

## 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, BOYD, B. BOYLE, BRENNAN, BROOKS, CALTAGIRONE, CARROLL, CAUSER, CHRISTIANA, CLYMER, D. COSTA, COX, CREIGHTON, DAVIS, DAY, DELOZIER, DeLUCA, DENLINGER, DePASQUALE, DiGIROLAMO, DUNBAR, ELLIS, J. EVANS, EVERETT, FABRIZIO, FARRY, FLECK, FRANKEL, GABLER, GEIST, GIBBONS, GILLEN, GILLESPIE, GINGRICH, GRELL, GROVE, HAHN, HANNA, HARHART, HARPER, HARRIS, HEFFLEY, HENNESSEY, HESS, HICKERNELL, HORNAMAN, HUTCHINSON, JOSEPHS, KAUFFMAN, M.K. KELLER, KNOWLES, KORTZ, KOTIK, KRIEGER, LONGIETTI, MAJOR, MANN, MARKOSEK, MARSHALL, MARSICO, MASSER, METCALFE, METZGAR, MICOZZIE, MILLER, MOUL, MURT, MUSTIO, O'NEILL, PEIFER, PICKETT, PRESTON, PYLE, QUIGLEY, RAPP, REED, REESE, REICHLEY, ROAE, ROCK, ROSS, SACCONI, SCAVELLO, SCHRODER, K. SMITH, SONNEY, STERN, STURLA, SWANGER, TALLMAN, J. TAYLOR, TOBASH, VEREB, VULAKOVICH, WAGNER, WATERS, WATSON, WILLIAMS, RAVENSTAHL AND THOMAS, FEBRUARY 4, 2011

AS REPORTED FROM COMMITTEE ON URBAN AFFAIRS, HOUSE OF REPRESENTATIVES, AS AMENDED, FEBRUARY 16, 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

1 Sec.

2 8101. Short title of chapter.

3 8102. Intent.

4 8103. Definitions.

5 8104. Prohibition.

6 8105. Liability for violation.

7 8106. Disclosure.

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

10 § 8101. Short title of chapter.

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

13 § 8102. Intent.

14 The General Assembly finds and declares that the public  
15 policy of this Commonwealth favors the marketability of real  
16 property and the transferability of interests in real property  
17 free of title defects or unreasonable restraints on alienation.

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

29 § 8103. Definitions.

30 The following words and phrases when used in this chapter

1 shall have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

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

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

12 "Private transfer fee." A fee or charge payable upon the  
13 transfer of an interest in real property, or payable for the  
14 right to make or accept the transfer, IF THE OBLIGATION TO PAY ←  
15 THE FEE OR CHARGE RUNS WITH TITLE TO THE PROPERTY OR OTHERWISE  
16 BINDS SUBSEQUENT OWNERS OF PROPERTY, regardless of whether the  
17 fee or charge is a fixed amount or is determined as a percentage  
18 of the value of the property, the purchase price or other  
19 consideration given for the transfer. The following are not  
20 private transfer fees for purposes of this chapter:

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

1 appurtenant surface access rights.

2 (2) Any commission payable to a licensed real estate  
3 broker for the transfer of real property pursuant to an  
4 agreement between the broker and the grantor or the grantee,  
5 including, but not limited to, any subsequent additional  
6 commission for that transfer payable by the grantor or the  
7 grantee based upon any subsequent appreciation, development  
8 or sale of the property.

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

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

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

30 (6) Any tax, fee, charge, assessment, fine or other

1 amount payable to or imposed by a governmental authority.

2 (7) Any fee, charge, assessment, dues, fine,  
3 contribution or other amount payable to a homeowners',  
4 condominium, cooperative, manufactured home or property  
5 owners' association and its agent pursuant to a declaration  
6 or covenant or law applicable to the association, including,  
7 but not limited to, fees or charges payable for estoppel  
8 letters or certificates, including resale certificates,  
9 issued by the association or its authorized agent.

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

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

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

27 "Private transfer fee obligation." An obligation arising  
28 under a declaration or covenant recorded against the title to  
29 real property, or under any other contractual agreement or  
30 promise, whether recorded, that requires or purports to require

1 the payment of a private transfer fee upon a subsequent transfer  
2 of an interest in the real property.

3 "Transfer." The sale, gift, conveyance, assignment,  
4 inheritance or other transfer of an ownership interest in real  
5 property located in this Commonwealth.

6 § 8104. Prohibition.

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

16 § 8105. Liability for violation.

17 A person who records or enters into an agreement imposing a  
18 private transfer fee obligation in his favor after the effective  
19 date of this chapter shall be liable for the following MAY BE  
20 AWARDED: ←

21 (1) the damages resulting from the imposition of the  
22 private transfer fee obligation on the transfer of an  
23 interest in the real property, including, but not limited to,  
24 the amount of any transfer fee paid by a party to the  
25 transfer; and

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

30 Where an agent acts on behalf of a disclosed principal to record

1 or secure a private transfer fee obligation, liability shall be  
2 assessed to the principal, rather than the agent.

3 § 8106. Disclosure.

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

16 (b) Recovery upon failure to disclose.--Where a private  
17 transfer fee obligation is not disclosed under subsection (a)  
18 and a buyer subsequently discovers the existence of the private  
19 transfer fee obligation after title to the property has passed  
20 to the buyer, the buyer shall have the right to recover ←  
21 AWARDED:

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

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

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

30 (2) the attorney fees, expenses and costs incurred by

1 the buyer in seeking the buyer's remedies under this  
2 subsection.

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

6 § 8107. Notice requirements for existing private transfer fee  
7 obligations.

8 (a) Notice of private transfer fee obligation.--The payee ←  
9 HOLDER of a private transfer fee obligation imposed prior to the ←  
10 effective date of this chapter shall record, within six months  
11 after the effective date of this chapter, against the real  
12 property subject to the private transfer fee obligation, a  
13 separate document in the office of the recorder of deeds for  
14 each county in which the real property is located that complies  
15 with all of the following requirements:

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

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

23 (3) ~~Examples~~ IF THE REAL PROPERTY IS RESIDENTIAL ←  
24 PROPERTY, ACTUAL DOLLAR COST EXAMPLES of the private transfer  
25 fee for a home priced at \$250,000, \$500,000 and \$750,000.

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

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

30 (6) The name of the payee and specific contact



1 information regarding where the funds are to be sent.

2 (7) The acknowledged signature of the payee HOLDER, or a ←  
3 representative of the payee HOLDER. ←

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

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

11 (b) Amendment.--The payee may file an amendment to the  
12 notice of private transfer fee containing new contact  
13 information, but the amendment must contain the recording  
14 information of the notice of private transfer fee which it  
15 amends and the legal description of the real property burdened  
16 by the private transfer fee obligation.

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

27 (d) Defective notice.--If a payee records a MATERIALLY ←  
28 defective OR MISLEADING notice under subsection (a), then a ←  
29 grantor, on recording of an affidavit under subsection (f), may  
30 convey an interest in the real property to a grantee without

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

7 (e) Failure to provide statement of private transfer fee.--  
8 Should a payee fail to provide a written statement of the  
9 private transfer fee payable within 30 days of the date of a  
10 written request for the same sent to the address shown in the  
11 notice of private transfer fee, then a grantor, on recording of  
12 an 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 (f) Affidavit.--An affidavit stating the facts enumerated in  
20 subsection (g) (1) or (2) shall be recorded in the office of the  
21 recorder of deeds for each county in which the real property is  
22 situated prior to or simultaneously with a conveyance pursuant  
23 to subsection (d) or (e) of real property unburdened by a  
24 private transfer fee obligation. An affidavit filed under this  
25 subsection shall state that the affiant has actual knowledge of,  
26 and is competent to testify to, the facts in the affidavit and  
27 shall include the legal description of the real property  
28 burdened by the private transfer fee obligation, the name of the  
29 person appearing by the record to be the owner of the real  
30 property at the time of the signing of the affidavit, a

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

5 (g) Effect of affidavit.--An affidavit filed under  
6 subsection (f) shall constitute prima facie evidence that  
7 either:

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

10 (2) a request for the written statement of the private  
11 transfer fee was sent to the payee at the address shown on  
12 the notice of private transfer fee and the payee failed to  
13 provide the written statement of the private transfer fee  
14 payable within 30 days of the date of the notice sent to the  
15 address shown in the notification.

16 Section 2. This act shall take effect immediately.