

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, WARD, McILHINNEY AND SMUCKER,
FEBRUARY 1, 2011

SENATOR YAW, URBAN AFFAIRS AND HOUSING, AS AMENDED, FEBRUARY 9,
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.

1 8106. Disclosure.

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

4 § 8101. Short title of chapter.

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

7 § 8102. Intent.

8 The General Assembly finds and declares that the public
9 policy of this Commonwealth favors the marketability of real
10 property and the transferability of interests in real property
11 free of title defects or unreasonable restraints on alienation.

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

23 § 8103. Definitions.

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

27 "Financial institution." A bank, savings association, ~~an~~ OR ←
28 operating subsidiary of a bank or savings association; a credit
29 union ~~or~~, AN association authorized by law to engage in the ←
30 mortgage loan business; ~~assignees~~ OR AN ASSIGNEE of a mortgage, ←

1 mortgage note or other rights of ~~such an~~ A FINANCIAL
2 institution.

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

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

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

26 (2) Any commission payable to a licensed real estate
27 broker for the transfer of real property pursuant to an
28 agreement between the broker and the grantor or the grantee,
29 including, but not limited to, any subsequent additional
30 commission for that transfer payable by the grantor or the

1 grantee based upon any subsequent appreciation, development
2 or sale of the property.

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

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

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

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

26 (7) Any fee, charge, assessment, dues, fine,
27 contribution or other amount payable to a homeowners',
28 condominium, cooperative, manufactured home or property
29 owners' association and its agent pursuant to a declaration
30 or covenant or law applicable to the association, including,

1 but not limited to, fees or charges payable for estoppel
2 letters or certificates, including resale certificates,
3 issued by the association or its authorized agent.

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

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

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

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

27 "Transfer." The sale, gift, conveyance, assignment,
28 inheritance or other transfer of an ownership interest in real
29 property located in this Commonwealth.

30 § 8104. Prohibition.

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

10 § 8105. Liability for violation.

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

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

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

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

27 § 8106. Disclosure.

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

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

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

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 ←
3 HOLDER of a private transfer fee obligation imposed prior to the ←
4 effective date of this chapter shall record, within six months
5 after the effective date of this chapter, against the real
6 property subject to the private transfer fee obligation, a
7 separate document in the office of the recorder of deeds for
8 each county in which the real property is located that complies
9 with all of 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~~ IF THE REAL PROPERTY IS RESIDENTIAL ←
18 PROPERTY, ACTUAL DOLLAR COST EXAMPLES of the private transfer
19 fee for a home priced at \$250,000, \$500,000 and \$750,000.

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

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

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

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

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

30 (9) Where there is more than one person or entity who

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

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

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

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

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

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

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

1 either:

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

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

10 Section 2. This act shall take effect immediately.