

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 13-229—SB 859

Insurance and Real Estate Committee

Judiciary Committee

AN ACT CONCERNING THE REGULATION OF PRIVATE TRANSFER FEES

SUMMARY: This act bans private transfer fees on and after June 24, 2013. A “private transfer fee” is, with some exceptions, a fee or charge payable (1) upon the conveyance and subsequent conveyance of an interest in real property located in Connecticut or (2) for the right to make or accept the conveyance. Under the act, anyone aggrieved by a private transfer fee imposed on or after June 24, 2013 may sue for damages in Superior Court.

For any private transfer fee obligation in existence as of June 24, 2013, the act requires the obligation to be (1) disclosed in any future sale contract and (2) recorded in the town’s land records by December 31, 2013. The act also specifies how real property can become unencumbered by an existing obligation.

EFFECTIVE DATE: Upon passage

PRIVATE TRANSFER FEES BANNED PROSPECTIVELY

The act makes it illegal for a person (which includes an entity) to impose a private transfer fee obligation on or after June 24, 2013. It specifies that any obligation imposed on or after that date and any agreement that violates the act is void and unenforceable. Further, it allows anyone aggrieved by the imposition of such a private transfer fee to sue for damages in Superior Court.

EXISTING PRIVATE TRANSFER FEES REGULATED

Disclosure Required

The act requires a contract offered or entered into after June 24, 2013 for the sale of real property encumbered by a pre-existing private transfer fee obligation to include a (1) provision that discloses the obligation’s existence, (2) description of the obligation, and (3) statement that the obligation is subject to the act’s provisions.

It specifies that (1) a contract that fails to make such a disclosure is void and unenforceable and (2) the purchaser is not liable to the seller for damages under the contract. It also specifies that the purchaser is entitled to the return of all deposits he or she made in connection with the contract.

Recording Required

For private transfer fee obligations imposed before June 24, 2013, the act

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requires the person paid the fee to record the obligation in the town's land records by December 31, 2013. The recording must be a separate document entitled, in at least 14-point bold type, "Notice of Private Transfer Fee Obligation" that includes:

1. the amount of the private transfer fee or method by which it is calculated;
2. if the involved property is residential, fee examples for a home priced at \$250,000, \$500,000, and \$750,000;
3. the date or circumstances under which the obligation expires;
4. what the collected fee will be used for;
5. the name of the person who collects the fee, specific contact information for where the fee is sent, and the person's acknowledged signature; and
6. the involved property's legal description.

The act allows a person who is paid the fee to file an amendment to the notice when contact information changes. Any such amendment must include the above recording information.

REMOVING A FEE OBLIGATION

The act allows an existing private transfer fee obligation to be removed if the person who is paid the fee fails to:

1. record the "Notice of Private Transfer Fee Obligation" by December 31, 2013 or
2. provide a written statement showing the fee payable upon the property's conveyance within 30 days after a written request for such a statement from a grantor of the property.

If either of these situations occurs, the act requires a grantor of real property to record an affidavit specifying the facts of the matter in the town's land records. By law, such an affidavit must include a description of the land affected by the affidavit and the land owner's name (CGS § 47-12a).

Upon filing the affidavit, the grantor is relieved of the obligation. The grantor can thereafter convey the property without paying the private transfer fee and the property will thereafter be conveyed free and clear of the obligation.

When an affidavit is recorded as set forth in the act, it is admissible as prima facie evidence that the grantor submitted a written request for the fee statement and the person paid the fee failed to provide the statement within 30 days.

DEFINITIONS

Private Transfer Fee

Under the act, a "private transfer fee" is a fee or charge payable (1) upon the conveyance and subsequent conveyance of an interest in real property in Connecticut or (2) for the right to make or accept the conveyance. It does not include any:

1. consideration payable by a grantee to a grantor for the conveyance of an interest in real property (including mineral rights), including any subsequent consideration payable by the grantee for the property based on subsequent appreciation, development, or sale of the property, provided

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- the subsequent consideration is payable once and the obligation to pay the consideration does not bind successors in title to the property;
2. commission payable to a real estate broker or salesperson for selling real property pursuant to a contract or agreement between the broker or salesperson and a grantee or grantor, including any subsequent commission payable by the grantee or grantor for the property based on subsequent appreciation, development, or sale of the property;
 3. interest, fee, charge, or other amount payable by a borrower to a lender under a mortgage, including any fee payable to the lender for agreeing to assume the loan or conveyance of the property, an estoppel letter or certificate (e.g., a document that certifies a certain set of facts and bars a party from later claiming a different set of facts), and any shared appreciation interest, profit participation, or other consideration payable to the lender in connection with the loan;
 4. rent, reimbursement, fee, charge, or other amount payable by a lessee to a lessor, including any fee or charge payable to the lessor for agreeing to assign, sublease, or encumber a rental agreement or lease;
 5. consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property, for the holder to waive, release, or not exercise the option or right;
 6. tax, assessment, fine, fee, charge, or other amount payable to or imposed by a governmental entity;
 7. dues, assessment, fine, contribution, fee, charge, or other amount payable to an association or a unit owners' association organized under the Common Interest Ownership Act pursuant to any declaration, covenant, law, or association bylaw, rule, or regulation, including a fee or charge payable to the association for an estoppel letter or certificate;
 8. dues, assessment, fine, contribution, fee, charge, or other amount imposed by a declaration or covenant encumbering a municipality, county, or any combination of the two, or a neighborhood or other area, irrespective of boundaries or political subdivision and payable solely to a tax-exempt organization for the purpose of supporting cultural, educational, charitable, recreational, environmental, conservation, or other similar activities that benefit the municipality, county, neighborhood, or other area; or
 9. dues, assessment, contribution, fee, charge, or other amount payable for the purchase or transfer of a club membership related to real property.

Private Transfer Fee Obligation

The act defines "private transfer fee obligation" as an obligation arising under a declaration or a covenant recorded against the title to real property located in Connecticut or under any contractual agreement or promise, whether or not recorded, that requires the payment of a private transfer fee upon a conveyance or a subsequent conveyance of an interest in the real property.

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