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(Original Signature of Member)

111TH CONGRESS
2D SESSION

H. R. _____

To amend the Real Estate Settlement Procedures Act of 1974 to prohibit certain transfer fees and covenants in connection with the sale of real property.

IN THE HOUSE OF REPRESENTATIVES

Ms. WATERS (for herself and Mr. SHERMAN) introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Real Estate Settlement Procedures Act of 1974 to prohibit certain transfer fees and covenants in connection with the sale of real property.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Homeowner Equity Protection Act of 2010".

SEC. 2. PROHIBITION ON TRANSFER FEES AND COVENANTS.

(a) PROHIBITION.—The Real Estate Settlement Procedures Act of 1974 is amended by inserting after section 12 (12 U.S.C. 2610) the following new section:

"SEC. 13. PROHIBITION ON TRANSFER FEES AND COVENANTS.

"(a) TRANSFER FEE COVENANTS AFTER EFFECTIVE DATE.—No person shall demand or accept a transfer fee pursuant to a transfer fee covenant that is recorded in any State if the transfer for which the transfer fee is imposed involves a federally related mortgage loan and such transfer occurs after the effective date under section 3 of the Homeowner Equity Protection Act of 2010. No person shall enforce or seek to enforce any lien purporting to secure the payment of a transfer fee pursuant to a transfer fee covenant recorded in any State in connection with any transfer involving a federally related mortgage loan if such transfer occurs after such effective date.

"(b) COORDINATION WITH STATE LAW.—No provision of State law or regulation that imposes more stringent limitations on transfer fees or transfer fee covenants shall be construed as being inconsistent with this section.

"(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

1 "(1) COVERED ASSOCIATION.—The term 'cov-
2 ered association' means a nonprofit, mandatory
3 membership organization comprised of owners of
4 homes, condominiums, cooperatives, manufactured
5 homes, or any interest in real property, created pur-
6 suant to a declaration, covenant, or other applicable
7 law.

8 "(2) STATE.—The term 'State' means the
9 States of the United States, the District of Colum-
10 bia, the Commonwealth of Puerto Rico, and any
11 other territory or possession of the United States.

12 "(3) TRANSFER.—The term 'transfer' means,
13 with respect to real property, the sale, gift, grant,
14 conveyance, assignment, inheritance, or other trans-
15 fer of an interest in the real property.

16 "(4) TRANSFER FEE.—The term 'transfer fee'
17 means a fee or charge imposed by a transfer fee cov-
18 enant, except that such term shall not include any
19 tax, assessment, fee, or charge imposed by a govern-
20 mental authority pursuant to applicable laws, regula-
21 tions, or ordinances.

22 "(5) TRANSFER FEE COVENANT.—

23 "(A) IN GENERAL.—The term 'transfer fee
24 covenant' means a provision in a document re-
25 lating to the transfer of specified residential

real property located in any State and designed principally for the occupancy of from one to four families, whether recorded or not and however denominated, that—

"(i) purports to run with the land or bind current owners of, or successors in title to such real property; and

"(ii) 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 any such transfer.

"(B) EXCLUSIONS.—Such term shall not include—

"(i) any 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 such amount—

1 "(I) is payable on a one-time
2 basis only upon the next transfer of
3 an interest in the specified real prop-
4 erty and, once paid, shall not bind
5 successors in title to the property;
6 "(II) constitutes a loan assump-
7 tion or similar fee charged by a lender
8 holding a lien on the property; or
9 "(III) constitutes a fee or com-
10 mission paid to a licensed real estate
11 broker for brokerage services rendered
12 in connection with the transfer of the
13 property for which the fee or commis-
14 sion is paid;
15 "(ii) any provision in a deed, memo-
16 randum, or other document recorded for
17 the purpose of providing record notice of
18 an agreement described in clause (i);
19 "(iii) any provision of a document re-
20 quiring payment of a fee, charge, assess-
21 ment, dues, fine, contribution, or other
22 amount payable to a covered association
23 pursuant to a declaration or covenant or
24 law applicable to such covered association,
25 including fees or charges payable for estop-

1 pel letters or certificates issued by the cov-
2 ered association or its authorized agent; or
3 "(iv) any provision of a document re-
4 quiring payment of a fee or charge to an
5 organization described in paragraph (3) or
6 (4) of section 501(c) of the Internal Rev-
7 enue Code of 1986, to be used exclusively
8 to support cultural, educational, charitable,
9 recreational, environmental, conservation,
10 or other similar activities benefitting the
11 real property affected by the provision or
12 the community of which the property is a
13 part.
14 "(d) REMEDIES.—
15 "(1) PENALTIES.—Any person or persons who
16 violate this section shall be fined not more than
17 $10,000 or imprisoned for not more than one year,
18 or both.
19 "(2) JOINT AND SEVERAL LIABILITY; TREBLE
20 DAMAGES.—Any person or persons who violate the
21 prohibitions or limitations of this section shall be
22 jointly and severally liable to the person or persons
23 charged for the transfer fee involved in the violation
24 in an amount equal to three times the amount of
25 any such transfer fee involved.

1 "(3) ACTIONS BY SECRETARY AND STATE OFFI-
2 CIALS.—The Secretary, the Attorney General of any
3 State, or the insurance commissioner of any State
4 may bring an action to enjoin violations of this sec-
5 tion.

6 "(4) COURT COSTS AND ATTORNEYS FEES.—In
7 any private action brought pursuant to this sub-
8 section, the court may award to the prevailing party
9 the court costs of the action together with reason-
10 able attorneys fees.".

11 (b) JURISDICTION OF COURTS.—Section 16 of the
12 Real Estate Settlement Procedures Act of 1974 (12
13 U.S.C. 2614) is amended by striking "or 9" each place
14 such term appears and inserting ", 9, or 13".

15 **SEC. 3. EFFECTIVE DATE.**

16 The amendment made by section 2 shall take effect
17 upon the expiration of the 90-day period beginning on the
18 date of the enactment of this Act.