
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 442 Session of
2011

INTRODUCED BY HELM, TOEPEL, DEASY, QUINN, BUXTON, SAYLOR,
STEVENSON, ADOLPH, BAKER, BARRAR, BEAR, BENNINGHOFF, BOBACK,
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LONGIETTI, MAJOR, MANN, MARKOSEK, MARSHALL, MARSICO, MASSER,
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SCHRODER, K. SMITH, SONNEY, STERN, STURLA, SWANGER, TALLMAN,
J. TAYLOR, TOBASH, VEREB, VULAKOVICH, WAGNER, WATERS, WATSON
AND WILLIAMS, FEBRUARY 4, 2011

REFERRED TO COMMITTEE ON URBAN AFFAIRS, FEBRUARY 4, 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.

1 8101. Short title of chapter.

2 8102. Intent.

3 8103. Definitions.

4 8104. Prohibition.

5 8105. Liability for violation.

6 8106. Disclosure.

7 8107. Notice requirements for existing private transfer fee
8 obligations.

9 § 8101. Short title of chapter.

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

12 § 8102. Intent.

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

28 § 8103. Definitions.

29 The following words and phrases when used in this chapter
30 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Financial institution." A bank, savings association, an
3 operating subsidiary of a bank or savings association; a credit
4 union or association authorized by law to engage in the mortgage
5 loan business; assignees of a mortgage, mortgage note or other
6 rights of such an institution.

7 "Payee." A person that claims the right to receive or
8 collect a private transfer fee payable under a private transfer
9 obligation.

10 "Private transfer fee." A fee or charge payable upon the
11 transfer of an interest in real property, or payable for the
12 right to make or accept the transfer, regardless of whether the
13 fee or charge is a fixed amount or is determined as a percentage
14 of the value of the property, the purchase price or other
15 consideration given for the transfer. The following are not
16 private transfer fees for purposes of this chapter:

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

28 (2) Any commission payable to a licensed real estate
29 broker for the transfer of real property pursuant to an
30 agreement between the broker and the grantor or the grantee,

1 including, but not limited to, any subsequent additional
2 commission for that transfer payable by the grantor or the
3 grantee based upon any subsequent appreciation, development
4 or sale of the property.

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

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

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

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

28 (7) Any fee, charge, assessment, dues, fine,
29 contribution or other amount payable to a homeowners',
30 condominium, cooperative, manufactured home or property

1 owners' association and its agent pursuant to a declaration
2 or covenant or law applicable to the association, including,
3 but not limited to, fees or charges payable for estoppel
4 letters or certificates, including resale certificates,
5 issued by the association or its authorized agent.

6 (8) Any fee, charge, assessment, dues, fine,
7 contribution or other amount imposed by a declaration or
8 covenant encumbering real property, and payable solely to a
9 nonprofit or charitable organization for the purpose of
10 supporting cultural, educational, charitable, recreational,
11 religious, environmental, conservation or other similar
12 activities.

13 (9) Any fee, charge, assessment, dues, fine,
14 contribution or other amount pertaining solely to the
15 purchase or transfer of a club membership relating to real
16 property owned by the member, including, but not limited to,
17 any amount determined by reference to the value, purchase
18 price or other consideration given for the transfer of the
19 real property.

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

23 "Private transfer fee obligation." An obligation arising
24 under a declaration or covenant recorded against the title to
25 real property, or under any other contractual agreement or
26 promise, whether recorded, that requires or purports to require
27 the payment of a private transfer fee upon a subsequent transfer
28 of an interest in the real property.

29 "Transfer." The sale, gift, conveyance, assignment,
30 inheritance or other transfer of an ownership interest in real

1 property located in this Commonwealth.

2 § 8104. Prohibition.

3 A private transfer fee obligation recorded or entered into in
4 this Commonwealth on or after the effective date of this chapter
5 does not run with the title to real property and is not binding
6 on or enforceable at law or in equity against a subsequent
7 owner, purchaser or mortgagee of an interest in real property as
8 an equitable servitude or otherwise. This section does not mean
9 that a private transfer fee obligation recorded or entered into
10 in this Commonwealth before the effective date of this chapter
11 is presumed valid and enforceable.

12 § 8105. Liability for violation.

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

16 (1) the damages resulting from the imposition of the
17 private transfer fee obligation on the transfer of an
18 interest in the real property, including, but not limited to,
19 the amount of any transfer fee paid by a party to the
20 transfer; and

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

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

28 § 8106. Disclosure.

29 (a) General rule.--A contract for the sale of real property
30 subject to a private transfer fee obligation shall include a

1 provision disclosing the existence of that obligation, a
2 description of the obligation and a statement that private
3 transfer fee obligations are subject to certain restrictions
4 under this chapter. A contract for the sale of real property
5 that does not conform to the requirements of this section shall
6 not be enforceable by the seller against the buyer, nor shall
7 the buyer be liable to the seller for damages under the
8 contract. The buyer under a contract that fails to comply with
9 this section shall be entitled to the return of all deposits
10 made in connection with the sale of the real property.

11 (b) Recovery upon failure to disclose.--Where a private
12 transfer fee obligation is not disclosed under subsection (a)
13 and a buyer subsequently discovers the existence of the private
14 transfer fee obligation after title to the property has passed
15 to the buyer, the buyer shall have the right to recover:

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

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

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

24 (2) the attorney fees, expenses and costs incurred by
25 the buyer in seeking the buyer's remedies under this
26 subsection.

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

30 § 8107. Notice requirements for existing private transfer fee

1 obligations.

2 (a) Notice of private transfer fee obligation.--The payee of
3 a private transfer fee obligation imposed prior to the effective
4 date of this chapter shall record, within six months after the
5 effective date of this chapter, against the real property
6 subject to the private transfer fee obligation, a separate
7 document in the office of the recorder of deeds for each county
8 in which the real property is located that complies with all of
9 the following requirements:

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

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

17 (3) Examples of the private transfer fee for a home
18 priced at \$250,000, \$500,000 and \$750,000.

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

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

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

25 (7) The acknowledged signature of the payee, or a
26 representative of the payee.

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

29 (9) Where there is more than one person or entity who
30 claims the right to receive or collect a private transfer fee

1 under a private transfer fee obligation, those persons or
2 entities shall designate a single person or entity as the
3 payee for purposes of that private transfer fee obligation.

4 (b) Amendment.--The payee may file an amendment to the
5 notice of private transfer fee containing new contact
6 information, but the amendment must contain the recording
7 information of the notice of private transfer fee which it
8 amends and the legal description of the real property burdened
9 by the private transfer fee obligation.

10 (c) Failure to file notice.--If a payee fails to file the
11 notice required under subsection (a), the grantor of real
12 property burdened by the private transfer fee obligation may
13 proceed with the conveyance of any interest in the real property
14 to any grantee and in so doing shall be conclusively deemed to
15 have acted in good faith and shall not be subject to any
16 obligations under the private transfer fee obligation. In such
17 event, the private transfer fee obligation shall become null and
18 void and the real property shall be conveyed free and clear of
19 the private transfer fee and private transfer fee obligation.

20 (d) Defective notice.--If a payee records a defective notice
21 under subsection (a), then a grantor, on recording of an
22 affidavit under subsection (f), may convey an interest in the
23 real property to a grantee without payment of the private
24 transfer fee and shall not be subject to any further obligations
25 under the private transfer fee obligation. In such event, the
26 private transfer fee obligation shall become null and void and
27 the real property shall be conveyed free and clear of the
28 private transfer fee and private transfer fee obligation.

29 (e) Failure to provide statement of private transfer fee.--
30 Should a payee fail to provide a written statement of the

1 private transfer fee payable within 30 days of the date of a
2 written request for the same sent to the address shown in the
3 notice of private transfer fee, then a grantor, on recording of
4 an affidavit under subsection (f), may convey an interest in the
5 real property to a grantee without payment of the private
6 transfer fee and shall not be subject to any further obligations
7 under the private transfer fee obligation. In such event, the
8 private transfer fee obligation shall become null and void and
9 the real property shall be conveyed free and clear of the
10 private transfer fee and private transfer fee obligation.

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

27 (g) Effect of affidavit.--An affidavit filed under
28 subsection (f) shall constitute prima facie evidence that
29 either:

30 (1) the payee has failed to comply with subsection (a)

1 in the respects stated in the affidavit; or

2 (2) a request for the written statement of the private
3 transfer fee was sent to the payee at the address shown on
4 the notice of private transfer fee and the payee failed to
5 provide the written statement of the private transfer fee
6 payable within 30 days of the date of the notice sent to the
7 address shown in the notification.

8 Section 2. This act shall take effect immediately.