

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL****No. 442** Session of  
2011

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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, THOMAS, AUMENT AND OBERLANDER, FEBRUARY 4, 2011

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AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,  
MARCH 7, 2011

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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

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 or  
4 operating subsidiary of a bank or savings association; a credit  
5 union; an association authorized by law to engage in the  
6 mortgage loan business; or an assignee of a mortgage, mortgage  
7 note or other rights of a financial institution.

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

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

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

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

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

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

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

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

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

9           (8) Any fee, charge, assessment, dues, fine,  
10 contribution or other amount ~~imposed by a declaration or~~ ←  
11 ~~covenant encumbering real property, and payable solely to a~~  
12 ~~nonprofit or charitable organization for the purpose of~~  
13 ~~supporting cultural, educational, charitable, recreational,~~  
14 ~~religious, environmental, conservation or other similar~~  
15 ~~activities.~~, WHICH IS IMPOSED BY A DECLARATION OR COVENANT ←  
16 ENCUMBERING REAL PROPERTY AND WHICH IS PAYABLE SOLELY TO A  
17 NONPROFIT CORPORATION, CHARITABLE ASSOCIATION OR CHARITABLE  
18 TRUST, THAT:

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

20           AND

21           (II) HOLDS, ON REAL PROPERTY SUBJECT TO THE  
22 DECLARATION OR COVENANT OR ON REAL PROPERTY INCLUDED IN  
23 THE SAME DEVELOPMENT PLAN WITH THE REAL PROPERTY SUBJECT  
24 TO THE DECLARATION OR COVENANT:

25           (A) AN AGRICULTURAL CONSERVATION EASEMENT, AS  
26 DEFINED IN SECTION 3 OF THE ACT OF JUNE 30, 1981  
27 (P.L.128, NO.43), KNOWN AS THE AGRICULTURAL AREA  
28 SECURITY LAW; OR

29           (B) A CONSERVATION EASEMENT, AS DEFINED IN  
30 SECTION 3 OF THE ACT OF JUNE 22, 2001 (P.L.390,

1 NO.29), KNOWN AS THE CONSERVATION AND PRESERVATION  
2 EASEMENTS ACT.

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

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

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

19 "Transfer." The sale, gift, conveyance, assignment,  
20 inheritance or other transfer of an ownership interest in real  
21 property located in this Commonwealth.

22 § 8104. Prohibition.

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

1 is presumed valid and enforceable.

2 § 8105. Liability for violation.

3 A person who records or enters into an agreement imposing a  
4 private transfer fee obligation in his favor after the effective  
5 date of this chapter may be awarded:

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

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

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

18 § 8106. Disclosure.

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

1 (b) Recovery upon failure to disclose.--Where a private  
2 transfer fee obligation is not disclosed under subsection (a)  
3 and a buyer subsequently discovers the existence of the private  
4 transfer fee obligation after title to the property has passed  
5 to the buyer, the buyer may be awarded:

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

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

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

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

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

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

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

30 (1) The title of the document shall be "Notice of



1 Private Transfer Fee Obligation" in at least 14-point  
2 boldface type.

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

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

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

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

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

16 (7) The acknowledged signature of the holder, or a  
17 representative of the holder.

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

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

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

1     (c) Failure to file notice.--If a payee fails to file the  
2 notice required under subsection (a), the grantor of real  
3 property burdened by the private transfer fee obligation may  
4 proceed with the conveyance of any interest in the real property  
5 to any grantee and in so doing shall be conclusively deemed to  
6 have acted in good faith and shall not be subject to any  
7 obligations under the private transfer fee obligation. In such  
8 event, the private transfer fee obligation shall become null and  
9 void and the real property shall be conveyed free and clear of  
10 the private transfer fee and private transfer fee obligation.

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

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

1 the real property shall be conveyed free and clear of the  
2 private transfer fee and private transfer fee obligation.

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

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

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

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

30 Section 2. This act shall take effect immediately.