

SUBJECT: Prohibiting fees on future transfers of real property

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Giddings, Elkins, Darby, Bohac, Castro, Martinez, Solomons, Zedler

0 nays

1 absent — Bailey

WITNESSES: *(on original bill:)*  
For — John Rothermel, Stewart Title Guaranty Co. TLTA  
*(Registered, but did not testify:)* Irene “Beanie” Adolph, Tiffany Becker; Aston M. Bryan, Arroyo Verde HOA; Carolyn Bryan; Bob Crawford; Gwen Gates; Kenneth Hamburger; Maria L. Hamburger; Gail Jaszcz; Jayleen Lann; Randy M. Lee, Stewart Title Guaranty Co; Mark Lehman, Texas Association of Realtors; David Martinez; Chade Nelson, Communities for Fair Legislation; Amy Pitloun; Stephanie Redding, Communities for Fair Legislation; Shontele Redeaux; Erik Reyes; Reynaldo Saucedo, Gardens Medical Center Condo Association; Tia Singer; Dodie Slama; Andrea Smith, Stephanie Smith, Select Management; Dawn Tomaschefsky, Encino Creek HOA; Lynn G Walshak, Texas Homeowners for HOA Reform Inc)

Against — Amy McLin

*(on committee substitute:)*  
On — David M. Smith, Texas Neighborhoods Together

DIGEST: CSHB 2403 would add Property Code, sec. 5.016 to prohibit a deed restriction or other covenant running with the land applicable to the transfer of real property if it required a transferee of the property or the transferee’s heirs, successors, or assigns to pay a fee in connection with a future transfer of the property. The prohibition would apply to fees paid to a declarant or other person imposing the restriction or covenant or to a third party designated by the transferor. The bill would make void and unenforceable a deed restriction, other covenant running with the land, or

a lien purporting to secure a right under such a deed restriction or covenant.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS  
SAY:**

CSHB 2403 would prohibit the practice of Internet-based companies that swindle unsophisticated residential property owners into signing contracts to encumber their property with deed restrictions or covenants running with the land that require a fee to be paid on each subsequent transfer of the property. These agreements require the payment of a fee to the Internet-based company upon each subsequent transfer, and as an inducement to the property owner, include a payment to the owner who places the restriction on the property. Unknown to the residential property owner, this encumbrance is likely to interfere with the owner's ability to sell the property and to decrease the insurability of the land. The bill would make void and unenforceable, as unreasonable restraints on alienation of property, deed restrictions, covenants running with the land, or liens trying to enforce the future fee payment upon transfer. Title companies, lenders, and homeowners associations agree that these agreements should be against public policy in order to protect consumers and promote free alienation of land.

**OPPONENTS  
SAY:**

While the property scam needs to be stopped, this bill inadvertently could prohibit homeowner association (HOA) transfer fees that provide funding for reserve accounts for future upkeep and maintenance of association-owned property. This could result in homeowners' dues greatly increasing to cover the difference. The HOA groups supported the bill in its original form, but the committee substitute is too broad and negatively would affect HOAs.

**NOTES:**

The committee substitute would apply to other covenants running with the land as well as deed restrictions. It also would apply to conveyances or other transfers of an interest or estate in real property.