

IC 32-21-14

Chapter 14. Transfer Fee Covenants

IC 32-21-14-1

"Transfer"

Sec. 1. As used in this chapter, "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.

As added by P.L.136-2011, SEC.1. Amended by P.L.6-2012, SEC.207.

IC 32-21-14-2 Version a

"Transfer fee"

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

Sec. 2. (a) As used in this chapter, "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:
 - (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, law, or contract applicable to the association.
- As added by P.L.136-2011, SEC.1. Amended by P.L.6-2012, SEC.208.*

IC 32-21-14-2 Version b

"Transfer fee"

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

Sec. 2. (a) As used in this chapter, "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 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 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:
 - (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, law, or contract applicable to the association.

As added by P.L.136-2011, SEC.1. Amended by P.L.6-2012, SEC.208; P.L.127-2012, SEC.48.

IC 32-21-14-3

"Transfer fee covenant"

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.
As added by P.L.136-2011, SEC.1.

IC 32-21-14-4

Transfer fee covenants; not binding or enforceable; lien to secure payment void and unenforceable; no presumption of validity

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.

As added by P.L.136-2011, SEC.1.