

[First Reprint]

ASSEMBLY, No. 2861

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED JUNE 10, 2010

Sponsored by:

Assemblyman FREDERICK SCALERA

District 36 (Bergen, Essex and Passaic)

Assemblywoman MILA M. JASEY

District 27 (Essex)

Assemblyman ERIK PETERSON

District 23 (Warren and Hunterdon)

Assemblyman PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Co-Sponsored by:

Assemblymen Connors, Giblin, Milam, Albano, DeAngelo, Coughlin, Greenwald, Green, Assemblywoman Watson Coleman, Assemblymen Biondi, Amodeo, Polistina, P. Barnes, III, Chiusano, DiCicco, DiMaio, Assemblywoman Casagrande, Assemblymen Thompson, Rible, Assemblywoman Angelini, Assemblyman Bramnick, Assemblywomen N.Munoz, McHose, Addiego, Assemblyman Rudder, Assemblywoman Lampitt, Senators Van Drew, Rice, Cardinale, B.Smith, Turner, Weinberg, Bateman, Beck, Buono, Ciesla, Codey, Oroho, Goodwin, T.Kean, Madden, Ruiz and Whelan

SYNOPSIS

Prohibits certain private transfer fees and imposes disclosure requirements.

CURRENT VERSION OF TEXT

As amended by the Senate on September 30, 2010.

(Sponsorship Updated As Of: 10/19/2010)

1 AN ACT regulating private transfer fees and supplementing Title 46
2 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. The Legislature declares that the public policy of this State
8 favors the marketability of real property and the transferability of
9 interests in real property free of title defects or unreasonable
10 restraints on alienation. The Legislature finds that private transfer
11 fee obligations impair the marketability and transferability of real
12 property by constituting an unacceptable restraint on alienation
13 regardless of the duration of the obligation to pay a private transfer
14 fee, the amount of a private transfer fee, or the method by which
15 any private transfer fee is created or imposed. The Legislature
16 declares that a private transfer fee obligation shall not run with the
17 title to property or bind subsequent owners of property under
18 common law or equitable principles.

19

20 2. As used in P.L. , c. (C.) (pending before the
21 Legislature as this bill):

22 “Transfer” means the sale, gift, conveyance, assignment,
23 inheritance, or other transfer of an ownership interest in real
24 property located in the State of New Jersey.

25 “Private transfer fee” means a fee or charge required by a private
26 transfer fee obligation and payable upon the transfer of an interest
27 in real property, or payable for the right to make or accept such
28 transfer, regardless of whether the fee or charge is a fixed amount
29 or is determined as a percentage of the value of the property, the
30 purchase price, or other consideration given for the transfer. The
31 following are not private transfer fees for purposes of
32 P.L. , c. (C.) (pending before the Legislature as this bill):

33 a. ¹(1) Any consideration payable by the grantee to the grantor
34 for the interest in real property being transferred, including any
35 subsequent additional consideration for the property payable by the
36 grantee based upon any subsequent appreciation, development, or
37 sale of the property, provided such additional consideration is
38 payable on a one-time basis only and obligation to make such
39 payment does not bind successors in title to the property. For the
40 purposes of this subsection, an interest in real property may include
41 a separate mineral estate and its appurtenant surface access rights.

42 ¹(2) Any subsequent additional consideration payable to the
43 grantor of an interest in unimproved real property by the first

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate floor amendments adopted September 30, 2010.

1 successor-in-interest to the original grantee, provided that the
2 additional consideration is payable on a one-time basis only and
3 follows the construction of an improvement on the property.¹

4 b. Any commission payable to a licensed real estate broker for
5 the transfer of real property pursuant to an agreement between the
6 broker and the grantor or the grantee, including any subsequent
7 additional commission for that transfer payable by the grantor or the
8 grantee based upon any subsequent appreciation, development, or
9 sale of the property.

10 c. Any interest, charges, fees, or other amounts payable by a
11 borrower to a lender pursuant to a loan secured by a mortgage
12 against real property, including, but not limited to, any fee payable
13 to the lender for consenting to an assumption of the loan or a
14 transfer of the real property subject to the mortgage, any fees or
15 charges payable to the lender for estoppel letters or certificates, and
16 any shared appreciation interest or profit participation or other
17 consideration and payable to the lender in connection with the loan.

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

22 e. Any consideration payable to the holder of an option to
23 purchase an interest in real property or the holder of a right of first
24 refusal or first offer to purchase an interest in real property for
25 waiving, releasing, or not exercising the option or right upon the
26 transfer of the property to another person ¹, or any consideration
27 payable by the holder of an option to the property owner necessary
28 to keep the option in force¹.

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

31 g. Any fee, charge, assessment, fine, or other amount payable
32 to a homeowners', condominium, cooperative, mobile home, private
33 residential leasehold community, or property owners' association
34 pursuant to a declaration or covenant authorized in a master deed or
35 bylaws including, but not limited to, fees or charges payable for
36 estoppel letters or certificates issued by the association or its
37 authorized agent.

38 h. Any fee, charge, assessment, dues, contribution, or other
39 amount imposed by a declaration or covenant encumbering a
40 community, and payable to a nonprofit or charitable organization,
41 for the purpose of supporting cultural, educational, charitable,
42 recreational, environmental, conservation, or other similar activities
43 benefiting the community that is subject to the declaration or
44 covenant.

45 i. Any fee, charge, assessment, dues, contribution, or other
46 amount pertaining to the purchase or transfer of a club membership
47 relating to real property owned by the member, including, but not
48 limited to, any amount determined by reference to the value,

1 purchase price, or other consideration given for the transfer of the
2 real property.

3 “Private transfer fee obligation” means a declaration or covenant
4 recorded against the title to real property, or any other contractual
5 agreement or promise, whether or not recorded, that requires or
6 purports to require the payment of a private transfer fee to the
7 declarant or other person specified in the declaration, obligation or
8 agreement, or to their successors or assigns, upon a subsequent
9 transfer of an interest in the real property.

10

11 3. a. A private transfer fee obligation recorded or entered into
12 in this State on or after the effective date of P.L. , c. (C.)
13 (pending before the Legislature as this bill) shall not run with the
14 title to real property and is not binding on or enforceable at law or
15 in equity against any subsequent owner, purchaser, or mortgagee of
16 any interest in real property as an equitable servitude or otherwise.
17 Any private transfer fee obligation that is recorded or entered into
18 in this State on or after the effective date of P.L. , c. (C.)
19 (pending before the Legislature as this bill) is void and
20 unenforceable.

21 b. This section shall not apply to a private transfer fee
22 obligation recorded or entered into in this State before the effective
23 date of P.L. , c. (C.) (pending before the Legislature as this
24 bill). This subsection does not mean that a private transfer fee
25 obligation recorded or entered into in this State before the effective
26 date of P.L. , c. (C.) (pending before the Legislature as this
27 bill) is presumed valid and enforceable.

28

29 4. Any person who records or enters into an agreement
30 imposing a private transfer fee obligation in their favor after the
31 effective date of P.L. , c. (C.) (pending before the Legislature
32 as this bill) shall be liable for both any and all damages resulting
33 from the imposition of the private transfer fee obligation on the
34 transfer of an interest in the real property, including, without
35 limitation, the amount of any transfer fee paid by a party to the
36 transfer, and all attorneys fees, expenses and costs incurred by a
37 party to the transfer or mortgagee of the real property to recover any
38 private transfer fee paid, or in connection with an action to quiet
39 title. Where an agent acts on behalf of a principal to record or
40 secure a private transfer fee obligation, liability shall be assessed to
41 the principal, rather than the agent.

42

43 5. Prior to closing on any sale of real property, the seller shall
44 furnish to any purchaser a written statement disclosing the existence
45 of any private transfer fee obligation. This written statement shall
46 include a description of the private transfer fee obligation and
47 include a statement that private transfer fee obligations are subject

1 to prohibitions under P.L. , c. (C.) (pending before the
2 Legislature as this bill).

3
4 6. a. The payee designated in a private transfer fee obligation
5 made prior to the effective date of P.L. , c. (C.) (pending
6 before the Legislature as this bill), shall ensure that the notice of
7 private transfer fee, described in subsection b., is recorded, ¹[prior
8 to December 31, 2010] no later than six months following the
9 effective date of P.L. , c. (C.) (pending before the
10 Legislature as this bill)¹, in the county recording office against the
11 real property subject to the private transfer fee obligation.

12 b. A private transfer fee obligation made prior to the effective
13 date of P.L. , c. (C.) (pending before the Legislature as this
14 bill) shall be imposed and enforceable by recording of a notice of
15 private transfer fee, which shall be a document, in recordable form
16 that meets all of the following requirements:

17 (1) The title of the document shall be “Notice of Private
18 Transfer Fee Obligation” in at least 14-point boldface type;

19 (2) The names of all current owners of the real property subject
20 to the transfer fee, and the legal description and assessor's parcel
21 number for the affected real property;

22 (3) The amount, if the fee is a flat amount, or the percentage of
23 the sales price constituting the cost of the transfer fee, or another
24 basis by which the transfer fee is to be calculated;

25 (4) If the real property is residential property, actual dollar-cost
26 examples of the transfer fee for a home priced at \$250,000,
27 \$500,000, and \$750,000;

28 (5) The date or circumstances under which the private transfer
29 fee covenant expires, if any;

30 (6) The purpose for which the funds from the private transfer
31 fee obligation will be used;

32 (7) The name of the payee or any assigns, and specific contact
33 information regarding where the funds are to be sent;

34 (8) The acknowledged signature of a representative of an entity
35 to which a private transfer fee is to be paid; and

36 (9) The legal description of the real property burdened by the
37 private transfer fee obligation.

38 c. The payee may file an amendment to the notice of transfer
39 fee containing new contact information, but such amendment must
40 contain the recording information for the notice of transfer fee that
41 the amendment modifies and the legal description of the property
42 burdened by the private transfer fee obligation.

43 d. If the payee fails to comply fully with subsection a. of this
44 section, the grantor of any real property burdened by the private
45 transfer fee obligation may proceed with the conveyance of any
46 interest in the real property to any grantee and in so doing shall be
47 deemed to have acted in good faith and shall not be subject to any
48 obligations under the private transfer fee obligation. In such event,

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

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

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

27 g. When recorded, an affidavit as described in subsection f. of
28 this section shall constitute prima facie evidence that:

29 (1) a request for the written statement of the transfer fee payable
30 in order to obtain a release of the fee imposed by the private
31 transfer fee obligation was sent to the address shown in the
32 notification; and

33 (2) The entity listed on the notice of private transfer fee failed to
34 provide the written statement of the transfer fee payable within 30
35 days of the date of the notice sent to the address shown in the
36 notification.

37

38 7. This act shall take effect immediately.