

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 353 Session of 2011

INTRODUCED BY FONTANA, YAW, ERICKSON, VOGEL, FOLMER, RAFFERTY, BAKER, KITCHEN, ALLOWAY, M. WHITE, EICHELBERGER, PILEGGI, BROWNE, DINNIMAN, GREENLEAF, VANCE, WAUGH, COSTA, BOSCOLA, FERLO, HUGHES, BREWSTER, WASHINGTON, EARLL, KASUNIC, STACK, ARGALL, YUDICHAK, BRUBAKER, BLAKE, TARTAGLIONE, PIPPY, WOZNIAK, FARNESE AND WARD, FEBRUARY 1, 2011

REFERRED TO URBAN AFFAIRS AND HOUSING, FEBRUARY 1, 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.

12 8101. Short title of chapter.

13 8102. Intent.

14 8103. Definitions.

15 8104. Prohibition.

16 8105. Liability for violation.

17 8106. Disclosure.

1 8107. Notice requirements for existing private transfer fee
2 obligations.

3 § 8101. Short title of chapter.

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

6 § 8102. Intent.

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

22 § 8103. Definitions.

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

26 "Financial institution." A bank, savings association, an
27 operating subsidiary of a bank or savings association; a credit
28 union or association authorized by law to engage in the mortgage
29 loan business; assignees of a mortgage, mortgage note or other
30 rights of such an institution.

1 "Payee." A person that claims the right to receive or
2 collect a private transfer fee payable under a private transfer
3 obligation.

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

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

22 (2) Any commission payable to a licensed real estate
23 broker for the transfer of real property pursuant to an
24 agreement between the broker and the grantor or the grantee,
25 including, but not limited to, any subsequent additional
26 commission for that transfer payable by the grantor or the
27 grantee based upon any subsequent appreciation, development
28 or sale of the property.

29 (3) Any interest, charge, fee or other amount payable to
30 a lender or financial institution pursuant to a mortgage,

1 deed of trust, lien or security interest in or against real
2 property, including, but not limited to, any fee payable for
3 consenting to an assumption of a loan or a transfer of the
4 real property subject to the mortgage, deed of trust, lien or
5 security interest or any fee or charge payable for estoppel
6 letters or certificates and any shared appreciation interest
7 or profit participation or other consideration payable to the
8 lender or financial institution.

9 (4) Any rent, reimbursement, charge, fee or other amount
10 payable by a lessee to a lessor under a lease, including, but
11 not limited to, any fee payable to the lessor for consenting
12 to an assignment, subletting, encumbrance or transfer of the
13 lease.

14 (5) Any consideration payable to the holder of an option
15 to purchase an interest in real property or the holder of a
16 right of first refusal or first offer to purchase an interest
17 in real property for waiving, releasing or not exercising the
18 option or right upon the transfer of the real property to
19 another person.

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

22 (7) Any fee, charge, assessment, dues, fine,
23 contribution or other amount payable to a homeowners',
24 condominium, cooperative, manufactured home or property
25 owners' association and its agent pursuant to a declaration
26 or covenant or law applicable to the association, including,
27 but not limited to, fees or charges payable for estoppel
28 letters or certificates, including resale certificates,
29 issued by the association or its authorized agent.

30 (8) Any fee, charge, assessment, dues, fine,

1 contribution or other amount imposed by a declaration or
2 covenant encumbering real property, and payable solely to a
3 nonprofit or charitable organization for the purpose of
4 supporting cultural, educational, charitable, recreational,
5 religious, environmental, conservation or other similar
6 activities.

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

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

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

23 "Transfer." The sale, gift, conveyance, assignment,
24 inheritance or other transfer of an ownership interest in real
25 property located in this Commonwealth.

26 § 8104. Prohibition.

27 A private transfer fee obligation recorded or entered into in
28 this Commonwealth on or after the effective date of this chapter
29 does not run with the title to real property and is not binding
30 on or enforceable at law or in equity against a subsequent

1 owner, purchaser or mortgagee of an interest in real property as
2 an equitable servitude or otherwise. This section does not mean
3 that a private transfer fee obligation recorded or entered into
4 in this Commonwealth before the effective date of this chapter
5 is presumed valid and enforceable.

6 § 8105. Liability for violation.

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

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

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

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

22 § 8106. Disclosure.

23 (a) General rule.--A contract for the sale of real property
24 subject to a private transfer fee obligation shall include a
25 provision disclosing the existence of that obligation, a
26 description of the obligation and a statement that private
27 transfer fee obligations are subject to certain restrictions
28 under this chapter. A contract for the sale of real property
29 that does not conform to the requirements of this section shall
30 not be enforceable by the seller against the buyer, nor shall

1 the buyer be liable to the seller for damages under the
2 contract. The buyer under a contract that fails to comply with
3 this section shall be entitled to the return of all deposits
4 made in connection with the sale of the real property.

5 (b) Recovery upon failure to disclose.--Where a private
6 transfer fee obligation is not disclosed under subsection (a)
7 and a buyer subsequently discovers the existence of the private
8 transfer fee obligation after title to the property has passed
9 to the buyer, the buyer shall have the right to recover:

10 (1) the damages resulting from the failure to disclose
11 the private transfer fee obligation, including, but not
12 limited to, the amount of any private transfer fee paid by
13 the buyer, or the difference between:

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

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

18 (2) the attorney fees, expenses and costs incurred by
19 the buyer in seeking the buyer's remedies under this
20 subsection.

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

24 § 8107. Notice requirements for existing private transfer fee
25 obligations.

26 (a) Notice of private transfer fee obligation.--The payee of
27 a private transfer fee obligation imposed prior to the effective
28 date of this chapter shall record, within six months after the
29 effective date of this chapter, against the real property
30 subject to the private transfer fee obligation, a separate

1 document in the office of the recorder of deeds for each county
2 in which the real property is located that complies with all of
3 the following requirements:

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

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

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

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

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

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

19 (7) The acknowledged signature of the payee, or a
20 representative of the payee.

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

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

28 (b) Amendment.--The payee may file an amendment to the
29 notice of private transfer fee containing new contact
30 information, but the amendment must contain the recording

1 information of the notice of private transfer fee which it
2 amends and the legal description of the real property burdened
3 by the private transfer fee obligation.

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

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

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

1 under the private transfer fee obligation. In such event, the
2 private transfer fee obligation shall become null and void and
3 the real property shall be conveyed free and clear of the
4 private transfer fee and private transfer fee obligation.

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

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

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

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

1 address shown in the notification.

2 Section 2. This act shall take effect immediately.