legislative Service Commission

## Bill Analysis

Aida S. Montano

### H.B. 292

128th General Assembly  
(As Introduced)

**Reps.** Letson and Oelslager, Yuko, Phillips, Ujvagi, Harwood, Domenick, Stebelton, Chandler, Luckie

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## BILL SUMMARY

- Provides that a transfer fee covenant recorded in Ohio on or after the effective date of the bill does not run with the title to real property and is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee of any interest in real property as an equitable servitude or otherwise, and provides that any lien purporting to secure the payment of a transfer fee under such a transfer fee covenant is void.

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## CONTENT AND OPERATION

### Transfer fee covenant

The bill provides that a "transfer fee covenant" recorded in Ohio on or after the effective date of the bill does not run with the title to real property and is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee of any interest in real property as an equitable servitude or otherwise. It further provides that any lien purporting to secure the payment of a "transfer fee" under a transfer fee covenant that is recorded in Ohio on or after the effective date of the bill is void. (See "**Definitions**," below, for the definitions of the terms in quotation marks.) (R.C. 5301.057(B) and (C).)

### Definitions

The bill defines the following terms for purposes of its provisions (R.C. 5301.057(A)):

"Transfer fee covenant" means a declaration or covenant recorded against the title to real property that requires or purports to require the payment of a transfer fee to

the declarant or other person specified in the declaration or covenant or to their successors or assigns upon a subsequent transfer of an interest in the real property.

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

(1) Any consideration payable by the grantee to the grantor for the interest in real property being transferred. For the purposes of this provision, an interest in real property includes a separate mineral estate and its appurtenant surface access rights.

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

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

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

(5) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of 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 to another person;

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

(7) Any fee, charge, assessment, fine, or other amount payable to a homeowners, condominium, cooperative, mobile home, or property owners association pursuant to a declaration or covenant or law applicable to the association;

(8) Any payment required pursuant to an "environmental covenant" (see definition below).

"Transfer" means the sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property located in Ohio.

"Environmental covenant" means a servitude that imposes activity and use limitations on real property and meets the requirements of R.C. 5301.82 (see **COMMENT**).

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## **COMMENT**

R.C. 5301.82(A), not in the bill, requires an environmental covenant to contain all of the following:

(1) A statement that the instrument is an environmental covenant executed pursuant to R.C. 5301.80 to 5301.92;

(2) A legally sufficient description of the real property that is subject to the environmental covenant;

(3) A description of the activity and use limitations on the real property;

(4) Requirements for notice following transfer of a specified interest in, or concerning proposed changes in the use of, applications for building permits for, or proposals for any site work affecting contamination on, the property that is subject to the environmental covenant;

(5) The name or identity of every holder;

(6) Rights of access to the property granted in connection with implementation or enforcement of the environmental covenant;

(7) The signatures of the applicable agency, every holder, and, unless waived by the agency, every owner of the fee simple of the real property that is subject to the environmental covenant;

(8) An identification of the name and location of any administrative record for the environmental response project pursuant to which the environmental covenant is created.

In addition to the above required information, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed the environmental covenant. In addition to other conditions for an agency's approval of an environmental covenant, the agency may require those persons specified by the agency who have interests in the real property that is the subject of the environmental covenant to sign the covenant. (R.C. 5301.82(B) and (C).)

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## HISTORY

ACTION

DATE

Introduced

09-30-09

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