

By: Harris

S.B. No. 1459

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting certain private transfer fees and the preservation of private real property rights; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 5, Property Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. CERTAIN PRIVATE TRANSFER FEES PROHIBITED;

PRESERVATION OF PRIVATE REAL PROPERTY RIGHTS

Sec. 5.201. DEFINITIONS. In this subchapter:

(1) "Lender" means a lending institution, including a bank, trust company, banking association, savings and loan association, mortgage company, investment bank, credit union, life insurance company, and governmental agency, that customarily provides financing or an affiliate of a lending institution.

(2) "Payee" means a person who claims the right to receive or collect a private transfer fee payable under a private transfer fee obligation and who may or may not have a pecuniary interest in the obligation.

(3) "Private transfer fee" means an amount of money, regardless of the method of determining the amount, that is payable on the transfer of an interest in real property or payable for a right to make or accept a transfer.

(4) "Private transfer fee obligation" means an obligation to pay a private transfer fee created under:

1 (A) a declaration or other covenant recorded in
2 the real property records in the county in which the property
3 subject to the private transfer fee obligation is located;

4 (B) a contractual agreement or promise; or

5 (C) an unrecorded contractual agreement or
6 promise.

7 (5) "Subsequent owner" means a person who acquires
8 real property by transfer from a person other than the person who is
9 the seller of the property on the date the private transfer fee
10 obligation is created.

11 (6) "Subsequent purchaser" means a person who
12 purchases real property from a person other than the person who is
13 the seller on the date the private transfer fee obligation is
14 created. The term includes a lender who provides a mortgage loan to
15 a subsequent purchaser to purchase the property.

16 (7) "Transfer" means the sale, gift, conveyance,
17 assignment, inheritance, or other transfer of an ownership interest
18 in real property.

19 Sec. 5.202. CERTAIN PRIVATE TRANSFER FEE OBLIGATIONS VOID.

20 (a) Except as provided by this subchapter, a private transfer fee
21 obligation is not binding or enforceable against a subsequent owner
22 or subsequent purchaser of an interest in real property and is void.

23 (b) For purposes of this subchapter, the following payments
24 are not considered private transfer fee obligations:

25 (1) consideration paid by a purchaser to a seller for
26 an interest in real property transferred, including, as applicable,
27 a mineral interest transferred, including additional consideration

1 paid to a seller for the property's appreciation, development, or
2 sale after the interest in the property has been transferred to the
3 purchaser, if the additional consideration is paid only once and
4 that payment does not bind successors in interest to the property to
5 any private transfer fee obligation;

6 (2) a commission paid to a licensed real estate broker
7 under a written agreement between a seller or purchaser and the
8 broker, including an additional commission for the property's
9 appreciation, development, or sale after the interest in property
10 is transferred to the purchaser;

11 (3) interest, a fee, a charge, or another type of
12 payment to a lender under a loan secured by a mortgage on the
13 property, including:

14 (A) a fee payable for the lender's consent to an
15 assumption of the loan or transfer of the property subject to the
16 mortgage;

17 (B) a fee or charge payable for an estoppel
18 letter or certificate;

19 (C) a shared appreciation interest or profit
20 participation; or

21 (D) other consideration payable in connection
22 with the loan;

23 (4) rent, reimbursement, a fee, a charge, or another
24 type of payment to a lessor under a lease, including a fee for
25 consent to an assignment, sublease, encumbrance, or transfer of a
26 lease;

27 (5) consideration paid to the holder of an option to

1 purchase an interest in property, or to the holder of a right of
2 first refusal or first offer to purchase an interest in property,
3 for waiving, releasing, or not exercising the option or right when
4 the property is transferred to another person;

5 (6) a fee payable to or imposed by a governmental
6 entity in connection with recording the transfer of the property;

7 (7) dues, a fee, a charge, an assessment, a fine, a
8 contribution, or another type of payment to a property owners'
9 association, as defined by Section 209.002, under a declaration or
10 other covenant or under law, including a fee or charge payable for
11 an estoppel letter or certificate issued by the association or an
12 authorized agent of the association, provided that no portion of
13 the fee or charge is required to be passed through to a third party
14 designated or identifiable in the declaration or other covenant or
15 law or in a document referenced in the declaration or other covenant
16 or law; or

17 (8) dues, a fee, a charge, an assessment, a fine, a
18 contribution, or another type of payment for the transfer of a club
19 membership related to the property.

20 Sec. 5.203. NOTICE REQUIREMENTS FOR CONTINUATION OF
21 EXISTING PRIVATE TRANSFER FEE OBLIGATIONS. (a) A person who
22 receives or collects a private transfer fee under a private
23 transfer fee obligation created before the effective date of this
24 subchapter must, on or before January 31, 2012, file for record a
25 "Notice of Private Transfer Fee Obligation" as provided by this
26 section in the real property records of each county in which the
27 property is located.

1 (b) Multiple payees of a single private transfer fee under a
2 private transfer fee obligation must designate one payee as the
3 payee of record for the fee.

4 (c) A notice under Subsection (a) must:

5 (1) be printed in at least 14-point boldface type;

6 (2) state the amount of the private transfer fee and
7 the method of determination, if applicable;

8 (3) state the date or any circumstance under which the
9 private transfer fee obligation expires, if any;

10 (4) state the purpose for which the money from the
11 private transfer fee obligation will be used;

12 (5) notwithstanding Subsection (b), state the name of
13 each payee and each payee's contact information;

14 (6) state the name and address of the payee of record
15 to whom the payment of the fee must be sent;

16 (7) include the acknowledged signature of each payee
17 or authorized representative of each payee; and

18 (8) state the legal description of the property
19 subject to the private transfer fee obligation.

20 (d) A person required to file a notice under this section
21 shall:

22 (1) refile the notice described by this section on or
23 before January 31 of each year in which a private transfer fee may
24 be collected or received; and

25 (2) amend the notice to reflect any change in the name
26 or address of any payee included in the notice not later than the
27 30th day after the date the change occurs.

1 (e) A person who amends a notice under Subsection (d)(2)
2 must include:

3 (1) the recording information of the original notice
4 filed as required by this section; and

5 (2) the legal description of the property subject to
6 the private transfer fee obligation.

7 (f) If a person required to file a notice under this section
8 fails to comply with this section:

9 (1) payment of the private transfer fee may not be a
10 requirement for the conveyance of an interest in the property to a
11 purchaser;

12 (2) the property is not subject to further obligation
13 under the private transfer fee obligation; and

14 (3) the private transfer fee obligation is void.

15 Sec. 5.204. ADDITIONAL COMPLIANCE REQUIREMENT: RESPONSE TO
16 REQUEST FOR NOTICE. (a) A person may send a written request to the
17 payee of record at the payee's address of record requesting a copy
18 of the most recently filed notice under Section 5.203 and a
19 statement of the amount of the private transfer fee. The payee
20 shall provide to the requesting party a copy of the notice and a
21 statement of the amount of the private transfer fee not later than
22 the 30th day after the date the party sends the written request to
23 the payee of record.

24 (b) If the payee of record fails to comply with Subsection
25 (a), a subsequent purchaser of property subject to the private
26 transfer fee obligation may file an affidavit as provided by this
27 subsection. The affidavit must:

1 (1) state that:

2 (A) a written request for a copy of the notice
3 required under Section 5.203 and a statement of the amount of the
4 private transfer fee was sent to the payee of record at the address
5 shown in the most recent notice filed on the date the request was
6 sent; and

7 (B) the payee failed to provide a copy of the
8 notice and a statement of the amount of the private transfer fee in
9 a timely manner; and

10 (2) include:

11 (A) the legal description of the property subject
12 to the private transfer fee obligation;

13 (B) the name of the record owner of the property
14 on the date the affidavit is signed;

15 (C) recording information for the instrument of
16 record, if any, imposing the private transfer fee obligation; and

17 (D) a description of the unrecorded contractual
18 agreement or promise, if any, imposing the private transfer fee
19 obligation.

20 (c) An affidavit filed for record under Subsection (b) is
21 prima facie evidence that the payee failed to comply with Section
22 5.203.

23 (d) After the date an affidavit under this section is filed:

24 (1) payment of the private transfer fee may not be a
25 requirement for the conveyance of an interest in the property to a
26 purchaser;

27 (2) the property is not subject to further obligation

1 under the private transfer fee obligation; and

2 (3) the private transfer fee obligation is void.

3 Sec. 5.205. ADDITIONAL COMPLIANCE REQUIREMENT: TIMELY
4 ACCEPTANCE OF FEES PAID UNDER EXISTING PRIVATE TRANSFER FEE
5 OBLIGATIONS. (a) The payee of record on the date a private
6 transfer fee is paid under a private transfer fee obligation
7 subject to Section 5.203 must accept the payment on or before the
8 30th day after the date the payment is made.

9 (b) If the payee of record fails to comply with Subsection
10 (a):

11 (1) the payment must be returned to the purchaser;

12 (2) payment of the private transfer fee may not be a
13 requirement for the conveyance of an interest in the property to a
14 purchaser;

15 (3) the property is not subject to further obligation
16 under the private transfer fee obligation; and

17 (4) the private transfer fee obligation is void.

18 Sec. 5.206. DISCLOSURE OF EXISTING TRANSFER FEE OBLIGATION
19 REQUIRED IN CONTRACT FOR SALE. (a) A contract for the sale of real
20 property subject to a private transfer fee obligation authorized
21 under this subchapter must describe the obligation and state that
22 the obligation is governed by this subchapter.

23 (b) If a contract for the sale of real property subject to a
24 private transfer fee obligation authorized under this subchapter
25 fails to comply with this section:

26 (1) payment of the private transfer fee may not be a
27 requirement for the conveyance of an interest in the property to a

1 purchaser;

2 (2) the property is not subject to further obligation
3 under the private transfer fee obligation; and

4 (3) the private transfer fee obligation is void.

5 Sec. 5.207. WAIVER VOID. A provision that purports to waive
6 a purchaser's rights under this subchapter is void.

7 Sec. 5.208. LIABILITY FOR IMPOSING PRIVATE TRANSFER FEE
8 OBLIGATION. A person who imposes or enters into an agreement
9 imposing a private transfer fee obligation in the person's favor in
10 violation of this subchapter is liable for:

11 (1) damages resulting from the imposition of the
12 private transfer fee obligation, including the amount of any
13 private transfer fee paid; and

14 (2) attorney's fees, expenses, and costs incurred in
15 an action to recover the private transfer fee paid or to quiet title
16 to the real property.

17 Sec. 5.209. INJUNCTIVE OR DECLARATORY RELIEF; PROVIDING
18 PENALTIES. (a) The attorney general may institute an action for
19 injunctive or declaratory relief to restrain a violation of this
20 subchapter.

21 (b) In addition to instituting an action for injunctive or
22 declaratory relief under Subsection (a), the attorney general may
23 institute an action for civil penalties against a payee for a
24 violation of this chapter. Except as provided by Subsection (c), a
25 civil penalty assessed under this section may not exceed an amount
26 equal to two times the amount of the private transfer fee charged or
27 collected by the payee in violation of this subchapter.

1 (c) If the court in which an action under Subsection (b) is
2 pending finds that a payee violated this subchapter with a
3 frequency that constitutes a pattern or practice, the court may
4 assess a civil penalty not to exceed \$250,000.

5 (d) If the attorney general substantially prevails in an
6 action for injunctive relief or a civil penalty under this section,
7 the attorney general may recover reasonable attorney's fees, costs,
8 and expenses incurred in obtaining the relief or penalty, including
9 court costs and witness fees.

10 (e) The comptroller shall deposit to the credit of the
11 general revenue fund all money collected under this section.

12 SECTION 2. Section 5.017, Property Code, is repealed.

13 SECTION 3. This Act takes effect immediately if it receives
14 a vote of two-thirds of all the members elected to each house, as
15 provided by Section 39, Article III, Texas Constitution. If this
16 Act does not receive the vote necessary for immediate effect, this
17 Act takes effect September 1, 2011.