
SENATE BILL 5115

State of Washington 62nd Legislature 2011 Regular Session

By Senators Harper, Pflug, Kline, Roach, Carrell, and Kilmer

Read first time 01/14/11. Referred to Committee on Judiciary.

1 AN ACT Relating to private transfer fee obligations; adding a new
2 chapter to Title 64 RCW; and declaring an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds and declares that the
5 public policy of this state favors the marketability of real property
6 and the transferability of interests in real property free of title
7 defects or unreasonable restraints on alienation. The legislature
8 further finds and declares that private transfer fee obligations
9 violate this public policy by impairing the marketability and
10 transferability of real property and by constituting an unreasonable
11 restraint on alienation regardless of the duration of the obligation to
12 pay a private transfer fee, the amount of a private transfer fee, or
13 the method by which any private transfer fee is created or imposed.
14 Thus, the legislature finds and declares that a private transfer fee
15 obligation may not run with the title to property or otherwise bind
16 subsequent owners of property under any common law or equitable
17 principle.

1 NEW SECTION. **Sec. 2.** This chapter may be known and cited as the
2 private transfer fee obligation act.

3 NEW SECTION. **Sec. 3.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Association" means: An association of apartment owners as
6 defined in RCW 64.32.010; a unit owners' association as defined in RCW
7 64.34.020; a homeowners' association as defined in RCW 64.38.010; a
8 corporation organized pursuant to chapter 24.06 RCW for the purpose of
9 owning real estate under a cooperative ownership plan; or a nonprofit
10 or cooperative membership organization composed exclusively of owners
11 of mobile homes, manufactured housing, timeshares, camping resort
12 interests, or other interests in real property that is responsible for
13 the maintenance, improvements, services, or expenses related to real
14 property that is owned, used, or enjoyed in common by the members.

15 (2) "Payee" means the person or entity who claims the right to
16 receive or collect a private transfer fee payable under a private
17 transfer fee obligation. A payee may or may not have a pecuniary
18 interest in the private transfer fee obligation.

19 (3) "Private transfer fee" means a fee or charge payable upon the
20 transfer of an interest in real property, or payable for the right to
21 make or accept such transfer, regardless of whether the fee or charge
22 is a fixed amount or is determined as a percentage of the value of the
23 property, the purchase price, or other consideration given for the
24 transfer. The following are not private transfer fees for the purposes
25 of this section:

26 (a) Any consideration payable by the grantee to the grantor for the
27 interest in real property being transferred, including any subsequent
28 additional consideration for the property payable by the grantee based
29 upon any subsequent appreciation, development, or sale of the property,
30 if such additional consideration is payable on a one-time basis only
31 and the obligation to make such payment does not bind successors in
32 title to the property. For the purposes of this subsection (3)(a), an
33 interest in real property may include a separate mineral estate and its
34 appurtenant surface access rights;

35 (b) Any commission payable to a licensed real estate broker for the
36 transfer of real property pursuant to an agreement between the broker
37 and the grantor or the grantee including, but not limited to, any

1 subsequent additional commission for that transfer payable by the
2 grantor or the grantee based upon any subsequent appreciation,
3 development, or sale of the property;

4 (c) Any interest, charges, fees, or other amounts payable by a
5 borrower to a lender pursuant to a loan secured by a mortgage against
6 real property including, but not limited to, any fee payable to the
7 lender for consenting to an assumption of the loan or a transfer of the
8 real property subject to the mortgage, any fees or charges payable to
9 the lender for estoppel letters or certificates, and any shared
10 appreciation interest, profit participation, or other consideration,
11 and payable to the lender in connection with the loan;

12 (d) Any rent, reimbursement, charge, fee, or other amount payable
13 by a lessee to a lessor under a lease or license including, but not
14 limited to, any fee payable to the lessor for consenting to an
15 assignment, subletting, encumbrance, or transfer of the lease or
16 license;

17 (e) Any consideration payable to the holder of an option to
18 purchase an interest in real property or the holder of a right of first
19 refusal or first offer to purchase an interest in real property for
20 waiving, releasing, or not exercising the option or right upon the
21 transfer of the real property to another person;

22 (f) Any tax, fee, charge, assessment, fine, or other amount payable
23 to or imposed by a governmental authority;

24 (g) Any assessment, fee, charge, fine, dues, or other amount
25 payable to an association pursuant to chapter 64.32, 64.34, or 64.38
26 RCW, payable by a purchaser of a camping resort contract, as defined in
27 RCW 19.105.300, on a timeshare, as defined in RCW 64.36.010, or a
28 recorded servitude encumbering the real property being transferred, as
29 long as no portion of the fee is required to be passed through or paid
30 to a third party;

31 (h) Any fee payable, upon a transfer, to an organization qualified
32 under section 501(c)(3) or 501(c)(4) of the internal revenue code of
33 1986, if the sole purpose of such organization is to support cultural,
34 educational, charitable, recreational, conservation, or similar
35 activities benefiting the real property being transferred and the fee
36 is used exclusively to fund such activities;

37 (i) Any fee, charge, assessment, dues, fine, contribution, or other
38 amount pertaining solely to the purchase or transfer of a club

1 membership relating to real property owned by the member including, but
2 not limited to, any amount determined by reference to the value,
3 purchase price, or other consideration given for the transfer of the
4 real property;

5 (j) Any fee charged by an association or an agent of an association
6 to a transferor or transferee for a service rendered contemporaneously
7 with the imposition of the fee, provided that the fee is not to be
8 passed through to a third party other than an agent of the association.

9 (4) "Private transfer fee obligation" means an obligation arising
10 under a declaration or covenant recorded against the title to real
11 property, or under any other contractual agreement or promise, recorded
12 or not, that requires or purports to require the payment of a private
13 transfer fee upon a subsequent transfer of an interest in the real
14 property.

15 (5) "Transfer" means the sale, gift, grant, conveyance, lease,
16 license, assignment, inheritance, or other act resulting in a transfer
17 of ownership interest in real property located in this state.

18 NEW SECTION. **Sec. 4.** (1) A private transfer fee obligation
19 recorded or entered into in this state on or after the effective date
20 of this section does not run with the title to real property and is not
21 binding on or enforceable at law or in equity against any subsequent
22 owner, purchaser, or mortgagee or holder of any interest in real
23 property as an equitable servitude or otherwise. Any private transfer
24 fee obligation that is recorded or entered into in this state on or
25 after the effective date of this section is void and unenforceable.

26 (2) A private transfer fee obligation recorded or entered into in
27 this state before the effective date of this section is not presumed
28 valid and enforceable. Any such private transfer fee obligation must
29 be interpreted and enforced according to principles of applicable real
30 estate, servitude contract, and other law including, without
31 limitation, restraints on alienation, the rule against perpetuities,
32 the touch and concern doctrine, and the requirement for covenants to
33 run with the land, as well as fraud, misrepresentation, violation of
34 public policy, or another invalidating cause.

35 NEW SECTION. **Sec. 5.** Any person who records, or enters into, an
36 agreement imposing a private transfer fee obligation in the person's

1 favor after the effective date of this section is liable for (1) any
2 damages resulting from the imposition of the private transfer fee
3 obligation on the transfer of an interest in the real property
4 including, but not limited to, the amount of any private transfer fee
5 paid by a party to the transfer, and (2) all attorneys' fees, expenses,
6 and costs incurred by a party to the transfer or mortgagee of the real
7 property to recover any private transfer fee paid or in connection with
8 an action to quiet title. If an agent acts on behalf of a principal to
9 record or secure a private transfer fee obligation, liability must be
10 assessed to the principal, rather than the agent.

11 NEW SECTION. **Sec. 6.** (1) Any contract for the sale of real
12 property subject to a private transfer fee obligation must include a
13 provision disclosing the existence of that obligation, a description of
14 the obligation, and a statement that private transfer fee obligations
15 are subject to certain prohibitions under this chapter. If a contract
16 for the sale of real property does not conform to the requirements of
17 this section, the contract is not enforceable by the seller against the
18 buyer, the buyer is not liable to the seller for damages under the
19 contract, and the buyer under the contract is entitled to the return of
20 all deposits made in connection with the sale of the real property.

21 (2) If a private transfer fee obligation is not disclosed under
22 subsection (1) of this section and a buyer subsequently discovers the
23 existence of the private transfer fee obligation after title to the
24 property has passed to the buyer, the buyer may recover (a) any damages
25 resulting from the failure to disclose the private transfer fee
26 obligation including, but not limited to, the amount of any private
27 transfer fee paid by the buyer, or the difference between (i) the
28 market value of the real property if the property were not subject to
29 a private transfer fee obligation and (ii) the market value of the real
30 property as subject to a private transfer fee obligation, and (b) all
31 attorneys' fees, expenses, and costs incurred by the buyer in seeking
32 the buyer's remedies under this subsection.

33 (3) Any provision in a contract for the sale of real property that
34 purports to waive the rights of a buyer under this section is void.

35 NEW SECTION. **Sec. 7.** (1) The payee of a private transfer fee
36 obligation imposed before the effective date of this section shall

1 record, before December 31, 2011, against the real property subject to
2 the private transfer fee obligation, a separate document in the office
3 of the recorder of deeds for each county in which the real property is
4 located that includes all of the following requirements:

5 (a) The title, "Notice of Private Transfer Fee Obligation," in at
6 least fourteen-point boldface type;

7 (b) The amount if the private transfer fee is a flat amount, the
8 percentage of the sales price constituting the cost of the private
9 transfer fee, or another basis by which the private transfer fee is to
10 be calculated;

11 (c) If the real property is residential property, actual dollar-
12 cost examples of the private transfer fee for a home priced at two
13 hundred fifty thousand dollars, five hundred thousand dollars, and
14 seven hundred fifty thousand dollars;

15 (d) The date or circumstances under which the private transfer fee
16 obligation expires, if any;

17 (e) The purpose for which the funds from the private transfer fee
18 obligation will be used;

19 (f) The name of the payee and specific contact information
20 regarding where the funds are to be sent;

21 (g) The acknowledged signature of the payee or a representative of
22 the payee; and

23 (h) The legal description of the real property purportedly burdened
24 by the private transfer fee obligation.

25 (2) When there is more than one person or entity who claims the
26 right to receive or collect a private transfer fee under a private
27 transfer fee obligation, those persons or entities shall designate a
28 single person or entity as the payee for purposes of that private
29 transfer fee obligation.

30 (3) The payee may file an amendment to the notice of private
31 transfer fee obligation containing new contact information. The
32 amendment must contain the recording information of the notice of
33 private transfer fee obligation which it amends and the legal
34 description of the real property burdened by the private transfer fee
35 obligation.

36 (4) If a payee fails to file the notice required under subsection
37 (1) of this section before December 31, 2011, the grantor of any real
38 property burdened by the private transfer fee obligation may proceed

1 with the conveyance of any interest in the real property to any grantee
2 and, in so doing, is conclusively deemed to have acted in good faith
3 and is not subject to any obligations under the private transfer fee
4 obligation. In such event, the private transfer fee obligation becomes
5 null and void and the real property thereafter must be conveyed free
6 and clear of the private transfer fee and private transfer fee
7 obligation.

8 (5) If a payee fails to file the notice required under subsection
9 (1) of this section, the grantor, on the recording of an affidavit
10 under subsection (7) of this section, may convey any interest in the
11 real property to any grantee without payment of the private transfer
12 fee and is not subject to any further obligations under the private
13 transfer fee obligation. In such event, the private transfer fee
14 obligation becomes null and void and the real property thereafter must
15 be conveyed free and clear of the private transfer fee and private
16 transfer fee obligation.

17 (6) If the payee fails to provide a written statement of the
18 private transfer fee payable within thirty days of the date of a
19 written request for such written statement to the address shown in the
20 notice of private transfer fee obligation, the grantor, on the
21 recording of an affidavit under subsection (7) of this section, may
22 convey any interest in the real property to any grantee without payment
23 of the private transfer fee and is not subject to any further
24 obligations under the private transfer fee obligation. In such event,
25 the private transfer fee obligation becomes null and void and the real
26 property thereafter must be conveyed free and clear of the private
27 transfer fee and private transfer fee obligation.

28 (7) An affidavit stating the facts enumerated in subsection (8) of
29 this section must be recorded in the office of the recorder of deeds
30 for each county in which the real property is situated prior to or
31 simultaneously with a conveyance pursuant to subsections (5) or (6) of
32 this section of real property unburdened by a private transfer fee
33 obligation. An affidavit filed under this subsection must state that
34 the affiant has actual knowledge of, and is competent to testify to,
35 the facts in the affidavit and must include the legal description of
36 the real property burdened by the private transfer fee obligation, the
37 name of the person appearing by the record to be the owner of such real
38 property at the time of the signing of the affidavit, a reference, by

1 recording information, to the instrument of record containing the
2 private transfer fee obligation, and an acknowledgment that the affiant
3 is testifying under penalty of perjury.

4 (8) When recorded, an affidavit filed under subsection (7) of this
5 section constitutes prima facie evidence that either:

6 (a) The payee has failed to fully comply with subsection (1) of
7 this section in the respects stated in the affidavit; or

8 (b) A request for the written statement of the private transfer fee
9 was sent to the payee at the address shown on the notice of private
10 transfer fee obligation, and the payee failed to provide the written
11 statement of the private transfer fee payable within thirty days of the
12 date of the notice to the address shown in the notice.

13 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
14 preservation of the public peace, health, or safety, or support of the
15 state government and its existing public institutions, and takes effect
16 immediately.

17 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act constitute
18 a new chapter in Title 64 RCW.

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