SENATE BILL 11-234

BY SENATOR(S) Jahn, Boyd, Cadman, Grantham, Hodge, King S., Kopp, Lundberg, Morse, Nicholson, Scheffel, Shaffer B., Spence, Steadman, Tochtrop, White, Williams S., Foster;
also REPRESENTATIVE(S) Massey, Kerr J., Liston, Pace, Schafer S., Scott, Swerdfeger, Todd, Barker, Court, Fields, Gardner D., Kagan, Labuda, Murray, Priola, Summers, Wilson.

CONCERNING RESIDENTIAL REAL PROPERTY TRANSFER FEE COVENANTS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 1 of article 35 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

38-35-127. Unenforceability of prospective residential transfer fee covenants - notice requirements for existing residential transfer fee covenants - written statement of transfer fee payable - affidavit - legislative declaration - definitions. (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

(a) THE PUBLIC POLICY OF THIS STATE FAVORS THE TRANSFERABILITY AND MARKETABILITY OF INTERESTS IN RESIDENTIAL REAL PROPERTY FREE FROM UNREASONABLE RESTRAINTS ON ALIENATION AND COVENANTS OR

Capital letters indicate new material added to existing statutes; dashes through words indicate

SERVITUDES THAT DO NOT TOUCH AND CONCERN THE RESIDENTIAL REAL PROPERTY; AND

(b) A TRANSFER FEE COVENANT AS APPLIED TO RESIDENTIAL REAL PROPERTY VIOLATES THIS PUBLIC POLICY BY IMPAIRING THE TRANSFERABILITY AND MARKETABILITY OF TITLE TO AFFECTED RESIDENTIAL REAL PROPERTY AND CONSTITUTES AN UNREASONABLE RESTRAINT ON ALIENATION, REGARDLESS OF THE DURATION OF THE TRANSFER FEE COVENANT OR THE AMOUNT OF THE TRANSFER FEE SET FORTH IN THE TRANSFER FEE COVENANT.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CONVEYANCE" MEANS THE SALE, GIFT, CONVEYANCE, ASSIGNMENT, INHERITANCE, OR OTHER TRANSFER OF AN OWNERSHIP INTEREST IN RESIDENTIAL REAL PROPERTY LOCATED IN THIS STATE EITHER UPON WHICH THERE ARE RESIDENTIAL IMPROVEMENTS OR UPON WHICH THE CONSTRUCTION OF RESIDENTIAL IMPROVEMENTS HAS COMMENCED.

(b) "EXCLUDED PROVISION" MEANS ANY ONE OF THE FOLLOWING:

(I) ANY PROVISION OF A PURCHASE CONTRACT, OPTION, MORTGAGE, DEED OF TRUST, SECURITY AGREEMENT, AGREEMENT ENGAGING A REAL ESTATE BROKER FOR BROKERAGE SERVICES, LEASE, 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 UNDER THE AGREEMENT, IF THE AMOUNT CONSTITUTES:

(A) PRINCIPAL, INTEREST, CHARGES, FEES, OR OTHER AMOUNTS TO THE EXTENT PAYABLE BY A BORROWER TO A LENDER, INCLUDING SELLER CARRY-BACK FINANCING, PURSUANT TO A LOAN SECURED BY A MORTGAGE, DEED OF TRUST, OR OTHER SECURITY AGREEMENT ENCUMBERING RESIDENTIAL REAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY FEE PAYABLE TO THE LENDER FOR CONSENTING TO AN ASSUMPTION OF THE LOAN OR A CONVEYANCE SUBJECT TO THE SECURITY AGREEMENT, ANY FEES OR CHARGES PAYABLE TO THE LENDER FOR ESTOPPEL LETTERS OR CERTIFICATES, AND ANY SHARED APPRECIATION INTEREST OR PROFIT PARTICIPATION OR OTHER CONSIDERATION PAYABLE TO THE LENDER IN

CONNECTION WITH THE LOAN;

(B) COMPENSATION OR EXPENSE REIMBURSEMENT PAID TO A LICENSED REAL ESTATE BROKER FOR BROKERAGE SERVICES RENDERED IN CONNECTION WITH THE CONVEYANCE FOR WHICH THE COMPENSATION IS EARNED OR A ONE-TIME FEE PAID TO A CLOSING AGENT, TITLE INSURANCE COMPANY, PROPERTY MANAGEMENT COMPANY, MANAGEMENT COMPANY FOR AN ASSOCIATION OF UNIT OWNERS, MORTGAGE LOAN ORIGINATOR, MORTGAGE BROKER, OR OTHER PARTY FOR SERVICES RENDERED IN CONNECTION WITH THE CONVEYANCE FOR WHICH THE FEE IS EARNED; OR

(C) ANY RENT, REIMBURSEMENT, CHARGE, FEE, OR OTHER AMOUNT TO THE EXTENT PAYABLE BY A LESSEE TO A LESSOR UNDER A LEASE, INCLUDING, WITHOUT LIMITATION, ANY FEE PAYABLE TO THE LESSOR FOR CONSENTING TO AN ASSIGNMENT, SUBLETTING, ENCUMBRANCE, OR TRANSFER OF THE LEASE;

(II) ANY PROVISION IN A DEED, MEMORANDUM, SHORT FORM, OR OTHER DOCUMENT RECORDED FOR THE PURPOSE OF PROVIDING RECORD NOTICE OF AN AGREEMENT DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b);

(III) TO THE EXTENT PERMITTED BY LAW, ANY PROVISION IN A DOCUMENT IMPOSING A TAX, FEE, CHARGE, ASSESSMENT, FINE, OR OTHER AMOUNT, TO THE EXTENT PAYABLE TO OR IMPOSED, DIRECTLY OR INDIRECTLY, BY A GOVERNMENTAL AUTHORITY OR A QUASI-GOVERNMENTAL ENTITY OR TO SUCH AUTHORITY'S OR ENTITY'S SUCCESSORS AND ASSIGNS, AND INCLUDING, WITHOUT LIMITATION, AN AMOUNT IMPOSED BY ANY OWNER OF RESIDENTIAL REAL PROPERTY AS THE DECLARANT PURSUANT TO A RECORDED DECLARATION OF TRANSFER FEE COVENANTS THAT ASSIGNS OR OTHERWISE DESIGNATES THE RIGHT TO RECEIVE AND UTILIZE THE PROCEEDS OF SUCH TRANSFER FEE TO A GOVERNMENTAL AUTHORITY OR QUASI-GOVERNMENTAL ENTITY, OR TO SUCH AUTHORITY'S OR ENTITY'S SUCCESSORS AND ASSIGNS, INCLUDING ANY BOND TRUSTEE OR LENDER WITH RESPECT TO FINANCING TRANSACTIONS OF SUCH AUTHORITY OR ENTITY;

(IV) ANY PROVISION IN A RECORDED DOCUMENT, REGARDLESS OF WHETHER THE DOCUMENT IS RECORDED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS SECTION REQUIRING PAYMENT OF A FEE, CHARGE, ASSESSMENT, FINE, OR OTHER AMOUNT ONLY TO THE EXTENT PAYABLE TO

OR COLLECTED BY AN ASSOCIATION OF UNIT OWNERS, HOMEOWNERS, PROPERTY OWNERS, CONDOMINIUM OWNERS, OR SIMILAR MANDATORY MEMBERSHIP ORGANIZATION, INCLUDING A COOPERATIVE, MOBILE HOME, TIME SHARE UNIT, OR COMMON INTEREST COMMUNITY ASSOCIATION;

(V) ANY PROVISION IN A DOCUMENT REQUIRING PAYMENT OF A FEE, CHARGE, ASSESSMENT, DUES, CONTRIBUTION, OR OTHER AMOUNT, ONLY TO THE EXTENT PAYABLE TO AN ORGANIZATION DESCRIBED IN SECTIONS 501 (c) (3), 501 (c) (4), OR 501 (c) (7) OF THE INTERNAL REVENUE CODE, FOR THE PURPOSE OF BENEFITING THE COMMUNITY IN WHICH THE AFFECTED REAL PROPERTY IS LOCATED, THE COMMON AREAS OF THE COMMUNITY, OR ANY ADJACENT OR CONTIGUOUS REAL PROPERTY AND SUPPORTING ACTIVITIES SUCH AS CULTURAL, EDUCATIONAL, CHARITABLE, AFFORDABLE HOUSING, PRESERVATION OF OPEN SPACE, RECREATIONAL, TRANSPORTATION, ENVIRONMENTAL, CONSERVATION, OR SIMILAR ACTIVITIES;

(VI) ANY PROVISION IN A DOCUMENT REQUIRING PAYMENT OF AN AMOUNT TO THE EXTENT REQUIRED PURSUANT TO A RECORDED COVENANT OR SERVITUDE THAT IMPOSES LIMITATIONS ON THE USE OF RESIDENTIAL REAL PROPERTY PURSUANT TO AN ENVIRONMENTAL REMEDIATION PROJECT PERTAINING TO SUCH PROPERTY; OR

(VII) ANY PROVISION IN A RECORDED DEED, MEMORANDUM, SHORT FORM, OR OTHER RECORDED DOCUMENT REQUIRING PAYMENT OF AN AMOUNT THAT, ONCE PAID, SHALL NOT BIND ANY SUCCESSOR IN TITLE TO THE INTEREST IN RESIDENTIAL REAL PROPERTY AND THAT SHALL IN NO EVENT BE PAYABLE BY A GRANTEE UPON THE CONVEYANCE OF RESIDENTIAL REAL PROPERTY UPON WHICH THERE ARE RESIDENTIAL IMPROVEMENTS.

(c) "PAYEE" MEANS THE PERSON, ENTITY, OR ORGANIZATION, OR THEIR SUCCESSORS AND ASSIGNS, SPECIFIED IN THE TRANSFER FEE COVENANT TO WHICH A TRANSFER FEE IS TO BE PAID.

(d) "RESIDENTIAL IMPROVEMENTS" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 39-1-102 (14.3), C.R.S.

(e) "RESIDENTIAL REAL PROPERTY" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 39-1-102 (14.5), C.R.S.

(f) "TIME SHARE UNIT" SHALL HAVE THE SAME MEANING AS SET

FORTH IN SECTION 38-33-110 (7).

(g) "TRANSFER FEE" MEANS A FEE OR CHARGE REQUIRED TO BE PAID BY A TRANSFER FEE COVENANT, ANY PORTION OF WHICH IS PAYABLE UPON CONVEYANCE OR PAYABLE FOR THE RIGHT TO MAKE OR ACCEPT SUCH CONVEYANCE, REGARDLESS OF WHETHER THE FEE OR CHARGE IS A FIXED AMOUNT OR IS DETERMINED AS A PERCENTAGE OF THE VALUE OF THE RESIDENTIAL REAL PROPERTY, THE PURCHASE PRICE, OR ANY OTHER FORM OF CONSIDERATION GIVEN FOR THE CONVEYANCE.

(h) "TRANSFER FEE COVENANT" MEANS A PROVISION IN A DOCUMENT, WHETHER RECORDED OR NOT AND HOWEVER DENOMINATED, THAT REQUIRES OR PURPORTS TO REQUIRE THE PAYMENT OF A TRANSFER FEE, OR PART OF A TRANSFER FEE, TO A PAYEE. A TRANSFER FEE COVENANT SHALL NOT INCLUDE, NOR SHALL THIS SECTION APPLY TO, AN EXCLUDED PROVISION.

(3) (a) ANY TRANSFER FEE COVENANT RECORDED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION, OR ANY LIEN RECORDED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION, TO THE EXTENT THAT IT PURPORTS TO SECURE THE PAYMENT OF A TRANSFER FEE, SHALL NOT, UPON CONVEYANCE, BE BINDING ON OR ENFORCEABLE AGAINST THE AFFECTED REAL PROPERTY OR BE PAYABLE FOR THE RIGHT TO MAKE OR ACCEPT SUCH CONVEYANCE, NOR SHALL SUCH COVENANT OR LIEN BE BINDING ON OR ENFORCEABLE AGAINST ANY SUBSEQUENT OWNER, PURCHASER, OR HOLDER OF ANY MORTGAGE, DEED OF TRUST, OR OTHER SECURITY INTEREST ENCUMBERING THE AFFECTED REAL PROPERTY.

(b) ANY PERSON WHO RECORDS, OR CAUSES OR SUFFERS TO BE RECORDED, A TRANSFER FEE COVENANT ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION AND FAILS TO RELEASE SUCH COVENANT AND ANY LIEN PURPORTING TO SECURE THE PAYMENT OF A TRANSFER FEE WITHIN THIRTY DAYS AFTER WRITTEN REQUEST FOR THE RELEASE IS SENT TO THE LAST-KNOWN ADDRESS OF THE PAYEE AS SPECIFIED IN THE TRANSFER FEE COVENANT PERSONALLY OR BY CERTIFIED MAIL, FIRST-CLASS POSTAGE PREPAID, RETURN RECEIPT REQUESTED, SHALL BE LIABLE FOR ALL OF THE FOLLOWING:

(I) ANY ACTUAL DAMAGES RESULTING FROM THE IMPOSITION OF THE TRANSFER FEE COVENANT ON A CONVEYANCE, INCLUDING THE AMOUNT OF

ANY TRANSFER FEE PAID BY A PARTY TO THE CONVEYANCE; AND

(II) ALL REASONABLE ACTUAL ATTORNEY FEES, EXPENSES, AND COSTS INCURRED BY A PARTY TO THE CONVEYANCE OR BY A HOLDER OF A MORTGAGE, DEED OF TRUST, OR OTHER SECURITY INTEREST ENCUMBERING THE RESIDENTIAL REAL PROPERTY SUBJECT TO THE TRANSFER FEE COVENANT IN CONNECTION WITH AN ACTION TO:

(A) RECOVER A TRANSFER FEE PAID;

(B) QUIET TITLE TO THE RESIDENTIAL REAL PROPERTY BURDENED BY THE TRANSFER FEE COVENANT; OR

(C) SHOW CAUSE WHY THE TRANSFER FEE COVENANT, OR ANY LIEN PURPORTING TO SECURE THE PAYMENT OF A TRANSFER FEE, SHOULD NOT BE DECLARED INVALID.

(4) (a) IN THE CASE OF ANY TRANSFER FEE COVENANT, OR ANY AMENDMENT TO SUCH COVENANT, RECORDED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, THE PAYEE, AS A CONDITION OF PAYMENT OF THE TRANSFER FEE, SHALL RECORD AGAINST THE RESIDENTIAL REAL PROPERTY BURDENED BY THE TRANSFER FEE COVENANT, IN THE OFFICE OF THE COUNTY CLERK AND RECORDER FOR THE COUNTY IN WHICH THE RESIDENTIAL REAL PROPERTY IS SITUATED, NOT LATER THAN OCTOBER 1, 2011, A NOTICE OF TRANSFER FEE.

(b) THE NOTICE OF TRANSFER FEE REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (4) SHALL:

(I) BE ENTITLED "NOTICE OF TRANSFER FEE", WHICH TITLE SHALL BE IN AT LEAST FOURTEEN-POINT BOLDFACE TYPE;

(II) SPECIFY THE AMOUNT OF THE TRANSFER FEE IF THE TRANSFER FEE IS A FLAT AMOUNT OR THE PERCENTAGE OF THE SALES PRICE CONSTITUTING THE TRANSFER FEE IF THE TRANSFER FEE IS DETERMINED AS A PERCENTAGE OF THE VALUE OF THE RESIDENTIAL REAL PROPERTY, OR SUCH OTHER BASIS BY WHICH THE TRANSFER FEE IS TO BE CALCULATED;

(III) PROVIDE ACTUAL COST EXAMPLES OF THE TRANSFER FEE FOR A HOME PRICED AT TWO HUNDRED FIFTY THOUSAND DOLLARS, A HOME PRICED

AT FIVE HUNDRED THOUSAND DOLLARS, AND A HOME PRICED AT SEVEN HUNDRED FIFTY THOUSAND DOLLARS;

(IV) SPECIFY THE DATE OR CIRCUMSTANCES UNDER WHICH THE TRANSFER FEE PAYMENT REQUIREMENT EXPIRES, IF ANY;

(V) DESCRIBE THE GENERAL PURPOSE FOR WHICH THE MONEYS FROM THE TRANSFER FEE WILL BE USED;

(VI) IDENTIFY THE NAME OF THE PAYEE AND SPECIFIC CONTACT INFORMATION FOR THE PAYEE, INCLUDING MAILING ADDRESS, REGARDING WHERE THE MONEYS ARE TO BE SENT;

(VII) CONTAIN THE ACKNOWLEDGED SIGNATURE OF THE PAYEE;

(VIII) IDENTIFY THE NAME OF THE OWNER AND THE LEGAL DESCRIPTION OF THE RESIDENTIAL REAL PROPERTY BURDENED BY THE TRANSFER FEE COVENANT, AS DISCLOSED BY THE RECORDS OF THE COUNTY CLERK AND RECORDER; AND

(IX) SPECIFY THE METHOD OF RELEASING ANY LIEN RECORDED AGAINST THE RESIDENTIAL REAL PROPERTY PURSUANT TO THE TRANSFER FEE COVENANT.

(c) THE PAYEE MAY FILE AN AMENDMENT TO THE NOTICE OF TRANSFER FEE CONTAINING NEW CONTACT INFORMATION, AND SUCH AMENDMENT SHALL CONTAIN THE RECORDING INFORMATION OF THE NOTICE OF TRANSFER FEE THAT IT AMENDS, THE NAME OF THE OWNER, AND THE LEGAL DESCRIPTION OF THE RESIDENTIAL REAL PROPERTY BURDENED BY THE TRANSFER FEE COVENANT AS CONTAINED IN THE RECORDS OF THE COUNTY CLERK AND RECORDER AT THE TIME OF THE RECORDING OF THE AMENDMENT.

(d) THE OFFICE OF THE COUNTY CLERK AND RECORDER SHALL INDEX THE NOTICE OF TRANSFER FEE UNDER THE NAMES OF THE PERSONS, ENTITIES, OR ORGANIZATIONS IDENTIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (4) OR AS SUCH NAMES MAY BE IDENTIFIED IN A NOTICE THAT HAS BEEN AMENDED UNDER PARAGRAPH (c) OF THIS SUBSECTION (4). THE OFFICE OF THE COUNTY CLERK AND RECORDER SHALL NOT BE REQUIRED TO EXAMINE ANY OTHER INFORMATION CONTAINED IN THE NOTICE OF TRANSFER FEE OR ANY AMENDMENT TO SUCH NOTICE.

(5) IF THE PAYEE FAILS TO COMPLY FULLY WITH PARAGRAPH (a) OR (b) OF SUBSECTION (4) OF THIS SECTION, THE GRANTOR OF ANY RESIDENTIAL REAL PROPERTY BURDENED BY THE TRANSFER FEE COVENANT MAY PROCEED WITH THE CONVEYANCE TO ANY GRANTEE AND IN DOING SO SHALL BE DEEMED TO HAVE ACTED IN GOOD FAITH AND SHALL NOT BE SUBJECT TO ANY OBLIGATIONS UNDER THE TRANSFER FEE COVENANT. ALL CONVEYANCES THEREAFTER SHALL BE FREE AND CLEAR OF ANY SUCH TRANSFER FEE AND TRANSFER FEE COVENANT.

(6) (a) UPON WRITTEN REQUEST MADE BY THE OWNER, OR THE OWNER'S DESIGNEE, DELIVERED PERSONALLY OR BY CERTIFIED MAIL, FIRST-CLASS POSTAGE PREPAID, RETURN RECEIPT REQUESTED, TO THE PAYEE'S ADDRESS SHOWN ON THE NOTICE OF TRANSFER FEE OR ANY AMENDMENT TO THE NOTICE, THE PAYEE SHALL FURNISH TO THE OWNER OR THE OWNER'S DESIGNEE A WRITTEN STATEMENT SPECIFYING THE AMOUNT OF THE TRANSFER FEE PAYABLE. IF THE PAYEE FAILS TO PROVIDE SUCH STATEMENT WITHIN THIRTY DAYS AFTER THE DATE A WRITTEN REQUEST FOR THE SAME IS SENT TO THE ADDRESS SHOWN IN THE NOTICE OF TRANSFER FEE IN ORDER TO OBTAIN A RELEASE OF SUCH FEE, THEN THE OWNER OR THE OWNER'S DESIGNEE, ON RECORDING OF THE AFFIDAVIT REQUIRED UNDER SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION (6), MAY CONVEY ANY INTEREST IN THE RESIDENTIAL REAL PROPERTY TO ANY GRANTEE WITHOUT PAYMENT OF THE TRANSFER FEE AND SUCH CONVEYANCE SHALL NOT BE SUBJECT TO THE TRANSFER FEE AND TRANSFER FEE COVENANT.

(b) (I) AN AFFIDAVIT, EXECUTED UNDER PENALTY OF PERJURY, STATING THE FACTS SPECIFIED UNDER PARAGRAPH (a) OF THIS SUBSECTION (6) AND CONTAINING, AT A MINIMUM, THE INFORMATION SET OUT IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (b), AND MADE BY ONE OR MORE PERSONS, IF APPLICABLE, WHO HAS ACTUAL KNOWLEDGE OF, AND IS COMPETENT TO TESTIFY IN A COURT OF COMPETENT JURISDICTION ABOUT, THE FACTS IN SUCH AFFIDAVIT, SHALL BE RECORDED PRIOR TO, SIMULTANEOUSLY WITH, OR WITHIN FORTY-FIVE DAYS AFTER A DEED OR OTHER INSTRUMENT CONVEYING THE INTEREST IN THE RESIDENTIAL REAL PROPERTY BURDENED BY THE TRANSFER FEE COVENANT IS RECORDED IN THE OFFICE OF THE COUNTY CLERK AND RECORDER IN THE COUNTY IN WHICH THE RESIDENTIAL REAL PROPERTY IS SITUATED.

(II) WHEN RECORDED, AN AFFIDAVIT AS DESCRIBED IN

SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL CONSTITUTE PRIMA FACIE EVIDENCE THAT:

(A) A REQUEST FOR THE WRITTEN STATEMENT OF THE TRANSFER FEE PAYABLE IN ORDER TO OBTAIN A RELEASE OF THE FEE IMPOSED BY THE TRANSFER FEE COVENANT WAS SENT TO THE ADDRESS SHOWN IN THE NOTICE OF TRANSFER FEE OR IN ANY AMENDMENT TO SUCH NOTICE; AND

(B) THE PAYEE FAILED TO PROVIDE THE WRITTEN STATEMENT OF THE TRANSFER FEE PAYABLE WITHIN THIRTY DAYS OF THE DATE OF THE NOTICE SENT TO THE ADDRESS SHOWN IN THE NOTICE OF TRANSFER FEE OR IN ANY AMENDMENT TO SUCH NOTICE.

(III) AN AFFIDAVIT FILED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL STATE THAT THE AFFIANT HAS ACTUAL KNOWLEDGE OF, AND IS COMPETENT TO TESTIFY TO, THE FACTS IN THE AFFIDAVIT AND SHALL INCLUDE THE LEGAL DESCRIPTION OF THE RESIDENTIAL REAL PROPERTY BURDENED BY THE TRANSFER FEE COVENANT; THE NAME OF THE PERSON APPEARING WHO IS ON RECORD AS THE OWNER OF SUCH RESIDENTIAL REAL PROPERTY AT THE TIME OF THE SIGNING OF SUCH AFFIDAVIT; THE NAME OF THE GRANTEE OF THE CONVEYANCE TO BE RECORDED; A REFERENCE, BY RECORDING INFORMATION, TO THE INSTRUMENT OF RECORD CONTAINING THE TRANSFER FEE COVENANT; AND AN ACKNOWLEDGMENT THAT THE AFFIANT IS TESTIFYING UNDER PENALTY OF PERJURY.

(IV) THE OFFICE OF THE COUNTY CLERK AND RECORDER SHALL INDEX THE AFFIDAVIT IN THE NAME OF THE RECORD OWNER SHOWN THEREIN.

(V) IN NO EVENT SHALL THE LIABILITY OF THE AFFIANT TO ANY PAYEE FOR NONPAYMENT OF THE TRANSFER FEE EXCEED THE AMOUNT STATED IN THE NOTICE OF TRANSFER FEE COVENANT FOR THAT PARTICULAR CONVEYANCE; EXCEPT THAT NOTHING IN THIS SECTION SHALL CONFER ANY LIABILITY UPON ANY PERSON OR TITLE COMPANY, OR ANY AGENT OR EMPLOYEE OF SUCH COMPANY, THAT EXECUTES AN AFFIDAVIT ON REQUEST OF ANY GRANTOR WHEN THE PERSON OR TITLE COMPANY HAS ACTUAL KNOWLEDGE OF SOME OR ALL OF THE MATTERS CONTAINED IN THE AFFIDAVIT, UNLESS THAT PERSON OR TITLE COMPANY IS PROVEN TO HAVE ACTED IN BAD FAITH OR WITH GROSS NEGLIGENCE.

(7) NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THE

TRANSFER FEE COVENANT, ANY NOTICE GIVEN UNDER THIS SECTION SHALL BE SENT TO THE LAST-KNOWN ADDRESS OF THE PAYEE AS SPECIFIED IN THE NOTICE OF TRANSFER FEE OR IN ANY AMENDMENT TO THE NOTICE.

(8) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, SUBSECTIONS (4), (5), AND (6) OF THIS SECTION SHALL NOT APPLY TO A NONPROFIT ORGANIZATION FORMED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION THAT IS EITHER DESCRIBED IN SECTIONS 501 (c) (3), 501 (c) (4), OR 501 (c) (7) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, OR THAT IS ORGANIZED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 30 OF TITLE 7, C.R.S., ARTICLE 40 OF TITLE 7, C.R.S., OR ARTICLES 121 TO 137 OF TITLE 7, C.R.S., AND THAT IS A PAYEE UNDER A TRANSFER FEE COVENANT RECORDED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION.

(9) THIS SECTION SHALL NOT BE CONSTRUED TO IMPLY THAT ANY TRANSFER FEE COVENANT OR EXCLUDED PROVISION IS VALID OR ENFORCEABLE SOLELY AS THE RESULT OF THE ENACTMENT OF THIS SECTION.

SECTION 2. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED 1:11 PM 5/23/11

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO