

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 certain  
3 procedures for notice and disclosure relative to existing  
4 private transfer fee obligations; providing penalties; and  
5 providing for an effective date.

6

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

8

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

11

12 CHAPTER 27

13 PRIVATE TRANSFER FEES

14

15 **34-27-101. 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 required by a private transfer fee obligation and  
9 payable upon the transfer of an interest in real property,  
10 or payable for the right to make or accept such transfer,  
11 regardless of whether the fee or charge is a fixed amount  
12 or is determined as a percentage of the value of the  
13 property, the purchase price or other consideration given  
14 for the transfer. "Private transfer fee" shall not include  
15 the following:

16

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

1 property. For the purposes of this subparagraph, an  
2 interest in real property may include a separate mineral  
3 estate and its appurtenant surface access rights;

4

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

12

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

23

1                   (D) Any rent, reimbursement, charge, fee or  
2 other amount payable by a lessee to a lessor under a lease,  
3 including, but not limited to, any fee payable to the  
4 lessor for consenting to an assignment, subletting,  
5 encumbrance or transfer of the lease;

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

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

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

1

2 (H) Any fee, charge, assessment, dues,  
3 contribution or other amount imposed by a declaration or  
4 covenant encumbering a community and payable to a nonprofit  
5 or charitable organization for the purpose of supporting  
6 cultural, educational, charitable, recreational,  
7 environmental, conservation or other similar activities  
8 benefiting the community that is subject to the declaration  
9 or covenant;

10

11 (J) Any fee, charge, assessment, dues,  
12 contribution or other amount pertaining to the purchase or  
13 transfer of a club membership relating to real property  
14 owned by the member, including, but not limited to, any  
15 amount determined by reference to the value, purchase price  
16 or other consideration given for the transfer of the real  
17 property.

18

19 (iii) "Private transfer fee obligation" means an  
20 obligation arising under a declaration or covenant recorded  
21 against the title to real property, or under any other  
22 contractual agreement or promise, whether or not recorded,  
23 that requires or purports to require the payment of a  
24 private transfer fee to the declarant or other person

1 specified in the declaration, covenant or agreement, or to  
2 their successors or assigns, upon a subsequent transfer of  
3 an interest in the real property.

4

5 **34-27-102. Prohibition.**

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7 A private transfer fee obligation recorded or entered into  
8 in this state on or after April 1, 2011 does not run with  
9 the title to real property and is not binding on or  
10 enforceable at law or in equity against any subsequent  
11 owner, purchaser or mortgagee of any interest in real  
12 property as an equitable servitude or otherwise. Any  
13 private transfer fee obligation that is recorded or entered  
14 into in this state on or after April 1, 2011 is void and  
15 unenforceable. This section shall not be construed to mean  
16 that a private transfer fee obligation recorded or entered  
17 into in this state before April 1, 2011 is presumed valid  
18 and enforceable.

19

20 **34-27-103. Liability for violation.**

21

22 (a) Any person who records or enters into an  
23 agreement imposing a private transfer fee obligation in

1 their favor in violation of this chapter shall be liable  
2 for:

3

4 (i) Any and all damages resulting from the  
5 imposition of the transfer fee obligation on the transfer  
6 of an interest in the real property, including, without  
7 limitation, the amount of any transfer fee paid by a party  
8 to the transfer; and

9

10 (ii) All attorneys' fees, expenses and costs  
11 incurred by a party to the transfer or mortgagee of the  
12 real property to recover any transfer fee paid or in  
13 connection with an action to quiet title including  
14 attorneys' fees, costs and expenses to cure any cloud on  
15 the title.

16

17 (b) Where an agent acts on behalf of a principal to  
18 record or secure a private transfer fee obligation,  
19 liability shall be assessed to the principal, rather than  
20 the agent.

21

22 **34-27-104. Required disclosure of private transfer**  
23 **fee obligations.**

24

1           (a) Any contract for the sale of real property  
2 subject to a private transfer fee obligation shall include  
3 a provision disclosing the existence of that obligation, a  
4 description of the obligation and a statement that private  
5 transfer fee obligations are subject to certain  
6 prohibitions under this chapter. A contract for sale of  
7 real property which does not conform to the requirements of  
8 this section shall not be enforceable by the seller against  
9 the buyer nor shall the buyer be liable to the seller for  
10 damages under such a contract and the buyer under such a  
11 contract shall be entitled to the return of all deposits  
12 made in connection with the sale of the real property.

13

14           (b) Where a private transfer fee obligation is not  
15 disclosed under subsection (a) of this section and a buyer  
16 subsequently discovers the existence of that private  
17 transfer fee obligation after title to the property has  
18 passed to the buyer, the buyer shall have the right to  
19 recover:

20

21           (i) Any and all damages resulting from the  
22 failure to disclose the private transfer fee obligation,  
23 including, but not limited to, the amount of any private  
24 transfer fee paid by the buyer, or the difference between



1 the market value of the real property if it were not  
2 subject to a private transfer fee obligation and the market  
3 value of the real property as subject to a private transfer  
4 fee obligation; and

5

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

10

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

14

15 **34-27-105. Notice requirements for existing private**  
16 **transfer fee obligations.**

17

18 (a) The payee of a private transfer fee obligation  
19 imposed prior to April 1, 2011 shall record, prior to July  
20 1, 2011, against the real property subject to the private  
21 transfer fee obligation, a separate document in the office  
22 of the clerk for each county in which the real property is  
23 located that complies with all of the following  
24 requirements:

1

2 (i) The title of the document shall be "Notice  
3 of Private Transfer Fee Obligation" in at least 14-point  
4 boldface type;

5

6 (ii) The amount, if the private transfer fee is  
7 a flat amount, or the percentage of the sales price  
8 constituting the cost of the private transfer fee, or any  
9 other basis by which the private transfer fee is to be  
10 calculated;

11

12 (iii) If the real property is residential  
13 property, actual dollar cost examples of the private  
14 transfer fee for a home priced at one hundred fifty  
15 thousand dollars (\$150,000.00), three hundred thousand  
16 dollars (\$300,000.00) and five hundred fifty thousand  
17 dollars (\$550,000.00);

18

19 (iv) The date or circumstances under which the  
20 private transfer fee obligation expires, if any;

21

22 (v) The purpose for which the funds from the  
23 private transfer fee obligation will be used;

24

1           (vi) The name of the payee and specific contact  
2 information regarding where the funds are to be sent.  
3 Where there is more than one (1) person or entity who  
4 claims the right to receive or collect a private transfer  
5 fee under a private transfer fee obligation, those persons  
6 or entities shall designate a single person or entity as  
7 the payee for purposes of that private transfer fee  
8 obligation;

9

10           (vii) The acknowledged signature of the payee,  
11 or a representative of the payee; and

12

13           (viii) The legal description of the real  
14 property purportedly burdened by the private transfer fee  
15 obligation.

16

17           (b) The payee may file an amendment to the notice of  
18 private transfer fee obligation containing new contact  
19 information, but the amendment must contain the recording  
20 information of the notice of private transfer fee  
21 obligation which it amends and the legal description of the  
22 real property burdened by the private transfer fee  
23 obligation.

24

1           (c) If a payee fails to file the notice required  
2 under subsection (a) of this section prior to December 31,  
3 2011, the grantor of any real property burdened by the  
4 private transfer fee obligation may proceed with the  
5 conveyance of any interest in the real property to any  
6 grantee and in so doing shall be conclusively deemed to  
7 have acted in good faith and shall not be subject to any  
8 obligations under the private transfer fee obligation. In  
9 this event, the private transfer fee obligation shall  
10 become null and void and the real property thereafter shall  
11 be conveyed free and clear of the private transfer fee and  
12 private transfer fee obligation.

13

14           (d) If a payee fails to fully comply with subsection  
15 (a) of this section in filing the notice required  
16 thereunder, then the grantor, on recording of an affidavit  
17 under subsection (f) of this section, may convey any  
18 interest in the real property to any grantee without  
19 payment of the private transfer fee and shall not be  
20 subject to any further obligations under the private  
21 transfer fee obligation. In this event, the private  
22 transfer fee obligation shall become null and void and the  
23 real property thereafter shall be conveyed free and clear

1 of the private transfer fee and private transfer fee  
2 obligation.

3

4 (e) Should the payee fail to provide a written  
5 statement of the private transfer fee payable within thirty  
6 (30) days of the date of a written request for the same  
7 sent to the address shown in the notice of private transfer  
8 fee, then the grantor, on recording of an affidavit under  
9 subsection (f) of this section, may convey any interest in  
10 the real property to any grantee without payment of the  
11 private transfer fee and shall not be subject to any  
12 further obligations under the private transfer fee  
13 obligation. In this event, the private transfer fee  
14 obligation shall become null and void and the real property  
15 thereafter shall be conveyed free and clear of the private  
16 transfer fee and private transfer fee obligation.

17

18 (f) An affidavit stating the facts enumerated in  
19 subsection (g) of this section shall be recorded in the  
20 office of the clerk of each county in which the real  
21 property is situated prior to or simultaneously with a  
22 conveyance pursuant to subsection (d) or (e) of this  
23 section of real property unburdened by a private transfer  
24 fee obligation. An affidavit filed under this subsection

1 shall state that the affiant has actual knowledge of, and  
2 is competent to testify to, the facts in the affidavit and  
3 shall include the legal description of the real property  
4 burdened by the private transfer fee obligation, the name  
5 of the person appearing by the record to be the owner of  
6 the real property at the time of the signing of the  
7 affidavit, a reference, by recording information, to the  
8 instrument of record containing the private transfer fee  
9 obligation and an acknowledgment that the affiant is  
10 testifying under penalty of perjury.

11

12 (g) When recorded, an affidavit filed under  
13 subsection (f) of this section shall constitute prima facie  
14 evidence that either:

15

16 (i) The payee has failed to fully comply with  
17 subsection (a) of this section in the respects stated in  
18 the affidavit; or

19

20 (ii) A request for the written statement of the  
21 private transfer fee was sent to the payee at the address  
22 shown on the notice of private transfer fee and the payee  
23 failed to provide the written statement of the private

1 transfer fee payable within thirty (30) days of the date of  
2 the notice sent to the address shown in the notification.

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)