

By: Menéndez

S.B. No. 1578

A BILL TO BE ENTITLED

AN ACT

relating to private transfer fee obligations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5.201, Property Code, is amended by adding Subdivision (3-a) to read as follows:

(3-a) "Payee of record" means:

(A) the payee of a private transfer fee under a private transfer fee obligation if there is only one payee; or

(B) the payee designated as payee of record by multiple payees of a single private transfer fee under a private transfer fee obligation, as required by Section 5.203(b).

SECTION 2. Section 5.203, Property Code, is amended by amending Subsection (e) and adding Subsections (e-1) and (e-2) to read as follows:

(e) A person who refiles or amends a notice under Subsection (d) [~~(d)(2)~~] must include:

(1) the recording information of the original notice and each subsequent notice filed as required by this section; and

(2) the legal description of the property subject to the private transfer fee obligation.

(e-1) The legal description of property included in a notice under this section must be sufficient to describe all encumbered property. A description by reference to a previously recorded document other than a recorded plat does not satisfy this

1 subsection.

2 (e-2) If the encumbered property is located in a platted
3 subdivision, the legal description of property included in a notice
4 under this section must:

5 (1) describe the subdivision and include the
6 subdivision's name and recording information; and

7 (2) itemize by lot and block reference each lot that is
8 subject to the private transfer fee obligation.

9 SECTION 3. Subchapter G, Chapter 5, Property Code, is
10 amended by adding Sections 5.2035, 5.2041, 5.2042, 5.2043, 5.2044,
11 and 5.2045 to read as follows:

12 Sec. 5.2035. ADDITIONAL COMPLIANCE REQUIREMENT:
13 NOTIFICATION OF SUBDIVISION PROPERTY OWNERS. (a) This section
14 applies to encumbered property located in a platted subdivision
15 used or developed primarily for use as one to four family
16 residences.

17 (b) The payee of record for an encumbered property to which
18 this section applies shall:

19 (1) on or before the date a notice required under
20 Section 5.203 is filed for record, mail a separate copy of the
21 notice to each owner of property in the subdivision by first class
22 mail, postage prepaid, at the mailing address shown for the owner in
23 the records of the central appraisal district of the county in which
24 the encumbered property is located;

25 (2) file for record with the notice the payee's sworn
26 affidavit affirming the copies of the notice were mailed in the time
27 and manner required by this section; and

1 (3) maintain auditable records showing compliance
2 with this section for at least five years and make those records
3 available at no charge to any owner of property in the subdivision.

4 (c) For purposes of Section 5.203(f), a payee of record's
5 failure to comply with this section constitutes failure to comply
6 with Section 5.203.

7 Sec. 5.2041. LIMITATIONS PERIOD FOR PAYEE CLAIM. (a) This
8 section applies to a suit:

9 (1) for payment of a private transfer fee payable as a
10 result of a transfer of encumbered property;

11 (2) to foreclose a lien securing a private transfer
12 fee obligation; or

13 (3) to contest the validity of a recorded termination
14 of the instrument creating a private transfer fee obligation.

15 (b) A person must bring a suit to which this section applies
16 not later than one year after the date of the sale or conveyance or
17 the date the termination was recorded.

18 (c) This section does not affect any other limitation
19 applicable to the payment of a private transfer fee, a private
20 transfer fee obligation, or the foreclosure of a lien securing a
21 private transfer fee or private transfer fee obligation.

22 Sec. 5.2042. REQUEST FOR STATUS OF PRIVATE TRANSFER FEE
23 OBLIGATION. (a) An owner of property described in a recorded
24 private transfer fee obligation may by mail request that the payee
25 of record designated in the most recent recorded notice of private
26 transfer fee obligation under Section 5.203 declare whether the
27 private transfer fee obligation is or is not currently effective.

1 (b) Not later than the 30th day after the date of the mailing
2 of a request under Subsection (a), the payee of record who receives
3 the request shall:

4 (1) deliver to the owner making the request a copy of a
5 sworn affidavit stating the status of the private transfer fee
6 obligation as currently effective or not currently effective and
7 made by:

8 (A) the payee of record, if the payee of record is
9 a natural person; or

10 (B) an individual who is an authorized
11 representative of the payee, if the payee is not a natural person;
12 and

13 (2) file the affidavit for record in the county where
14 the property is located.

15 (c) If a request is made under Subsection (a) and the payee
16 of record does not satisfy the requirements of Subsection (b) or the
17 affidavit delivered and recorded under Subsection (b) states that
18 the private transfer fee obligation is not effective:

19 (1) the private transfer fee obligation is terminated,
20 is not effective, and does not encumber any property described in
21 the private transfer fee obligation; and

22 (2) a private transfer fee is not due or payable with
23 respect to any future transfer of the owner's property or any other
24 property described in the private transfer fee obligation.

25 (d) A property owner who makes a request under Subsection
26 (a) may record at any time in the county where the property is
27 located a sworn affidavit that states the date the request was

1 mailed and includes a copy of the request. An affidavit described by
2 this subsection:

3 (1) is presumed to be true and correct; and

4 (2) may be conclusively relied on as true and correct
5 by any future grantees or lienholders.

6 Sec. 5.2043. ACTION AGAINST PAYEE AUTHORIZED. (a) The
7 owner of or any purchaser, lienholder, or other party having an
8 interest in or lien on affected property may bring an action under
9 this section against any payee of a private transfer fee
10 obligation, as shown in the most recent notice of private transfer
11 fee obligation recorded under Section 5.203, and any individual who
12 signed the relevant affidavit on behalf of the payee, if the payee
13 improperly:

14 (1) files a notice of private transfer fee obligation
15 under Section 5.203;

16 (2) files an affidavit described by Section 5.2042(b)
17 stating that the private transfer fee obligation is currently
18 effective; or

19 (3) files any other affidavit or notice asserting the
20 private transfer fee obligation is effective with respect to the
21 property, the owner, or any purchaser, lienholder, or other
22 interested party having an interest in or lien on the property.

23 (b) An owner or a purchaser, lienholder, or other interested
24 party who prevails in an action under this section is entitled:

25 (1) to declaratory relief determining that the private
26 transfer fee obligation, any right to receive a private transfer
27 fee, and any lien securing the private transfer fee obligation is

1 invalid and unenforceable with respect to the property; and

2 (2) to recover:

3 (A) the party's attorney's fees and court costs;

4 (B) actual damages; and

5 (C) exemplary damages of \$10,000 for each
6 affected tract, with each subdivided lot constituting a separate
7 tract.

8 (c) Each payee and any individual who is determined to have
9 signed a false affidavit is jointly and severally liable for an
10 award under Subsection (b)(2).

11 (d) An action may be brought under this section in the same
12 suit by more than one owner of property described by the private
13 transfer fee obligation. Each prevailing owner is separately
14 entitled to recover under Subsection (b)(2).

15 (e) An action under this section regarding an affidavit
16 recorded under Section 5.2042(b) may be brought by the owner who
17 requested the affidavit or any person who acquired title to the
18 property after the request was made.

19 (f) In an action brought under this section against the
20 payee of record for the most recently filed notice of private
21 transfer fee obligation under Section 5.203:

22 (1) service on the payee of record is effective
23 service on all payees, without requiring joinder or service on any
24 other payee; and

25 (2) a judgment against the payee of record is binding
26 on each payee jointly and severally.

27 Sec. 5.2044. DECEPTIVE TRADE PRACTICE. The filing of a

1 notice under Section 5.203 with respect to a private transfer fee
2 obligation that has terminated or the making or filing of a false
3 affidavit under Section 5.2042(b) is a deceptive trade practice
4 under Subchapter E, Chapter 17, Business & Commerce Code, and is
5 actionable under that subchapter.

6 Sec. 5.2045. TIMING OF TERMINATION. (a) In any action to
7 enforce or to determine the validity or enforceability of a private
8 transfer fee obligation with respect to a transaction in which a
9 deed is executed, a termination of the obligation shall be
10 considered effective if:

11 (1) the termination is recorded before the deed is
12 recorded; or

13 (2) a grantor or grantee of the deed executes and
14 records an affidavit stating that it was the intention of the
15 parties to the deed that the deed was not executed, delivered, or
16 accepted, and that the property was not sold, conveyed,
17 transferred, or assigned, until after the recordation of the
18 termination.

19 (b) For purposes of Subsection (a), if a deed is executed in
20 a transaction in which a termination of a private transfer fee
21 obligation is executed, it is presumed that the termination was
22 executed before the conveyance.

23 SECTION 4. (a) Notwithstanding Section 5.2041, Property
24 Code, as added by this Act, a person may bring a suit described by
25 Subsection (a) of that section before September 1, 2024, in
26 connection with a sale or conveyance that occurred or a termination
27 of private transfer fee obligation that was recorded before

1 September 1, 2023.

2 (b) This section does not affect any other limitation
3 applicable to the payment of a private transfer fee, a private
4 transfer fee obligation, or the foreclosure of a lien securing a
5 private transfer fee or private transfer fee obligation.

6 SECTION 5. This Act takes effect September 1, 2023.