

ASSEMBLY BILL NO. 271—ASSEMBLYMEN
BUSTAMANTE ADAMS, HORNE AND CONKLIN

MARCH 15, 2011

Referred to Committee on Judiciary

SUMMARY—Regulates private transfer fee obligations that affect real property. (BDR 10-628)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to real property; providing for the regulation of private transfer fee obligations affecting real property; providing that certain such obligations are void and unenforceable; revising the disclosures that a seller of real property must make to a buyer to include certain information concerning such obligations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 This bill regulates the imposition of private transfer fee obligations upon the
2 transfer of an interest in real property in this State. **Section 6** of this bill defines a
3 "private transfer fee obligation" to mean an obligation arising under a declaration
4 or covenant recorded against the title to real property, or under any other
5 contractual agreement or promise, whether or not recorded, that requires or purports
6 to require the payment of a private transfer fee to the declarant or other person
7 specified in the declaration, covenant or agreement, or to his or her successors or
8 assigns, upon a subsequent transfer of an interest in the real property. **Section 9** of
9 this bill sets forth the finding and declaration of the Legislature that a private
10 transfer fee obligation violates the public policy of this State by impairing the
11 marketability and transferability of real property and by constituting an
12 unreasonable restraint on the alienation of real property. **Section 10** of this bill
13 provides that certain private transfer fee obligations that are created or recorded in
14 this State on or after the date of passage and approval of this bill are void and
15 unenforceable. **Sections 11 and 12** of this bill require the payee under a private
16 transfer fee obligation that was created before the date of passage and approval of
17 this bill to record, on or before July 31, 2012, in the office of the county recorder of
18 the county in which the real property that is subject to the private transfer fee
19 obligation is located, a notice which includes certain specified information and to
20 respond timely to a request for a written statement of the amount of the transfer fee



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due upon the sale of the real property, and provides that the private transfer fee obligation becomes void and unenforceable upon failure to comply with either requirement. In addition, **section 13** of this bill imposes civil liability upon a person who fails to comply with either of these requirements or who creates or records a private transfer fee obligation in the person's favor on or after the date of passage and approval of this bill. **Section 14** of this bill revises the disclosures that a seller of real property must make to a buyer by requiring a seller of real property that is subject to a private transfer fee obligation to furnish to the buyer a written statement which discloses the existence of the private transfer fee obligation, includes a description of the private transfer fee obligation and sets forth a notice which includes information concerning applicable state laws and the effect that such an obligation may have on the value of the property.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 111 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this act.

Sec. 2. *As used in sections 2 to 13, inclusive, of this act, the words and terms defined in sections 3 to 8, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Buyer" includes, without limitation, a grantee or other transferee of an interest in real property.*

Sec. 4. *"Payee" means the natural person to whom or the entity to which a private transfer fee is to be paid and the successors or assigns of the natural person or entity.*

Sec. 5. 1. *"Private transfer fee" means a fee or charge required by a private transfer fee obligation and payable upon the transfer of an interest in real property, or payable for the right to make or accept such a transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the interest in real property or the purchase price or other consideration paid for the transfer of the interest in real property.*

2. *The term does not include any:*

(a) Consideration payable by the buyer to the seller for the interest in real property being transferred, including any subsequent additional consideration payable by the buyer based upon any subsequent appreciation, development or sale of the property if the additional consideration is payable on a one-time basis only and the obligation to make the payment does not bind successors in title to the property;

(b) Commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the seller or buyer, including any subsequent



1 *additional commission payable by the seller or buyer based upon*
2 *any subsequent appreciation, development or sale of the property;*

3 *(c) Interest, charge, fee or other amount payable by a borrower*
4 *to a lender pursuant to a loan secured by a mortgage on real*
5 *property, including, without limitation, any fee payable to the*
6 *lender for consenting to an assumption of the loan or a transfer of*
7 *the real property, any amount paid to the lender pursuant to an*
8 *agreement which gives the lender the right to share in any*
9 *subsequent appreciation in the value of the property, and any*
10 *other consideration payable to the lender in connection with the*
11 *loan;*

12 *(d) Rent, reimbursement, charge, fee or other amount payable*
13 *by a lessee to a lessor under a lease, including, without limitation,*
14 *any fee payable to the lessor for consenting to any assignment,*
15 *subletting, encumbrance or transfer of the lease;*

16 *(e) Consideration payable to the holder of an option to*
17 *purchase an interest in real property or to the holder of a right of*
18 *first refusal to purchase an interest in real property for waiving,*
19 *releasing or not exercising the option or right upon the transfer of*
20 *the real property to another person;*

21 *(f) Tax, fee, charge, assessment, fine or other amount payable*
22 *to or imposed by a governmental entity;*

23 *(g) Fee, charge, assessment, fine or other amount payable to*
24 *an association of property owners or any other form of*
25 *organization of property owners, including, without limitation, a*
26 *unit-owners' association or master association of a common-*
27 *interest community, a unit-owners' association of a condominium*
28 *hotel or an association of owners of a time-share plan, pursuant to*
29 *a declaration, covenant or specific statute applicable to the*
30 *association or organization; or*

31 *(h) Fee or charge payable to the master developer of a planned*
32 *community by the first purchaser of each lot in the planned*
33 *community in the event that the first purchaser fails to construct*
34 *and obtain a municipal certificate of occupancy for a residence on*
35 *the lot and retain ownership of the residence for 1 year before*
36 *conveying the residence, provided that the obligation of the first*
37 *purchaser of the lot to pay the fee or charge is on a one-time basis*
38 *only and does not bind subsequent purchasers of the lot.*

39 **Sec. 6. "Private transfer fee obligation" means an obligation**
40 **arising under a declaration or covenant recorded against the title**
41 **to real property, or under any other contractual agreement or**
42 **promise, whether or not recorded, that requires or purports to**
43 **require the payment of a private transfer fee to the declarant or**
44 **other person specified in the declaration, covenant or agreement,**



1 *or to his or her successors or assigns, upon a subsequent transfer*
2 *of an interest in the real property.*

3 **Sec. 7.** *“Seller” includes, without limitation, a grantor or*
4 *other transferor of an interest in real property.*

5 **Sec. 8.** *“Transfer” means the sale, gift, conveyance,*
6 *assignment, inheritance or other transfer of an interest in real*
7 *property.*

8 **Sec. 9.** *The Legislature finds and declares that:*

9 *1. The public policy of this State favors the marketability of*
10 *real property and the transferability of interests in real property*
11 *free of defects in title or unreasonable restraints on the alienation*
12 *of real property; and*

13 *2. A private transfer fee obligation violates the public policy*
14 *of this State by impairing the marketability and transferability of*
15 *real property and by constituting an unreasonable restraint on the*
16 *alienation of real property regardless of the duration or amount of*
17 *the private transfer fee or the method by which the private transfer*
18 *fee obligation is created or imposed.*

19 **Sec. 10.** *1. Except as otherwise provided in section 11 of*
20 *this act:*

21 *(a) A person shall not, on or after the effective date of this act,*
22 *create or record a private transfer fee obligation in this State; and*

23 *(b) A private transfer fee obligation that is created or recorded*
24 *in this State on or after the effective date of this act is void and*
25 *unenforceable.*

26 *2. The provisions of subsection 1 do not validate or make*
27 *enforceable any private transfer fee obligation that was created or*
28 *recorded in this State before the effective date of this act.*

29 **Sec. 11.** *1. The payee under a private transfer fee*
30 *obligation that was created before the effective date of this act*
31 *shall, on or before July 31, 2012, record in the office of the county*
32 *recorder of the county in which the real property that is subject to*
33 *the private transfer fee obligation is located a notice which*
34 *includes:*

35 *(a) The title “Notice of Private Transfer Fee Obligation” in*
36 *not less than 14-point boldface type;*

37 *(b) The legal description of the real property;*

38 *(c) The amount of the private transfer fee or the method by*
39 *which the private transfer fee must be calculated;*

40 *(d) If the real property is residential property, the amount of*
41 *the private transfer fee that would be imposed on the sale of a*
42 *home for \$100,000, the sale of a home for \$250,000 and the sale of*
43 *a home for \$500,000;*

44 *(e) The date or circumstances under which the private transfer*
45 *fee obligation expires, if any;*



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(f) The purpose for which the money received from the payment of the private transfer fee will be used;

(g) The name, address and telephone number of the payee; and

(h) If the payee is:

(1) A natural person, the notarized signature of the payee; or

(2) An entity, the notarized signature of an authorized officer or employee of the entity.

2. Upon any change in the information set forth in the notice described in subsection 1, the payee may record an amendment to the notice.

3. If the payee fails to comply with the requirements of subsection 1:

(a) The private transfer fee obligation is void and unenforceable and any interest in the real property that is subject to the private transfer fee obligation may thereafter be conveyed free and clear of the private transfer fee obligation; and

(b) The payee is subject to the liability described in section 13 of this act.

4. Any person with an interest in the real property that is subject to the private transfer fee obligation may record in the office of the county recorder of the county in which the real property is located an affidavit which:

(a) States that the affiant has actual knowledge of, and is competent to testify to, the facts set forth in the affidavit;

(b) Sets forth the legal description of the real property that is subject to the private transfer fee obligation;

(c) Sets forth the name of the owner of the real property as recorded in the office of the county recorder;

(d) States that the private transfer fee obligation was created before the effective date of this act and specifies the date on which the private transfer fee obligation was created;

(e) States that the payee under the private transfer fee obligation failed on or before July 31, 2012, to record in the office of the county recorder of the county in which the real property that is subject to the private transfer fee obligation is located a notice which complies with the requirements of subsection 1; and

(f) Is signed by the affiant under penalty of perjury.

5. When properly recorded, the affidavit described in subsection 4 constitutes prima facie evidence that:

(a) The real property described in the affidavit was subject to a private transfer fee obligation that was created before the effective date of this act;



(b) *The payee under the private transfer fee obligation failed on or before July 31, 2012, to record in the office of the county recorder of the county in which the real property that was subject to the private transfer fee obligation is located a notice which complies with the requirements of subsection 1; and*

(c) *The private transfer fee obligation is void and unenforceable and any interest in the real property that is subject to the private transfer fee obligation may thereafter be conveyed free and clear of the private transfer fee obligation.*

Sec. 12. *1. If a written request for a written statement of the amount of the transfer fee due upon the sale of real property is sent by certified mail, return receipt requested, to the payee under a private transfer fee obligation that was created before the effective date of this act at the address appearing in the recorded notice described in section 11 of this act, the payee shall provide such a written statement to the person who requested the written statement not later than 30 days after the date of mailing.*

2. If the payee fails to comply with the requirements of subsection 1:

(a) *The private transfer fee obligation is void and unenforceable and any interest in the real property that is subject to the private transfer fee obligation may thereafter be conveyed free and clear of the private transfer fee obligation; and*

(b) *The payee is subject to the liability described in section 13 of this act.*

3. The person who requested the written statement may record in the office of the county recorder of the county in which the real property is located an affidavit which:

(a) *States that the affiant has actual knowledge of, and is competent to testify to, the facts set forth in the affidavit;*

(b) *Sets forth the legal description of the real property that is subject to the private transfer fee obligation;*

(c) *Sets forth the name of the owner of the real property as recorded in the office of the county recorder;*

(d) *Expressly refers to the recorded notice described in section 11 of this act by:*

(1) The date on which the notice was recorded in the office of the county recorder; and

(2) The book, page and document number, as applicable, of the recorded notice;

(e) *States that a written request for a written statement of the amount of the transfer fee due upon the sale of the real property was sent by certified mail, return receipt requested, to the payee at the address appearing in the recorded notice described in section 11 of this act, and that the payee failed to provide such a written*



1 *statement to the person who requested the written statement within*
2 *30 days after the date of mailing; and*

3 *(f) Is signed by the affiant under penalty of perjury.*

4 *4. When properly recorded, the affidavit described in*
5 *subsection 3 constitutes prima facie evidence that:*

6 *(a) A written request for a written statement of the amount of*
7 *the transfer fee due upon the sale of the real property was sent by*
8 *certified mail, return receipt requested, to the payee at the address*
9 *appearing in the recorded notice described in section 11 of this*
10 *act;*

11 *(b) The payee failed to provide such a written statement to the*
12 *person who requested the written statement within 30 days after*
13 *the date of mailing; and*

14 *(c) The private transfer fee obligation is void and*
15 *unenforceable and any interest in the real property that is subject*
16 *to the private transfer fee obligation may thereafter be conveyed*
17 *free and clear of the private transfer fee obligation.*

18 **Sec. 13.** *1. Any person who creates or records a private*
19 *transfer fee obligation in the person's favor on or after the*
20 *effective date of this act or who fails to comply with a requirement*
21 *imposed by subsection 1 of section 11 of this act or subsection 1 of*
22 *section 12 of this act is liable for all:*

23 *(a) Damages resulting from the enforcement of the private*
24 *transfer fee obligation upon the transfer of an interest in the real*
25 *property, including, without limitation, the amount of any private*
26 *transfer fee paid by a party to the transfer; and*

27 *(b) Attorney's fees, expenses and costs incurred by a party to*
28 *the transfer or mortgagee of the real property to recover any*
29 *private transfer fee paid or in connection with an action to quiet*
30 *title.*

31 *2. A principal is liable pursuant to this section for the acts or*
32 *omissions of an authorized agent of the principal.*

33 **Sec. 14.** *Chapter 113 of NRS is hereby amended by adding*
34 *thereto a new section to read as follows:*

35 *1. A seller of real property that is subject to a private transfer*
36 *fee obligation shall furnish to the buyer a written statement which*
37 *discloses the existence of the private transfer fee obligation,*
38 *includes a description of the private transfer fee obligation and*
39 *sets forth a notice in substantially the following form:*

40
41 *A private transfer fee obligation has been created with*
42 *respect to this property. The private transfer fee obligation*
43 *may lower the value of this property. The laws of this State*
44 *prohibit the enforcement of certain private transfer fee*
45 *obligations that are created or recorded on or after the*



1 *effective date of this act (section 10 of this act) and impose*
2 *certain notice requirements with respect to private transfer*
3 *fee obligations that were created before the effective date of*
4 *this act (section 11 of this act).*

5
6 2. As used in this section, “private transfer fee obligation”
7 *has the meaning ascribed to it in section 6 of this act.*

8 **Sec. 15.** This act becomes effective upon passage and
9 approval.

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