

1-1 By: Darby, et al. (Senate Sponsor - Harris) H.B. No. 8
1-2 (In the Senate - Received from the House May 5, 2011;
1-3 May 9, 2011, read first time and referred to Committee on Business
1-4 and Commerce; May 16, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 May 16, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 8 By: Estes

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to prohibiting certain private transfer fees and the
1-11 preservation of private real property rights; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 5, Property Code, is amended by adding
1-14 Subchapter G to read as follows:

1-15 SUBCHAPTER G. CERTAIN PRIVATE TRANSFER FEES PROHIBITED;

1-16 PRESERVATION OF PRIVATE REAL PROPERTY RIGHTS

1-17 Sec. 5.201. DEFINITIONS. In this subchapter:

1-18 (1) "Encumbered property" means all property,
1-19 including the property of a subsequent purchaser, subject to the
1-20 same private transfer fee obligation.

1-21 (2) "Lender" means a lending institution, including a
1-22 bank, trust company, banking association, savings and loan
1-23 association, mortgage company, investment bank, credit union, life
1-24 insurance company, and governmental agency, that customarily
1-25 provides financing or an affiliate of a lending institution.

1-26 (3) "Payee" means a person who claims the right to
1-27 receive or collect a private transfer fee payable under a private
1-28 transfer fee obligation and who may or may not have a pecuniary
1-29 interest in the obligation.

1-30 (4) "Private transfer fee" means an amount of money,
1-31 regardless of the method of determining the amount, that is payable
1-32 on the transfer of an interest in real property or payable for a
1-33 right to make or accept a transfer.

1-34 (5) "Private transfer fee obligation" means an
1-35 obligation to pay a private transfer fee created under:

1-36 (A) a declaration or other covenant recorded in
1-37 the real property records in the county in which the property
1-38 subject to the private transfer fee obligation is located;

1-39 (B) a contractual agreement or promise; or

1-40 (C) an unrecorded contractual agreement or
1-41 promise.

1-42 (6) "Subsequent owner" means a person who acquires
1-43 real property by transfer from a person other than the person who is
1-44 the seller of the property on the date the private transfer fee
1-45 obligation is created.

1-46 (7) "Subsequent purchaser" means a person who
1-47 purchases real property from a person other than the person who is
1-48 the seller on the date the private transfer fee obligation is
1-49 created. The term includes a lender who provides a mortgage loan to
1-50 a subsequent purchaser to purchase the property.

1-51 (8) "Transfer" means the sale, gift, conveyance,
1-52 assignment, inheritance, or other transfer of an ownership interest
1-53 in real property.

1-54 Sec. 5.202. CERTAIN PRIVATE TRANSFER FEE OBLIGATIONS VOID.

1-55 (a) Except as provided by this subchapter, a private transfer fee
1-56 obligation created on or after the effective date of this
1-57 subchapter is not binding or enforceable against a subsequent owner
1-58 or subsequent purchaser of an interest in real property and is void.

1-59 (b) For purposes of this subchapter, the following payments
1-60 are not considered private transfer fee obligations:

1-61 (1) consideration paid by a purchaser to a seller for
1-62 an interest in real property transferred, including, as applicable,
1-63 a mineral interest transferred, including additional consideration

2-1 paid to a seller for the property's appreciation, development, or
2-2 sale after the interest in the property has been transferred to the
2-3 purchaser, if the additional consideration is paid only once and
2-4 that payment does not bind successors in interest to the property to
2-5 any private transfer fee obligation;
2-6 (2) a commission paid to a licensed real estate broker
2-7 under a written agreement between a seller or purchaser and the
2-8 broker, including an additional commission for the property's
2-9 appreciation, development, or sale after the interest in property
2-10 is transferred to the purchaser;
2-11 (3) interest, a fee, a charge, or another type of
2-12 payment to a lender under a loan secured by a mortgage on the
2-13 property, including:
2-14 (A) a fee payable for the lender's consent to an
2-15 assumption of the loan or transfer of the property subject to the
2-16 mortgage;
2-17 (B) a fee or charge payable for an estoppel
2-18 letter or certificate;
2-19 (C) a shared appreciation interest or profit
2-20 participation; or
2-21 (D) other consideration payable in connection
2-22 with the loan;
2-23 (4) rent, reimbursement, a fee, a charge, or another
2-24 type of payment to a lessor under a lease, including a fee for
2-25 consent to an assignment, sublease, encumbrance, or transfer of a
2-26 lease;
2-27 (5) consideration paid to the holder of an option to
2-28 purchase an interest in property, or to the holder of a right of
2-29 first refusal or first offer to purchase an interest in property,
2-30 for waiving, releasing, or not exercising the option or right when
2-31 the property is transferred to another person;
2-32 (6) a fee payable to or imposed by a governmental
2-33 entity in connection with recording the transfer of the property;
2-34 (7) dues, a fee, a charge, an assessment, a fine, a
2-35 contribution, or another type of payment under a declaration or
2-36 other covenant or under law, including a fee or charge payable for a
2-37 change of ownership entered in the records of an association to
2-38 which this subdivision applies or an estoppel letter or resale
2-39 certificate issued under Section 207.003 by an association to which
2-40 this subdivision applies or the person identified under Section
2-41 209.004(a)(6), provided that no portion of the fee or charge is
2-42 required to be passed through to a third party designated or
2-43 identifiable in the declaration or other covenant or law or in a
2-44 document referenced in the declaration or other covenant or law,
2-45 unless paid to:
2-46 (A) an association as defined by Section 82.003
2-47 or 221.002 or the person or entity managing the association as
2-48 provided by Section 82.116(a)(5) or 221.032(b)(11), as applicable;
2-49 (B) a property owners' association as defined by
2-50 Section 202.001 or 209.002 or the person or entity described by
2-51 Section 209.004(a)(6); or
2-52 (C) a property owners' association as defined by
2-53 Section 202.001 that does not require an owner of property governed
2-54 by the association to be a member of the association or the person
2-55 or entity described by Section 209.004(a)(6);
2-56 (8) dues, a fee, a charge, an assessment, a fine, a
2-57 contribution, or another type of payment for the transfer of a club
2-58 membership related to the property;
2-59 (9) dues, a fee, a charge, an assessment, a fine, a
2-60 contribution, or another type of payment paid to an organization
2-61 exempt from federal taxation under Section 501(c)(3) or 501(c)(4),
2-62 Internal Revenue Code of 1986, only if the organization uses the
2-63 payments to directly benefit the encumbered property by:
2-64 (A) supporting or maintaining only the
2-65 encumbered property;
2-66 (B) constructing or repairing improvements only
2-67 to the encumbered property; or
2-68 (C) providing activities or infrastructure to
2-69 support quality of life, including cultural, educational,

3-1 charitable, recreational, environmental, and conservation
3-2 activities and infrastructure, that directly benefit the
3-3 encumbered property; or
3-4 (10) a fee payable to or imposed by the Veterans' Land
3-5 Board for consent to an assumption or transfer of a contract of sale
3-6 and purchase.
3-7 (c) The benefit described by Subsection (b)(9)(C) may
3-8 collaterally benefit a community composed of:
3-9 (1) property that is adjacent to the encumbered
3-10 property; or
3-11 (2) property a boundary of which is not more than 1,000
3-12 yards from a boundary of the encumbered property.
3-13 (d) Notwithstanding Subsection (c), an organization may
3-14 provide a direct benefit under Subsection (b)(9) if:
3-15 (1) the organization provides to the general public
3-16 activities or infrastructure described by Subsection (b)(9)(C);
3-17 (2) the provision of activities or infrastructure
3-18 substantially benefits the encumbered property; and
3-19 (3) the governing body of the organization:
3-20 (A) is controlled by owners of the encumbered
3-21 property; and
3-22 (B) approves payments for activities or
3-23 infrastructure at least annually.
3-24 (e) An organization may provide activities and
3-25 infrastructure described by Subsection (b)(9)(C) to another
3-26 organization exempt from federal taxation under Section 501(c)(3)
3-27 or 501(c)(4), Internal Revenue Code of 1986, at no charge for de
3-28 minimis usage without violating the requirements of this section.
3-29 Sec. 5.203. NOTICE REQUIREMENTS FOR CONTINUATION OF
3-30 EXISTING PRIVATE TRANSFER FEE OBLIGATIONS. (a) A person who
3-31 receives a private transfer fee under a private transfer fee
3-32 obligation created before the effective date of this subchapter
3-33 must, on or before January 31, 2012, file for record a "Notice of
3-34 Private Transfer Fee Obligation" as provided by this section in the
3-35 real property records of each county in which the property is
3-36 located.
3-37 (b) Multiple payees of a single private transfer fee under a
3-38 private transfer fee obligation must designate one payee as the
3-39 payee of record for the fee.
3-40 (c) A notice under Subsection (a) must:
3-41 (1) be printed in at least 14-point boldface type;
3-42 (2) state the amount of the private transfer fee and
3-43 the method of determination, if applicable;
3-44 (3) state the date or any circumstance under which the
3-45 private transfer fee obligation expires, if any;
3-46 (4) state the purpose for which the money from the
3-47 private transfer fee obligation will be used;
3-48 (5) notwithstanding Subsection (b), state the name of
3-49 each payee and each payee's contact information;
3-50 (6) state the name and address of the payee of record
3-51 to whom the payment of the fee must be sent;
3-52 (7) include the acknowledged signature of each payee
3-53 or authorized representative of each payee; and
3-54 (8) state the legal description of the property
3-55 subject to the private transfer fee obligation.
3-56 (d) A person required to file a notice under this section
3-57 shall:
3-58 (1) refile the notice described by this section not
3-59 earlier than the 30th day before the third anniversary of the
3-60 original filing date described by Subsection (a) and within a
3-61 similar 30-day period every third year thereafter; and
3-62 (2) amend the notice to reflect any change in the name
3-63 or address of any payee included in the notice not later than the
3-64 30th day after the date the change occurs.
3-65 (e) A person who amends a notice under Subsection (d)(2)
3-66 must include:
3-67 (1) the recording information of the original notice
3-68 filed as required by this section; and
3-69 (2) the legal description of the property subject to

4-1 the private transfer fee obligation.

4-2 (f) If a person required to file a notice under this section
 4-3 fails to comply with this section:

4-4 (1) payment of the private transfer fee may not be a
 4-5 requirement for the conveyance of an interest in the property to a
 4-6 purchaser;

4-7 (2) the property is not subject to further obligation
 4-8 under the private transfer fee obligation; and

4-9 (3) the private transfer fee obligation is void.

4-10 Sec. 5.204. ADDITIONAL COMPLIANCE REQUIREMENT: TIMELY
 4-11 ACCEPTANCE OF FEES PAID UNDER EXISTING PRIVATE TRANSFER FEE
 4-12 OBLIGATIONS. (a) The payee of record on the date a private
 4-13 transfer fee is paid under a private transfer fee obligation
 4-14 subject to Section 5.203 must accept the payment on or before the
 4-15 30th day after the date the payment is tendered to the payee.

4-16 (b) If the payee of record fails to comply with Subsection
 4-17 (a):

4-18 (1) the payment must be returned to the remitter;

4-19 (2) payment of the private transfer fee may not be a
 4-20 requirement for the conveyance of an interest in the property to a
 4-21 purchaser; and

4-22 (3) the property is not subject to further obligation
 4-23 under the private transfer fee obligation.

4-24 Sec. 5.205. DISCLOSURE OF EXISTING TRANSFER FEE OBLIGATION
 4-25 REQUIRED IN CONTRACT FOR SALE. A seller of real property that may
 4-26 be subject to a private transfer fee obligation shall provide
 4-27 written notice to a potential purchaser stating that the obligation
 4-28 may be governed by this subchapter.

4-29 Sec. 5.206. WAIVER VOID. A provision that purports to waive
 4-30 a purchaser's rights under this subchapter is void.

4-31 Sec. 5.207. INJUNCTIVE OR DECLARATORY RELIEF; PROVIDING
 4-32 PENALTIES. (a) The attorney general may institute an action for
 4-33 injunctive or declaratory relief to restrain a violation of this
 4-34 subchapter.

4-35 (b) In addition to instituting an action for injunctive or
 4-36 declaratory relief under Subsection (a), the attorney general may
 4-37 institute an action for civil penalties against a payee for a
 4-38 violation of this chapter. Except as provided by Subsection (c), a
 4-39 civil penalty assessed under this section may not exceed an amount
 4-40 equal to two times the amount of the private transfer fee charged or
 4-41 collected by the payee in violation of this subchapter.

4-42 (c) If the court in which an action under Subsection (b) is
 4-43 pending finds that a payee violated this subchapter with a
 4-44 frequency that constitutes a pattern or practice, the court may
 4-45 assess a civil penalty not to exceed \$250,000.

4-46 (d) The comptroller shall deposit to the credit of the
 4-47 general revenue fund all money collected under this section.

4-48 SECTION 2. Section 5.017, Property Code, is repealed.

4-49 SECTION 3. Section 5.205, Property Code, as added by this
 4-50 Act, applies only to a contract for the sale of real property
 4-51 entered into on or after January 1, 2012. A contract for the sale of
 4-52 real property entered into before January 1, 2012, is governed by
 4-53 the law in effect immediately before the effective date of this Act,
 4-54 and the former law is continued in effect for that purpose.

4-55 SECTION 4. This Act takes effect immediately if it receives
 4-56 a vote of two-thirds of all the members elected to each house, as
 4-57 provided by Section 39, Article III, Texas Constitution. If this
 4-58 Act does not receive the vote necessary for immediate effect, this
 4-59 Act takes effect September 1, 2011.

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