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ENGROSSED SUBSTITUTE HOUSE BILL 1214

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State of Washington

62nd Legislature

2011 Regular Session

By House Judiciary (originally sponsored by Representatives Goodman and Rodne)

READ FIRST TIME 02/08/11.

1 AN ACT Relating to private transfer fee obligations; and adding a  
2 new chapter to Title 64 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds and declares that the  
5 public policy of this state favors the marketability of real property  
6 and the transferability of interests in real property free of title  
7 defects or unreasonable restraints on alienation. The legislature  
8 further finds and declares that private transfer fee obligations  
9 violate this public policy by impairing the marketability and  
10 transferability of real property and by constituting an unreasonable  
11 restraint on alienation regardless of the duration of the obligation to  
12 pay a private transfer fee, the amount of a private transfer fee, or  
13 the method by which any private transfer fee is created or imposed.  
14 Thus, the legislature finds and declares that a private transfer fee  
15 obligation may not run with the title to real property, touch and  
16 concern real property, or otherwise bind subsequent owners of real  
17 property under any common law or equitable principle.

1        NEW SECTION.    **Sec. 2.**    This chapter may be known and cited as the  
2 private transfer fee obligation act.

3        NEW SECTION.    **Sec. 3.**    The definitions in this section apply  
4 throughout this chapter unless the context clearly requires otherwise.

5        (1) "Association" means:    An association of apartment owners as  
6 defined in RCW 64.32.010; a unit owners' association as defined in RCW  
7 64.34.020; a homeowners' association as defined in RCW 64.38.010; a  
8 corporation organized pursuant to chapter 24.06 RCW for the purpose of  
9 owning real estate under a cooperative ownership plan; or a nonprofit  
10 or cooperative membership organization composed exclusively of owners  
11 of mobile homes, manufactured housing, timeshares, camping resort  
12 interests, or other interests in real property that is responsible for  
13 the maintenance, improvements, services, or expenses related to real  
14 property that is owned, used, or enjoyed in common by the members.

15        (2) "Payee" means the person or entity who claims the right to  
16 receive or collect a private transfer fee payable under a private  
17 transfer fee obligation.    A payee may or may not have a pecuniary  
18 interest in the private transfer fee obligation.

19        (3) "Private transfer fee" means a fee or charge payable upon the  
20 transfer of an interest in real property, or payable for the right to  
21 make or accept such transfer, regardless of whether the fee or charge  
22 is a fixed amount or is determined as a percentage of the value of the  
23 real property, the purchase price, or other consideration given for the  
24 transfer.    The following are not private transfer fees for the purposes  
25 of this section:

26        (a) Any consideration payable by the grantee to the grantor for the  
27 interest in real property being transferred, including any subsequent  
28 additional consideration for the real property payable by the grantee  
29 based upon any subsequent appreciation, development, or sale of the  
30 real property, if such additional consideration is payable on a one-  
31 time basis only and the obligation to make such payment does not bind  
32 successors in title to the real property;

33        (b) Any commission payable to a licensed real estate broker for  
34 services rendered in connection with the transfer of real property  
35 pursuant to an agreement between the broker and the grantor or the  
36 grantee including, but not limited to, any subsequent additional

1 commission for that transfer payable by the grantor or the grantee  
2 based upon any subsequent appreciation, development, or sale of the  
3 real property;

4 (c) Any interest, charges, fees, or other amounts payable by a  
5 borrower to a lender pursuant to a loan secured by a mortgage against  
6 real property including, but not limited to, any fee payable to the  
7 lender for consenting to an assumption of the loan or a transfer of the  
8 real property subject to the mortgage, any fees or charges payable to  
9 the lender for estoppel letters or certificates, and any shared  
10 appreciation interest, profit participation, or other consideration,  
11 and payable to the lender in connection with the loan;

12 (d) Any rent, reimbursement, charge, fee, or other amount payable  
13 by a lessee or licensee to a lessor or licensor under a lease or  
14 license including, but not limited to, any fee payable to the lessor or  
15 licensor for consenting to an assignment, subletting, encumbrance, or  
16 transfer of the lease or license;

17 (e) Any consideration payable to the holder of an option to  
18 purchase an interest in real property or the holder of a right of first  
19 refusal or first offer to purchase an interest in real property for  
20 waiving, releasing, or not exercising the option or right upon the  
21 transfer of the real property to another person;

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

24 (g) Any assessment, fee, charge, fine, dues, or other amount:  
25 Payable to an association pursuant to chapter 64.32, 64.34, or 64.38  
26 RCW; payable by a purchaser of a camping resort contract, as defined in  
27 RCW 19.105.300, or a purchaser of a timeshare, as defined in RCW  
28 64.36.010; or payable pursuant to a recorded servitude encumbering the  
29 real property being transferred, as long as no portion of the fee is  
30 required to be passed through or paid to a third party;

31 (h) Any fee payable, upon a transfer, to an organization qualified  
32 under section 501(c)(3) or 501(c)(4) of the internal revenue code of  
33 1986, if the sole purpose of such organization is to support cultural,  
34 educational, charitable, recreational, conservation, or similar  
35 activities benefiting the real property being transferred and the fee  
36 is used exclusively to fund such activities;

37 (i) Any fee, charge, assessment, dues, fine, contribution, or other  
38 amount pertaining solely to the purchase or transfer of a club

1 membership relating to real property owned by the member including, but  
2 not limited to, any amount determined by reference to the value,  
3 purchase price, or other consideration given for the transfer of the  
4 real property;

5 (j) Any fee charged by an association or an agent of an association  
6 to a transferor or transferee for a service rendered contemporaneously  
7 with the imposition of the fee, provided that the fee is not to be  
8 passed through to a third party other than an agent of the association.

9 (4) "Private transfer fee obligation" means an obligation arising  
10 under a declaration or covenant recorded against the title to real  
11 property, or under any other contractual agreement or promise, recorded  
12 or not, that requires or purports to require the payment of a private  
13 transfer fee upon a subsequent transfer of an interest in the real  
14 property.

15 (5) "Transfer" means the sale, gift, grant, conveyance, lease,  
16 license, assignment, inheritance, or other act resulting in a transfer  
17 of ownership interest in real property located in this state.

18 NEW SECTION. **Sec. 4.** (1) A private transfer fee obligation  
19 recorded or entered into in this state on or after the effective date  
20 of this section does not run with the title to real property or touch  
21 and concern the real property, and is not binding on or enforceable at  
22 law or in equity against any subsequent owner, purchaser, or mortgagee  
23 or holder of any interest in real property as an equitable servitude or  
24 otherwise. Any private transfer fee obligation that is recorded or  
25 entered into in this state on or after the effective date of this  
26 section is void and unenforceable.

27 (2) A private transfer fee obligation recorded or entered into in  
28 this state before the effective date of this section is not presumed  
29 valid and enforceable. The interpretation and enforceability of any  
30 such private transfer fee obligation must be judged according to  
31 principles of applicable real estate law, servitude law, contract law,  
32 and other law including, without limitation: Restraints on alienation;  
33 the rule against perpetuities; the touch and concern doctrine; the  
34 requirement for covenants to run with the land; fraud;  
35 misrepresentation; violation of public policy; or another invalidating  
36 cause.

1        NEW SECTION.    **Sec. 5.** Any person who records, or enters into, an  
2 agreement imposing a private transfer fee obligation in the person's  
3 favor after the effective date of this section is liable for: (1) Any  
4 damages resulting from the imposition of the private transfer fee  
5 obligation on the transfer of an interest in the real property  
6 including, but not limited to, the amount of any private transfer fee  
7 paid by a party to the transfer; and (2) all reasonable attorneys'  
8 fees, expenses, and costs incurred by a party to the transfer or  
9 mortgagee of the real property to recover any private transfer fee paid  
10 or in connection with an action to quiet title. If an agent acts on  
11 behalf of a principal to record or secure a private transfer fee  
12 obligation, liability must be assessed to the principal, rather than  
13 the agent.

14        NEW SECTION.    **Sec. 6.** (1) The payee of a private transfer fee  
15 obligation imposed before the effective date of this section shall  
16 record, before December 31, 2011, against the real property subject to  
17 the private transfer fee obligation, a separate document in the office  
18 of the recorder of deeds for each county in which the real property is  
19 located that includes all of the following requirements:

- 20            (a) The title, "Notice of Private Transfer Fee Obligation";
- 21            (b) The amount of the fee if the private transfer fee is a flat  
22 amount, the percentage of the sales price constituting the cost of the  
23 private transfer fee, or another basis by which the private transfer  
24 fee is to be calculated;
- 25            (c) The date or circumstances under which the private transfer fee  
26 obligation expires, if any;
- 27            (d) The name and address of the payee;
- 28            (e) The acknowledged signature of the payee or a representative of  
29 the payee; and
- 30            (f) The legal description of the real property purportedly burdened  
31 by the private transfer fee obligation.

32        (2) The payee may file an amendment to the notice of private  
33 transfer fee obligation containing new contact information. The  
34 amendment must contain the recording information of the notice of  
35 private transfer fee obligation which it amends and the legal  
36 description of the real property burdened by the private transfer fee  
37 obligation.

1           (3) If a payee fails to file the notice required under subsection  
2 (1) of this section before December 31, 2011, the private transfer fee  
3 obligation is not enforceable.

4           NEW SECTION. **Sec. 7.** If any provision of this act or its  
5 application to any person or circumstance is held invalid, the  
6 remainder of the act or the application of the provision to other  
7 persons or circumstances is not affected.

8           NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act constitute  
9 a new chapter in Title 64 RCW.

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