

## 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, TAYLOR, TOBASH, VEREB, VULAKOVICH, WAGNER, WATERS, WATSON, WILLIAMS, RAVENSTAHL, THOMAS, AUMENT, OBERLANDER AND STEPHENS, FEBRUARY 4, 2011

SENATOR YAW, URBAN AFFAIRS AND HOUSING, IN SENATE, AS AMENDED,  
MAY 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

1 PRIVATE TRANSFER FEE OBLIGATIONS

2 Sec.

3 8101. Short title of chapter.

4 8102. Intent.

5 8103. Definitions.

6 8104. Prohibition.

7 8105. Liability for violation.

8 8106. Disclosure.

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

11 § 8101. Short title of chapter.

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

14 § 8102. Intent.

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

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

30 § 8103. Definitions.

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

4 "Financial institution." A bank, savings association or  
5 operating subsidiary of a bank or savings association; a credit  
6 union; an association authorized by law to engage in the  
7 mortgage loan business; or an assignee of a mortgage, mortgage  
8 note or other rights of a financial 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, which is imposed by a  
12 declaration or covenant encumbering real property and which  
13 is payable solely to a nonprofit corporation, charitable  
14 association or charitable trust, that:

15 (i) has been in existence for at least two years;

16 and

17 (ii) holds, on real property subject to the  
18 declaration or covenant or on real property included in  
19 the same development plan with the real property subject  
20 to the declaration or covenant:

21 (A) an agricultural conservation easement, as  
22 defined in section 3 of the act of June 30, 1981  
23 (P.L.128, No.43), known as the Agricultural Area  
24 Security Law; or

25 (B) a conservation easement, as defined in  
26 section 3 of the act of June 22, 2001 (P.L.390,  
27 No.29), known as the Conservation and Preservation  
28 Easements Act.

29 (9) Any fee, charge, assessment, dues, fine,  
30 contribution or other amount pertaining solely to the

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

6 (10) Any payment or other amount due for or upon the  
7 removal or extraction of timber, crops or minerals, including  
8 oil, gas and water, from 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 recorded, that requires or purports to require  
13 the payment of a private transfer fee upon a subsequent transfer  
14 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. This section does not mean  
25 that a private transfer fee obligation recorded or entered into  
26 in this Commonwealth before the effective date of this chapter  
27 is presumed valid and enforceable.

28 § 8105. Liability for violation.

29 A person who records or enters into an agreement imposing a  
30 private transfer fee obligation in his favor after the effective



1 date of this chapter may be awarded LIABLE FOR THE FOLLOWING:

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

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

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

14 § 8106. Disclosure.

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

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

1 to the buyer, the buyer may be awarded:

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

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

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

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

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

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

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

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

29 (2) The amount, if the private transfer fee is a flat  
30 amount, or the percentage of the sales price constituting the



1 cost of the private transfer fee, or other basis by which the  
2 private transfer fee is to be calculated.

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

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

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

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

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

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

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

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

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

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

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

17 (e) Failure to provide statement of private transfer fee.--  
18 Should a payee fail to provide a written statement of the  
19 private transfer fee payable within 30 days of the date of a  
20 written request for the same sent to the address shown in the  
21 notice of private transfer fee, then a grantor, on recording of  
22 an 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 (f) Affidavit.--An affidavit stating the facts enumerated in  
30 subsection (g) (1) or (2) shall be recorded in the office of the

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

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

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

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

26 Section 2. This act shall take effect immediately.