

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 353** Session of
2011

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FEBRUARY 1, 2011

AS REPORTED FROM COMMITTEE ON URBAN AFFAIRS, HOUSE OF
REPRESENTATIVES, AS AMENDED, MAY 25, 2011

AN ACT

1 Amending Title 68 (Real and Personal Property) of the
2 Pennsylvania Consolidated Statutes, prohibiting private
3 transfer fee obligations; and providing for notice and
4 disclosure of existing private transfer fee obligations.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Title 68 of the Pennsylvania Consolidated
8 Statutes is amended by adding a chapter to read:

9 CHAPTER 81

10 PRIVATE TRANSFER FEE OBLIGATIONS

11 Sec.

12 8101. Short title of chapter.

13 8102. Intent.

14 8103. Definitions.

15 8104. Prohibition.

1 8105. Liability for violation.

2 8106. Disclosure.

3 8107. Notice requirements for existing private transfer fee
4 obligations.

5 § 8101. Short title of chapter.

6 This chapter shall be known and may be cited as the Private
7 Transfer Fee Obligation Act.

8 § 8102. Intent.

9 The General Assembly finds and declares that the public
10 policy of this Commonwealth favors the marketability of real
11 property and the transferability of interests in real property
12 free of title defects or unreasonable restraints on alienation.

13 The General Assembly further finds and declares that private
14 transfer fee obligations violate this public policy by impairing
15 the marketability and transferability of real property and by
16 constituting an unreasonable restraint on alienation regardless
17 of the duration of the obligation to pay a private transfer fee,
18 the amount of a private transfer fee or the method by which any
19 private transfer fee is created or imposed. Thus, the General
20 Assembly finds and declares that a private transfer fee
21 obligation shall not run with the title to property or otherwise
22 bind subsequent owners of property under any common law or
23 equitable principle.

24 § 8103. Definitions.

25 The following words and phrases when used in this chapter
26 shall have the meanings given to them in this section unless the
27 context clearly indicates otherwise:

28 "Financial institution." A bank, savings association or
29 operating subsidiary of a bank or savings association; a credit
30 union, an association authorized by law to engage in the

1 mortgage loan business; or an assignee of a mortgage, mortgage
2 note or other rights of a financial institution.

3 "Payee." A person that claims the right to receive or
4 collect a private transfer fee payable under a private transfer
5 obligation.

6 "Private transfer fee." A fee or charge payable upon the
7 transfer of an interest in real property, or payable for the
8 right to make or accept the transfer, if the obligation to pay
9 the fee or charge runs with title to the property or otherwise
10 binds subsequent owners of property, regardless of whether the
11 fee or charge is a fixed amount or is determined as a percentage
12 of the value of the property, the purchase price or other
13 consideration given for the transfer. The following are not
14 private transfer fees for purposes of this chapter:

15 (1) Any consideration payable by or on behalf of the
16 grantee to the grantor for the interest in real property
17 being transferred, including any subsequent additional
18 consideration for the property payable by or on behalf of the
19 grantee based upon any subsequent appreciation, development
20 or sale of the property, if the additional consideration is
21 payable on a one-time basis only and the obligation to make
22 the payment does not bind successors in title to the
23 property. For the purposes of this paragraph, an interest in
24 real property may include a separate mineral estate and its
25 appurtenant surface access rights.

26 (2) Any commission payable to a licensed real estate
27 broker for the transfer of real property pursuant to an
28 agreement between the broker and the grantor or the grantee,
29 including, but not limited to, any subsequent additional
30 commission for that transfer payable by the grantor or the

1 grantee based upon any subsequent appreciation, development
2 or sale of the property.

3 (3) Any interest, charge, fee or other amount payable to
4 a lender or financial institution pursuant to a mortgage,
5 deed of trust, lien or security interest in or against real
6 property, including, but not limited to, any fee payable for
7 consenting to an assumption of a loan or a transfer of the
8 real property subject to the mortgage, deed of trust, lien or
9 security interest or any fee or charge payable for estoppel
10 letters or certificates and any shared appreciation interest
11 or profit participation or other consideration payable to the
12 lender or financial institution.

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

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

24 (6) Any tax, fee, charge, assessment, fine or other
25 amount payable to or imposed by a governmental authority.

26 (7) Any fee, charge, assessment, dues, fine,
27 contribution or other amount payable to a homeowners',
28 condominium, cooperative, manufactured home or property
29 owners' association and its agent pursuant to a declaration
30 or covenant or law applicable to the association, including,

1 but not limited to, fees or charges payable for estoppel
2 letters or certificates, including resale certificates,
3 issued by the association or its authorized agent.

4 (8) Any fee, charge, assessment, dues, fine,
5 contribution or other amount imposed by a declaration or ←
6 covenant encumbering real property, and payable solely to a
7 nonprofit or charitable organization for the purpose of
8 supporting cultural, educational, charitable, recreational,
9 religious, environmental, conservation or other similar
10 activities. WHICH IS IMPOSED BY A DECLARATION OR COVENANT ←

11 ENCUMBERING REAL PROPERTY AND WHICH IS PAYABLE SOLELY TO A
12 NONPROFIT CORPORATION, CHARITABLE ASSOCIATION OR CHARITABLE
13 TRUST, THAT:

14 (I) HAS BEEN IN EXISTENCE FOR AT LEAST TWO YEARS;

15 AND

16 (II) HOLDS, ON REAL PROPERTY SUBJECT TO THE
17 DECLARATION OR COVENANT OR ON REAL PROPERTY INCLUDED IN
18 THE SAME DEVELOPMENT PLAN WITH THE REAL PROPERTY SUBJECT
19 TO THE DECLARATION OR COVENANT:

20 (A) AN AGRICULTURAL CONSERVATION EASEMENT, AS
21 DEFINED IN SECTION 3 OF THE ACT OF JUNE 30, 1981
22 (P.L.128, NO.43), KNOWN AS THE AGRICULTURAL AREA
23 SECURITY LAW; OR

24 (B) A CONSERVATION EASEMENT, AS DEFINED IN
25 SECTION 3 OF THE ACT OF JUNE 22, 2001 (P.L.390,
26 NO.29), KNOWN AS THE CONSERVATION AND PRESERVATION
27 EASEMENTS ACT.

28 (9) Any fee, charge, assessment, dues, fine,
29 contribution or other amount pertaining solely to the
30 purchase or transfer of a club membership relating to real

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

5 (10) Any payment or other amount due for or upon the
6 removal or extraction of timber, crops or minerals, including
7 oil, gas and water, from real property.

8 "Private transfer fee obligation." An obligation arising
9 under a declaration or covenant recorded against the title to
10 real property, or under any other contractual agreement or
11 promise, whether recorded, that requires or purports to require
12 the payment of a private transfer fee upon a subsequent transfer
13 of an interest in the real property.

14 "Transfer." The sale, gift, conveyance, assignment,
15 inheritance or other transfer of an ownership interest in real
16 property located in this Commonwealth.

17 § 8104. Prohibition.

18 A private transfer fee obligation recorded or entered into in
19 this Commonwealth on or after the effective date of this chapter
20 does not run with the title to real property and is not binding
21 on or enforceable at law or in equity against a subsequent
22 owner, purchaser or mortgagee of an interest in real property as
23 an equitable servitude or otherwise. This section does not mean
24 that a private transfer fee obligation recorded or entered into
25 in this Commonwealth before the effective date of this chapter
26 is presumed valid and enforceable.

27 § 8105. Liability for violation.

28 A person who records or enters into an agreement imposing a
29 private transfer fee obligation in his favor after the effective
30 date of this chapter may be ~~awarded~~ LIABLE FOR THE FOLLOWING:



1 (1) the damages resulting from the imposition of the
2 private transfer fee obligation on the transfer of an
3 interest in the real property, including, but not limited to,
4 the amount of any transfer fee paid by a party to the
5 transfer; and

6 (2) the attorney fees, expenses and costs incurred by a
7 party to the transfer or mortgagee of the real property to
8 recover any private transfer fee paid or in connection with
9 an action to quiet title.

10 Where an agent acts on behalf of a disclosed principal to record
11 or secure a private transfer fee obligation, liability shall be
12 assessed to the principal, rather than the agent.

13 § 8106. Disclosure.

14 (a) General rule.--A contract for the sale of real property
15 subject to a private transfer fee obligation shall include a
16 provision disclosing the existence of that obligation, a
17 description of the obligation and a statement that private
18 transfer fee obligations are subject to certain restrictions
19 under this chapter. A contract for the sale of real property
20 that does not conform to the requirements of this section shall
21 not be enforceable by the seller against the buyer, nor shall
22 the buyer be liable to the seller for damages under the
23 contract. The buyer under a contract that fails to comply with
24 this section shall be entitled to the return of all deposits
25 made in connection with the sale of the real property.

26 (b) Recovery upon failure to disclose.--Where a private
27 transfer fee obligation is not disclosed under subsection (a)
28 and a buyer subsequently discovers the existence of the private
29 transfer fee obligation after title to the property has passed
30 to the buyer, the buyer may be awarded:

1 (1) the damages resulting from the failure to disclose
2 the private transfer fee obligation, including, but not
3 limited to, the amount of any private transfer fee paid by
4 the buyer, or the difference between:

5 (i) the market value of the real property if it were
6 not subject to a private transfer fee obligation; and

7 (ii) the market value of the real property as
8 subject to a private transfer fee obligation; and

9 (2) the attorney fees, expenses and costs incurred by
10 the buyer in seeking the buyer's remedies under this
11 subsection.

12 (c) Waiver.--A provision in a contract for sale of real
13 property that purports to waive the rights of a buyer under this
14 section shall be void.

15 § 8107. Notice requirements for existing private transfer fee
16 obligations.

17 (a) Notice of private transfer fee obligation.--The holder
18 of a private transfer fee obligation imposed prior to the
19 effective date of this chapter shall record, within six months
20 after the effective date of this chapter, against the real
21 property subject to the private transfer fee obligation, a
22 separate document in the office of the recorder of deeds for
23 each county in which the real property is located that complies
24 with all of the following requirements:

25 (1) The title of the document shall be "Notice of
26 Private Transfer Fee Obligation" in at least 14-point
27 boldface type.

28 (2) The amount, if the private transfer fee is a flat
29 amount, or the percentage of the sales price constituting the
30 cost of the private transfer fee, or other basis by which the

1 private transfer fee is to be calculated.

2 (3) If the real property is residential property, actual
3 dollar cost examples of the private transfer fee for a home
4 priced at \$250,000, \$500,000 and \$750,000.

5 (4) The date or circumstances under which the private
6 transfer fee obligation expires, if any.

7 (5) The purpose for which the funds from the private
8 transfer fee obligation will be used.

9 (6) The name of the payee and specific contact
10 information regarding where the funds are to be sent.

11 (7) The acknowledged signature of the holder, or a
12 representative of the holder.

13 (8) The legal description of the real property
14 purportedly burdened by the private transfer fee obligation.

15 (9) Where there is more than one person or entity who
16 claims the right to receive or collect a private transfer fee
17 under a private transfer fee obligation, those persons or
18 entities shall designate a single person or entity as the
19 payee for purposes of that private transfer fee obligation.

20 (b) Amendment.--The payee may file an amendment to the
21 notice of private transfer fee containing new contact
22 information, but the amendment must contain the recording
23 information of the notice of private transfer fee which it
24 amends and the legal description of the real property burdened
25 by the private transfer fee obligation.

26 (c) Failure to file notice.--If a payee fails to file the
27 notice required under subsection (a), the grantor of real
28 property burdened by the private transfer fee obligation may
29 proceed with the conveyance of any interest in the real property
30 to any grantee and in so doing shall be conclusively deemed to

1 have acted in good faith and shall not be subject to any
2 obligations under the private transfer fee obligation. In such
3 event, the private transfer fee obligation shall become null and
4 void and the real property shall be conveyed free and clear of
5 the private transfer fee and private transfer fee obligation.

6 (d) Defective notice.--If a payee records a materially
7 defective or misleading notice under subsection (a), then a
8 grantor, on recording of an affidavit under subsection (f), may
9 convey an interest in the real property to a grantee without
10 payment of the private transfer fee and shall not be subject to
11 any further obligations under the private transfer fee
12 obligation. In such event, the private transfer fee obligation
13 shall become null and void and the real property shall be
14 conveyed free and clear of the private transfer fee and private
15 transfer fee obligation.

16 (e) Failure to provide statement of private transfer fee.--
17 Should a payee fail to provide a written statement of the
18 private transfer fee payable within 30 days of the date of a
19 written request for the same sent to the address shown in the
20 notice of private transfer fee, then a grantor, on recording of
21 an affidavit under subsection (f), may convey an interest in the
22 real property to a grantee without payment of the private
23 transfer fee and shall not be subject to any further obligations
24 under the private transfer fee obligation. In such event, the
25 private transfer fee obligation shall become null and void and
26 the real property shall be conveyed free and clear of the
27 private transfer fee and private transfer fee obligation.

28 (f) Affidavit.--An affidavit stating the facts enumerated in
29 subsection (g) (1) or (2) shall be recorded in the office of the
30 recorder of deeds for each county in which the real property is



1 situated prior to or simultaneously with a conveyance pursuant
2 to subsection (C), (d) or (e) of real property unburdened by a
3 private transfer fee obligation. An affidavit filed under this
4 subsection shall state that the affiant has actual knowledge of,
5 and is competent to testify to, the facts in the affidavit and
6 shall include the legal description of the real property
7 burdened by the private transfer fee obligation, the name of the
8 person appearing by the record to be the owner of the real
9 property at the time of the signing of the affidavit, a
10 reference by recording information to the instrument of record
11 containing the private transfer fee obligation and an
12 acknowledgment that the affiant is testifying under penalty of
13 perjury.

14 (g) Effect of affidavit.--An affidavit filed under
15 subsection (f) shall constitute prima facie evidence that
16 either:

17 (1) the payee has failed to comply with subsection (a)
18 in the respects stated in the affidavit; or

19 (2) a request for the written statement of the private
20 transfer fee was sent to the payee at the address shown on
21 the notice of private transfer fee and the payee failed to
22 provide the written statement of the private transfer fee
23 payable within 30 days of the date of the notice sent to the
24 address shown in the notification.

25 Section 2. This act shall take effect immediately.