

ENROLLED ACT NO. 43, HOUSE OF REPRESENTATIVES

SIXTY-FIRST LEGISLATURE OF THE STATE OF WYOMING
2012 BUDGET SESSION

AN ACT relating to real property; prohibiting the creation of private transfer fee obligations as specified; specifying requirements for effective private transfer fee obligations; providing definitions; and providing for an effective date.

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

Section 1. W.S. 34-28-101 through 34-28-103 are created to read:

CHAPTER 28
PRIVATE TRANSFER FEES

34-28-101. Definitions.

(a) As used in this chapter:

(i) "Transfer" means the sale, gift, conveyance, assignment, inheritance or other transfer of an ownership interest in real property located in this state;

(ii) "Private transfer fee" means a fee or charge payable upon the transfer of an interest in real property, or payable for the right to make or accept the transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price or other consideration given for the transfer. "Private transfer fee" shall not include the following:

(A) Any consideration payable by the grantee to the grantor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the grantee based

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upon any subsequent appreciation, development or sale of a separate mineral estate and its appurtenant surface access rights;

(B) Any consideration payable by the grantee to the grantor for the interest in real property, other than a mineral estate and its appurtenant surface access rights, being transferred, including any subsequent additional consideration for the property payable to the grantee based upon any subsequent appreciation, development or sale of the property, provided the additional consideration is payable on a one (1) time basis only and the obligation to make the payment does not bind successors in title to the property;

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

(D) Any interest, charges, fees or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage against real property, including, but not limited to, any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage, any fees or charges payable to the lender for estoppel letters or certificates and any other consideration allowed by law and payable to the lender in connection with the loan;

(E) Any rent, reimbursement, charge, fee or other amount payable by a lessee to a lessor under a lease, including, but not limited to, any fee payable to the

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lessor for consenting to an assignment, subletting, encumbrance or transfer of the lease;

(F) Any 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 waiving, releasing or not exercising the option or right upon the transfer of the property to another person;

(G) Any tax, fee, charge, assessment, fine or other amount payable to or imposed by a governmental authority;

(H) Any fee, charge, assessment, fine or other amount payable to a homeowners', condominium, cooperative, mobile home or property owners' association or to a nonprofit land trust pursuant to a declaration or covenant or law applicable to the association or nonprofit land trust;

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

(K) Any fee, charge, assessment, contribution or other amount imposed by the holder of a recorded conservation easement that is designated to compensate the holder for the cost of ensuring compliance with the terms of the easement. The fee, charge, assessment, contribution or other amount may be determined

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by reference to the value, purchase price or other consideration given for the transfer of the real property.

(iii) "Private transfer fee obligation" means an obligation arising under a declaration or covenant purporting to affect real property that requires or purports to require the payment of a private transfer fee to the declarant or other person specified in the declaration, covenant or agreement, or to their successors or assigns, upon a subsequent transfer of an interest in the real property.

34-28-102. Prohibition.

A private transfer fee obligation recorded or entered into in this state on or after April 1, 2012 and before July 1, 2014 does not run with the title to real property and is not binding on or enforceable at law or in equity against any subsequent owner, purchaser or mortgagee of any interest in real property as an equitable servitude or otherwise.

34-28-103. Recording of existing private transfer fee obligations; jurisdictions; affidavit of payment.

(a) The payee of a private transfer fee obligation imposed prior to April 1, 2012 or an obligation under W.S. 34-28-101(a)(ii)(H) shall record a notice of private transfer fee obligation in the office of the clerk for each county in which the real property is located. The notice recorded shall meet the following requirements and contain:

(i) A clearly identified disclosure of the existence and amount of the private transfer fee obligation;

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(ii) A description of the type and nature of the private transfer fee obligation;

(iii) A description of the type and nature of any penalty which may be incurred as a result of failure to pay the private transfer fee obligation;

(iv) A legal description of the real property;
and

(v) The name and address of the payee. A notice filed under this subsection shall be amended upon change of the name or address of the payee.

(b) No court in the state of Wyoming shall have jurisdiction to enforce a private transfer fee obligation which is not recorded as required by subsection (a) of this section against a bonafide purchaser who receives title to the property after April 1, 2012.

(c) Filing of an affidavit by a grantor with the clerk for each county in which the real property is located stating that payment in full of any private transfer fee obligation was sent by certified mail to the payee at the address listed in the document recorded under subsection (a) of this section is prima facie evidence of satisfaction of the obligation.

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Section 2. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk