~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

May 25, 2010

**S. 879**

Introduced by Senator Campsen

S. Printed 5/25/10--H.

Read the first time March 9, 2010.

**A** **BILL**

TO AMEND SECTION 12‑37‑3150, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ASSESSABLE TRANSFERS OF INTEREST FOR PURPOSES OF DETERMINING THE VALUE OF REAL PROPERTY FOR PROPERTY TAXATION, SO AS TO PROVIDE ADDITIONAL INSTANCES OF PROPERTY TRANSFERS NOT CONSIDERED ASSESSABLE TRANSFERS OF INTEREST, INCLUDING TRANSFERS OF FRACTIONAL INTERESTS CONSTITUTING NOT MORE THAN FIFTY PERCENT OF FEE SIMPLE TITLE, TRANSFERS INTO AND OUT OF A SINGLE MEMBER LIMITED LIABILITY COMPANY NOT TAXED AS A CORPORATION WHEN THE SINGLE MEMBER IS THE TRANSFEREE AND TRANSFEROR, TRANSFERS RELATING TO EASEMENTS, TRANSFERS TO QUIET TITLE OR ESTABLISH A BOUNDARY LINE, AND TRANSFERS CREATING OR TERMINATING A JOINT TENANCY WITH RIGHTS OF SURVIVORSHIP IF THE GRANTORS AND GRANTEES ARE THE SAME.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 1, Title 27 of the 1976 Code is amended by adding:

“Section 27‑1‑70. (A) As used in this section:

(1) ‘Association’ means a nonprofit, mandatory membership organization comprised of owners of homes, condominiums, cooperatives, manufactured homes, or interest in real property, created pursuant to a declaration, covenant, or other applicable law.

(2) ‘Association Document’ means the governing documents of an Association, typically jointly and severally, the Articles of Incorporation, Master Deed, Declaration, Covenants, Bylaws, Rules and Regulations.

(3) ‘Covenants’ means the Protective and Restrictive Covenants, Master Deed, and Declaration that detail the protections and restrictions on real property of common interest ownership Associations.

(4) ‘Transfer’ means the sale, gift, grant, conveyance, assignment, inheritance, or other transfer of an interest in real property located in this State.

(5) ‘Transfer fee’ means a fee or charge imposed by a transfer fee covenant, but does not include a tax, assessment, fee, or charge imposed by a government authority pursuant to applicable laws, ordinances, or regulations.

(6) ‘Transfer fee covenant’ means a provision in a document, whether recorded or not and however denominated, that purports to run with the land or bind current owners or successors in title to specified real property located in this State, and that obligates a transferee or transferor of all or part of the property to pay a fee or charge to a third person upon transfer of an interest in all or part of the property, or in consideration for permitting this transfer. A ‘transfer fee covenant’ does not include:

(a) a provision of a purchase contract, option, mortgage, security agreement, real property listing agreement, or other agreement that obligates one party to the agreement to pay the other, as full or partial consideration for the agreement or for a waiver of rights under the agreement, an amount determined by the agreement, if that amount:

(i) is payable on a one‑time basis only upon the next transfer of an interest in the specified real property and, once paid, does not bind successors in title to the property;

(ii) constitutes a loan assumption or similar fee charged by a lender holding a lien on the property; or

(iii) constitutes a fee or commission paid to a licensed real estate broker for brokerage services rendered in connection with the transfer of the property for which the fee or commission is paid;

(b) provision in a deed, memorandum, or other document recorded for the purpose of providing record notice of an agreement described in subsection (A)(4)(a);

(c) a provision of an association document requiring payment of a fee or charge to an association to be used exclusively for purposes authorized in the document if no portion of the fee is required to be passed through to a third party, for purposes other than benefits to an Association or an affiliated club or organization, a majority of whose members are also members of the association, as stated in the association documents, designated or identifiable by description in the document or another document referenced in it, provided that this fee is established by a covenant or other document properly recorded in the Register of Deeds office for the county in which the property is located; or

(d) a fee received by a holder as defined in Section 27‑8‑20(2) in connection with the sale of real property subject to:

(i) a conservation easement as defined in Section 27‑8‑29(1); or

(ii) a conservation easement, façade, or historic preservation easement that is a qualified conservation contribution as defined under Section 170(H)(91) of the Internal Revenue Code.

(B) The General Assembly finds:

(1) the public policy of this State favors the transferability of interests in real property free from unreasonable restraints on alienation and covenants or servitudes that do not touch and concern the property; and

(2) a transfer fee covenant that does not provide a benefit or value to the property owners within an association violates this public policy by impairing the marketability of title to the affected real property and constitutes an unreasonable restraint on alienation, regardless of the duration of the covenant or the amount of the transfer fee set forth in the covenant.

(C) A transfer fee covenant recorded after the effective date of this section, or a lien to the extent that it purports to secure the payment of a transfer fee, other than those enacted by an association by means of a proper vote in accordance with the requirements in its association documents, is not binding on or enforceable against the affected real property or any subsequent owner, purchaser, or mortgagee of an interest in the property.

(D) Nothing in this section may imply that a transfer fee covenant recorded before the effective date of this section is valid or enforceable other than those transfer fees enacted by an association by means of a proper vote in accordance with the requirements in its association documents that benefit the association and, collectively, its property owners.”

SECTION 2. Chapter 1, Title 27 of the 1976 Code is amended by adding:

“Section 27‑1‑80. (A) The South Carolina Real Estate Commission shall revise the disclosure statement required under the Residential Property Condition Disclosure Act as found in Article 1, Chapter 50, Title 27, to expressly provide that a private transfer fee obligation must be disclosed.

(B) For a transfer of real property not subject to the disclosure requirements of the Residential Property Disclosure Act, as found in Article 1, Chapter 50, Title 27, a seller of real property shall furnish to a purchaser a written statement disclosing the existence of a private transfer fee obligation. This written statement must include a description of the private transfer fee obligation and include a statement that a private transfer fee obligation, other than a transfer fee enacted by an association by means of a proper vote in accordance with the requirements in its association documents that benefit the association and, collectively, its property owners, is subject to certain prohibitions under Section 27‑1‑80. ”

SECTION 3. Section 12‑37‑670(A) of the 1976 Code, as last amended by Act 57 of 2007, is further amended to read:

“(A) No new structure must be listed or assessed for property tax until it is completed and fit for the use for which it is intended, as evidenced by the issuance of a certificate of occupancy or the structure is actually occupied if no certificate is issued.”

SECTION 4. A. Article 25, Chapter 37, Title 12 of the 1976 Code is amended by adding:

“Section 12‑37‑3142. (A) If a parent transfers a parcel of residential real property to a child by deed in a transaction constituting an assessable transfer of interest, and the child, within one year of the original transfer, deeds the identical parcel of real property back to the parent, the value of the parcel in the hands of the parent must be determined as if these transfers had not occurred.

(B) If a parent establishes a trust for the benefit of a child and transfers a parcel of residential real property to the trust and the trust subsequently distributes that parcel to the child thereby constituting an assessable transfer of interest, and the child, within one year of that distribution by deed transfers the parcel back to the parent or by disclaimer disclaims his interest in the parcel thereby terminating the trust resulting in the parent retaining title, then the value of the parcel in the hands of the parent must be determined as if the trust had not been established and these transfers had not occurred.”

B. Notwithstanding any other effective date provided in this act, this section takes effect upon approval by the Governor and applies for transactions occurring after 2006.

SECTION 5. This act takes effect upon approval by the Governor, except a transfer fee executed but not recorded on or before the effective date of this act is presumed to be void, other than a transfer fee enacted by an association by means of a proper vote in accordance with the requirements in its association documents that benefits the Association and, collectively, its property owners.

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