HB
48

"An Act relating to contractual restrictions on the transferability of interests in realty."

COMMITTEE REPORT

2/2_ 75

HOUSE

Mr. Speaker: Date ________________

The Committee on JUDICIARY has had HB 48 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR HB 48 AND THAT CS FOR HB 48 DO PASS

( ) "and" recommends it BE REFERRED TO THE ________________ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Gardiner

[illegible]

[illegible]

[illegible]

Members NOT concurring in the Majority report:

________________ recommends:

________________ recommends:

________________ recommends:

________________ recommends:

________________ recommends:

Terry Gardiner Chairman

file on HB48
for the floor

Alaska Association of Realtors
2223 Spenard Road
Anchorage, Alaska 99503

April 2, 1975

The Honorable Terry Gardiner
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Representative:

We solicit your support for CSHB 48 "An Act relating to contractual restrictions on transferability of interests in realty", which is now under consideration in Rules Committee.

While the majority of Alaskan Financial Institutions do not unreasonably withhold approval and acceptance of a new owner wishing to assume an existing security agreement covering the property he is purchasing, certain of these institutions ordinarily refuse to approve such assumptions unless the purchaser agrees to an increase in the interest rate. We believe this unfair.

When a security agreement (mortgage or deed of trust) is assumed by a new purchaser of property, it does not relieve the original owner of responsibility to pay the debt. Indeed, it adds one additional guarantor of payments and further insures the security of the mortgagee.

A favorable interest rate on a mortgage is a definite plus to an owner and increases the value of his property. Those home owners who purchase their property and arrange to finance the purchase by amortization of the loan over a definite period of time at a definite rate, have every reason to believe that they can sell their interest in the property to someone who can continue to make the payments as agreed between the original owner and the mortgagee as long as he, the original owner, is still responsible for payment to the mortgagee.

In times of increasing interest rates and scarce mortgage financing, the ability of property owners to freely dispose of their equity becomes very important. The enactment of HB 48 would insure that they would not be deprived of this one possibility of sale and would provide prospective purchasers with a purchase method that meets their capabilities.

Thank you,

Audie L. Moore

Audie L. Moore, Co-Chairman
Legislative Committee
Alaska Association of Realtors

ALM/pd

"March 5, 1975

House Judiciary Committee
Statement of Intent
CS HB 48 "An Act relating to contractual restrictions on the transferability of interests in realty."

Some commercial lending institutions in the state have not been allowing assumptions of existing secured loans on real estate. Most lending institutions do allow assumptions of the old loan where the lender's interest in the property is not impaired and the original buyer is not released from his obligation to pay. But some lenders have recently been demanding that the property be refinanced instead of merely assumed. The refinancing is at a considerably higher rate of interest in most cases. These lenders point out to the borrower, who now wants to sell his equity, that the trust deed or other security instrument contains a clause that provides for default if the borrower sells or attempts to sell his equity without the consent of the lender.

Most banks or other lending institutions involved with transfers of interest in real property do not include such "default upon transfer" provisions, or if provided for, the clause is not invoked where the real property is the security and the sale of the equity presents no threat or impairment of that security. In some cases, the transfer actually strengthens the position of the lender, as it will have two people from whom it can collect instead of only the original borrower. The only reason for refusing to permit the transfer of the beneficial interest to a buyer is to enable the lender to call in the original loan and force the buyer to pay a higher interest rate on a new loan.

The scope of the bill does not extend to natural persons because such a lender is more likely to be relying on the credit of the person he deals with rather than simply the value of the collateral. "Default upon transfer" language in contracts between natural persons would seem appropriate in cases where the credit and character of the parties may be fundamental to the transaction. Therefore, the bill would permit reasonable restrictions on transfers found in contracts between natural persons.

Such "default upon transfer" provisions would probably be held to constitute invalid restraints on alienation if challenged in court. A court challenge is not likely, however, as the lending institutions generally permit an assignment if the other parties in the transaction appear to want to take the matter into the courts. Legislative action is proper therefore, to eliminate this unconscionable use of the fine print in the lender's adhesion contracts.

An exemption is available for federal agencies at the discretion of the Commissioner of Commerce in order that the Federal National Mortgage Administration and the Federal Home Loan Bank Board may continue to use their standard deeds of trust which do contain transfer restrictions. It is not intended that the FHA and VA loans be affected by this measure.