

SENATE, No. 2047

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 21, 2010

Sponsored by:

Senator JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Senator RONALD L. RICE

District 28 (Essex)

Co-Sponsored by:

Senator Cardinale

SYNOPSIS

Prohibits certain private transfer fees and imposes disclosure requirements.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/14/2010)

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:*

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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.

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20 2. As used in P.L. , c. (C.) (pending before the Legislature
21 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. Any consideration payable by the grantee to the grantor for
34 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 b. Any commission payable to a licensed real estate broker for
43 the transfer of real property pursuant to an agreement between the
44 broker and the grantor or the grantee, including any subsequent
45 additional commission for that transfer payable by the grantor or the
46 grantee based upon any subsequent appreciation, development, or
47 sale of the property.

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

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

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

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

20 g. Any fee, charge, assessment, fine, or other amount payable
21 to a homeowners', condominium, cooperative, mobile home, private
22 residential leasehold community, or property owners' association
23 pursuant to a declaration or covenant authorized in a master deed or
24 bylaws including, but not limited to, fees or charges payable for
25 estoppel letters or certificates issued by the association or its
26 authorized agent.

27 h. Any fee, charge, assessment, dues, contribution, or other
28 amount imposed by a declaration or covenant encumbering a
29 community, and payable to a nonprofit or charitable organization,
30 for the purpose of supporting cultural, educational, charitable,
31 recreational, environmental, conservation, or other similar activities
32 benefiting the community that is subject to the declaration or
33 covenant.

34 i. Any fee, charge, assessment, dues, contribution, or other
35 amount pertaining to the purchase or transfer of a club membership
36 relating to real property owned by the member, including, but not
37 limited to, any amount determined by reference to the value,
38 purchase price, or other consideration given for the transfer of the
39 real property.

40 "Private transfer fee obligation" means a declaration or covenant
41 recorded against the title to real property, or any other contractual
42 agreement or promise, whether or not recorded, that requires or
43 purports to require the payment of a private transfer fee to the
44 declarant or other person specified in the declaration, obligation or
45 agreement, or to their successors or assigns, upon a subsequent
46 transfer of an interest in the real property.

1 3. a. A private transfer fee obligation recorded or entered into
2 in this State on or after the effective date of P.L. , c. (C.)
3 (pending before the Legislature as this bill) shall not run with the
4 title to real property and is not binding on or enforceable at law or
5 in equity against any subsequent owner, purchaser, or mortgagee of
6 any interest in real property as an equitable servitude or otherwise.
7 Any private transfer fee obligation that is recorded or entered into
8 in this State on or after the effective date of P.L. , c. (C.)
9 (pending before the Legislature as this bill) is void and
10 unenforceable.

11 b. This section shall not apply to a private transfer fee
12 obligation recorded or entered into in this State before the effective
13 date of P.L. , c. (C.) (pending before the Legislature as this
14 bill). This subsection does not mean that a private transfer fee
15 obligation recorded or entered into in this State before the effective
16 date of P.L. , c. (C.) (pending before the Legislature as this
17 bill) is presumed valid and enforceable.

18
19 4. Any person who records or enters into an agreement
20 imposing a private transfer fee obligation in their favor after the
21 effective date of P.L. , c. (C.) (pending before the Legislature as
22 this bill) shall be liable for both any and all damages resulting from
23 the imposition of the private transfer fee obligation on the transfer
24 of an interest in the real property, including, without limitation, the
25 amount of any transfer fee paid by a party to the transfer, and all
26 attorneys fees, expenses and costs incurred by a party to the transfer
27 or mortgagee of the real property to recover any private transfer fee
28 paid, or in connection with an action to quiet title. Where an agent
29 acts on behalf of a principal to record or secure a private transfer
30 fee obligation, liability shall be assessed to the principal, rather than
31 the agent.

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33 5. Prior to closing on any sale of real property, the seller shall
34 furnish to any purchaser a written statement disclosing the existence
35 of any private transfer fee obligation. This written statement shall
36 include a description of the private transfer fee obligation and
37 include a statement that private transfer fee obligations are subject
38 to prohibitions under P.L. , c. (C.) (pending before the
39 Legislature as this bill).

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41 6. a. The payee designated in a private transfer fee obligation
42 made prior to the effective date of P.L. , c. (C.) (pending
43 before the Legislature as this bill), shall ensure that the notice of
44 private transfer fee, described in subsection b., is recorded, prior to
45 December 31, 2010, in the county recording office against the real
46 property subject to the private transfer fee obligation.

47 b. A private transfer fee obligation made prior to the effective
48 date of P.L. , c. (C.) (pending before the Legislature as this

1 bill) shall be imposed and enforceable by recording of a notice of
2 private transfer fee, which shall be a document, in recordable form
3 that meets all of the following requirements:

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

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

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

12 (4) If the real property is residential property, actual dollar-cost
13 examples of the transfer fee for a home priced at \$250,000,
14 \$500,000, and \$750,000;

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

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

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

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

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

25 c. The payee may file an amendment to the notice of transfer
26 fee containing new contact information, but such amendment must
27 contain the recording information for the notice of transfer fee that
28 the amendment modifies and the legal description of the property
29 burdened by the private transfer fee obligation.

30 d. If the payee fails to comply fully with subsection a. of this
31 section, the grantor of any real property burdened by the private
32 transfer fee obligation may proceed with the conveyance of any
33 interest in the real property to any grantee and in so doing shall be
34 deemed to have acted in good faith and shall not be subject to any
35 obligations under the private transfer fee obligation. In such event,
36 the real property thereafter shall be conveyed free and clear of such
37 transfer fee and private transfer fee obligation.

38 e. Should the payee fail to provide a written statement of the
39 transfer fee payable within 30 days of the date of a written request
40 for the same sent to the address shown in the notice of private
41 transfer fee, then the grantor, on recording of the affidavit required
42 under subsection f., may convey any interest in the real property to
43 any grantee without payment of the transfer fee and shall not be
44 subject to any further obligations under the private transfer fee
45 obligation. In such event the real property shall be conveyed free
46 and clear of the transfer fee and private transfer fee obligation.

47 f. An affidavit stating the facts enumerated under subsection a.
48 of this section shall be recorded in the office of the county clerk or

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

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

16 (1) a request for the written statement of the transfer fee payable
17 in order to obtain a release of the fee imposed by the private
18 transfer fee obligation was sent to the address shown in the
19 notification; and

20 (2) The entity listed on the notice of private transfer fee failed to
21 provide the written statement of the transfer fee payable within 30
22 days of the date of the notice sent to the address shown in the
23 notification.

24 For purposes of this section, "payee" means the person or entity,
25 or representative thereof, to which a private transfer fee shall be
26 paid pursuant to a private transfer fee obligation.

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28 7. This act shall take effect immediately.

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STATEMENT

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34 This legislation would prohibit private transfer fees and private
35 transfer fee obligations. Typically, a private transfer fee arises
36 when a grantor adds a obligation to a property deed that reserves in
37 the grantor the right to receipt of a percentage price or value of real
38 property on future transfers of that property.

39 If enacted, this bill would prohibit the recording and enforcement
40 of certain obligations imposing private transfer fees. The bill would
41 also impose disclosure and recording requirements on existing
42 private transfer fee obligations made as part of the sale of real
43 property. Grantors of real property who try to impose private
44 transfer fee obligations after the effective date of this bill would be
45 liable for damages resulting from the imposition of the transfer fee
46 obligation on the transfer of an interest in real property including all
47 attorneys fees, expenses, and costs incurred by a party to the

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1 transfer or by mortgagee of the real property to recover any transfer
2 fee paid or in connection with an action to quiet title.
3 Private transfer fee obligations created prior to the effective date
4 of the prohibition would be subject to disclosure and notice
5 requirements. Although compliance with recording, disclosure, and
6 notice requirements may be a prerequisite to enforceability, the
7 legislation provides that the obligations shall not be presumed valid.
8 Failure to comply with the notice requirements or respond to
9 requests for statements of transfer fees would void private transfer
10 fee obligations created prior to the effective date of the prohibition.