

1 HB184
2 125928-5
3 By Representative Greeson
4 RFD: Commerce and Small Business
5 First Read: 08-MAR-11

ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

Relating to private transfer fees; prohibiting the creation of private transfer fee obligations; and requiring certain procedures for notice and disclosure relative to private transfer fee obligations imposed prior to the effective date of this act in order for the obligations to be valid.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Article 18 is added to Chapter 4 of Title 35 of the Code of Alabama 1975, to read as follows:

Article 18.

§35-4-431. Intent.

The Legislature finds and declares that the public policy of this state favors the marketability of real property and the transferability of interests in real property free of title defects or unreasonable restraints on alienation. The Legislature further finds and declares that private transfer fee obligations violate this public policy by impairing the marketability and transferability of real property and by constituting an unreasonable restraint on alienation regardless of the duration of the obligation to pay a private

1 transfer fee, the amount of a private transfer fee, or the
2 method by which any private transfer fee is created or
3 imposed. Thus, the Legislature finds and declares that a
4 private transfer fee obligation should not run with the title
5 to property or otherwise bind subsequent owners of property
6 under any common law or equitable principle.

7 §35-4-432. Definitions.

8 (a) As used in this act, the following words have
9 the following meanings:

10 (1) ASSOCIATION. A association or unit owners'
11 association, as defined in Section 35-8A-103 of the Alabama
12 Uniform Condominium Act of 1991; an association as defined in
13 Section 35-8-2 of the Condominium Ownership Act; or a
14 nonprofit or cooperative membership organization composed
15 exclusively of owners of mobile homes, manufactured housing,
16 time-shares, camping resort interests, or other interests in
17 real property that is responsible for the maintenance,
18 improvements, services, or expenses related to real property
19 that is owned, used, or enjoyed in common by the members.

20 (2) PAYEE. The person or entity who claims the right
21 to receive or collect a private transfer fee payable under a
22 private transfer obligation. A payee may or may not have a
23 pecuniary interest in the private transfer fee obligation.

24 (3) PRIVATE TRANSFER FEE. A fee or charge payable
25 upon the transfer of an interest in real property, or payable
26 for the right to make or accept such transfer, regardless of
27 whether the fee or charge is a fixed amount or is determined

1 as a percentage of the value of the property, the purchase
2 price, or other consideration given for the transfer. The
3 following are not private transfer fees for purposes of this
4 article:

5 a. Any consideration payable by the grantee to the
6 grantor for the interest in real property being transferred,
7 including any subsequent additional consideration for the
8 property payable by the grantee based upon any subsequent
9 appreciation, development, or sale of the property, if such
10 additional consideration is payable on a one-time basis only
11 and the obligation to make such payment does not bind
12 successors in title to the property. For the purposes of this
13 paragraph, an interest in real property may include a separate
14 mineral estate and its appurtenant surface access rights.

15 b. Any commission payable to a licensed real estate
16 broker for the transfer of real property pursuant to an
17 agreement between the broker and the grantor or the grantee,
18 including, but not limited to, any subsequent additional
19 commission for that transfer payable by the grantor or the
20 grantee based upon any subsequent appreciation, development,
21 or sale of the property.

22 c. Any interest, charges, fees, or other amounts
23 payable by a borrower to a lender pursuant to a loan secured
24 by a mortgage against real property, including, but not
25 limited to, any fee payable to the lender for consenting to an
26 assumption of the loan or a transfer of the real property
27 subject to the mortgage, any fees or charges payable to the

1 lender for estoppel letters or certificates, and any shared
2 appreciation interest or profit participation or other
3 consideration and payable to the lender in connection with the
4 loan.

5 d. Any rent, reimbursement, charge, fee, or other
6 amount payable by a lessee to a lessor under a lease,
7 including, but not limited to, any fee payable to the lessor
8 for consenting to an assignment, subletting, encumbrance, or
9 transfer of the lease.

10 e. Any consideration payable to the holder of an
11 option to purchase an interest in real property or the holder
12 of a right of first refusal or first offer to purchase an
13 interest in real property for waiving, releasing, or not
14 exercising the option or right upon the transfer of the real
15 property to another person.

16 f. Any tax, fee, charge, assessment, fine, or other
17 amount payable to or imposed by a governmental authority.

18 g. Any fee, charge, assessment, dues, fine,
19 contribution, or other amount payable to a homeowners',
20 condominium, cooperative, mobile home, or property owners'
21 association pursuant to a declaration or covenant or law
22 applicable to such association, including, but not limited to,
23 fees or charges payable for estoppel letters or certificates
24 issued by the association or its authorized agent.

25 h. Any fee, charge, assessment, dues, fine,
26 contribution, or other amount imposed by a declaration or
27 covenant encumbering real property, and payable solely to a

1 nonprofit or charitable organization for the purpose of
2 supporting cultural, educational, charitable, recreational,
3 environmental, conservation, or other similar activities
4 benefitting the real property subject to the declaration or
5 covenant or the community in which such real property is
6 located.

7 i. Any fee, charge, assessment, dues, fine,
8 contribution, or other amount pertaining solely to the
9 purchase or transfer of a club membership relating to real
10 property owned by the member, including, but not limited to,
11 any amount determined by reference to the value, purchase
12 price, or other consideration given for the transfer of the
13 real property.

14 (4) PRIVATE TRANSFER FEE OBLIGATION. An obligation
15 arising under a declaration or covenant recorded against the
16 title to real property, or under any other contractual
17 agreement or promise, whether or not recorded, that requires
18 or purports to require the payment of a private transfer fee
19 upon a subsequent transfer of an interest in the real
20 property.

21 (5) TRANSFER. The sale, gift, conveyance,
22 assignment, inheritance, or other transfer of an ownership
23 interest in real property located in this state.

24 §35-4-433. Prohibition.

25 A private transfer fee obligation recorded or
26 entered into in this state on or after the effective date of
27 this act does not run with the title to real property and is

1 not binding on or enforceable at law or in equity against any
2 subsequent owner, purchaser, or mortgagee of any interest in
3 real property as an equitable servitude or otherwise. Any
4 private transfer fee obligation that is recorded or entered
5 into in this state on or after the effective date of this act
6 is void and unenforceable. This section does not create a
7 presumption that a private transfer fee obligation recorded or
8 entered into in this state before the effective date of this
9 act is valid and enforceable.

10 §35-4-434. Liability for Violations.

11 (a) Any person who records or enters into an
12 agreement imposing a private transfer fee obligation in his or
13 her favor after the effective date of this act shall be liable
14 for:

15 (1) Any and all damages resulting from the
16 imposition of the private transfer fee obligation on the
17 transfer of an interest in the real property, including, but
18 not limited to, the amount of any transfer fee paid by a party
19 to the transfer.

20 (2) All attorney fees, expenses, and costs incurred
21 by a party to the transfer or mortgagee of the real property
22 to recover any private transfer fee paid or in connection with
23 an action to quiet title.

24 (b) Where an agent acts on behalf of a principal to
25 record or secure a private transfer fee obligation, liability
26 shall be assessed to the principal, rather than the agent.

27 §35-4-435. Disclosure.

1 (a) Any contract for the sale of real property
2 subject to a private transfer fee obligation shall include a
3 provision disclosing the existence of that obligation, a
4 description of the obligation, and a statement that private
5 transfer fee obligations are subject to certain prohibitions
6 under this article. A contract for sale of real property which
7 does not conform to the requirements of this section is not
8 enforceable by the seller against the buyer, nor is the buyer
9 liable to the seller for damages under such a contract, and
10 the buyer under the contract is entitled to the return of all
11 deposits made in connection with the sale of the real
12 property.

13 (b) Where a private transfer fee obligation is not
14 disclosed under subsection (a) and a buyer subsequently
15 discovers the existence of the private transfer fee obligation
16 after title to the property has passed to the buyer, the buyer
17 has the right to recover both:

18 (1) Any and all damages resulting from the failure
19 to disclose the private transfer fee obligation, including,
20 but not limited to, the amount of any private transfer fee
21 paid by the buyer, or the difference between:

22 a. The market value of the real property if it were
23 not subject to a private transfer fee obligation.

24 b. The market value of the real property as subject
25 to a private transfer fee obligation.

1 (2) All attorney fees, expenses, and costs incurred
2 by the buyer in seeking the buyer's remedies under this
3 subsection.

4 (c) Any provision in a contract for sale of real
5 property that purports to waive the rights of a buyer under
6 this section is void.

7 (d) A real estate licensee shall have no duty to
8 discover the existence of any private transfer fee obligation.

9 §35-4-436. Notice Requirements for Existing Private
10 Transfer Fee Obligations.

11 (a) The payee of a private transfer fee obligation
12 imposed prior to the effective date of this act shall record,
13 prior to December 31, 2011, against the real property subject
14 to the private transfer fee obligation, a separate document in
15 the office of the judge of probate for each county in which
16 the real property is located which complies with all of the
17 following requirements:

18 (1) The title of the document shall be "Notice of
19 Private Transfer Fee Obligation" in at least 14-point boldface
20 type.

21 (2) The amount, if the private transfer fee is a
22 flat amount, or the percentage of the sales price constituting
23 the cost of the private transfer fee, or such other basis by
24 which the private transfer fee is to be calculated.

25 (3) If the real property is residential property,
26 actual dollar-cost examples of the private transfer fee for a
27 home priced at two hundred fifty thousand dollars (\$250,000),

1 five hundred thousand dollars (\$500,000), and seven hundred
2 fifty thousand dollars (\$750,000).

3 (4) The date or circumstances under which the
4 private transfer fee obligation expires, if any.

5 (5) The purpose for which the funds from the private
6 transfer fee obligation will be used.

7 (6) The name of the payee and specific contact
8 information regarding where the funds are to be sent.

9 (7) The acknowledged signature of the payee, or a
10 representative of the payee.

11 (8) The legal description of the real property
12 purportedly burdened by the private transfer fee obligation.

13 (9) Where there is more than one person or entity
14 who claims the right to receive or collect a private transfer
15 fee under a private transfer fee obligation, those persons or
16 entities shall designate a single person or entity as the
17 payee for purposes of that private transfer fee obligation.

18 (b) The payee may file an amendment to the notice of
19 private transfer fee containing new contact information, but
20 such amendment must contain the recording information of the
21 notice of private transfer fee which it amends and the legal
22 description of the real property burdened by the private
23 transfer fee obligation.

24 (c) If a payee fails to file the notice required
25 under subsection (a)(1) prior to December 31, 2011, the
26 grantor or any real property burdened by the private transfer
27 fee obligation may proceed with the conveyance of an interest

1 in the real property to any grantee and in so doing shall be
2 conclusively deemed to have acted in good faith and shall not
3 be subject to any obligations under the private transfer fee
4 obligation. In that event, the private transfer fee obligation
5 is void and the real property thereafter shall be conveyed
6 free and clear of the private transfer fee and private
7 transfer fee obligation.

8 (d) If a payee fails to fully comply with subsection
9 (a) in filing the notice required thereunder, then the
10 grantor, on recording of an affidavit under subsection (e),
11 may convey an interest in the real property to any grantee
12 without payment of the private transfer fee and is not subject
13 to any further obligations under the private transfer fee
14 obligation. In that event, the private transfer fee obligation
15 is void and the real property thereafter shall be conveyed
16 free and clear of the private transfer fee and private
17 transfer fee obligation.

18 (e) If the payee fails to provide a written
19 statement of the private transfer fee payable within 30 days
20 of the date of a written request for the same sent to the
21 address shown in the notice of private transfer fee, then the
22 grantor, on recording of an affidavit under subsection (f),
23 may convey an interest in the real property to any grantee
24 without payment of the private transfer fee and is not subject
25 to any further obligations under the private transfer fee
26 obligation. In that event, the private transfer fee obligation
27 shall become null and void and the real property thereafter

1 shall be conveyed free and clear of the private transfer fee
2 and private transfer fee obligation.

3 (f) An affidavit stating the facts enumerated in
4 subsection (g) shall be recorded in the office of the judge of
5 probate for each county in which the real property is situated
6 prior to or simultaneously with a conveyance pursuant to
7 subsection (d) or (e) of real property unburdened by a private
8 transfer fee obligation. An affidavit filed under this
9 subsection shall state that the affiant has actual knowledge
10 of, and is competent to testify to, the facts in the affidavit
11 and shall include the legal description of the real property
12 burdened by the private transfer fee obligation, the name of
13 the person appearing by the record to be the owner of the real
14 property at the time of the signing of the affidavit, a
15 reference, by recording information, to the instrument of
16 record containing the private transfer fee obligation and an
17 acknowledgment that the affiant is testifying under penalty of
18 perjury.

19 (g) When recorded, an affidavit filed under
20 subsection (f) is prima facie evidence that either of the
21 following:

22 (1) The payee has failed to fully comply with
23 subsection (a) in the respects stated in the affidavit.

24 (2) A request for the written statement of the
25 private transfer fee was sent to the payee at the address
26 shown on the notice of private transfer fee, and the payee
27 failed to provide the written statement of the private

1 transfer fee payable within 30 days of the date of the notice
2 sent to the address shown in the notification.

3 Section 2. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.

1
2
3

4
5
6
7
8
9
10
11
12
13
14

15
16
17
18

House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Commerce and
Small Business..... 08-MAR-11

Read for the second time and placed
on the calendar 1 amendment 24-MAR-11

Read for the third time and passed
as amended..... 07-APR-11

Yeas 93, Nays 0, Abstains 0

Greg Pappas
Clerk