

HOUSE BILL NO. HB0137

Private transfer fee obligations.

Sponsored by: Representative(s) Shepperson and Brown and
Senator(s) Perkins

A BILL

for

1 AN ACT relating to real property; prohibiting the creation
2 of private transfer fee obligations; requiring disclosure
3 and recording of existing private transfer fee obligations;
4 providing penalties; and providing for an effective date.

5

6 *Be It Enacted by the Legislature of the State of Wyoming:*

7

8 **Section 1.** W.S. 34-27-101 through 34-27-105 are
9 created to read:

10

11

CHAPTER 27

12

PRIVATE TRANSFER FEES

13

14 **34-27-101. Definitions.**

15

16 (a) As used in this chapter:

1

2 (i) "Transfer" means the sale, gift, conveyance,
3 assignment, inheritance or other transfer of an ownership
4 interest in real property located in this state;

5

6 (ii) "Private transfer fee" means a fee or
7 charge required by a private transfer fee obligation and
8 payable upon the transfer of an interest in real property,
9 or payable for the right to make or accept such transfer,
10 regardless of whether the fee or charge is a fixed amount
11 or is determined as a percentage of the value of the
12 property, the purchase price or other consideration given
13 for the transfer. "Private transfer fee" shall not include
14 the following:

15

16 (A) Any consideration payable by the
17 grantee to the grantor for the interest in real property
18 being transferred, including any subsequent additional
19 consideration for the property payable by the grantee based
20 upon any subsequent appreciation, development or sale of
21 the property, provided such additional consideration is
22 payable on a one (1) time basis only and the obligation to
23 make such payment does not bind successors in title to the
24 property. For the purposes of this subparagraph, an

1 interest in real property may include a separate mineral
2 estate and its appurtenant surface access rights;

3

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

11

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

22

23 (D) Any rent, reimbursement, charge, fee or
24 other amount payable by a lessee to a lessor under a lease,

1 including, but not limited to, any fee payable to the
2 lessor for consenting to an assignment, subletting,
3 encumbrance or transfer of the lease;

4

5 (E) Any consideration payable to the holder
6 of an option to purchase an interest in real property or
7 the holder of a right of first refusal or first offer to
8 purchase an interest in real property for waiving,
9 releasing or not exercising the option or right upon the
10 transfer of the property to another person;

11

12 (F) Any tax, fee, charge, assessment, fine
13 or other amount payable to or imposed by a governmental
14 authority;

15

16 (G) Any fee, charge, assessment, fine or
17 other amount payable to a homeowners', condominium,
18 cooperative, mobile home or property owners' association
19 pursuant to a declaration or covenant or law applicable to
20 the association, including, but not limited to, fees or
21 charges payable for estoppel letters or certificates issued
22 by the association or its authorized agent;

23

1 (H) Any fee, charge, assessment, dues,
2 contribution or other amount pertaining to the purchase or
3 transfer of a club membership relating to real property
4 owned by the member, including, but not limited to, any
5 amount determined by reference to the value, purchase price
6 or other consideration given for the transfer of the real
7 property.

8
9 (iii) "Private transfer fee obligation" means an
10 obligation arising under a declaration or covenant recorded
11 against the title to real property, or under any other
12 contractual agreement or promise, whether or not recorded,
13 that requires or purports to require the payment of a
14 private transfer fee to the declarant or other person
15 specified in the declaration, covenant or agreement, or to
16 their successors or assigns, upon a subsequent transfer of
17 an interest in the real property.

18

19 **34-27-102. Prohibition.**

20

21 A private transfer fee obligation recorded or entered into
22 in this state on or after April 1, 2011 does not run with
23 the title to real property and is not binding on or
24 enforceable at law or in equity against any subsequent

1 owner, purchaser or mortgagee of any interest in real
2 property as an equitable servitude or otherwise. Any
3 private transfer fee obligation that is recorded or entered
4 into in this state on or after April 1, 2011 is void and
5 unenforceable. This section shall not be construed to mean
6 that a private transfer fee obligation recorded or entered
7 into in this state before April 1, 2011 is presumed valid
8 and enforceable.

9

10 **34-27-103. Liability for violation.**

11

12 (a) Any person who records or enters into an
13 agreement imposing a private transfer fee obligation in
14 their favor in violation of this chapter shall be liable
15 for:

16

17 (i) Any and all damages resulting from the
18 imposition of the transfer fee obligation on the transfer
19 of an interest in the real property, including, without
20 limitation, the amount of any transfer fee paid by a party
21 to the transfer; and

22

23 (ii) All attorneys' fees, expenses and costs
24 incurred by a party to the transfer or mortgagee of the

1 real property to recover any transfer fee paid or in
2 connection with an action to quiet title including
3 attorneys' fees, costs and expenses to cure any cloud on
4 the title.

5

6 (b) Where an agent acts on behalf of a principal to
7 record or secure a private transfer fee obligation,
8 liability shall be assessed to the principal, rather than
9 the agent.

10

11 **34-27-104. Required disclosure of private transfer**
12 **fee obligations.**

13

14 (a) Any contract for the sale of real property
15 subject to a private transfer fee obligation that is of
16 record shall include a provision disclosing the existence
17 of that obligation, a description of the obligation and a
18 statement that private transfer fee obligations are subject
19 to certain prohibitions under this chapter. A contract for
20 sale of real property which does not conform to the
21 requirements of this section shall not be enforceable by
22 the seller against the buyer nor shall the buyer be liable
23 to the seller for damages under such a contract and the
24 buyer under such a contract shall be entitled to the return

1 of all deposits made in connection with the sale of the
2 real property.

3

4 (b) Where a private transfer fee obligation is not
5 disclosed under subsection (a) of this section and a buyer
6 subsequently discovers the existence of that private
7 transfer fee obligation after title to the property has
8 passed to the buyer, the buyer shall have the right to
9 recover:

10

11 (i) Any and all damages resulting from the
12 failure to disclose the private transfer fee obligation,
13 including, but not limited to, the amount of any private
14 transfer fee paid by the buyer, or the difference between
15 the market value of the real property if it were not
16 subject to a private transfer fee obligation and the market
17 value of the real property as subject to a private transfer
18 fee obligation; and

19

20 (ii) All attorneys' fees, expenses and costs
21 incurred by the buyer in seeking the buyer's remedies under
22 this subsection including the process of curing any cloud
23 on and quieting title.

24

1 (c) Any provision in a contract for sale of real
2 property that purports to waive the rights of a buyer under
3 this section shall be void.

4

5 **34-27-105. Recording of existing private transfer fee**
6 **obligations; jurisdictions; affidavit of payment.**

7

8 (a) The payee of a private transfer fee obligation
9 imposed prior to April 1, 2011 shall record the document
10 evidencing the obligation in the office of the clerk for
11 each county in which the real property is located prior to
12 December 1, 2011.

13

14 (b) No court in the state of Wyoming shall have
15 jurisdiction to enforce a private transfer fee obligation
16 which is not recorded as provided in subsection (a) of this
17 section.

18

19 (c) Filing of an affidavit by a grantor with the
20 clerk for each county in which the real property is located
21 stating that payment in full of any private transfer fee
22 obligation was sent by certified mail to the payee at the
23 address listed in the document recorded under subsection

1 (a) of this section is prima facie evidence of satisfaction
2 of the obligation.

3

4 **Section 2.** This act is effective immediately upon
5 completion of all acts necessary for a bill to become law
6 as provided by Article 4, Section 8 of the Wyoming
7 Constitution.

8

9

(END)