

HOUSE BILL NO. HB0114

Private transfer fee disclosures.

Sponsored by: Representative(s) Greear, Lubnau and Stubson

A BILL

for

1 AN ACT relating to real property; requiring disclosure and
2 recording of private transfer fee obligations; providing
3 definitions; providing for proof of payment of a private
4 transfer fee obligation; and providing for an effective
5 date.

6

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

8

9 **Section 1.** W.S. 34-28-101 through 34-28-104 are
10 created to read:

11

12 CHAPTER 28

13 PRIVATE TRANSFER FEES

14

15 **34-28-101. Definitions.**

16

17 (a) As used in this chapter:

1

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

5

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

14

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

1 interest in real property may include a separate mineral
2 estate and its appurtenant surface access rights;

3

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

11

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

21

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

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

3

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

10

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

14

15 (G) Any fee, charge, assessment, fine or
16 other amount payable to a homeowners', condominium,
17 cooperative, mobile home or property owners' association
18 pursuant to a declaration or covenant or law applicable to
19 the association;

20

21 (H) Any fee, charge, assessment, dues,
22 contribution or other amount pertaining to the purchase or
23 transfer of a club membership relating to real property
24 owned by the member, including, but not limited to, any

1 amount determined by reference to the value, purchase price
2 or other consideration given for the transfer of the real
3 property.

4
5 (iii) "Private transfer fee obligation" means an
6 obligation arising under a declaration, covenant or
7 agreement purporting to affect real property that requires
8 or purports to require the payment of a private transfer
9 fee to the declarant or other person specified in the
10 declaration, covenant or agreement, or to his successors or
11 assigns, upon a subsequent transfer of an interest in the
12 real property.

13
14 **34-28-102. Recording of private transfer fee**
15 **obligation; consequences of failure to record;**
16 **jurisdiction.**

17
18 (a) The payee of a private transfer fee obligation
19 shall record a notice of private transfer fee obligation
20 and the document evidencing the obligation in the office of
21 the clerk for each county in which the real property is
22 located. The notice shall contain:

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

4
5 (ii) A description of the type and nature of the
6 private transfer fee obligation;

7
8 (iii) A description of the type and nature of
9 any penalty which may be incurred as a result of failure to
10 pay the private transfer fee obligation;

11
12 (iv) A legal description of the real property;
13 and

14
15 (v) The name and address of the payee. A notice
16 filed under this subsection shall be amended upon change
17 of the name or address of the payee.

18
19 (b) Every private transfer fee obligation created
20 before July 1, 2012 shall be void unless the notice and
21 document evidencing the obligation are recorded pursuant to
22 this section before July 1, 2012. Every private transfer
23 fee obligation created on or after July 1, 2012 shall be

1 void unless the notice and document evidencing the
2 obligation are recorded in compliance with this section.

3

4 (c) No court in the state of Wyoming shall have
5 jurisdiction to enforce a private transfer fee obligation
6 which is not recorded as provided in subsections (a) and
7 (b) of this section.

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9 **34-28-103. Required disclosure of private transfer**
10 **fee obligations.**

11

12 (a) Any contract for the sale of real property
13 subject to a private transfer fee obligation that is
14 recorded shall include a provision disclosing the existence
15 of the obligation, a description of the obligation and a
16 statement that private transfer fee obligations are subject
17 to certain prohibitions under this chapter. A contract for
18 the sale of real property which does not conform to the
19 requirements of this section shall not be enforceable by
20 the seller against the buyer. Nor shall the buyer be
21 liable to the seller for damages under such a contract and
22 the buyer under such a contract shall be entitled to the
23 return of all deposits made in connection with the sale of
24 the real property.

1

2 (b) Any provision in a contract for sale of real
3 property that purports to waive the rights of a buyer under
4 this section shall be void.

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6 (c) This section shall apply to any contract for the
7 sale of real property executed on or after July 1, 2012
8 that creates a private transfer fee obligation.

9

10 **34-28-104. Proof of payment of private transfer fee**
11 **obligation.**

12

13 (a) An affidavit filed with the clerk for each county
14 in which real property subject to a private transfer fee
15 obligation is located shall constitute prima facie evidence
16 of payment of a private transfer fee obligation provided
17 the affidavit:

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19 (i) Is executed by a grantor of the real
20 property subject to a private transfer fee obligation; and

21

22 (ii) States that payment in full of the private
23 transfer fee obligation was sent by certified mail to the

1 payee at the address in the notice of private transfer fee
2 obligation recorded under W.S. 34-28-102(a).

3

4 **Section 2.** This act is effective July 1, 2012.

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(END)