

We provided Ohio Senate testimony today on behalf of the OLTA.
See below.



Chairman Seitz, Ranking Member Kearney, Vice Chair Goodman, Members of the Senate Judiciary – Civil Justice Committee. I would like to thank you for the opportunity to present proponent testimony on Substitute House Bill 292.

I am James Havens. My firm represents and litigates for title insurance underwriters on their direct claims and on behalf of their insureds. In addition to my litigation work, I am the president and founder of Cardinal Title Insurance Agency and have been a licensed title agent in the State of Ohio for more than 25 years. I have been a guest lecturer on the “Methods of Title Assurance” for the Ohio State University and Capital University Law Schools. I am a member of the Ohio Land Title Association (OLTA) and am testifying on its behalf today. OLTA is the state association for the title industry representing licensed title agents, underwriters, abstractors and real estate / title attorneys who operate or practice in all of Ohio’s 88 counties.

Private transfer fee covenants are of great concern to the title industry:

- These covenants hinder the safe and efficient transfer of real property. These covenants create unnecessary and unacceptable risk for lenders, homeowners and land title professionals the transferability of the property by making the transfer of real property more costly and less certain. The long, 99-year timeframe of most of these covenants increase the chances that these restrictions could never be known by the homeowner or are undiscovered during a search of title records. Further, the long timeframe makes it likely that beneficiaries of these covenants will never be found due to a death or dissolution.
- These covenants reduce transparency and exploit the complexity of real estate transactions. These opaque and confusing covenants are hidden from consumers buried in a veil of legal documents. They can often be difficult for even experienced professionals to comprehend, much less be understood by consumers.
- These covenants erode fee simple title and restrain alienation the unrestricted right of an owner to transfer their property. They may be subject to legal challenge as courts have been unwilling to recognize or create new interests in land and they fail the common law “touch and concern” test, which requires that covenants benefit and burden the land. The American Law Institute argues that these covenants are “arbitrary, spiteful, capricious” and an “unreasonable restraint on alienation” and “unconscionable”.
- Private transfer fees depress home prices. When a private transfer fee covenant is attached to a property, it causes the value to be decreased due to the built in nature of a fee encumbrance. Everyone can agree Ohio home prices do not need to be depressed further.

And perhaps most frightening is that one company is attempting to bundle the revenue from these fees into pools of securities in order to sell them to investors on the secondary market.

Six states, including California, Florida, Kansas, Missouri, Oregon and Texas, have already enacted legislation to outlaw or severely restrict the use of these covenants.

The Ohio Land Title Association is pleased the General Assembly is addressing this issue before it becomes as pervasive a problem in Ohio as it has in other states. OLTA joins the Ohio State Bar Association, Ohio Association of Realtors and others in supporting this critical bill. Thank you again for the opportunity to address the Committee.