



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

October 5, 2020

The Honorable Tom Miles
State Representative, District 75
807 Highway 35 South
Forest, Mississippi 39074

Re: Mississippi Code Annotated Section 89-1-69

Dear Representative Miles:

The Office of the Attorney General has received your request for an official opinion.

Question Presented

Does Mississippi Code Section 89-1-69, as amended during the 2019 Legislative Session, prohibit HOA management companies from charging a purchaser a transfer fee in connection with a sale, in order to provide the balance, if any, owed by the seller and to transfer the property ownership records in the HOA documents?

Brief Response

Pursuant to Section 89-1-69, a subdivision's property owner's association may charge a "fee in connection with a future transfer of the property," but only in the manner "evidenced by a deed restriction or covenant running with the land filed in the public land records."

Applicable Law and Discussion

Section 89-1-69 provides:

- (1) In this section, "property owners' association" means an incorporated or unincorporated association that:
 - (a) Is designated as the representative of the owners of property in a subdivision;
 - (b) Has a membership primarily consisting of the owners of the property covered by the dedicatory instrument for the subdivision; and
 - (c) Manages or regulates the subdivision for the benefit of the owners of property in the subdivision.

(2) A deed restriction or other covenant running with the land applicable to the conveyance of real property that requires a transferee of real property or the transferee's heirs, successors, or assigns to pay a declarant or other person imposing the deed restriction or covenant on the property or a third party designated by a transferor of the property a fee in connection with a future transfer of the property is prohibited. A deed restriction or other covenant running with the land that violates this section or a lien purporting to encumber the land to secure a right under a deed restriction or other covenant running with the land that violates this section is void and unenforceable. For purposes of this section, a conveyance of real property includes a conveyance or other transfer of an interest or estate in real property.

(3) This section does not apply to a deed restriction or other covenant running with the land that requires a fee associated with the conveyance of property in a subdivision that is payable to:

(a) A property owners' association that manages or regulates the subdivision or the association's managing agent if the subdivision contains more than one (1) platted lot *and the right to collect a fee in connection with a future transfer of the property is evidenced by a deed restriction or covenant running with the land filed in the public land records;*

(b) An entity organized under Section 501(c)(3), Internal Revenue Code of 1986 *if the entity has a right to collect a fee in connection with a future transfer of the property evidenced by a deed restriction or covenant running with the land filed in the public land records; or*

c) A governmental entity.

Miss. Code Ann. § 89-1-69 (emphasis added to show language added by 2019 legislative amendment). Accordingly, a subdivision's property owner's association may charge a "fee in connection with a future transfer of the property," but only in the manner "evidenced by a deed restriction or covenant running with the land filed in the public land records." Miss. Code Ann. § 89-1-69(3)(a).

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Beebe Garrard

Beebe Garrard
Special Assistant Attorney General