
SENATE BILL 5179

State of Washington

62nd Legislature

2011 Regular Session

By Senator Carrell

Read first time 01/17/11. Referred to Committee on Judiciary.

1 AN ACT Relating to real property transfer fees; adding new sections
2 to chapter 64.04 RCW; and providing an effective date.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 64.04 RCW
5 to read as follows:

6 The definitions in this section apply throughout this section and
7 section 2 of this act.

8 (1) "Transfer" means the sale, gift, conveyance, assignment,
9 inheritance, or other transfer of an ownership interest in real
10 property located in this state.

11 (2) "Transfer fee" means a fee or charge payable upon the transfer
12 of an interest in real property or payable for the right to make or
13 accept the transfer, regardless of whether the fee or charge is a fixed
14 amount or is determined as a percentage of the value of the property,
15 the purchase price, or other consideration given for the transfer. The
16 following is not a transfer fee:

17 (a) Any consideration payable by the grantee to the grantor for the
18 interest in real property being transferred, including any subsequent

1 additional consideration for the property payable by the grantee based
2 upon any subsequent appreciation, development, or sale of the property
3 that, once paid, shall not bind successors in title to the property;

4 (b) Any commission payable to a licensed real estate broker for the
5 transfer of real property pursuant to an agreement between the broker
6 and the transferor or transferee, including any subsequent additional
7 commission for the transfer payable by the transferor or the transferee
8 based upon any subsequent additional commission payable by the
9 transferor based upon any subsequent appreciation, development, or sale
10 of the property;

11 (c) Any interest, charges, fees, or other amounts payable by a
12 borrower to a lender pursuant to a loan secured by a mortgage against
13 real property, including any fee payable to the lender for consenting
14 to an assumption of the loan or a transfer of the real property subject
15 to the mortgage, any fees or charges payable to the lender for estoppel
16 letters or certificates, and any other consideration allowed by law and
17 payable to the lender in connection with the loan;

18 (d) Any rent, reimbursement, charge, fee, or other amount payable
19 by a lessee to a lessor under a lease, including any fee payable to the
20 lessor for consenting to an assignment, subletting, encumbrance, or
21 transfer of the lease;

22 (e) Any consideration payable to the holder of an option to
23 purchase an interest in real property or the holder of a right of first
24 refusal or first offer to purchase an interest in real property for
25 waiving, releasing, or not exercising the option or right upon the
26 transfer of the property to another person;

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

29 (g) Any fee charged that is a typical real estate closing cost,
30 including closing or escrow fees, settlement fees, attorney fees, or
31 title insurance premiums and fees;

32 (h) Any reasonable fee charged for the preparation of statements of
33 unpaid assessments or resale certificates or statements of unpaid
34 assessments;

35 (i) Any reasonable fee payable by the original transferee to a unit
36 owners' association, or owners' association, as long as no portion of
37 the fee is required to be passed through to a third party designated or

1 identifiable by description in the document or another document
2 referenced therein; and

3 (j) Any fee payable as part of a conservation or preservation
4 agreement.

5 (3) "Transfer fee covenant" means a declaration or covenant
6 purporting to affect real property that requires or purports to require
7 the payment of a transfer fee to the declarant or other person
8 specified in the declaration or covenant or to their successors or
9 assigns, upon a subsequent transfer of an interest in the real
10 property.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 64.04 RCW
12 to read as follows:

13 (1) Any transfer fee covenant or any lien that is filed to enforce
14 a transfer fee covenant or purports to secure payment of a transfer fee
15 does not run with the title to real property and is not binding on or
16 enforceable at law or in equity against any subsequent owner,
17 purchaser, or mortgagee of any interest in real property as an
18 equitable servitude or otherwise.

19 (2) A person who records a transfer fee covenant, files a lien that
20 purports to secure payment of a transfer fee, or enters into an
21 agreement imposing a private transfer fee obligation is liable for:

22 (a) Any and all damages resulting from the imposition of the
23 transfer fee obligation on the transfer of an interest in the real
24 property, including the amount of any transfer fee paid by a party to
25 the transfer; and

26 (b) All attorney fees, expenses, and costs incurred by a party to
27 the transfer or mortgagee of the real property to recover the transfer
28 fee paid or in connection with an action to quiet title or register the
29 title or a proceeding subsequent to initial registration. If an agent
30 acts on behalf of a principal to file or secure a private transfer fee
31 obligation, liability is assessed to the principal, but not to the
32 agent.

33 NEW SECTION. **Sec. 3.** This act takes effect August 1, 2011.

--- END ---