
SUBSTITUTE SENATE BILL 5115

State of Washington

62nd Legislature

2011 Regular Session

By Senate Judiciary (originally sponsored by Senators Harper, Pflug, Kline, Roach, Carrell, and Kilmer)

READ FIRST TIME 02/08/11.

1 AN ACT Relating to private transfer fee obligations; adding a new
2 chapter to Title 64 RCW; and declaring an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds and declares that the
5 public policy of this state favors the marketability of real property
6 and the transferability of interests in real property free of title
7 defects or unreasonable restraints on alienation. The legislature
8 further finds and declares that private transfer fee obligations
9 violate this public policy by impairing the marketability and
10 transferability of real property and by constituting an unreasonable
11 restraint on alienation regardless of the duration of the obligation to
12 pay a private transfer fee, the amount of a private transfer fee, or
13 the method by which any private transfer fee is created or imposed.
14 Thus, the legislature finds and declares that a private transfer fee
15 obligation may not run with the title to real property, touch or
16 concern the real property, or otherwise bind subsequent owners of real
17 property under any common law or equitable principle.

1 NEW SECTION. **Sec. 2.** This chapter may be known and cited as the
2 private transfer fee obligation act.

3 NEW SECTION. **Sec. 3.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Association" means: An association of apartment owners as
6 defined in RCW 64.32.010; a unit owners' association as defined in RCW
7 64.34.020; a homeowners' association as defined in RCW 64.38.010; a
8 corporation organized pursuant to chapter 24.06 RCW for the purpose of
9 owning real estate under a cooperative ownership plan; or a nonprofit
10 or cooperative membership organization composed exclusively of owners
11 of mobile homes, manufactured housing, timeshares, camping resort
12 interests, or other interests in real property that is responsible for
13 the maintenance, improvements, services, or expenses related to real
14 property that is owned, used, or enjoyed in common by the members.

15 (2) "Payee" means the person or entity who claims the right to
16 receive or collect a private transfer fee payable under a private
17 transfer fee obligation. A payee may or may not have a pecuniary
18 interest in the private transfer fee obligation.

19 (3) "Private transfer fee" means a fee or charge payable upon the
20 transfer of an interest in real property, or payable for the right to
21 make or accept such transfer, regardless of whether the fee or charge
22 is a fixed amount or is determined as a percentage of the value of the
23 real property, the purchase price, or other consideration given for the
24 transfer. The following are not private transfer fees for the purposes
25 of this section:

26 (a) Any consideration payable by the grantee to the grantor for the
27 interest in real property being transferred, including any subsequent
28 additional consideration for the real property payable by the grantee
29 based upon any subsequent appreciation, development, or sale of the
30 real property, if such additional consideration is payable on a one-
31 time basis only and the obligation to make such payment does not bind
32 successors in title to the real property;

33 (b) Any commission payable to a licensed real estate broker for
34 services rendered in connection with the transfer of real property
35 pursuant to an agreement between the broker and the grantor or the
36 grantee including, but not limited to, any subsequent additional

1 commission for that transfer payable by the grantor or the grantee
2 based upon any subsequent appreciation, development, or sale of the
3 property;

4 (c) Any interest, charges, fees, or other amounts payable by a
5 borrower to a lender pursuant to a loan secured by a mortgage against
6 real property including, but not limited to, any fee payable to the
7 lender for consenting to an assumption of the loan or a transfer of the
8 real property subject to the mortgage, any fees or charges payable to
9 the lender for estoppel letters or certificates, and any shared
10 appreciation interest, profit participation, or other consideration,
11 and payable to the lender in connection with the loan;

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

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

22 (f) Any tax, fee, charge, assessment, fine, or other amount payable
23 to or imposed by a governmental authority;

24 (g) Any assessment, fee, charge, fine, dues, or other amount
25 payable to an association pursuant to chapter 64.32, 64.34, or 64.38
26 RCW, payable by a purchaser of a camping resort contract, as defined in
27 RCW 19.105.300, or a timeshare, as defined in RCW 64.36.010, or payable
28 pursuant to a recorded servitude encumbering the real property being
29 transferred, as long as no portion of the fee is required to be passed
30 through or paid to a third party;

31 (h) Any fee payable, upon a transfer, to an organization qualified
32 under section 501(c)(3) or 501(c)(4) of the internal revenue code of
33 1986, if the sole purpose of such organization is to support cultural,
34 educational, charitable, recreational, conservation, or similar
35 activities benefiting the real property being transferred and the fee
36 is used exclusively to fund such activities;

37 (i) Any fee, charge, assessment, dues, fine, contribution, or other
38 amount pertaining solely to the purchase or transfer of a club

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

5 (j) Any fee charged by an association or an agent of an association
6 to a transferor or transferee for a service rendered contemporaneously
7 with the imposition of the fee, provided that the fee is not to be
8 passed through to a third party other than an agent of the association.

9 (4) "Private transfer fee obligation" means an obligation arising
10 under a declaration or covenant recorded against the title to real
11 property, or under any other contractual agreement or promise, recorded
12 or not, that requires or purports to require the payment of a private
13 transfer fee upon a subsequent transfer of an interest in the real
14 property.

15 (5) "Transfer" means the sale, gift, grant, conveyance, lease,
16 license, assignment, inheritance, or other act resulting in a transfer
17 of ownership interest in real property located in this state.

18 NEW SECTION. **Sec. 4.** (1) A private transfer fee obligation
19 recorded or entered into in this state on or after the effective date
20 of this section does not run with the title to real property and is not
21 binding on or enforceable at law or in equity against any subsequent
22 owner, purchaser, or mortgagee or holder of any interest in real
23 property as an equitable servitude or otherwise. Any private transfer
24 fee obligation that is recorded or entered into in this state on or
25 after the effective date of this section is void and unenforceable.

26 (2) A private transfer fee obligation recorded or entered into in
27 this state before the effective date of this section is not presumed
28 valid and enforceable. Any such private transfer fee obligation must
29 be interpreted and enforced according to principles of applicable real
30 estate, servitude contract, and other law including, without
31 limitation, restraints on alienation, the rule against perpetuities,
32 the touch and concern doctrine, and the requirement for covenants to
33 run with the land, as well as fraud, misrepresentation, violation of
34 public policy, or another invalidating cause.

35 NEW SECTION. **Sec. 5.** Any person who records, or enters into, an
36 agreement imposing a private transfer fee obligation in the person's

1 favor after the effective date of this section is liable for (1) any
2 damages resulting from the imposition of the private transfer fee
3 obligation on the transfer of an interest in the real property
4 including, but not limited to, the amount of any private transfer fee
5 paid by a party to the transfer, and (2) reasonable attorneys' fees,
6 expenses, and costs incurred by a party to the transfer or mortgagee of
7 the real property to recover any private transfer fee paid or in
8 connection with an action to quiet title. If an agent acts on behalf
9 of a principal to record or secure a private transfer fee obligation,
10 liability must be assessed to the principal, rather than the agent.

11 NEW SECTION. **Sec. 6.** (1) A payee of a private transfer fee
12 obligation imposed before the effective date of this section shall
13 record, before December 31, 2011, against the real property subject to
14 the private transfer fee obligation, a separate document in the county
15 auditor's office in the county in which the real property is located
16 that includes all of the following requirements:

- 17 (a) The title, "Notice of Private Transfer Fee Obligation";
18 (b) The amount if the private transfer fee is a flat amount, the
19 percentage of the sales price constituting the cost of the private
20 transfer fee, or another basis by which the private transfer fee is to
21 be calculated;
22 (c) The date under which the private transfer fee obligation
23 expires, if any;
24 (d) The name and address of the payee;
25 (e) The acknowledged signature of the payee or a representative of
26 the payee; and
27 (f) The legal description of the real property purportedly burdened
28 by the private transfer fee obligation.

29 (2) A payee may file an amendment to the notice of private transfer
30 fee obligation containing new contact information. The amendment must
31 contain the recording information of the notice of private transfer fee
32 obligation which it amends and the legal description of the real
33 property burdened by the private transfer fee obligation.

34 (3) If a payee fails to file the notice required under subsection
35 (1) of this section before December 31, 2011, the private transfer fee
36 obligation is not enforceable by the payee.

1 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately.

5 NEW SECTION. **Sec. 8.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 9.** Sections 1 through 7 of this act constitute
10 a new chapter in Title 64 RCW.

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