

SENATE BILL REPORT

SB 5115

As of February 4, 2011

Title: An act relating to private transfer fee obligations.

Brief Description: Concerning private transfer fee obligations.

Sponsors: Senators Harper, Pflug, Kline, Roach, Carrell and Kilmer.

Brief History:

Committee Activity: Judiciary: 1/26/11.

SENATE COMMITTEE ON JUDICIARY

Staff: Kim Johnson (786-7472)

Background: Covenants are formal agreements or promises between individuals. Covenants may be used to ensure the execution or prevention of an action. A covenant for a title is a covenant that binds the person conveying the property to ensure the completeness, security, and continuance of the title transferred.

A private transfer fee is a form of covenant that is attached to real property by the owner and requires payment of a fee upon each resale of the property. The fee typically is paid to an identified third party, such as the property developer or its trustee, is often calculated as a percentage of the property's sales price and can survive for a specified period of years.

It is reported that up to 19 other states have a full or partial ban on private transfer fees.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): A private transfer fee is defined. Certain fees and taxes are expressly excluded from the definition of a private transfer fee and include: real estate broker commissions, rent, taxes and fees imposed by a governmental entity, and home owner association fees.

Future Transfer Fee Obligations. A private transfer fee recorded or entered into in this state on or after the effective date of this act does not run with the title to real property and is not binding or enforceable at law or in equity. A private transfer fee that is recorded on or after the effective date of this act is void and unenforceable.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Any person who records, or enters into, an agreement imposing a private transfer fee in the person's favor after the effective date of this section is liable for any damages resulting from the imposition of the fee.

Existing Transfer Fee Obligations. A private transfer fee obligation recorded before the effective date of this section is not presumed valid and enforceable. Any private transfer fee must be interpreted and enforced according to specified principles of applicable real estate law, contract law, and common law principles.

Any contract for the sale of real property subject to a private transfer fee must include a provision disclosing the existence of the fee, a description of the fee, and a statement that private transfer fee obligations are subject to certain prohibitions established by this bill. A contract for the sale of real property that does not conform to these requirements is not enforceable by the seller against the buyer, the buyer is not liable to the seller for damages under the contract, and the buyer under the contract is entitled to the return of all deposits made in connection with the sale of the real property.

If a buyer subsequently discovers the existence of the private transfer fee after title to the property has passed and the private transfer fee was not properly disclosed, then the buyer may recover damages resulting from the failure to disclose. Any provision in contract for the sale of real property that purports to waive the rights of a buyer to notice of the private transfer fee obligation is void.

For private transfer fees imposed prior to the effective date of this bill, the person or entity who claims the right to collect a private transfer fee must record a separate document with the county before December 31, 2011. The document must include specified information about the private transfer fee. If the notice is not filed as required, then the private transfer fee obligation is null and void and the real property must be conveyed free and clear from the fee.

If the person or entity who claims the right to collect a private transfer fee fails to provide a written statement of the private transfer fee within 30 days of the date of a request, then the property may be conveyed and the private transfer fee is null and void.

If the required notice is not filed or the written statement is not provided as requested, then a person may file and record an affidavit. An affidavit is considered prima facie evidence that the person claiming the right to collect the private transfer fee failed to comply with either the notice requirement or the written statement request.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: What we're trying to prohibit in this bill are privately imposed fees that amount to a private tax on citizens who are selling their residential real property. The Legislature needs to protect the citizens from this practice. The typical practice is for a developer and other disinterested private parties to attach to the title a fee that is paid every time the property is transferred. The fee is typically 1 percent of the sales price and the fee remains on the title of the property for 99 years. When you consider that residential real property is sold on average every 7 to 8 years, you can appreciate how much money these private companies stand to gain with absolutely no benefit to the home owners. For example, on the sale of a \$250,000 home, for the privilege of selling your own property you pay \$2,500. This practice will depress home prices. This legislation is a very important consumer protection measure, and is one of the Washington Realtors' priorities for this session.

Persons Testifying: PRO: Rush Riese, Washington Land Title Association; Bob Mitchell, WA Realtors.