

1 AN ACT

2 relating to prohibiting certain private transfer fees and the  
3 preservation of private real property rights; providing penalties.

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

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

7 SUBCHAPTER G. CERTAIN PRIVATE TRANSFER FEES PROHIBITED;

8 PRESERVATION OF PRIVATE REAL PROPERTY RIGHTS

9 Sec. 5.201. DEFINITIONS. In this subchapter:

10 (1) "Encumbered property" means all property,  
11 including the property of a subsequent purchaser, subject to the  
12 same private transfer fee obligation.

13 (2) "Lender" means a lending institution, including a  
14 bank, trust company, banking association, savings and loan  
15 association, mortgage company, investment bank, credit union, life  
16 insurance company, and governmental agency, that customarily  
17 provides financing or an affiliate of a lending institution.

18 (3) "Payee" means a person who claims the right to  
19 receive or collect a private transfer fee payable under a private  
20 transfer fee obligation and who may or may not have a pecuniary  
21 interest in the obligation.

22 (4) "Private transfer fee" means an amount of money,  
23 regardless of the method of determining the amount, that is payable  
24 on the transfer of an interest in real property or payable for a

1 right to make or accept a transfer.

2 (5) "Private transfer fee obligation" means an  
3 obligation to pay a private transfer fee created under:

4 (A) a declaration or other covenant recorded in  
5 the real property records in the county in which the property  
6 subject to the private transfer fee obligation is located;

7 (B) a contractual agreement or promise; or

8 (C) an unrecorded contractual agreement or  
9 promise.

10 (6) "Subsequent owner" means a person who acquires  
11 real property by transfer from a person other than the person who is  
12 the seller of the property on the date the private transfer fee  
13 obligation is created.

14 (7) "Subsequent purchaser" means a person who  
15 purchases real property from a person other than the person who is  
16 the seller on the date the private transfer fee obligation is  
17 created. The term includes a lender who provides a mortgage loan to  
18 a subsequent purchaser to purchase the property.

19 (8) "Transfer" means the sale, gift, conveyance,  
20 assignment, inheritance, or other transfer of an ownership interest  
21 in real property.

22 Sec. 5.202. CERTAIN PRIVATE TRANSFER FEE OBLIGATIONS VOID.

23 (a) Except as provided by this subchapter, a private transfer fee  
24 obligation created on or after the effective date of this  
25 subchapter is not binding or enforceable against a subsequent owner  
26 or subsequent purchaser of an interest in real property and is void.

27 (b) For purposes of this subchapter, the following payments

1 are not considered private transfer fee obligations:

2 (1) consideration paid by a purchaser to a seller for  
3 an interest in real property transferred, including, as applicable,  
4 a mineral interest transferred, including additional consideration  
5 paid to a seller for the property's appreciation, development, or  
6 sale after the interest in the property has been transferred to the  
7 purchaser, if the additional consideration is paid only once and  
8 that payment does not bind successors in interest to the property to  
9 any private transfer fee obligation;

10 (2) a commission paid to a licensed real estate broker  
11 under a written agreement between a seller or purchaser and the  
12 broker, including an additional commission for the property's  
13 appreciation, development, or sale after the interest in property  
14 is transferred to the purchaser;

15 (3) interest, a fee, a charge, or another type of  
16 payment to a lender under a loan secured by a mortgage on the  
17 property, including:

18 (A) a fee payable for the lender's consent to an  
19 assumption of the loan or transfer of the property subject to the  
20 mortgage;

21 (B) a fee or charge payable for an estoppel  
22 letter or certificate;

23 (C) a shared appreciation interest or profit  
24 participation; or

25 (D) other consideration payable in connection  
26 with the loan;

27 (4) rent, reimbursement, a fee, a charge, or another

1 type of payment to a lessor under a lease, including a fee for  
2 consent to an assignment, sublease, encumbrance, or transfer of a  
3 lease;

4 (5) consideration paid to the holder of an option to  
5 purchase an interest in property, or to the holder of a right of  
6 first refusal or first offer to purchase an interest in property,  
7 for waiving, releasing, or not exercising the option or right when  
8 the property is transferred to another person;

9 (6) a fee payable to or imposed by a governmental  
10 entity in connection with recording the transfer of the property;

11 (7) dues, a fee, a charge, an assessment, a fine, a  
12 contribution, or another type of payment under a declaration or  
13 other covenant or under law, including a fee or charge payable for a  
14 change of ownership entered in the records of an association to  
15 which this subdivision applies or an estoppel letter or resale  
16 certificate issued under Section 207.003 by an association to which  
17 this subdivision applies or the person identified under Section  
18 209.004(a)(6), provided that no portion of the fee or charge is  
19 required to be passed through to a third party designated or  
20 identifiable in the declaration or other covenant or law or in a  
21 document referenced in the declaration or other covenant or law,  
22 unless paid to:

23 (A) an association as defined by Section 82.003  
24 or 221.002 or the person or entity managing the association as  
25 provided by Section 82.116(a)(5) or 221.032(b)(11), as applicable;

26 (B) a property owners' association as defined by  
27 Section 202.001 or 209.002 or the person or entity described by

1 Section 209.004(a)(6); or

2 (C) a property owners' association as defined by  
3 Section 202.001 that does not require an owner of property governed  
4 by the association to be a member of the association or the person  
5 or entity described by Section 209.004(a)(6);

6 (8) dues, a fee, a charge, an assessment, a fine, a  
7 contribution, or another type of payment for the transfer of a club  
8 membership related to the property;

9 (9) dues, a fee, a charge, an assessment, a fine, a  
10 contribution, or another type of payment paid to an organization  
11 exempt from federal taxation under Section 501(c)(3) or 501(c)(4),  
12 Internal Revenue Code of 1986, only if the organization uses the  
13 payments to directly benefit the encumbered property by:

14 (A) supporting or maintaining only the  
15 encumbered property;

16 (B) constructing or repairing improvements only  
17 to the encumbered property; or

18 (C) providing activities or infrastructure to  
19 support quality of life, including cultural, educational,  
20 charitable, recreational, environmental, and conservation  
21 activities and infrastructure, that directly benefit the  
22 encumbered property; or

23 (10) a fee payable to or imposed by the Veterans' Land  
24 Board for consent to an assumption or transfer of a contract of sale  
25 and purchase.

26 (c) The benefit described by Subsection (b)(9)(C) may  
27 collaterally benefit a community composed of:

1 (1) property that is adjacent to the encumbered  
2 property; or

3 (2) property a boundary of which is not more than 1,000  
4 yards from a boundary of the encumbered property.

5 (d) Notwithstanding Subsection (c), an organization may  
6 provide a direct benefit under Subsection (b)(9) if:

7 (1) the organization provides to the general public  
8 activities or infrastructure described by Subsection (b)(9)(C);

9 (2) the provision of activities or infrastructure  
10 substantially benefits the encumbered property; and

11 (3) the governing body of the organization:

12 (A) is controlled by owners of the encumbered  
13 property; and

14 (B) approves payments for activities or  
15 infrastructure at least annually.

16 (e) An organization may provide activities and  
17 infrastructure described by Subsection (b)(9)(C) to another  
18 organization exempt from federal taxation under Section 501(c)(3)  
19 or 501(c)(4), Internal Revenue Code of 1986, at no charge for de  
20 minimis usage without violating the requirements of this section.

21 Sec. 5.203. NOTICE REQUIREMENTS FOR CONTINUATION OF  
22 EXISTING PRIVATE TRANSFER FEE OBLIGATIONS. (a) A person who  
23 receives a private transfer fee under a private transfer fee  
24 obligation created before the effective date of this subchapter  
25 must, on or before January 31, 2012, file for record a "Notice of  
26 Private Transfer Fee Obligation" as provided by this section in the  
27 real property records of each county in which the property is

1 located.

2 (b) Multiple payees of a single private transfer fee under a  
3 private transfer fee obligation must designate one payee as the  
4 payee of record for the fee.

5 (c) A notice under Subsection (a) must:

6 (1) be printed in at least 14-point boldface type;

7 (2) state the amount of the private transfer fee and  
8 the method of determination, if applicable;

9 (3) state the date or any circumstance under which the  
10 private transfer fee obligation expires, if any;

11 (4) state the purpose for which the money from the  
12 private transfer fee obligation will be used;

13 (5) notwithstanding Subsection (b), state the name of  
14 each payee and each payee's contact information;

15 (6) state the name and address of the payee of record  
16 to whom the payment of the fee must be sent;

17 (7) include the acknowledged signature of each payee  
18 or authorized representative of each payee; and

19 (8) state the legal description of the property  
20 subject to the private transfer fee obligation.

21 (d) A person required to file a notice under this section  
22 shall:

23 (1) refile the notice described by this section not  
24 earlier than the 30th day before the third anniversary of the  
25 original filing date described by Subsection (a) and within a  
26 similar 30-day period every third year thereafter; and

27 (2) amend the notice to reflect any change in the name

1 or address of any payee included in the notice not later than the  
2 30th day after the date the change occurs.

3 (e) A person who amends a notice under Subsection (d)(2)  
4 must include:

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

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

9 (f) If a person required to file a notice under this section  
10 fails to comply with this section:

11 (1) payment of the private transfer fee may not be a  
12 requirement for the conveyance of an interest in the property to a  
13 purchaser;

14 (2) the property is not subject to further obligation  
15 under the private transfer fee obligation; and

16 (3) the private transfer fee obligation is void.

17 Sec. 5.204. ADDITIONAL COMPLIANCE REQUIREMENT: TIMELY  
18 ACCEPTANCE OF FEES PAID UNDER EXISTING PRIVATE TRANSFER FEE  
19 OBLIGATIONS. (a) The payee of record on the date a private  
20 transfer fee is paid under a private transfer fee obligation  
21 subject to Section 5.203 must accept the payment on or before the  
22 30th day after the date the payment is tendered to the payee.

23 (b) If the payee of record fails to comply with Subsection  
24 (a):

25 (1) the payment must be returned to the remitter;

26 (2) payment of the private transfer fee may not be a  
27 requirement for the conveyance of an interest in the property to a



1 purchaser; and

2 (3) the property is not subject to further obligation  
3 under the private transfer fee obligation.

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

9 Sec. 5.206. WAIVER VOID. A provision that purports to waive  
10 a purchaser's rights under this subchapter is void.

11 Sec. 5.207. INJUNCTIVE OR DECLARATORY RELIEF; PROVIDING  
12 PENALTIES. (a) The attorney general may institute an action for  
13 injunctive or declaratory relief to restrain a violation of this  
14 subchapter.

15 (b) In addition to instituting an action for injunctive or  
16 declaratory relief under Subsection (a), the attorney general may  
17 institute an action for civil penalties against a payee for a  
18 violation of this chapter. Except as provided by Subsection (c), a  
19 civil penalty assessed under this section may not exceed an amount  
20 equal to two times the amount of the private transfer fee charged or  
21 collected by the payee in violation of this subchapter.

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

26 (d) The comptroller shall deposit to the credit of the  
27 general revenue fund all money collected under this section.

1           SECTION 2. Section 5.017, Property Code, is repealed.

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

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

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President of the Senate

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Speaker of the House

I certify that H.B. No. 8 was passed by the House on May 4, 2011, by the following vote: Yeas 135, Nays 1, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 8 on May 21, 2011, by the following vote: Yeas 142, Nays 1, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 8 was passed by the Senate, with amendments, on May 19, 2011, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor