

Chapter 64.60 RCW
PRIVATE TRANSFER FEE OBLIGATION ACT

Sections

64.60.005 Findings.
64.60.010 Definitions.
64.60.020 Private transfer fee obligations—Enforceability—
Interpretation.
64.60.030 Liability.
64.60.040 Notice of private transfer fee obligation.
64.60.900 Short title.
64.60.901 Effective date—2011 c 36.

RCW 64.60.005 Findings. 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 transfer fee, the amount of a private transfer fee, or the method by which any private transfer fee is created or imposed. Thus, the legislature finds and declares that a private transfer fee obligation may not run with the title to real property, touch or concern the real property, or otherwise bind subsequent owners of real property under any common law or equitable principle. [2011 c 36 § 1.]

RCW 64.60.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

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

(3) "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 such transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the real property, the purchase price, or other consideration given for the transfer. The following are not private transfer fees for the purposes of this section:

(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 real property payable by the grantee based upon any subsequent appreciation, development, or sale of the real property, if such additional consideration is payable on a one-time basis only and the obligation to make such payment does not bind successors in title to the real property;

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

(c) 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 shared appreciation interest, profit participation, or other consideration, and payable to the lender in connection with the loan;

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

(e) 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 real property to another person;

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

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

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

(i) Any fee, charge, assessment, dues, fine, contribution, or other amount pertaining solely 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;

(j) Any fee charged by an association or an agent of an association to a transferor or transferee for a service rendered contemporaneously with the imposition of the fee, provided that the

fee is not to be passed through to a third party other than an agent of the association.

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

(5) "Transfer" means the sale, gift, grant, conveyance, lease, license, assignment, inheritance, or other act resulting in a transfer of ownership interest in real property located in this state. [2011 c 36 § 3.]

RCW 64.60.020 Private transfer fee obligations—Enforceability—Interpretation. (1) A private transfer fee obligation recorded or entered into in this state on or after April 13, 2011, 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 or holder of any interest in real property as an equitable servitude or otherwise. Any private transfer fee obligation that is recorded or entered into in this state on or after April 13, 2011, is void and unenforceable.

(2) A private transfer fee obligation recorded or entered into in this state before April 13, 2011, is not presumed valid and enforceable. Any such private transfer fee obligation must be interpreted and enforced according to principles of applicable real estate, servitude contract, and other law including, without limitation, restraints on alienation, the rule against perpetuities, the touch and concern doctrine, and the requirement for covenants to run with the land, as well as fraud, misrepresentation, violation of public policy, or another invalidating cause. [2011 c 36 § 4.]

RCW 64.60.030 Liability. Any person who records, or enters into, an agreement imposing a private transfer fee obligation in the person's favor after April 13, 2011, is liable for (1) any damages resulting from the imposition of the private transfer fee obligation on the transfer of an interest in the real property including, but not limited to, the amount of any private transfer fee paid by a party to the transfer, and (2) reasonable attorneys' fees, expenses, and costs incurred by a party to the transfer or mortgagee of the real property to recover any private transfer fee paid or in connection with an action to quiet title. If an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability must be assessed to the principal, rather than the agent. [2011 c 36 § 5.]

RCW 64.60.040 Notice of private transfer fee obligation. (1) A payee of a private transfer fee obligation imposed before April 13, 2011, shall record, before December 31, 2011, against the real property subject to the private transfer fee obligation, a separate document in the county auditor's office in the county in which the real property is located that includes all of the following requirements:

(a) The title, "Notice of Private Transfer Fee Obligation";

(b) The amount if the private transfer fee is a flat amount, the percentage of the sales price constituting the cost of the private transfer fee, or another basis by which the private transfer fee is to be calculated;

(c) The date under which the private transfer fee obligation expires, if any;

(d) The name and address of the payee;

(e) The acknowledged signature of the payee or a representative of the payee; and

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

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

(3) If a payee fails to file the notice required under subsection (1) of this section before December 31, 2011, the private transfer fee obligation is not enforceable by the payee. [2011 c 36 § 6.]

RCW 64.60.900 Short title. This chapter may be known and cited as the private transfer fee obligation act. [2011 c 36 § 2.]

RCW 64.60.901 Effective date—2011 c 36. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 13, 2011]. [2011 c 36 § 7.]