

SESSION OF 2009

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2092**

As Amended by House Committee on  
Financial Institutions

**Brief\***

HB 2092, as amended, would enact new law to specify that transfer fee covenants recorded on and after July 1, 2009 shall not run with the title to real property and would not be binding or enforceable in law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in real property as an equitable servitude or otherwise. Additionally, the bill would declare transfer fee covenants, on and after the effective date of this act, to be against public policy and any such covenant would be void and unenforceable.

A "transfer fee" is defined by the act to mean "a fee or charge payable upon the transfer of an interest in real property or payable for the right to make or accept such 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." A transfer fee would not include, among those items outlined in the bill, commissions payable to real estate salespersons and brokers; any rent, reimbursement, charge, fee or other amount payable by a lessee to a lessor; any tax, fee, charge, assessment, fine other amount payable to or imposed by a government authority; and any fee charged that is a typical real estate closing cost, including escrow fees, settlement fees or title insurance premiums charged by a licensed real estate title company.

---

\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

## **Background**

The bill was introduced by the House Committee on Financial Institutions at the request of the Kansas Association of Realtors whose representative indicated that a private transfer fee covenant is essentially a sophisticated extortion scheme that robs a homeowner of the equity in his or her home by holding clear and marketable title to the property hostage. The representative also noted that in other states where this practice is more prevalent, mortgage lenders and title insurance agencies are not willing to participate in transactions where the title is affected by a private transfer fee covenant. The Kansas Land Title Association representative stated that the bill will eliminate clouds on titles and claims and litigation many years down the road, based on a seller's attempt to maintain a residuary interest in future sales. Written testimony in support of the bill was provided by the Kansas Bankers Association. There were no opponents present at the time of the Committee hearing.

The House Committee on Financial Institutions recommended an amendment to include fees associated with typical real estate closings among the exclusions to the term, "transfer fee." The amendment was requested by the Kansas Association of Realtors. Additionally, the Committee recommended an amendment that would apply to transfer fee covenants in existence on the effective date of the act (publication in statute) to declare the covenants as void and unenforceable.

The fiscal note prepared by the Division of the Budget on the original version of the bill states that the Kansas Insurance Department indicates there would be no effect on state revenues and expenditures.