

HOUSE BILL NO. HB0025

Private transfer fee obligations.

Sponsored by: Representative(s) Stubson, Brown, Greear,
Greene and Illoway and Senator(s) Bebout and
Scott

A BILL

for

1 AN ACT relating to real property; prohibiting the creation
2 of private transfer fee obligations; specifying
3 requirements for effective private transfer fee
4 obligations; providing definitions; and providing for an
5 effective date.

6

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

8

9 **Section 1.** W.S. 34-28-101 through 34-28-103 are
10 created to read:

11

12 CHAPTER 28

13 PRIVATE TRANSFER FEES

14

15 **34-28-101. Definitions.**

16

1 (a) As used in this chapter:

2

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

6

7 (ii) "Private transfer fee" means a fee or
8 charge payable upon the transfer of an interest in real
9 property, or payable for the right to make or accept such
10 transfer, regardless of whether the fee or charge is a
11 fixed amount or is determined as a percentage of the value
12 of the property, the purchase price or other consideration
13 given for the transfer. "Private transfer fee" shall not
14 include 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 other consideration allowed by law
20 and payable to the lender in connection with the loan;

21
22 (D) Any rent, reimbursement, charge, fee or
23 other amount payable by a lessee to a lessor under a lease,
24 including, but not limited to, any fee payable to the

1 lessor for consenting to an assignment, subletting,
2 encumbrance or transfer of the lease;

3

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

10

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

14

15 (G) Any fee, charge, assessment, fine or
16 other amount payable to a homeowners', condominium,
17 cooperative, mobile home or property owners' association
18 pursuant to a declaration or covenant or law applicable to
19 the association;

20

21 (H) Any fee, charge, assessment, dues,
22 contribution or other amount pertaining to the purchase or
23 transfer of a club membership relating to real property
24 owned by the member, including, but not limited to, any

1 amount determined by reference to the value, purchase price
2 or other consideration given for the transfer of the real
3 property;

4
5 (J) Any fee, charge, assessment,
6 contribution or other amount imposed by the holder of a
7 recorded conservation easement that is designated to
8 compensate the holder for the cost of ensuring compliance
9 with the terms of the easement. The fee, charge,
10 assessment, contribution or other amount may be determined
11 by reference to the value, purchase price or other
12 consideration given for the transfer of the real property.

13
14 (iii) "Private transfer fee obligation" means an
15 obligation arising under a declaration or covenant
16 purporting to affect real property that requires or
17 purports to require the payment of a private transfer fee
18 to the declarant or other person specified in the
19 declaration, covenant or agreement, or to their successors
20 or assigns, upon a subsequent transfer of an interest in
21 the real property.

22
23 **34-28-102. Prohibition.**

1 A private transfer fee obligation recorded or entered into
2 in this state on or after April 1, 2012 does not run with
3 the title to real property and is not binding on or
4 enforceable at law or in equity against any subsequent
5 owner, purchaser or mortgagee of any interest in real
6 property as an equitable servitude or otherwise.

7

8 **34-28-103. Recording of existing private transfer fee**
9 **obligations; jurisdictions; affidavit of payment.**

10

11 (a) The payee of a private transfer fee obligation
12 imposed prior to April 1, 2012 shall record a notice of
13 private transfer fee obligation in the office of the clerk
14 for each county in which the real property is located. The
15 notice recorded shall meet the following requirements and
16 contain:

17

18 (i) A clearly identified disclosure of the
19 existence and amount of the private transfer fee
20 obligation;

21

22 (ii) A description of the type and nature of the
23 private transfer fee obligation;

24

1 (iii) A description of the type and nature of
2 any penalty which may be incurred as a result of failure to
3 pay the private transfer fee obligation;

4
5 (iv) A legal description of the real property;
6 and

7
8 (v) The name and address of the payee. A notice
9 filed under this subsection shall be amended upon change of
10 the name or address of the payee.

11
12 (b) No court in the state of Wyoming shall have
13 jurisdiction to enforce a private transfer fee obligation
14 which is not recorded as provided in subsection (a) of this
15 section against a bonafide purchaser who receives title to
16 the property after April 1, 2012.

17
18 (c) Filing of an affidavit by a grantor with the
19 clerk for each county in which the real property is located
20 stating that payment in full of any private transfer fee
21 obligation was sent by certified mail to the payee at the
22 address listed in the document recorded under subsection
23 (a) of this section is prima facie evidence of satisfaction
24 of the obligation.

1

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

6

7

(END)