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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1481 Session of  
2010

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INTRODUCED BY FONTANA, YAW, KITCHEN, FERLO, FOLMER, WASHINGTON  
AND ARGALL, SEPTEMBER 24, 2010

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REFERRED TO URBAN AFFAIRS AND HOUSING, SEPTEMBER 24, 2010

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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.

16 8105. Liability for violation.

17 8106. Disclosure.

18 8107. Notice requirements for existing private transfer fee  
19 obligations.

1 § 8101. Short title of chapter.

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

4 § 8102. Intent.

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

20 § 8103. Definitions.

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

24 "Payee." A person that claims the right to receive or  
25 collect a private transfer fee payable under a private transfer  
26 obligation. A payee may or may not have a pecuniary interest in  
27 the private transfer fee obligation.

28 "Private transfer fee." A fee or charge payable upon the  
29 transfer of an interest in real property, or payable for the  
30 right to make or accept the transfer, regardless of whether the

1 fee or charge is a fixed amount or is determined as a percentage  
2 of the value of the property, the purchase price or other  
3 consideration given for the transfer. The following are not  
4 private transfer fees for purposes of this chapter:

5 (1) Any consideration payable by the grantee to the  
6 grantor for the interest in real property being transferred,  
7 including any subsequent additional consideration for the  
8 property payable by the grantee based upon any subsequent  
9 appreciation, development or sale of the property, if the  
10 additional consideration is payable on a one-time basis only  
11 and the obligation to make the payment does not bind  
12 successors in title to the property. For the purposes of this  
13 paragraph, an interest in real property may include a  
14 separate mineral estate and its appurtenant surface access  
15 rights.

16 (2) Any commission payable to a licensed real estate  
17 broker for the transfer of real property pursuant to an  
18 agreement between the broker and the grantor or the grantee,  
19 including, but not limited to, any subsequent additional  
20 commission for that transfer payable by the grantor or the  
21 grantee based upon any subsequent appreciation, development  
22 or sale of the property.

23 (3) Any interest, charge, fee or other amount payable by  
24 a borrower to a lender pursuant to a loan secured by a  
25 mortgage against real property, including, but not limited  
26 to, any fee payable to the lender for consenting to an  
27 assumption of the loan or a transfer of the real property  
28 subject to the mortgage, any fee or charge payable to the  
29 lender for estoppel letters or certificates and any shared  
30 appreciation interest or profit participation or other

1 consideration payable to the lender in connection with the  
2 loan.

3 (4) Any rent, reimbursement, charge, fee or other amount  
4 payable by a lessee to a lessor under a lease, including, but  
5 not limited to, any fee payable to the lessor for consenting  
6 to an assignment, subletting, encumbrance or transfer of the  
7 lease.

8 (5) Any consideration payable to the holder of an option  
9 to purchase an interest in real property or the holder of a  
10 right of first refusal or first offer to purchase an interest  
11 in real property for waiving, releasing or not exercising the  
12 option or right upon the transfer of the real property to  
13 another person.

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

16 (7) Any fee, charge, assessment, dues, fine,  
17 contribution or other amount payable to a homeowners',  
18 condominium, cooperative, mobile home or property owners'  
19 association pursuant to a declaration or covenant or law  
20 applicable to the association, including, but not limited to,  
21 fees or charges payable for estoppel letters or certificates  
22 issued by the association or its authorized agent.

23 (8) Any fee, charge, assessment, dues, fine,  
24 contribution or other amount imposed by a declaration or  
25 covenant encumbering real property, and payable solely to a  
26 nonprofit or charitable organization for the purpose of  
27 supporting cultural, educational, charitable, recreational,  
28 environmental, conservation or other similar activities  
29 benefiting the real property subject to the declaration or  
30 covenant or the community in which the real property is

1 located.

2 (9) Any fee, charge, assessment, dues, fine,  
3 contribution or other amount pertaining solely to the  
4 purchase or transfer of a club membership relating to real  
5 property owned by the member, including, but not limited to,  
6 any amount determined by reference to the value, purchase  
7 price or other consideration given for the transfer of the  
8 real property.

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

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

18 § 8104. Prohibition.

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

1 § 8105. Liability for violation.

2 A person who records or enters into an agreement imposing a  
3 private transfer fee obligation in his favor after the effective  
4 date of this chapter shall be liable for the following:

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

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

14 Where an agent acts on behalf of a principal to record or secure  
15 a private transfer fee obligation, liability shall be assessed  
16 to the principal, rather than the agent.

17 § 8106. Disclosure.

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

30 (b) Recovery upon failure to disclose.--Where a private

1 transfer fee obligation is not disclosed under subsection (a)  
2 and a buyer subsequently discovers the existence of the private  
3 transfer fee obligation after title to the property has passed  
4 to the buyer, the buyer shall have the right to recover:

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

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

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

13 (2) the attorney fees, expenses and costs incurred by  
14 the buyer in seeking the buyer's remedies under this  
15 subsection.

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

19 § 8107. Notice requirements for existing private transfer fee  
20 obligations.

21 (a) Notice of private transfer fee obligation.--The payee of  
22 a private transfer fee obligation imposed prior to the effective  
23 date of this chapter shall record, prior to December 31, 2010,  
24 against the real property subject to the private transfer fee  
25 obligation, a separate document in the office of the recorder of  
26 deeds for each county in which the real property is located that  
27 complies with all of the following requirements:

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

1           (2) The amount, if the private transfer fee is a flat  
2 amount, or the percentage of the sales price constituting the  
3 cost of the private transfer fee, or other basis by which the  
4 private transfer fee is to be calculated.

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

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

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

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

14          (7) The acknowledged signature of the payee, or a  
15 representative of the payee.

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

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

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

29          (c) Failure to file notice.--If a payee fails to file the  
30 notice required under subsection (a) prior to December 31, 2010,



1 the grantor of real property burdened by the private transfer  
2 fee obligation may proceed with the conveyance of any interest  
3 in the real property to any grantee and in so doing shall be  
4 conclusively deemed to have acted in good faith and shall not be  
5 subject to any obligations under the private transfer fee  
6 obligation. In such event, the private transfer fee obligation  
7 shall become null and void and the real property shall be  
8 conveyed free and clear of the private transfer fee and private  
9 transfer fee obligation.

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

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

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

17 (g) Effect of affidavit.--An affidavit filed under  
18 subsection (f) shall constitute prima facie evidence that  
19 either:

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

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

28 Section 2. This act shall take effect immediately.