

# Private Transfer Fees - By Jurisdiction

## Executive Summary

### PRIVATE TRANSFER FEES

#### ANNUAL REPORT EXECUTIVE SUMMARY

June 2020

[Private Transfer Fees – 2020 Short Answer Table](#)

For more information: [NAR Private Transfer Fees White Paper \(August 2015\)](#)

#### **Overview**

A majority of the surveyed jurisdictions explicitly address private transfer fees. Before the 2010 legislative sessions, only California, Texas, Florida, Missouri, Kansas, and Oregon had laws regarding the fees. During the next three years, the topic was a popular one in state legislatures as numerous jurisdictions added prohibitions, but the pace of new legislation has slowed considerably. Since April 2014, only California has enacted a new law prohibiting private transfer fees.

#### **Disclosure requirements**

Several states require some form of disclosure for existing private transfer fees. Most of those provisions were added during the 2010, 2011, and 2012 legislative sessions. In 2013, only Connecticut added a disclosure requirement for previously existing private transfer fees, and no states have added disclosure requirements since July 2014, although California amended its disclosure and recording requirements in 2015 and its disclosure requirement again in 2017 and 2018. Twenty-one jurisdictions now require disclosure of private transfer fees or private transfer fee obligations. Alaska law contains certain disclosure requirements for similar fees in the narrow context of a rental agreement between a mobile-home park operator and a mobile-home park tenant.

## **Licensee responsibility**

Only a few states explicitly address a licensee's responsibility regarding private transfer fees. For example, California's statutes delineate specific licensee responsibilities, Alabama law explicitly provides that real estate licensees have no duty to discover private transfer fees, and Kentucky law states that liability related to a private transfer fee is assessed against the principal rather than the agent. However, although no other jurisdictions have specifically applicable provisions, laws in 48 jurisdictions include general licensee duties to buyers that may require a licensee to disclose private transfer fees, even if the fees apply only to future transactions. All of the recent changes to laws regarding licensee responsibilities related to private transfer fees have been minor or not specifically relevant to the topics addressed in this survey.

## **Limitations on private transfer fees**

Currently, 44 states explicitly prohibit private transfer fees in most situations. All of the laws were enacted fairly recently: five states enacted their relevant provisions from the 2007 through the 2009 legislative sessions; 13 states added their laws in 2010; 18 states passed applicable provisions in 2011; five states passed limitations in 2012; and two states enacted legislation in 2013 that prohibited most private transfer fees. During 2013, Hawaii and Wyoming removed previously applicable repeal dates, making their private transfer fee restrictions permanent. The only significant change since 2014 was in California, which passed a law providing that private transfer fees may not be created as of January 1, 2019.

## **Permitted private transfer fees**

All states that generally prohibit private transfer fees list certain payments as exclusions from their "private transfer fee" definitions or provide that specific fees are not covered by the state's act prohibiting private transfer fees. Some states, such as Texas, do not permit transfer fees that are imposed by a deed, contract, security instrument, or other transfer document, except under certain specified situations, such as fees paid to the property owners' association that manages or regulates a subdivision, an association's managing agent, a charitable entity, or a governmental entity. Most states that generally prohibit private transfer fees list certain payments as exclusions from their "private transfer fee" definitions or provide that specific fees are not covered by the state's act prohibiting private transfer fees.

## **Private transfer fee relief provisions**

All states that prohibit private transfer fees also provide that the prohibited fees, liens, or covenants are void or unenforceable. Typical provisions may also address liability, the effect of a party's failure to record required documents related to previously existing private transfer fees, or a payee's failure to respond to a written request for fee information. Since April 2014, only California significantly revised its provisions related to private transfer fee relief—private transfer fees created in violation of its recently enacted prohibition are void as against public policy.

## Alabama

### Alabama, Disclosure requirements

#### **REQUIRED DISCLOSURES**

Effective May 5, 2011, a contract for the sale of real property subject to a private transfer fee obligation must include:

- a provision disclosing the obligation's existence;
- a description of the obligation; and
- a statement that private transfer fee obligations are subject to certain statutory prohibitions.

A seller may not enforce a contract for sale that does not conform to these requirements. Also, the buyer is not liable to the seller for damages under such a contract and is entitled to the return of all deposits made in connection with the sale of the real property.

The payee of a private transfer fee obligation imposed before May 5, 2011, must have recorded a "Notice of Private Transfer Fee Obligation" before December 31, 2011, in the office of the probate judge for each county in which the real property is located. The document must meet all requirements set forth by § 35-4-435(a).

#### **EXCEPTIONS**

No relevant provisions were located.

Statutory sections enacted 2011.

[Ala. Code §§ 35-4-434, -435 \(2019\)](#)

### Alabama, Licensee responsibility

Effective May 5, 2011, a real estate licensee explicitly has "no duty to discover the existence of any private transfer fee obligation."

However, generally, a licensee has the following obligations, among others, to all parties to a real estate transaction:

- to provide brokerage services honestly and in good faith; and
- to disclose all known information that is not confidential, that is material to the transaction, and that is not reasonably discoverable by the client. However, the licensee has no affirmative duty to discover that information.

Statutory section 34-27-84 amended 2005; § 34-27-85 enacted 1995; § 35-4-434 enacted 2011.

[Ala. Code §§ 34-27-84\(a\), -85\(a\); 35-4-434\(d\) \(2019\)](#)

### Alabama, Limitations on private transfer fees

#### **BENEFICIARY AND USE RESTRICTIONS**

##### *Prohibited fees*

A private transfer fee obligation recorded or entered into in Alabama on or after May 5, 2011, does not run with the property's title and is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee. A private transfer fee obligation that is recorded or entered into after May 5, 2011, is void and unenforceable. This provision does *not* create a presumption that a private transfer fee obligation recorded or entered into before May 5, 2011, is valid and enforceable.

### *Relevant definitions*

"Private transfer fee" means a fee or charge payable upon the transfer of a real property interest, 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 property, the purchase price, or other consideration given for the transfer."

"Private transfer fee obligation" means an obligation arising under a declaration or covenant recorded against a real property title, or under any other contractual agreement or promise, that "requires or purports to require the payment of a private transfer fee upon a subsequent transfer" of a real property interest.

"Transfer" means the "sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest" in Alabama real property.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

No relevant provisions were located.

### **TIME LIMITS**

No relevant provisions were located.

### **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory sections enacted 2011.

[Ala. Code §§ 35-4-431, -432 \(2019\)](#)

## Alabama, Permitted private transfer fees

### **PERMITTED FEES**

#### *Existing transfer fees*

Certain private transfer fee obligations imposed before May 5, 2011, may be permitted. The payee of a private transfer fee obligation imposed before May 5, 2011, must have recorded a "Notice of Private Transfer Fee Obligation" before December 31, 2011, in the office of the probate judge for each county in which the real property is located. The document must meet all requirements set forth by § 35-4-435(a).

The payee may file an amendment to a private transfer fee notice to amend contact information. That amendment must contain the recording information of the private transfer fee notice it amends and the property's legal description.

#### *Fees not deemed to be private transfer fees*

The following are *not* private transfer fees for the purpose of the statutory provisions prohibiting private transfer fees:

- consideration payable by a grantee to a grantor for the real property interest being transferred, including certain subsequent additional consideration based upon the property's subsequent appreciation, development, or sale;

- a commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement, including certain additional commission for a transfer based on the property's subsequent appreciation, development, or sale;
- interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage against the real property;
- an amount payable by a lessee to a lessor under a lease;
- consideration payable to the holder of an option to purchase a real property interest;
- consideration payable to the holder of a right of first refusal or first offer to purchase a real property interest for waiving, releasing, or not exercising the option or right;
- any "tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority";
- any amounts payable to a homeowners', condominium, cooperative, mobile home, or property owners' association pursuant to an applicable declaration, covenant, or law;
- an amount "imposed by a declaration or covenant encumbering real property, and payable solely to a nonprofit or charitable organization for the purpose of supporting cultural, educational, charitable, recreational, environmental, conservation, or other similar activities benefitting the real property subject to the declaration or covenant or the community in which such real property is located"; or
- an amount "pertaining solely to the purchase or transfer of a club membership relating to real property owned by the member."

## **RECORDING REQUIREMENTS**

The payee of a private transfer fee obligation imposed before May 5, 2011, must record a "Notice of Private Transfer Fee Obligation" before December 31, 2011. The document must contain all of the following:

- its title in at least 14-point boldface type;
- the amount or the percentage of the sales price constituting the private transfer fee, or any other basis by which the private transfer fee is to be calculated;
- if the real property is residential property, actual dollar-cost examples of the private transfer fee for a home priced at \$250,000, \$500,000, and \$750,000;
- any date or circumstances under which the private transfer fee obligation expires;
- the purpose for which the funds will be used;
- the payee's name and specific contact information regarding where the funds are to be sent;
- the payee's (or its representative's) acknowledged signature;
- the burdened property's legal description; and
- if more than one person or entity claims the right to receive or collect a private transfer fee, a single person or entity designated as the payee.

Statutory sections enacted 2011.



[Ala. Code §§ 35-4-431, -435 \(2019\)](#)

## Alabama, Private transfer fee relief provisions

### **VOID PROVISIONS**

A private transfer fee obligation that is recorded or entered into on or after May 5, 2011, is void and unenforceable.

### **LIABILITY FOR DAMAGES**

A person who records or enters into an agreement imposing a private transfer fee obligation after May 5, 2011, is liable for the following:

- damages resulting from the imposition of the private transfer fee obligation on the transfer of a real property interest, including the amount of any transfer fee paid; and
- attorney fees, expenses, and costs incurred by a party or mortgagee to recover any private transfer fee paid or in connection with a quiet title action.

If an agent acts on a principal's behalf to record or secure a private transfer fee obligation, liability is assessed to the principal.

Any provision in a sale contract that purports to waive these rights is void.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

*Failure to record notice*

If a payee failed to file the notice required by § 35-4-435(a)(1) before December 31, 2011, the grantor may convey an interest in the real property, and the grantor is:

- "conclusively deemed to have acted in good faith"; and
- "not subject to any obligations under the private transfer fee obligation."

In that case, the private transfer fee obligation is void, and the real property is conveyed free and clear of the private transfer fee.

Similarly, if a payee fails to comply with § 35-4-435(a) in filing the required notice, the grantor, upon recording an affidavit, may convey the real property to a grantee without paying the private transfer fee and is not subject to any further obligations under the private transfer fee obligation. In that case, the private transfer fee obligation is void and the real property may be conveyed free and clear of the private transfer fee.

## **OTHER RELIEF**

### *Failure to respond to written request*

If the payee fails to provide a written statement of the private transfer fee payable within 30 days of the date of a written request, the grantor, upon recording an affidavit pursuant to § 35-4-435(f), may convey the real property to a grantee without paying the private transfer fee and is not subject to any further obligations under the private transfer fee obligation. In that case, the private transfer fee obligation is null and void, and the real property may be conveyed free and clear of the private transfer fee. Details regarding the filing, contents, and effect of the affidavit are set forth in subsections 35-4-435(f) and (g).

### *Failure to disclose in contract for sale*

If a private transfer fee obligation is not disclosed in a sale contract (as required by § 35-4-434(a)), and a buyer subsequently discovers the private transfer fee obligation after title has passed to the buyer, the buyer may recover:

- either (a) all damages resulting from the failure to disclose the private transfer fee obligation, including the amount of any private transfer fee the buyer paid, or (b) the difference between the property's market value if it were not subject to a private transfer fee obligation and the property's market value as subject to a private transfer fee obligation; and
- all attorney fees, expenses, and costs incurred in seeking the buyer's remedies.

Statutory sections enacted 2011.

[Ala. Code §§ 35-4-432, -433, -434, -435 \(2019\)](#)

## Alaska

### Alaska, Disclosure requirements

#### **REQUIRED DISCLOSURES**

No generally relevant provisions were located. However, in the narrow context of a rental agreement between a mobile-home park operator and a mobile-home park tenant, the agreement may not require payment of "any type of vendor or transfer fee either by a tenant in the mobile home park desiring to sell the tenant's mobile home to another party or by any party desiring to purchase a mobile home from a tenant in the park as a condition of tenancy." However, this provision does not prevent the owner or operator from charging a reasonable vendor or transfer fee for services actually performed, *provided* the tenant is notified in writing of the amount of those charges before agreeing to move into the park.

#### **EXCEPTIONS**

No relevant provisions were located.

Statutory section amended 1976.

[Alaska Stat. § 34.03.040\(c\)\(3\) \(2019\)](#)

## Alaska, Licensee responsibility

No specifically relevant provisions were located. However, a real estate licensee owes the following duties, among others, to each person to whom the licensee provides specific assistance:

- to deal with honesty and in good faith;
- except as otherwise provided, to disclose all known material information regarding the real estate's *physical condition* if it substantially adversely affects the real estate or a person's ability to perform his or her obligations in the transaction or if the information would "materially impair or defeat" the transaction's purpose; and
- not to take actions that are adverse or detrimental to the represented person's interests.

A licensee has no duty to investigate any matter that he or she has not agreed to investigate, or that is not known by the seller, prospective buyer, or licensee.

Statutory sections enacted 2004.

[Alaska Stat. §§ 08.88.615, .620 \(2019\)](#)

## Alaska, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

Effective May 25, 2012, a document that conveys real estate may not include "a provision that requires a subsequent grantee or grantor to pay a transfer fee to convey the real estate." However, a document that conveys real estate may require a transfer fee if the fee is:

- a loan assumption or similar fee charged by a person with a lien on the property; or
- a fee or commission paid to a licensed real estate broker for brokerage services.

*Relevant definitions*

No relevant provisions were located.

**PAYEE RESTRICTIONS**

No relevant provisions were located.

**MAXIMUM FEES**

No relevant provisions were located.

**TIME LIMITS**

No relevant provisions were located.

**OTHER RELEVANT PROVISIONS**

In the narrow context of a rental agreement between a mobile-home park operator and a mobile-home park tenant, the agreement may not require payment of "any type of vendor or transfer fee either by a tenant in the mobile home park desiring to sell the tenant's mobile home to another party or by any party desiring to purchase a mobile home from a tenant in the park as a condition

of tenancy." However, this provision does not prevent the owner or operator from charging a reasonable vendor or transfer fee for services actually performed, provided the tenant is notified in writing of the amount of those charges before agreeing to move into the park.

Statutory section 34.03.040 amended 1976; § 34.15.105 enacted 2012.

[Alaska Stat. §§ 34.03.040\(c\)\(3\), .15.105 \(2019\)](#)

## Alaska, Permitted private transfer fees

### **PERMITTED FEES**

#### *Existing transfer fees*

No relevant provisions were located.

#### *Fees not deemed to be private transfer fees*

The following are *not* private transfer fees for the purpose of the statutory provisions prohibiting private transfer fees:

- an amount imposed by a governmental authority;
- a recording fee;
- a fee payable to a "nonprofit, mandatory homeowners association, condominium association, or cooperative under an applicable declaration or covenant"; or

- a fee that is payable to certain nonprofit organizations and that is used "exclusively for cultural, educational, charitable, recreational, environmental, conservation, or similar activities" that benefit the conveyed real estate.

## **RECORDING REQUIREMENTS**

No relevant provisions were located.

Statutory section enacted 2012.

[Alaska Stat. § 34.15.105 \(2019\)](#)

Alaska, Private transfer fee relief provisions

## **VOID PROVISIONS**

A provision that violates Alaska Stat. § 34.15.105 is void.

## **LIABILITY FOR DAMAGES**

No relevant provisions were located.

## **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

## **OTHER RELIEF**

No relevant provisions were located.

Statute enacted 2012.

[Alaska Stat. § 34.15.105 \(2019\)](#)

## Arizona

### Arizona, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Arizona, Licensee responsibility

No specifically relevant provisions were located. However, generally, a licensee owes a fiduciary duty to his or her client and must, among other things,

- deal fairly with all parties;
- disclose in writing to all other parties any adverse information that materially affects the consideration to be paid, including information that any party is or may be unable to perform, any material property defect, and the possible existence of a lien or encumbrance; and
- exercise reasonable care in ensuring that information material to a client's interests and relevant to the contemplated transaction is obtained and accurately communicated to the client.

Regulation amended 2005.

[Ariz. Admin. Code R4-28-1101 \(2020\)](#)

### Arizona, Limitations on private transfer fees

#### **BENEFICIARY AND USE RESTRICTIONS**



### *Prohibited fees*

Effective July 29, 2010, a provision in a declaration, covenant, or other document relating to Arizona real property is not binding or enforceable against the real property or against any subsequent owner, purchaser, lienholder, or other claimant if the provision purports to:

- bind successors in title; and
- obligate the transferee or transferor to pay a fee or other charge to a declarant or a third person upon transfer of an interest in the property or in consideration for permitting a transfer.

### *Relevant definitions*

"Association" means a nonprofit organization qualified under § 501(c)(3) or (4) of the U.S. Internal Revenue Code or "nonprofit mandatory membership organization" that is:

- created pursuant to a declaration, covenant, or applicable law; and
- composed of the owners of homes, condominiums, cooperatives, or manufactured homes, or any other real property interest.

"Transfer" means the "sale, gift, conveyance, assignment, inheritance or other transfer" of an interest in Arizona real property.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

## **MAXIMUM FEES**

The Arizona legislature found that a transfer fee covenant violates public policy by impairing marketability of title and constitutes an unreasonable restraint on alienation of property, regardless of the transfer fee amount.

## **TIME LIMITS**

The Arizona legislature found that a transfer fee covenant violates public policy by impairing marketability of title and constitutes an unreasonable restraint on alienation of property, regardless of the covenant's duration.

## **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statute amended 2017.

[Ariz. Rev. Stat. § 33-442\(A\), \(E\) \(2019\)](#)

Arizona, Permitted private transfer fees

## **PERMITTED FEES**

Some regularly scheduled fees or charges are not considered prohibited private transfer fees; they are not deemed to be "payable on transfer of an interest" if the fees or charges will be payable by the property owner "regardless of whether or not the property is transferred, even if the obligation to pay does not commence until the trustee, declarant, builder or developer first conveys the property to a retail purchaser."

Section 33-442, which prohibits transfer fees, does *not* apply to the following:

- any provision that obligates one party to pay the other party as full or partial consideration for the agreement or for a waiver of rights under the agreement, if the amount to be paid is either (a) a loan assumption or similar fee charged by a lender that holds a lien on the property or (b) a fee or commission paid to a licensed real estate broker for brokerage services rendered in connection with the property transfer;
- a provision in a deed, memorandum, or other document recorded to provide notice of an agreement related to a loan assumption or similar fee charged by a lender that holds a lien on the property;
- a provision that requires payment of a fee or charge to an association to be used exclusively for the authorized purpose if the fee "touches and concerns the land" and no portion of the fee is passed through to a third party or declarant unless the third party is authorized to manage real property within the association or was part of an approved development plan;
- rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease;
- consideration payable to the holder of an option to purchase an interest in the real property or to the holder of a right of first refusal or first offer and the consideration paid for waiving, releasing, or not exercising the option or right upon transfer of the property to another;
- a fee, charge, assessment, dues, contribution, or other amount related to the purchase or transfer of a club membership related to the real property owner;
- a fee or charge imposed by a document and payable to a nonprofit corporation for the sole purpose of supporting recreational activities within the association;
- a fee, tax, assessment or other charge imposed by a governmental authority pursuant to applicable laws, ordinances, or regulations; or

- consideration payable by the transferee to the transferor for the real property interest being transferred, including any subsequent additional consideration based on any appreciation, development or sale of the property.

Arizona statutes also provide that § 33-442 "shall not be construed to imply that a transfer fee covenant or other document . . . that is executed before the effective date of this section is enforceable or valid."

### **RECORDING REQUIREMENTS**

A transfer fee provision is unenforceable whether or not recorded.

Statutory section amended 2017.

[Ariz. Rev. Stat. § 33-442\(A\), \(B\), \(C\), \(D\) \(2019\)](#)

Arizona, Private transfer fee relief provisions

### **VOID PROVISIONS**

A lien purportedly arising out of a prohibited transfer fee provision is invalid and unenforceable, and a transfer fee covenant that is executed after July 29, 2010, is not binding or enforceable. Also, § 33-442 "shall not be construed to imply that a transfer fee covenant . . . that is executed before the effective date of this section is enforceable or valid."

### **LIABILITY FOR DAMAGES**

No relevant provisions were located.

## **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

## **OTHER RELIEF**

No relevant provisions were located.

Statutory section amended 2017.

[Ariz. Rev. Stat. § 33-442\(B\), \(D\) \(2019\)](#)

## Arkansas

### Arkansas, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Arkansas, Licensee responsibility

No specifically relevant provisions were located. However, generally, a licensee acting as an agent must protect and promote his or her client's interests, while dealing honestly with all parties.

Regulation amended 2016.

[Ark. Real Estate Comm'n Regs. r. 8.5\(a\) \(2019\)](#)

### Arkansas, Limitations on private transfer fees

## **BENEFICIARY AND USE RESTRICTIONS**

### *Prohibited fees*

A transfer fee covenant recorded with respect to Arkansas real property after July 27, 2011:

- does not run with the real property's title; and
- is not binding upon or enforceable against the real property or against a subsequent owner, purchaser, or mortgagee.

This provision does *not* validate a transfer fee covenant recorded before July 27, 2011.

### *Relevant definitions*

"Transfer fee" means a fee or charge that obligates a real property transferee or transferor to pay a fee or charge to a third person upon a real property transfer or for permitting the transfer.

"Transfer fee covenant" means a provision in a document "imposing a transfer fee that purports to run with the land or bind current owners or successors in title" to Arkansas real property. A "transfer fee covenant" includes a lien or lien claim to secure a transfer fee payment.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

No relevant provisions were located.

## **TIME LIMITS**

No relevant provisions were located.

## **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory section enacted 2011.

Ark. Code § 18-12-107 (LexisNexis 2020)

[Arkansas, Permitted private transfer fees](#)

## **PERMITTED FEES**

### *Existing transfer fees*

Certain private transfer fee obligations imposed before July 27, 2011, are not explicitly prohibited by statute. However, § 18-12-107 provides that the section "does not validate" a transfer fee covenant recorded in Arkansas before July 27, 2011.

### *Fees not deemed to be private transfer fees*

A "transfer fee" does *not* include a "tax, assessment, fee, or charge imposed by a governmental authority." Also, a "transfer fee covenant" does *not* include a provision:

- in a purchase contract, option, mortgage, security agreement, real property listing agreement, or other agreement that obligates a party to pay another, as full or partial consideration for the agreement or for a waiver of rights under the agreement, an specified amount, provided the amount is (a) payable on a one-time basis only upon the next transfer of a real property interest; (b) a loan assumption fee or other fee charged in connection with a transfer by a lender holding or obtaining a lien on the property; or (c) a fee or commission paid to a licensee for services rendered in connection with a real property transfer;
- in a document recorded for the purpose of providing record notice of an agreement described above;
- in a document requiring payment of a fee or charge to an association to be used exclusively for the purposes authorized in the document, as long as no portion must be passed through to a third party designated or identifiable by description in the document; or
- in a document affecting real property that requires payment of a fee or charge to a nonprofit organization to be used exclusively to support "cultural, educational, charitable, recreational, environmental, conservational, or other similar activities benefiting the real property" or the community in which the property is located.

## **RECORDING REQUIREMENTS**

No relevant provisions were located.

Statutory section enacted 2011.

Ark. Code § 18-12-107 (LexisNexis 2020)

[Arkansas, Private transfer fee relief provisions](#)

## **VOID PROVISIONS**

A transfer fee covenant recorded with respect to Arkansas real property after July 27, 2011:



- does not run with the title to the real property; and
- is not binding upon or enforceable at law or in equity against the real property or a subsequent owner, purchaser, or mortgagee.

### **LIABILITY FOR DAMAGES**

No relevant provisions were located.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

### **OTHER RELIEF**

No relevant provisions were located.

Statutory section enacted 2011.

Ark. Code § 18-12-107 (LexisNexis 2020)

California

California, Disclosure requirements

### **REQUIRED DISCLOSURES**

If property transferred on or after January 1, 2008, is subject to a transfer fee and, effective January 1, 2016, if the document required by § 1098.5(b) has not already been provided, the transferor must provide, with the Real Estate Transfer Disclosure Statement, an additional disclosure statement that contains:

- a notice that payment of a transfer fee is required as a result of the property's transfer;
- the fee amount required for the property's asking price, if that amount is based on the real property's price;
- a description of how the fee is calculated;
- a notice that the final fee amount may differ if the fee is based on a percentage of the final sale price;
- the entity to which the fee will be paid;
- the purposes for which the funds will be used; and
- the date or circumstances, if any, under which the obligation to pay the transfer fee expires.

A seller of any single-family real property must deliver the completed written statement to the prospective buyer as follows:

- for a sale, "as soon as practicable before transfer of title"; and
- for a sale by a real property sales contract, a lease with an option to purchase, or a ground lease with improvements, "as soon as practicable before execution of the contract." (In this context, "execution" means making or accepting an offer.)

The transferor must indicate his or her compliance on the real property sales contract, lease, or addendum attached thereto, or on a separate document.

The disclosure must be made in "good faith," which means "honesty in fact."

The disclosure must be by personal delivery to a transferee or by mail to a prospective transferee. Delivery to a transferee's spouse is deemed delivery to the transferee, unless otherwise provided by contract.

Effective January 1, 2016, a transfer fee recorded against the property on or before December 31, 2007, that complies with § 1098(a)(9)(A) and "incorporates by reference from another document" is unenforceable, unless recorded against the property on or before December 31, 2016, in a single document that complies with § 1098(b) and § 1098.5. The information in § 1098(a)(9) must be set forth in a single document and may not be incorporated by reference from any other document.

### **EXCEPTIONS**

This requirement does not apply to sales or transfers:

- for which a prospective buyer must receive a copy of a public report related to subdivided lands pursuant to Cal. Bus. & Prof. Code § 11018.1;
- that can be made without a public report pursuant to Cal. Bus. & Prof. Code § 11010.4;
- that are made pursuant to a court order;
- to a mortgagee by a mortgagor or successor in interest who is in default;

- to a beneficiary of a deed of trust by a trustor or successor in interest who is in default;
- by a foreclosure sale or under a power of sale or deed in lieu of foreclosure after default;
- to the legal owner or lienholder of a manufactured or mobile home upon default;
- by reason of a foreclosure of a security interest in a manufactured or mobile home;
- by a fiduciary in administering a decedent's estate, guardianship, conservatorship, or trust, unless the trustee is a natural person who is the sole trustee of a revocable trust and either a former owner of the property or an "occupant in possession" during the preceding year;
- from one co-owner to another;
- to a spouse;
- to a person in the transferor's "lineal line of consanguinity";
- between spouses resulting from a marriage dissolution or legal separation;
- by the Controller administering the state's unclaimed property law;
- "[t]he sale, creation, or transfer of any lease of any duration with the exception of a lease with an option to purchase or a ground lease coupled with improvements;"
- under the state's laws related to either (a) the sale to private parties after a deed to the state or (b) a deed to the state, county or public agencies;

- to or from any governmental entity; or
- of any portion of a property not single-family residential property.

Statutory sections 1102.7 and 1102.10 enacted 1985; §§ 1102.6e and 1098 amended 2015; §§ 1102.2 and 1102.3 amended 2019.

[Cal. Civ. Code §§ 1098; 1102.2, .3, .6e, .7, .10 \(2020\)](#)

## California, Licensee responsibility

Neither the seller nor any seller's or buyer's agent is liable for an error, inaccuracy, or omission of delivered information, if:

- the error, inaccuracy, or omission was not within the seller's or the listing or buyer's agent's personal knowledge;
- the error, inaccuracy, or omission was based on information timely provided by a public agency or another person providing information that is required to be disclosed; and
- the seller or his or her agent exercised "ordinary care" in obtaining and transmitting the information.

The delivery of any required information to a prospective buyer by a public agency or other person:

- is deemed to comply with the law's requirements; and
- relieves the seller or listing or buyer's agent of any further duty regarding that information.

If more than one licensed real estate broker is acting as an agent in a transaction for which transfer fee disclosures are required, the broker who obtained the transferee's offer generally must deliver the disclosure to the transferee, unless the transferor has given other written delivery instructions. If the broker responsible for delivering the disclosures cannot obtain the disclosure document and does not have the transferee's written assurance that he or she has received the disclosure, the broker must advise the transferee in writing of his or her rights to the disclosure. The licensed real estate broker who is responsible for delivering the disclosure must maintain a record of his or her action.

Statutory section 1102.12 amended 1986; § 1102.4 amended 2018.

[Cal. Civ. Code §§ 1102.4, .12 \(2020\)](#)

## California, Limitations on private transfer fees

A transfer fee may not be created as of January 1, 2019. This restriction does not apply to the excepted transfer fee covenants defined by [12 C.F.R. § 1228.1](#), which defines "excepted transfer fee covenant" as a "private transfer fee covenant that requires payment of a private transfer fee to a covered association and limits the use of such transfer fees exclusively to purposes which provide a direct benefit to the real property encumbered by the private transfer fee covenants."

Any transfer fee created in violation of the state's prohibition is void as against public policy.

Section 1098.6 enacted 2018.

[Cal. Civ. Code § 1098.6 \(2020\)](#)

## California, Permitted private transfer fees

### **PERMITTED FEES**

California law permits a "transfer fee," which is defined as "any fee payment requirement imposed within a covenant, restriction, or condition contained in any deed, contract, security instrument, or other document affecting the transfer or sale of, or any interest in, real property that requires a fee be paid as a result of transfer of the real property."

A "transfer fee" does *not* include:

- fees or taxes imposed by a governmental entity;
- mechanics' lien fees;
- fees "pursuant to court-ordered transfers, payments, or judgments";
- fees pursuant to property agreements related to a legal separation or marriage dissolution;
- fees in connection with administering certain estates or trusts;
- fees imposed by lenders or loan purchasers;
- assessments, charges, penalties, or fees authorized by the Davis-Stirling Common Interest Development Act or by the Commercial and Industrial Common Interest Development Act;
- fees for failing to comply with, or for transferring real property, before satisfying an obligation to construct residential improvements; or
- pursuant to § 1098(a)(9)(A), any fee "reflected in a document recorded against the property on or before December 31, 2007, that is separate from any covenants, conditions, and restrictions, and that substantially complies with" the notice requirements of § 1098.5(a) by providing a prospective transferee notice of:
  - the required transfer fee;

- the fee's amount or calculation;
- any date or circumstances under which the payment requirement expires;
- the entity to which the fee will be paid; and
- the general purposes for which the fee will be used; and
- effective January 1, 2016, and pursuant to § 1098(a)(9)(B), any fee "reflected in a document recorded against the property on or before December 31, 2007, that is not separate from any covenants, conditions, and restrictions, or that incorporates by reference from another document, is a 'transfer fee' for purposes of Section 1098.5."

## **RECORDING REQUIREMENTS**

### *Transfer fee imposed before January 1, 2008*

For transfer fees imposed before January 1, 2008, the fee's receiver, as a condition of the payment of the fee on or after January 1, 2009, must record in the office of the county recorder on or before December 31, 2008, a separate document entitled "Payment of Transfer Fee Required." The title must be in at least 14-point boldface type, and the document must include the following:

- the names of all current owners of the real property subject to the transfer fee;
- the affected property's legal description and assessor's parcel number;
- the amount (if a flat fee) or the percentage of the sales price that constitutes the fee;



- if the real property is residential property, "dollar-cost examples" of the fee for a home priced at \$250,000, \$500,000, and \$750,000;
- the date or circumstances, if any, under which the transfer fee payment requirement expires;
- the purpose for which the funds will be used;
- the entity to which funds will be paid;
- specific contact information regarding where the funds must be sent; and
- the signature of the authorized representative of the entity to which the will be paid.

Effective January 1, 2016, a transfer fee recorded against the property on or before December 31, 2007, that complies with § 1098(a)(9)(A) and "incorporates by reference from another document" is unenforceable, unless recorded against the property on or before December 31, 2016, in a single document that complies with § 1098(a)(9)(B) and § 1098.5. The information in § 1098(a)(9) must be set forth in a single document and must not be incorporated by reference from any other document.

*Transfer fee imposed on or after January 1, 2008*

If a transfer fee is imposed on real property on or after January 1, 2008, the person or entity imposing the fee, as a condition of payment of the fee, must record in the office of the county recorder, concurrently with the instrument creating the transfer fee requirement, a separate document that is entitled "Payment of Transfer Fee Required." The document's title must be in at least 14-point boldface type, and the document must include the following information:

- the names of all current owners of the real property;

- the property's legal description and assessor's parcel number;
- the amount, if the fee is a flat amount, the percentage of the sales price constituting the cost of the fee, or the method for calculating the amount;
- if the property is residential and the fee amount is based on the property's price, actual dollar-cost examples of the fee for a home priced at \$250,000, \$500,000, and \$750,000;
- the date or circumstances under which the transfer fee payment requirement expires, if any;
- the purpose for which the funds will be used;
- the entity to which the funds will be paid and specific contact information regarding where the funds are to be sent;
- the signature of the authorized representative of the entity to which funds from the fee will be paid; and
- for private transfer fees created on or after February 8, 2011, unless the exception in 12 C.F.R. § 1228.3 applies, the following notice in at least 14-point boldface type: "The Federal Housing Finance Agency and the Federal Housing Administration are prohibited from dealing in mortgages on properties encumbered by private transfer fee covenants that do not provide a "direct benefit" to the real property encumbered by the covenant. As a result, if you purchase such a property, you or individuals you want to sell the property to may have difficulty obtaining financing."

Section 1098 amended 2015; § 1098.5 amended 2017.

[Cal. Civ. Code §§ 1098, 1098.5 \(2020\)](#)

California, Private transfer fee relief provisions

Any transfer fee created in violation of section 1098.6 (which prohibits the creation of transfer fees on or after January 1, 2019) is void as against public policy.

[Cal. Civ. Code § 1098.6\(b\) \(2020\)](#)

## Colorado

### Colorado, Disclosure requirements

#### **REQUIRED DISCLOSURES**

The payee of a transfer fee covenant recorded before May 23, 2011, must record a Notice of Transfer Fee against the burdened residential real property. The document must be recorded no later than October 1, 2011, in the office of the county clerk and recorder for the county in which the property is located. See "Permitted private transfer fees" for details regarding the recording requirements.

The payee may file an amendment to the notice for new contact information. The amendment must contain:

- the notice's recording information;
- the owner's name; and
- the residential real property's legal description.

Upon the owner's written request, the payee must furnish the owner (or the owner's designee) with a written statement specifying the amount of the transfer fee payable.

#### **EXCEPTIONS**

No relevant provisions were located.

Statutory section enacted 2011.

Colo. Rev. Stat. Ann. § 38-35-127 (LexisNexis 2019)

## Colorado, Licensee responsibility

No specifically relevant provisions were located. However, generally, a buyer's agent has the following duties, among others:

- to disclose to the buyer known adverse material facts; and
- to counsel the buyer as to any known material benefits or risks of a transaction.

A seller's agent owes no duty or obligation to the buyer or tenant, except that a broker must generally disclose all known adverse material facts.

With respect to an affidavit upon failure to respond to a request for payment amount, nothing in § 38-35-127 confers liability on "any person or title company, or any agent or employee of such company, that executes an affidavit on request of any grantor when the person or title company has actual knowledge of some or all of the matters contained in the affidavit, unless that person or title company is proven to have acted in bad faith or with gross negligence."

Statutory sections 12-61-804 and 12-61-805 renumbered/recodified in 2019 as 12-10-404 and 12-10-405 respectively; § 38-35-127 enacted 2011.

Colo. Rev. Stat. Ann. §§ 12-61-804 (renumbered 12-10-404 in 2019), -805 (renumbered as 12-10-405 in 2019); 38-35-127 (LexisNexis 2019)

## Colorado, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

*Prohibited fees*

A transfer fee covenant recorded on or after May 23, 2011, or any lien that purports to secure the payment of a transfer fee, recorded on or after May 23, 2011, is not, upon a conveyance:

- binding on or enforceable against the affected real property;
- "payable for the right to make or accept such conveyance"; or
- "binding on or enforceable against any subsequent owner, purchaser, or holder of any mortgage" or other security interest that encumbers the real property.

#### *Relevant definitions*

"Conveyance" means the "sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in residential real property" located in Colorado upon which either there are residential improvements or the construction of residential improvements has begun.

"Transfer fee" means a "fee or charge required to be paid by a transfer fee covenant, any portion of which is payable upon conveyance or payable for the right to make or accept such conveyance," regardless of how the fee or charge is determined.

"Transfer fee covenant" means a provision that requires or purports to require the payment of a transfer fee. It does not include an "excluded provision." See "Permitted private transfer fees" for a list of excluded provisions.

#### **PAYEE RESTRICTIONS**

No relevant provisions were located.

## **MAXIMUM FEES**

A transfer fee covenant applied to residential real property violates Colorado's public policy regardless of the transfer fee's amount.

## **TIME LIMITS**

A transfer fee covenant applied to residential real property violates Colorado's public policy regardless of the covenant's duration.

## **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory section enacted 2011.

Colo. Rev. Stat. Ann. § 38-35-127 (2019)

[Colorado, Permitted private transfer fees](#)

## **PERMITTED FEES**

### *Existing transfer fees*

Certain private transfer fee obligations imposed before May 23, 2011, may be permitted. The payee of a private transfer fee imposed before May 23, 2011, must record against burdened residential real property a notice of transfer fee no later than October 1, 2011. The document must be recorded in the office of the county clerk and recorder for the county in which the residential real property is located. The payee may file an amendment to the notice of transfer fee to revise contact information.

Upon the owner's (or the owner's designee's) written request, the payee must furnish a written statement specifying the amount of the transfer fee payable. If the payee fails to provide a statement within 30 days after the date a written request is sent, the owner, upon recording an affidavit, may convey residential real property to a grantee without paying the transfer fee. That conveyance is not subject to the transfer fee or the transfer fee covenant.

However, note that § 38-35-127 "shall not be construed to imply that any transfer fee covenant or excluded provision is valid or enforceable solely" because § 38-35-127 was enacted.

*Fees not deemed to be private transfer fees*

The following are "excluded provisions," which are *not* deemed to be private transfer fees:

- principal, interest, fees, or other amounts payable by a borrower to a lender;
- compensation or expense reimbursements paid to a licensed real estate broker for certain brokerage services rendered;
- rent, reimbursement, or other amount payable by a lessee to a lessor under a lease;
- a provision in a deed or other document recorded for the purpose of providing record notice of specified agreements;
- a tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority or a quasi-governmental entity;
- a fee, charge, assessment, fine, or other amount payable to or collected by "an association of unit owners, homeowners, property owners, condominium owners, or similar mandatory membership organization";

- a fee, charge, assessment, dues, contribution, or other amount payable to a nonprofit organization for "the purpose of benefiting the community in which the affected real property is located, the common areas of the community, or any adjacent or contiguous real property and supporting activities such as cultural, educational, charitable, affordable housing, preservation of open space, recreational, transportation, environmental, conservation, or similar activities";
- an amount "to the extent required pursuant to a recorded covenant or servitude that imposes limitations on the use of residential real property pursuant to an environmental remediation project"; or
- a payment of "an amount that, once paid, shall not bind any successor in title to the interest in residential real property and that shall in no event be payable by a grantee upon the conveyance of residential real property upon which there are residential improvements."

## **RECORDING REQUIREMENTS**

The payee of a private transfer fee imposed before May 23, 2011, must record a notice of transfer fee against the burdened residential real property no later than October 1, 2011. The document must be recorded in the office of the county clerk and recorder for the county in which the residential real property is located.

The notice of transfer fee must:

- be entitled "notice of transfer fee" in at least 14-point boldface type;
- specify the transfer fee amount (if a flat amount) or the basis by which the transfer fee is to be calculated;
- provide actual cost examples of the transfer fee for homes priced at \$250,000, \$500,000, and \$750,000;



- specify any date or circumstances under which the transfer fee payment requirement expires;
- describe the general purpose for which the funds will be used;
- identify the payee's name and specific contact information;
- contain the payee's acknowledged signature;
- identify the owner's name and legal description; and
- specify the method of releasing a lien recorded against the residential real property pursuant to the transfer fee covenant.

The payee may file an amendment to the notice of transfer fee containing new contact information. The amendment must contain:

- the recording information of the notice of transfer fee that it amends;
- the owner's name; and
- the burdened residential real property's legal description.

The requirements set forth in subsections 38-35-127(4), (5), and (6) do not apply to certain nonprofit organizations formed before May 23, 2011, that are a payee under a transfer fee covenant recorded before May 23, 2011.

Section 38-35-127 must "not be construed to imply that any transfer fee covenant or excluded provision is valid or enforceable solely as the result of" the section's enactment.

Statutory section enacted 2011.

Colo. Rev. Stat. Ann. § 38-35-127 (LexisNexis 2019)

## Colorado, Private transfer fee relief provisions

### **VOID PROVISIONS**

A transfer fee covenant recorded on or after May 23, 2011, or any lien that purports to secure the payment of a transfer fee recorded on or after May 23, 2011, is not, upon a conveyance:

- binding on or enforceable against the affected real property;
- "payable for the right to make or accept such conveyance"; or
- "binding on or enforceable against any subsequent owner, purchaser, or holder of any mortgage" or other security interest encumbering the real property.

### **LIABILITY FOR DAMAGES**

A person who records a transfer fee covenant on or after May 23, 2011, and fails to release the covenant (and any associated liens) within 30 days after written request for the release is sent, is liable for:

- actual damages resulting from the imposition of the transfer fee covenant on a conveyance, including the amount of any transfer fee a party paid; and

- all "reasonable actual attorney fees, expenses, and costs incurred by a party to the conveyance or by a holder of a mortgage, deed of trust, or other security interest encumbering the residential real property subject to the transfer fee covenant" in connection with an action to recover a transfer fee paid, to quiet title to burdened residential real property, or to show cause why the transfer fee covenant (or any associated lien) should not be declared invalid.

## **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

### *Failure to record notice*

If the payee fails to record the required notice, the grantor of residential real property burdened by the transfer fee covenant:

- may convey the property to the grantee;
- is deemed to have acted in good faith; and
- is not be subject to any obligations under the transfer fee covenant.

All future conveyances are free and clear of the transfer fee and the transfer fee covenant.

## **OTHER RELIEF**

### *Failure to respond to written request*

Upon an owner's written request, the payee must furnish to the owner (or the owner's designee) a written statement specifying the amount of the transfer fee payable. If the payee fails to provide the statement within 30 days after the request is sent, the owner may record an affidavit and then

convey the residential real property interest without paying the transfer fee. The conveyance is not subject to the transfer fee or the transfer fee covenant.

The affidavit must be recorded before, simultaneously with, or within 45 after a deed or other instrument conveying the interest in the burdened residential real property is recorded. Once recorded, the affidavit constitutes prima facie evidence that:

- a request for a written statement of the transfer fee payable was sent to the appropriate address; and
- the payee failed to provide the written statement within 30 days.

The affidavit must:

- state that "the affiant has actual knowledge of, and is competent to testify to, the facts in the affidavit"; and
- include the property's legal description, the owner's name, the grantee's name, a reference to the instrument containing the transfer fee covenant, and an acknowledgment that the affiant is testifying under penalty of perjury.

Statutory section enacted 2011.

Colo. Rev. Stat. Ann. § 38-35-127 (LexisNexis 2019)

## Connecticut

### Connecticut, Disclosure requirements

#### **REQUIRED DISCLOSURES**

A contract offered or entered into on or after June 24, 2013, for the sale of Connecticut real property encumbered by a private transfer fee obligation imposed before June 24, 2013, must include:

- a provision disclosing the obligation's existence;
- a description of the obligation; and
- a statement that private transfer fee obligations are subject Conn. Gen. Stat. § 47-17a.

Also, for each private transfer fee obligation imposed before June 24, 2013, the person to which the fee was or is paid must record, before December 31, 2013, a separate document entitled "Notice of Private Transfer Fee Obligation." The notice must contain specific information required by statute.

## **EXCEPTIONS**

No relevant provisions were located.

Statutory section amended 2014.

[Conn. Gen. Stat. § 47-17a\(c\), \(d\) \(2019\)](#)

## **Connecticut, Licensee responsibility**

No specifically relevant provisions were located. However, generally, a licensee may not misrepresent or conceal any material facts. Also, a broker must exercise diligence at all times in obtaining and presenting accurate information in the broker's advertising and representations to the public.

Regulation amended 2004.

[Conn. Agencies Regs. § 20-328-5a \(2020\)](#)

## Connecticut, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

No person may impose a private transfer fee obligation on or after June 24, 2013.

#### *Relevant definitions*

"Person" means "an individual, corporation, limited liability company, partnership, association, trustee or other entity" capable of holding a real property interest.

"Private transfer fee" means a fee or charge payable:

- upon the conveyance and subsequent conveyance of a Connecticut real property interest; or
- for "the right to make or accept such conveyance."

"Private transfer fee obligation" means an obligation arising under a declaration or covenant recorded against the title to Connecticut real property located or under any contractual agreement or promise, whether or not recorded, that requires the payment of a private transfer fee upon a conveyance or a subsequent conveyance of an interest in the property.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

No relevant provisions were located.

### **TIME LIMITS**

No relevant provisions were located.

### **OTHER RELEVANT PROVISIONS**

No relevant provisions were located.

Statutory section amended 2014.

[Conn. Gen. Stat. 47-17a\(a\)\(1\), \(2\)\(A\), \(3\); \(b\) \(2019\)](#)

Connecticut, Permitted private transfer fees

### **PERMITTED FEES**

*Existing transfer fees*

Certain private transfer fee obligations imposed before June 24, 2013, may be permitted. The payee of a private transfer fee obligation imposed before June 24, 2013, must have recorded a "Notice of Private Transfer Fee Obligation" before December 31, 2013, in the land records for each town in which the real property is located. The document must meet all requirements set forth by § 47-17a(d).

The payee may file an amendment to a private transfer fee notice to amend contact information. That amendment must contain the recording information of the private transfer fee notice it amends and the property's legal description.

*Fees not deemed to be private transfer fees*

The following are *not* private transfer fees for the purpose of Connecticut's statutory provisions prohibiting private transfer fees:

- consideration payable by a grantee to a grantor for the conveyance of a Connecticut real property interest (or a mineral estate), including subsequent consideration payable that is based on the property's subsequent appreciation, development, or sale, provided the subsequent consideration is payable one time and the obligation does not bind successors in title;
- a commission payable to a real estate licensee for the sale of Connecticut real property pursuant to a contract or agreement between the licensee and a grantee or grantor, including any subsequent commission based on the property's subsequent appreciation, development, or sale;
- any interest, fee, or other amount payable by a borrower to a lender pursuant to a loan secured by a mortgage against Connecticut real property;
- any rent, reimbursement, fee, or other amount payable by a lessee to a lessor;
- any consideration payable to the holder of (a) an option to purchase a real property interest or (b) a right of first refusal or first offer to purchase a Connecticut real property interest, for such holder's waiver, release, or nonexercise of that option or right;
- a tax, assessment, fine, or other amount "payable to or imposed by a governmental entity";



- any dues, assessment, or other amount "payable to an association or a unit owners' association" pursuant to a "declaration, covenant, law, association bylaw, association rule or association regulation";
- any dues, assessment, fine, or other amount "imposed by a declaration or covenant encumbering a municipality or a county" or a neighborhood or other area in Connecticut, and payable solely to an organization that is tax exempt for the purpose of "supporting cultural, educational, charitable, recreational, environmental, conservation or other similar activities that benefit such municipality, county, neighborhood or other area"; or
- any dues, assessment, or other amount "payable for the purchase or transfer of a club membership" related to Connecticut real property.

## **RECORDING REQUIREMENTS**

No relevant provisions were located.

Statutory section amended 2014.

[Conn. Gen. Stat. § 47-17a\(a\)\(2\)\(B\), \(d\) \(2019\)](#)

Connecticut, Private transfer fee relief provisions

## **VOID PROVISIONS**

A private transfer fee obligation or agreement imposed on and after June 24, 2013, is void and unenforceable.

A property sale contract offered or entered into on or after June 24, 2013, that is encumbered by a private transfer fee obligation imposed before June 24, 2013, but that fails to disclose the existence of the private transfer fee, is void and unenforceable.

## **LIABILITY FOR DAMAGES**

A person aggrieved by the imposition of a private transfer fee imposed on or after June 24, 2013, may bring a civil action for damages in the Superior Court.

## **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

Connecticut real property that is encumbered by a private transfer fee obligation may become unencumbered if:

- the person to which the fee was or is paid fails to record notice of the fee before December 31, 2013; or
- a grantor requests in writing, to the person to which the private transfer fee was or is paid, a statement showing the private transfer fee amount payable upon the property's conveyance, and the payee fails to provide the statement in writing within 30 days of the grantor's written request.

In that case, the grantor is not subject to the fee upon the recording of an affidavit. The grantor may thereafter convey the property without paying the private transfer fee, and the property may thereafter be conveyed free and clear of the obligation and fee.

## **OTHER RELIEF**

### *Failure to disclose existing private transfer fee*

A property sale contract offered or entered into on or after June 24, 2013, that is encumbered by a private transfer fee obligation imposed before June 24, 2013, but that fails to disclose the existence of a private transfer fee, is void and unenforceable. No purchaser is liable to the seller for damages under such contract. A purchaser under a contract that is void and unenforceable for this reason is entitled to the return of all deposits he or she made in connection with the property's sale.

Statutory section amended 2014.

[Conn. Gen. Stat. § 47-17a\(b\), \(c\), \(e\) \(2019\)](#)

## Delaware

### Delaware, Disclosure requirements

#### **REQUIRED DISCLOSURES**

A transfer fee covenant that existed before July 27, 2010, must have been recorded before that date. An unrecorded transfer fee covenant or one recorded on or after July 27, 2010, does not run with the title and is not binding on or enforceable against any owner, subsequent owner, purchaser, or mortgagee. A transfer fee covenant recorded before July 27, 2010, is *not* presumed valid and enforceable.

#### **EXCEPTIONS**

No relevant provisions were located.

Statutory section enacted 2010.

[Del. Code tit. 25, § 319\(b\) \(2020\)](#)

### Delaware, Licensee responsibility

No specifically relevant provisions were located. However, generally, licensees must, "to the extent applicable to their functions," disclose to all prospective buyers any known adverse material facts. Also, an agent may, among others things:

- provide customers with "factual information they request"; and

- provide clients with "relevant factual information."

Also, a licensee is not liable for a customer's or a client's "wrongful act, error, omission, or misrepresentation," except to the extent the licensee had actual knowledge of the wrongful act, error, omission, or misrepresentation. This provision does not apply if a licensee or brokerage organization is hired as a common law agent.

Statutory sections amended and renumbered 2011.

[Del. Code tit. 24, §§ 2936, 2937 \(2020\)](#)

## Delaware, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

A transfer fee covenant recorded in Delaware on or after July 27, 2010, does not run with the real property's title and is not binding on or enforceable against any owner, subsequent owner, purchaser, or mortgagee. Any lien purporting to secure the payment of a private transfer fee pursuant to a transfer fee covenant recorded on or after July 27, 2010, is void and unenforceable.

#### *Relevant definitions*

"Private transfer fee" means a fee or charge payable upon the transfer of a real property estate or interest, or payable for the right to make or accept a transfer of a real property estate or interest, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the property's value, the purchase price, or other consideration.

"Transfer" means the "sale, gift, conveyance, assignment, devise by will, inheritance through intestate laws, or other transfer or release" of a real property estate or interest.

"Transfer fee covenant" means a declaration or covenant that requires or purports to require the payment of a private transfer fee to the declarant or other person or entity specified in the covenant or declaration upon a subsequent transfer of a real property estate or interest.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

No relevant provisions were located.

### **TIME LIMITS**

No relevant provisions were located.

### **OTHER RELEVANT PROVISIONS**

No relevant provisions were located.

Statutory section enacted 2010.

[Del. Code tit. 25, § 319\(a\), \(b\) \(2020\)](#)

[Delaware, Permitted private transfer fees](#)

### **PERMITTED FEES**

### *Previously recorded covenants*

A transfer fee covenant recorded before July 27, 2010, may run with the real property's title and may be binding or enforceable against any owner, subsequent owner, purchaser, or mortgagee. However, a transfer fee covenant recorded before July 27, 2010, is *not* presumed valid and enforceable.

### *Fees excluded from "private transfer fee" definition*

The term "private transfer fee" does *not* include:

- consideration payable by the transferee to the transferor for the transferred real property estate or interest or for a purchase money mortgage from the purchaser to the seller;
- consideration payable under a conditional sales agreement or installment sale;
- a commission or fee payable to the personal representative of an estate of a deceased person, guardian, or trustee upon a property transfer;
- a commission or fee payable to an auctioneer or a licensed real estate broker upon the transfer of property under an agreement between the auctioneer or broker and the transferor or transferee;
- a commission or fee payable to a trustee in bankruptcy proceedings;
- principal, interest, charges, fees, or other amounts payable by a borrower to a lender under a bona fide loan secured by a real property mortgage (payment by a transferor or transferee to a developer or builder for a transfer of an estate or interest after the initial sale by the developer or builder is not a bona fide loan);

- rent, reimbursement, charge, fee, or other amount payable by a tenant to a landlord under a rental agreement or lease;
- consideration payable to the holder of an option to purchase real property or the holder of a right of first refusal or first offer to purchase real property for waiving, releasing, or not exercising the option or right upon the transfer of the property to another person;
- a tax, fee, charge, assessment, fine, or other amount payable to or imposed by any governmental authority, a Sustainable Energy Utility, or a public utility; or
- a fee, charge, assessment, fine, or other amount payable to the unit owners association of a common interest community or of a condominium for the benefit of the unit owners pursuant to a declaration, covenant, or applicable law.

### **RECORDING REQUIREMENTS**

Previously existing transfer fee covenants must be recorded. An unrecorded transfer fee covenant or one recorded on or after July 27, 2010, does not run with the property's title and is not binding or enforceable at law or in equity against any owner, subsequent owner, purchaser, or mortgagee. A transfer fee covenant recorded before July 27, 2010, is *not* presumed valid and enforceable.

Statutory section enacted 2010.

[Del. Code tit. 25, § 319\(a\), \(b\) \(2020\)](#)

Delaware, Private transfer fee relief provisions

### **VOID PROVISIONS**

A lien purporting to secure the payment of a private transfer fee pursuant to a transfer fee covenant recorded on or after July 27, 2010, is void and unenforceable. A transfer fee covenant recorded before July 27, 2010, is *not* presumed valid and enforceable.

## **LIABILITY FOR DAMAGES**

The state's attorney general may charge the use of a transfer fee covenant in violation of § 319 as a violation of the state's consumer law. Section 319 may also be enforced by private action.

## **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

## **OTHER RELIEF**

No relevant provisions were located.

Statutory section enacted 2010.

[Del. Code tit. 25, § 319\(b\), \(c\) \(2020\)](#)

## District of Columbia

### District Of Columbia, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### District Of Columbia, Licensee responsibility

No specifically relevant provisions were located. However, generally, a licensee engaged by a buyer must disclose to the buyer known material facts related to the property or the transaction. Also, a seller's licensee must treat prospective buyers honestly and not knowingly give false information.

Statutory section amended 1998.



[D.C. Code § 42-1703\(a\)\(1\)\(B\)\(iii\), \(a\)\(2\) \(2020\)](#)

## District Of Columbia, Limitations on private transfer fees

No relevant provisions were located.

## District Of Columbia, Permitted private transfer fees

No relevant provisions were located.

## District Of Columbia, Private transfer fee relief provisions

No relevant provisions were located.

# Florida

## Florida, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

## Florida, Licensee responsibility

Effective July 1, 2008, private transfer fee covenants are void, and this restriction explicitly "does not mean that transfer fee covenants or liens recorded . . . before July 1, 2008, are presumed valid and enforceable." However, if an earlier covenant is found to be valid, a single agent generally has the following duties, among others:

- honest and fair dealing;
- full disclosure; and
- disclosure of "all known facts that materially affect the value of residential real property and are not readily observable."

A transaction broker and a licensee who has no brokerage relationship with a party owes the following duties, among others, to a potential seller or buyer:

- honest and fair dealing; and
- disclosure of "all known facts that materially affect the value of the residential real property" that are not readily observable.

The above disclosure requirements apply to all residential sales, which include:

- the sale of improved residential property of four or fewer units;
- the sale of unimproved residential property intended for four or fewer units; or
- the sale of agricultural property of 10 acres or fewer.

The disclosure requirements do not apply:

- when a licensee knows that the potential seller or buyer is represented by a single agent or a transaction broker;
- when "an owner is selling new residential units built by the owner and the circumstances or setting should reasonably inform the potential buyer that the owner's employee or single agent is acting" on the owner's behalf; or
- to specified transactions, including, among others, the following:
  - the rental or leasing of certain real property;
  - a bona fide open house or model home showing that does not involve eliciting confidential information, executing an offer or representation agreement, or negotiating price, terms, or conditions;

- "unanticipated casual conversations" that do not involve eliciting confidential information, executing an offer or representation agreement, or negotiating price, terms, or conditions; and
- responding to general factual questions.

Statutory section 475.278 amended 2009; § 689.28 enacted 2008.

[Fla. Stat. §§ 475.278, 689.28 \(2019\)](#)

## Florida, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

A transfer fee covenant recorded in Florida on or after July 1, 2008,

- does not run with the title to the real property; and
- is "not binding on or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in real property as an equitable servitude or otherwise."

Any liens "purporting to secure the payment of a transfer fee under a transfer fee covenant" recorded in Florida on or after July 1, 2008, are void and unenforceable.

The Florida Legislature explains that Florida's public policy "favors the marketability of real property and the transferability of interests in real property free of title defects or unreasonable restraints on

alienation" and that transfer fee covenants violate this public policy regardless of the covenant's duration or the transfer fee amount.

### *Relevant definitions*

"Transfer" means the "sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property" located in Florida.

"Transfer fee" means "a fee or charge required by a transfer fee covenant and 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 property, the purchase price, or other consideration given for the transfer."

"Transfer fee covenant" means a recorded declaration or covenant that "requires or purports to require the payment of a transfer fee to the declarant or other person specified in the declaration or covenant or to their successors or assigns upon a subsequent transfer" of an interest in the property.

### **PAYEE RESTRICTIONS**

No specifically relevant provisions were located.

### **MAXIMUM FEES**

Transfer fee covenants violate Florida's public policy regardless of the transfer fee amount.

### **TIME LIMITS**

Transfer fee covenants violate Florida's public policy regardless of the covenant's duration.

## **OTHER RELEVANT PROVISIONS**

Liens "purporting to secure the payment of a transfer fee under a transfer fee covenant" recorded in Florida on or after July 1, 2008, are void and unenforceable. This provision "does not mean that transfer fee covenants or liens recorded . . . before July 1, 2008, are presumed valid and enforceable."

Statutory section enacted 2008.

[Fla. Stat. § 689.28 \(2019\)](#)

### Florida, Permitted private transfer fees

No specifically relevant provisions were located. However, the following are *not* included in the definition of "transfer fee":

- consideration payable by the grantee to the grantor for the real property interest being transferred, including any additional consideration based on the property's subsequent appreciation, development, or sale;
- a commission payable to a licensed real estate broker for the real property transfer pursuant to an agreement between the broker and the grantor or grantee, including any additional commission based on the property's subsequent appreciation, development, or sale;
- "interest, charges, fees, or other amounts" payable by a borrower to a lender pursuant to a loan secured by a real property mortgage;
- "rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease";

- consideration payable to the holder of a purchase option or a right of first refusal or first offer for waiving, releasing, or not exercising the option or right upon the property's transfer to another person;
- taxes, fees, charges, assessments, fines, or other amounts payable to or imposed by a governmental authority;
- fees, charges, assessments, fines, or other amounts "payable to a homeowners', condominium, cooperative, mobile home, or property owners' association pursuant to a declaration or covenant or law applicable to such association";
- fees, charges, assessments, dues, contributions, or other amounts imposed by a declaration or covenant encumbering four or more parcels in a community and payable to "a nonprofit or charitable organization for the purpose of supporting cultural, educational, charitable, recreational, environmental, conservation, or other similar activities benefiting" that community;
- fees, charges, assessments, dues, contributions, or other amounts pertaining to the purchase or transfer of a club membership relating to real property owned by the member; or
- payments required pursuant to an environmental covenant, which is defined as "a covenant or servitude that imposes limitations on the use of real property pursuant to an environmental remediation project pertaining to the property."

Statutory section enacted 2008.

[Fla. Stat. § 689.28 \(2019\)](#)

Florida, Private transfer fee relief provisions

**VOID PROVISIONS**

Any liens "purporting to secure the payment of a transfer fee under a transfer fee covenant" recorded in Florida on or after July 1, 2008, are void and unenforceable.

### **LIABILITY FOR DAMAGES**

No relevant provisions were located.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

### **OTHER RELIEF**

No relevant provisions were located.

Statutory section enacted 2008.

### **[Fla. Stat. § 689.28 \(2019\)](#)**

#### **Georgia**

#### **Georgia, Disclosure requirements**

No relevant provisions were located.

#### **Georgia, Licensee responsibility**

No specifically relevant provisions were located. However, generally, a buyer's broker must disclose to the buyer known adverse material facts concerning the transaction.

Although a seller's broker must timely disclose to all parties with whom the broker is working all adverse material facts pertaining to the property's *physical condition* that the broker knows and that

the buyer could not discover in a reasonably diligent inspection, Georgia law does not explicitly address a seller's duties regarding the disclosure to buyers of other factors.

Statutory sections amended 2000.

Ga. Code §§ 10-6A-5, -7 (LexisNexis 2020)

## Georgia, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

As of May 6, 2013, a restriction or covenant running with the land that requires a real property transferee or transferor to pay a declarant, another person imposing the restriction or covenant, or a designated third party a fee in connection with the property's future transfer is prohibited.

#### *Relevant definitions*

"Conveyance of real property" means a conveyance or other transfer of a real property interest or estate.

### **PAYEE RESTRICTIONS**

Restricted payees are broadly described as:

- the declarant;
- another person imposing the restriction or covenant on the property;



- a designated third party; or
- the declarant's, a third party's, or another person's successor, assignee, or designee.

### **MAXIMUM FEES**

No relevant provisions were located.

### **TIME LIMITS**

No relevant provisions were located.

### **OTHER RELEVANT PROVISIONS**

No relevant provisions were located.

Statutory section enacted 2013.

Ga. Code § 44-14-15(a), (b) (LexisNexis 2020)

[Georgia, Permitted private transfer fees](#)

### **PERMITTED FEES**

*Existing transfer fees*

No relevant provisions were located.

*Fees not deemed to be private transfer fees*

Georgia's private transfer fee statute does not apply to a restriction or covenant that requires a fee associated with a real property conveyance be paid to:

- an association formed to exercise a condominium association's powers;
- a property owners' association formed to exercise a property owners' association's powers pursuant to the "Georgia Property Owners' Association Act";
- a property owners' association formed to exercise the powers of a property owners' association that has not been formed pursuant to, or that has not adopted the provisions of, the "Georgia Property Owners' Association Act," provided the association complies with Ga. Code § 44-3-232(d);
- a person or entity under the Public Service Commission's general supervision (as provided for in Ga. Code § 46-2-20(a)), provided the fee is "charged for expenses incurred in the administration of ongoing services or rights provided to the property interest conveyed";
- a tax-exempt community land trust or community development corporation, provided the fee is "charged for and applied to expenses incurred in the administration of ongoing community program services or rights provided to shared equity property interests within, as applicable, the land subject to the community land trust or the geographic area served by the community development corporation"; or
- a party to a purchase contract, option, real property listing agreement, or other agreement that obligates one party to pay the other, as full or partial consideration for the agreement or for a waiver of rights under the agreement, an amount, if the amount constitutes a fee or commission paid to a licensed real estate broker for brokerage services rendered in connection with the property's transfer.

## **RECORDING REQUIREMENTS**

No relevant provisions were located.

Statutory section enacted 2013.

Ga. Code § 44-14-15(c) (LexisNexis 2020)

[Georgia, Private transfer fee relief provisions](#)

## **VOID PROVISIONS**

A restriction or covenant or a lien purporting to encumber the land to secure a right under a restriction or covenant running with the land that violates Ga. Code § 44-14-15 is void and unenforceable.

## **LIABILITY FOR DAMAGES**

No relevant provisions were located.

## **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

## **OTHER RELIEF**

No relevant provisions were located.

Statutory section enacted 2013.

Ga. Code § 44-14-15(b) (LexisNexis 2020)

## Guam

### Guam, Disclosure requirements

Research located no statutes or regulations specifically addressing the disclosure of private transfer fees.

### Guam, Licensee responsibility

No specifically relevant provisions were located. However, generally, a licensee may be disciplined for "making any substantial misrepresentation."

Statutory section enacted 1971.

[Guam Code tit. 21, § 104302 \(2019\)](#)

### Guam, Limitations on private transfer fees

No relevant provisions were located.

### Guam, Permitted private transfer fees

No relevant provisions were located.

### Guam, Private transfer fee relief provisions

No relevant provisions were located.

## Hawaii

### Hawaii, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

## Hawaii, Licensee responsibility

No specifically relevant provisions were located. However, generally, a licensee must protect the public against "fraud, misrepresentation, or unethical practices in the real estate field."

Regulation amended 2016.

[Haw. Admin. R. § 16-99-3 \(2020\)](#)

## Hawaii, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

Effective June 22, 2010, a deed restriction or other covenant that requires a real property transferee to "pay a fee in connection with a future transfer of the property to a declarant or other person imposing the deed restriction or covenant on the property" or a designated third party is prohibited. Deed restrictions or other covenants that violate this provision or liens purporting to encumber the land to secure such rights are void and unenforceable.

A deed restriction, covenant, or lien created or filed on or after June 22, 2010, is void and not binding on or enforceable against the real property or any subsequent owner, purchaser, or mortgagee to the extent it purports to secure the payment of a prohibited transfer fee. This provision does *not* imply that any particular deed restriction, covenant, or lien created or filed before June 22, 2010, is "valid per se."

Note that legislation passed in 2013 prohibits private transfer fees permanently by eliminating the temporary act's scheduled repeal date of June 30, 2015.

#### *Relevant definitions*

"Filed" means filed in the "office of the assistant registrar of the land court."

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

No relevant provisions were located.

### **TIME LIMITS**

No relevant provisions were located.

### **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory sections amended 2017.

[Haw. Rev. Stat. §§ 501-232, 502-112 \(2019\)](#)

Hawaii, Permitted private transfer fees

### **PERMITTED FEES**

*Fees existing before June 22, 2010*

A deed restriction or other covenant created or filed before June 22, 2010, may be enforceable. Hawaii law provides that, effective June 22, 2010, a deed restriction or other covenant that violates the state's provision prohibiting transfer fees or a lien purporting to encumber property to secure such right are void and unenforceable. Therefore, a deed restriction, covenant, or lien is void and not binding on or enforceable against the real property or any subsequent owner, purchaser, or mortgagee, to the extent it purports to secure the payment of a prohibited transfer fee that is created or filed on or after June 22, 2010. However, this provision does *not* imply that any particular deed restriction, covenant, or lien created or filed before June 22, 2010, is "valid per se."

*Fees excluded from the definition of "private transfer fee"*

Hawaii's laws prohibiting private transfer fees do *not* apply to the following:

- any interest, charge, fee, or other amount payable by a borrower to a lender pursuant to a loan secured by real property;
- a fee, charge, assessment, or fine payable to an association as defined in § 514B-3, a cooperative housing corporation, a limited-equity housing cooperative, or a planned community association, pursuant to a declaration, covenant, or law applicable to such association or corporation;
- a fee or charge payable to a lessor under a real property lease;
- consideration payable to the holder of an option to purchase a real property interest or the holder of a right of first refusal or first offer to purchase a real property interest for waiving, releasing, or not exercising the option or right upon the real property's transfer;
- a "fee, charge, shared appreciation interest, profit participation, or other consideration, payable by" (a) a person engaged in the business developing real property for resale to other unrelated parties, (b) a person who acquires real property for the purpose of engaging in the business of developing real property for resale to others or for the purpose of reselling the real property to a person engaged in that business, or (c) a person who purchases real property initially transferred at a price below its then-prevailing market value pursuant to an affordable housing program established by the seller, provided that the

amount is payable within 10 years of the recording of the deed restriction or other covenant that imposes the fee or charge;

- a fee or charge payable to a governmental entity;
- a fee, charge, assessment, or other amount payable pursuant to a deed restriction or other covenant, regardless of when filed or recorded, that was required by a litigation settlement approved by a court before June 22, 2010; or
- a reasonable fee payable to a qualified organization for (a) the organization's "management, stewardship, or enforcement of a qualified real property interest in the real property, granted exclusively for a conservation purpose" or (b) educating new owners on the restrictions imposed by the qualified real property interest granted exclusively for a conservation purpose.

## **RECORDING REQUIREMENTS**

No specifically applicable provisions were located.

Statutory sections amended 2017.

[Haw. Rev. Stat. §§ 501-232, 502-112 \(2019\)](#)

[Hawaii, Private transfer fee relief provisions](#)

## **VOID PROVISIONS**

Hawaii law provides that, effective June 22, 2010, a deed restriction or other covenant that violates the state's prohibition on transfer fees or a lien purporting to encumber property to secure such right are void and unenforceable. Therefore, a deed restriction, covenant, or lien, to the extent it purports to secure the payment of a prohibited transfer fee created or filed on or after June 22, 2010, is void and not binding on or enforceable against the real property or any subsequent owner,



purchaser, or mortgagee. However, this provision does *not* imply that any particular deed restriction, covenant, or lien created or filed before June 22, 2010, is "valid per se."

### **LIABILITY FOR DAMAGES**

A person may *not* recover from the recipient or payee "any fee, charge, or assessment required by a deed restriction or other covenant running with the land in connection with the transfer of real property to the extent that the fee, charge, or assessment was paid" before June 22, 2010.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

### **OTHER RELIEF**

No relevant provisions were located.

Statutory sections amended 2017.

[Haw. Rev. Stat. §§ 501-232, 502-112 \(2019\)](#)

## Idaho

### Idaho, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Idaho, Licensee responsibility

No specifically relevant provisions were located. However, generally, a licensee owes the following duties, among others, to a client:

- to promote the client's best interests in good faith, honesty, and fair dealing; and
- to disclose to the client all adverse material facts that the licensee knows or reasonably should have known.

Similarly, if a buyer or seller is not represented by a brokerage, the party remains a customer, and the brokerage and its licensees are nonagents that owe the following legal duties, among others:

- to perform with honesty, good faith, and reasonable skill and care; and
- to disclose to the buyer and seller all adverse material facts that the licensee knows or reasonably should have known.

However, unless otherwise agreed in writing, a brokerage and its licensees owe no duty to a client or a buyer customer to verify the accuracy or completeness of a statement or representation regarding a property.

Statutory section 54-2086 amended 2007; § 54-2087 amended 2009.

[Idaho Code §§ 54-2086, -2087 \(2019\)](#)

## Idaho, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

A transfer fee covenant recorded after March 22, 2011, or any lien that purports to secure a transfer fee payment, is not binding on or enforceable against either the affected real property or any subsequent owner, purchaser, or mortgagee. This provision does not imply that a transfer fee covenant recorded before March 22, 2011, is valid or enforceable.

#### *Relevant definitions*

"Transfer" means the "sale, gift, grant, conveyance, assignment, inheritance or other transfer" of an interest in Idaho real property.

"Transfer fee" means a fee or charge payable upon the transfer of real property or payable for the right to make or accept a transfer, whether the amount is fixed or determined as a percentage of the property's value, purchase price, or other consideration.

"Transfer fee covenant" means a provision in a document that:

- "purports to run with the land or bind current owners or successors in title" to specified real property in Idaho; and
- obligates a transferee or transferor to pay a fee or charge to a third person upon transfer of the property or in consideration of permitting a transfer.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

A transfer fee covenant violates Idaho's public policy, regardless of the fee's amount.

### **TIME LIMITS**

A transfer fee covenant violates Idaho's public policy, regardless of the covenant's duration.

## **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory sections enacted 2011.

[Idaho Code §§ 55-3101, -3102, -3103 \(2019\)](#)

Idaho, Permitted private transfer fees

## **PERMITTED FEES**

*Existing transfer fees*

Idaho law provides that a transfer fee covenant recorded *after* March 22, 2011, or any lien that purports to secure a transfer fee payment, is not binding on or enforceable against the affected real property or any subsequent owner, purchaser, or mortgagee. However, the statute explicitly provides that the provision does *not* imply that a transfer fee covenant recorded before March 22, 2011, is valid or enforceable.

*Fees not deemed to be private transfer fees*

The following are *not* private transfer fees for the purpose of the statutory provisions prohibiting private transfer fees:

- a tax, assessment, fee, or charge properly imposed by a governmental authority or taxing district;
- a contract provision that obligates one party to pay the other an amount determined by the agreement, provided that amount is: "(i) payable on a one-time basis only upon the next transfer of an interest in the specified real property and, once paid, shall not bind successors

in title to the property; and (ii) constitutes a loan assumption or similar fee charged by a lender holding a lien on the property";

- a provision in a deed or other document recorded to provide record notice of specified agreements;
- a provision in a mortgage, deed of trust, or promissory note secured by a mortgage or deed of trust;
- a "commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the transferor or transferee";
- a typical or common real estate closing cost;
- a fee or charge to an association or entity that "operates for the benefit of the association, its members or property of the association or its members to be used exclusively for purposes authorized in the document, so long as no portion of the fee is required to be passed through" to a designated third-party;
- a provision of a document requiring payment of a fee or charge "under the housing or financing programs of the Idaho housing and finance association"; or
- a provision in a "purchase contract, option, mortgage, security agreement, real property listing agreement or lease" that obligates one party to pay the other consideration for the agreement's assignment or transfer.

## **RECORDING REQUIREMENTS**

No relevant provisions were located.

Statutory section enacted 2011.

[Idaho Code § 55-3102 \(2019\)](#)

## Idaho, Private transfer fee relief provisions

### **VOID PROVISIONS**

A transfer fee covenant recorded after March 22, 2011, or any lien that purports to secure a transfer fee payment, is not binding on or enforceable against the affected real property or any subsequent owner, purchaser, or mortgagee. This provision does not imply that a transfer fee covenant recorded before March 22, 2011, is valid or enforceable.

### **LIABILITY FOR DAMAGES**

A person who "records a transfer fee covenant, files a lien that purports to secure payment of a transfer fee or enters into an agreement imposing a private transfer fee obligation" is liable for:

- damages resulting from the imposition of the transfer fee obligation on a real property transfer, including the amount of any transfer fee paid; and
- all attorney's fees, expenses, and costs a party or mortgagee incurred to recover the transfer fee paid or in connection with an action to quiet title.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

### **OTHER RELIEF**

No relevant provisions were located.

Statutory section enacted 2011.

[Idaho Code § 55-3103 \(2019\)](#)

## Illinois

### Illinois, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Illinois, Licensee responsibility

No specifically relevant provisions were located. However, generally, a licensee representing a client must disclose to the client known material facts, unless confidential. Also, a licensee must treat all customers honestly and may not negligently or knowingly give a customer false information.

Statutory sections amended 2019.

[225 Ill. Comp. Stat. 454/15-15\(a\)\(2\)\(C\), -25\(a\) \(2020\)](#)

### Illinois, Limitations on private transfer fees

#### **BENEFICIARY AND USE RESTRICTIONS**

##### *Prohibited fees*

The Illinois General Assembly found that Illinois public policy favors the marketability of real property and the transferability of real property interests free of title defects or unreasonable restraints on alienation. The General Assembly also found that transfer fee covenants impair the marketability and transferability of real property and constitute an unreasonable restraint on alienation, regardless of the covenant's duration or the transfer fee's amount.

Thus, a transfer fee covenant recorded in Illinois on or after January 1, 2011, does not run with the real property's title and is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee. Any lien purporting to secure the payment of a transfer fee under a transfer fee covenant recorded in Illinois on or after January 1, 2011, is void and unenforceable. A transfer fee covenant or lien recorded in Illinois *before* January 1, 2011, is *not* presumed valid and enforceable.

#### *Relevant definitions*

"Transfer" means "the sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest" in Illinois real property.

"Transfer fee" means "a fee or charge required by a transfer fee covenant and payable upon the transfer of a real property interest, or payable for the right to make or accept a transfer," regardless of whether the amount is fixed or determined as a percentage of the property's value, the purchase price, or other consideration.

"Transfer fee covenant" means a declaration or covenant that "requires or purports to require the payment of a transfer fee to the declarant or other person specified in the declaration or covenant or to their successors or assigns upon a subsequent transfer of an interest in the real property."

#### **PAYEE RESTRICTIONS**

No relevant provisions were located.

#### **MAXIMUM FEES**

The General Assembly found that transfer fee covenants impair the marketability and transferability of real property and constitute an unreasonable restraint on alienation, regardless of the transfer fee amount.

#### **TIME LIMITS**



The General Assembly found that transfer fee covenants impair the marketability and transferability of real property and constitute an unreasonable restraint on alienation, regardless of the covenant's duration.

### **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory sections enacted 2010.

[765 Ill. Comp. Stat. 155/5, /10, /15 \(2020\)](#)

Illinois, Permitted private transfer fees

### **PERMITTED FEES**

The following are *not* included in the definition of "transfer fees":

- consideration payable by the grantee to the grantor for the real property being transferred;
- a commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the grantor or the grantee, including any subsequent additional commission for that transfer based upon the property's subsequent appreciation, development, or sale;
- interest, charges, fees, or other amounts payable by a borrower to a lender under a loan secured by a mortgage against real property;
- any rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor pursuant to a lease;

- consideration payable to the holder of an option to purchase a real property interest in real property or of a right of first refusal or first offer to purchase a real property interest for waiving, releasing, or not exercising the option or right upon the property's transfer to another;
- any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority, as long as the amount is not imposed or payable by virtue of a covenant or declaration;
- a "fee, charge, assessment, fine, or other amount payable to a homeowners', condominium, cooperative, mobile home, or property owners' association" pursuant to a declaration, covenant, or applicable law; or
- a "fee, charge, assessment or other amount payable to an entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code whose purpose includes the conservation of land, natural areas, open space or water areas or the preservation of native plants or animals, biotic communities or geographic formations located within the same subdivision or planned unit development or within one-half mile of the real property to which the transfer fee covenant attaches for the exclusive or non-exclusive use and benefit" of that real property's owners.

## **RECORDING REQUIREMENTS**

A transfer fee covenant or lien recorded in Illinois before January 1, 2011, is not *presumed* valid and enforceable.

Statutory sections enacted 2010.

[765 Ill. Comp. Stat. 155/10, /15 \(2020\)](#)

Illinois, Private transfer fee relief provisions

## **VOID PROVISIONS**

A transfer fee covenant recorded in Illinois on or after January 1, 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. A lien purporting to secure the payment of a transfer fee under a transfer fee covenant recorded in Illinois on or after January 1, 2011, is void and unenforceable. A transfer fee covenant or lien recorded in Illinois before January 1, 2011, is not presumed valid and enforceable.

### **LIABILITY FOR DAMAGES**

No relevant provisions were located.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

### **OTHER RELIEF**

No relevant provisions were located.

Statutory sections enacted 2010.

[765 Ill. Comp. Stat. 155/5, /15 \(2020\)](#)

## Indiana

### Indiana, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Indiana, Licensee responsibility

No specifically relevant provisions were located. However, generally, a buyer's licensee must disclose to the buyer known adverse material facts or risks concerning the transaction.

A seller's licensee owes no duties to the buyer, except that the licensee must:

- treat all prospective buyers honestly;
- not knowingly give buyers false information; and
- disclose to a prospective buyer known adverse material facts concerning the property's *physical condition* and facts that the law requires to be disclosed and that the buyer could not discover inspecting the property.

A seller's licensee need not verify the accuracy of any written or oral statement by the seller.

Statutory sections amended 1999.

[Ind. Code §§ 25-34.1-10-10\(a\), -11 \(2019\)](#)

## Indiana, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

A transfer fee covenant recorded in Indiana after June 30, 2011:

- does not run with the real property's title; and
- is not binding or enforceable against any subsequent owner, purchaser, or mortgagee.

A lien purporting to secure a transfer fee payment payable pursuant to a transfer fee covenant recorded in Indiana after June 30, 2011, is void and unenforceable.

A transfer fee covenant, or a lien purporting to secure a transfer fee payable under a transfer fee covenant recorded in Indiana before July 1, 2011, is *not* presumed valid and enforceable.

### *Relevant definitions*

"Transfer" means the transfer of Indiana real property by sale, gift, conveyance, assignment, inheritance, or other means.

"Transfer fee" means a fee or charge that:

- is required by a transfer fee covenant; and
- is payable (a) upon the transfer of a real property interest, or (b) for the right to make or accept a transfer of a real property interest, whether the fee or charge is a fixed amount or determined as a percentage of the property's value, purchase price, or other consideration.

"Transfer fee covenant" means a declaration or covenant that:

- purports to affect an interest in Indiana real property; and
- requires or purports to require the payment of a transfer fee to the declarant or another specified person, or that person's successors or assigns, upon a subsequent transfer of the real property.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

No relevant provisions were located.

### **TIME LIMITS**

No relevant provisions were located.

### **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory sections 32-21-14-3 and 32-21-14-4 enacted 2011; §§ 32-21-14-1 and 32-21-14-2 amended 2012.

[Ind. Code §§ 32-21-14-1, -2, -3, -4 \(2019\)](#)

Indiana, Permitted private transfer fees

### **PERMITTED FEES**

*Existing transfer fees*

Certain private transfer fee obligations imposed on or before June 30, 2011, may be permitted. However, although § 32-21-14-4 provides that transfer fee covenants recorded *after* June 30, 2011, are void and unenforceable, the statute also explicitly states that a transfer fee covenant or a lien

purporting to secure the payment of a transfer fee recorded in Indiana before July 1, 2011, is *not* "presumed to be valid and enforceable."

*Fees not deemed to be private transfer fees*

The following are *not* transfer fees for the purpose of the statutory provisions prohibiting transfer fees:

- consideration payable by the transferee to the transferor for the real property interest being transferred;
- a commission to a real estate licensee payable in connection with the transfer of real property and pursuant to an agreement between the licensee and the transferor or transferee;
- interest, charges, fees, or other amounts payable by a borrower to a lender under a mortgage loan;
- rent or other amounts payable by a lessee to a lessor pursuant to a lease;
- consideration payable to the holder of an option to purchase real property or payable to the holder of a right of first refusal or first offer to purchase real property for waiving, releasing, or not exercising the option or right upon the property's transfer to another;
- a "tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental entity"; or
- a "fee, charge, assessment, fine, or other amount payable to" a homeowners', condominium, cooperative, mobile home, or other property owners' association, or its agent.

## **RECORDING REQUIREMENTS**

No relevant provisions were located.

Statutory section 32-21-14-4 enacted 2011; § 32-21-14-2 amended 2012.

[Ind. Code §§ 32-21-14-2, -4 \(2019\)](#)

Indiana, Private transfer fee relief provisions

## **VOID PROVISIONS**

A transfer fee covenant recorded in Indiana after June 30, 2011:

- does not run with the real property's title; and
- is not binding or enforceable against any subsequent owner, purchaser, or mortgagee.

A lien purporting to secure a transfer fee payment payable pursuant to a transfer fee covenant recorded in Indiana after June 30, 2011, is void and unenforceable.

## **LIABILITY FOR DAMAGES**

No relevant provisions were located.

## **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.



## **OTHER RELIEF**

No relevant provisions were located.

Statutory sections enacted 2011.

[Ind. Code § 32-21-14-4 \(2019\)](#)

### Iowa

#### Iowa, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

#### Iowa, Licensee responsibility

No specifically relevant provisions were located. However, generally, when providing brokerage services to a party, a licensee must, among other things,

- act honestly and in good faith; and
- unless excepted by statute, generally disclose to each party all known material adverse facts.

Similarly, a licensee providing brokerage services to a client must disclose to the client all known material information.

Also, a licensee representing a buyer as an exclusive agent must:

- disclose material adverse facts; and

- provide services to all parties honestly and in good faith.

A licensee representing a seller as an exclusive agent must provide services to all parties honestly and in good faith.

Statutory section amended 1996. Regulations effective 2002.

[Iowa Code § 543B.56 \(2020\)](#); [Iowa Admin. Code r. 193E-12.3, -12.4 \(2020\)](#)

## Iowa, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

Effective April 23, 2010, a transfer fee covenant does not run with a real property's title and is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee. A lien purporting to secure the payment of a transfer fee under a transfer fee covenant is also void and unenforceable. This restriction applies to any lien purporting to secure the payment of a transfer fee under a transfer fee covenant that is filed in Iowa on or after April 23, 2010.

#### *Relevant definitions*

"Transfer" means the "sale, gift, conveyance, assignment, inheritance, or other transfer of ownership interest" in Iowa real property.

"Transfer fee" means a fee or charge payable upon the transfer of a real property interest, or payable for the right to make or accept a transfer of a real property interest, regardless of whether the amount is fixed or determined as a percentage of the property's value, purchase price, or other consideration.

"Transfer fee covenant" means a declaration or covenant purporting to affect real property that "requires or purports to require the payment of a transfer fee to the declarant or other person

specified in the covenant or declaration, or to their successors or assigns, upon a subsequent transfer" of a real property interest.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

No relevant provisions were located.

### **TIME LIMITS**

No relevant provisions were located.

### **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory section enacted 2010.

[Iowa Code § 558.48 \(2020\)](#)

[Iowa, Permitted private transfer fees](#)

### **PERMITTED FEES**

Iowa's statute prohibiting transfer fee covenants applies only to liens purporting to secure the payment of a transfer fee pursuant to a transfer fee covenant filed in Iowa on or after April 23, 2010.

The term "transfer fee" does *not* include:

- consideration payable by the transferee to the transferor for the real property interest being transferred;
- a commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the transferee or transferor;
- any "interest, charges, fees, or other amounts payable by a borrower to a lender under a loan secured by a mortgage";
- any "rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease";
- consideration payable to the holder of an option to purchase a real property interest or the holder of a right of first refusal or first offer to purchase a real property interest "for waiving, releasing, or not exercising the option or right" upon the property's transfer to another; or
- a tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority.

## **RECORDING REQUIREMENTS**

No relevant provisions were located.

Statutory section enacted 2010.

[Iowa Code § 558.48 \(2020\)](#)

## Iowa, Private transfer fee relief provisions

### **VOID PROVISIONS**

Effective April 23, 2010, a transfer fee covenant 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. A lien purporting to secure the payment of a transfer fee under a transfer fee covenant is also void and unenforceable.

### **LIABILITY FOR DAMAGES**

No relevant provisions were located.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

### **OTHER RELIEF**

No relevant provisions were located.

Statutory section enacted 2010.

[Iowa Code § 558.48 \(2020\)](#)

## Kansas

### Kansas, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

## Kansas, Licensee responsibility

No specifically relevant provisions were located. However, generally, a buyer's agent must disclose to the buyer all known adverse material facts. A seller's agent must also disclose to the buyer all known adverse material facts. Also, a seller's or a landlord's agent owes no duty to a customer, except that the licensee must generally disclose to a customer all known adverse material facts actually known by the licensee (except certain information regarding the property's physical condition contained in a written report regarding the property's physical condition that was provided to the client or customer).

Statutory section 58-30,107 amended 1997; § 58-30,106 amended 2015.

[Kan. Stat. §§ 58-30,106, -30,107 \(2019\)](#)

## Kansas, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

The state legislature has declared that transfer fee covenants are against public policy, void, and unenforceable. Therefore, effective July 1, 2009, a transfer fee covenant recorded in Kansas on or after July 1, 2009:

- does *not* run with the real property's title; and
- is *not* binding or enforceable against any subsequent owner, purchaser, or mortgagee.

This restriction also applies to transfer fee covenants in existence on July 1, 2009.

#### *Relevant definitions*

"Transfer" means the "sale, gift, conveyance, assignment inheritance or other transfer of an ownership interest" in Kansas real property.

"Transfer fee" means a fee or charge payable on the transfer of a real property interest or 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 property's value or purchase price, subject to certain exceptions. (See *Permitted private transfer fees* below.)

"Transfer fee covenant" means a declaration or covenant that "requires or purports to require the payment of a transfer fee to the declarant or other person specified in the declaration or covenant or to their successors or assigns, upon a subsequent transfer of an interest in the real property."

### **PAYEE RESTRICTIONS**

No specifically relevant provisions were located.

### **MAXIMUM FEES**

Transfer fee covenants violate the state's public policy regardless of the transfer fee amount.

### **TIME LIMITS**

Transfer fee covenants violate the state's public policy regardless of the covenant's duration.

### **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory sections enacted 2009.

[Kan. Stat. §§ 58-3821, -3822 \(2019\)](#)

## Kansas, Permitted private transfer fees

No specifically relevant provisions were located. However, the following are *not* included in the definition of "transfer fee":

- consideration payable to the grantor for the real property interest being transferred, including any additional consideration based on any subsequent appreciation, development, or sale of the property;
- any commission payable to a real estate licensee for the transfer of real property pursuant to an agreement between the grantor or grantee and the licensee, including any additional commission based on any subsequent appreciation, development, or sale of the property;
- 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";
- any "rent, reimbursement, charge, fee or other amount payable by a lessee to a lessor under a lease";
- any consideration payable to the holder of an option to purchase or a right of first refusal or first offer to purchase a real property interest for waiving, releasing, or not exercising that option or right;
- any "tax, fee, charge, assessment, fine or other amount payable to or imposed by a governmental authority";
- any "tax, fee, charge, assessment, fine or other amount payable to a homeowners', condominium, cooperative, mobile home or property owners' association pursuant to a declaration or covenant or law" that applies to the association; or



- any "typical real estate closing cost."

Statutory section enacted 2009.

[Kan. Stat. § 58-3821 \(2019\)](#)

Kansas, Private transfer fee relief provisions

### **VOID PROVISIONS**

The state legislature has declared that transfer fee covenants are void and unenforceable.

### **LIABILITY FOR DAMAGES**

No relevant provisions were located.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

### **OTHER RELIEF**

No relevant provisions were located.

Statutory section enacted 2009.

[Kan. Stat. § 58-3822 \(2019\)](#)

## Kentucky

### Kentucky, Disclosure requirements

#### **REQUIRED DISCLOSURES**

As of April 11, 2012, a contract or other instrument used for the sale of real property that obligates the buyer to pay a fee to the seller upon the subsequent resale of the property must include a conspicuous provision that:

- discloses the obligation's existence;
- describes the obligation; and
- states that private transfer fee obligations are prohibited by Kentucky law.

This disclosure requirement applies whether the fee is a fixed amount or stated as a percentage of the property's value, purchase price, or other consideration given for the subsequent transfer.

#### **EXCEPTIONS**

No relevant provisions were located.

Statutory section enacted 2012.

[Ky. Rev. Stat. § 382.796 \(2020\)](#)

### Kentucky, Licensee responsibility

If an agent is acting on behalf of a principal to record or secure a private transfer fee obligation, liability is assessed against the principal, not the agent. However, generally, it is improper for a licensed agent to fail to satisfy the fiduciary duty of disclosure the licensee owes to his or her client.

Statutory section enacted 2012. Regulation amended 2019.

[Ky. Rev. Stat. § 382.794 \(2020\)](#); [201 Ky. Admin. Regs. 11:121 \(2020\)](#)

## Kentucky, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

As of April 11, 2012, private transfer fee obligations, whether recorded or not, are prohibited. Any instrument that attempts to create a private transfer fee obligation is "void and unenforceable as against public policy."

#### *Relevant definitions*

"Private transfer fee" means a fee or charge payable upon the transfer of a real property interest, or payable for the right to make or accept a transfer, whether the fee is fixed or stated as a percentage of the property's value, purchase price, or other consideration.

"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, whether or not recorded, that requires or purports to require the payment of a private transfer fee upon a subsequent transfer" of a real property interest.

"Transfer" means the "sale, gift, conveyance, assignment, inheritance, or other transfer" of a real property ownership interest.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

No relevant provisions were located.

### **TIME LIMITS**

No relevant provisions were located.

### **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory sections enacted 2012.

[Ky. Rev. Stat. §§ 382.794, .796 \(2020\)](#)

Kentucky, Permitted private transfer fees

### **PERMITTED FEES**

*Existing transfer fees*

Certain private transfer fee obligations imposed before April 11, 2012, may be permitted. As of April 11, 2012, a contract or other instrument used for the sale of real property that obligates the buyer to pay a fee to the seller upon the subsequent resale of the property must include a conspicuous provision that:

- discloses the obligation's existence;
- describes the obligation; and
- states that private transfer fee obligations are prohibited by Kentucky law.

This disclosure requirement applies whether the fee is fixed or stated as a percentage of the property's value, purchase price, or other consideration.

*Fees not deemed to be private transfer fees*

A private transfer fee does *not* include:

- consideration payable for the real property interest being transferred, including subsequent additional consideration based on the property's subsequent appreciation, development, or sale, provided the additional consideration is "payable on a one-time basis only and the obligation to make such payment does not bind successors in title";
- a commission payable to a licensed real estate broker for a real property transfer pursuant to an agreement between the broker and the grantor or the grantee, including any additional commission payable by the grantor or the grantee that is based on the property's subsequent appreciation, development, or sale;
- interest, charges, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage against real property;
- rent, reimbursement, or other amount payable by a lessee to a lessor pursuant to a lease;

- consideration payable to the holder of an option to purchase a real property interest or to the holder of a right of first refusal or first offer to purchase real property "for waiving, releasing, or not exercising the option or right upon the transfer of the real property to another person";
- a tax, fee, or other amount payable to or imposed by a governmental authority;
- a fee, charge, or other amount payable to a homeowners', condominium, cooperative, mobile home, or property owners' association pursuant to a declaration, covenant, or law applicable to the association;
- a fee, charge, or other amount "imposed by a declaration or covenant encumbering real property, and payable solely to a nonprofit or charitable organization for the purpose of supporting cultural, educational, charitable, recreational, environmental, conservation, or other similar activities benefiting the real property subject to the declaration or covenant or the community in which the real property is located"; and
- a fee, charge, or other amount "pertaining solely to the purchase or transfer of a club membership relating to real property owned by the member."

## **RECORDING REQUIREMENTS**

No relevant provisions were located.

Statutory sections enacted 2012.

[Ky. Rev. Stat. §§ 382.792, .796 \(2020\)](#)

[Kentucky, Private transfer fee relief provisions](#)

## **VOID PROVISIONS**

As of April 11, 2012, private transfer fee obligations, whether recorded or not, are prohibited. Any instrument that attempts to create a private transfer fee obligation is "void and unenforceable as against public policy."

### **LIABILITY FOR DAMAGES**

A person who records or enters into an agreement imposing a private transfer fee obligation in his or her favor is liable for:

- damages resulting from the imposition of the private transfer fee obligation on the transfer of a real property interest, including, but not limited to, the transfer fee amount paid; and
- attorneys' fees, expenses, and costs incurred by a party or mortgagee to recover any private transfer fee paid or in connection with a quiet-title action.

If an agent is acting on behalf of a principal to record or secure a private transfer fee obligation, liability is assessed against the principal, not the agent.

A provision in an instrument that purports to waive these rights is void.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

### **OTHER RELIEF**

*Failure to disclose existing provision*

A contract or other instrument for the sale of real property that contains a private transfer fee obligation, but that does not comply with the notice requirements set forth in Ky. Rev. Stat. 382.796:

- is void;
- is not enforceable by the seller against the buyer;
- does not subject the buyer to any liability to the seller for damages; and
- requires the seller to return all deposits made in connection with the property's sale.

If a buyer does not discover a private transfer fee obligation until after the property's title has passed to the buyer, the buyer may recover all damages resulting from the failure to disclose the obligation, including but not limited to the following:

- "(a) The amount of any obligation paid by the buyer to the seller, including interest thereon; or
- (b) The difference between the market value of the real property if it were not subject to a private transfer fee obligation and the market value of the real property as subject to a private transfer fee obligation; and
- (c) Attorneys fees, expenses, and costs incurred by the buyer in seeking the remedies under . . . section [382.796]."

A provision that waives a buyer's rights under § 382.796 is void.

Statutory sections enacted 2012.

[Ky. Rev. Stat. §§ 382.794, .796 \(2020\)](#)

## Louisiana

### Louisiana, Disclosure requirements

#### **REQUIRED DISCLOSURES**



Effective July 2, 2010, a seller of an immovable must furnish to any purchaser a written statement disclosing any private transfer fee obligations. The written statement must include:

- a description of the private transfer fee obligation; and
- a statement that private transfer fee obligations are subject to certain prohibitions under Chapter 4-A of Title 9.

For a private transfer fee obligation imposed before July 2, 2010, the person entitled to receive the fee must have recorded, before December 31, 2010, a "Notice of Private Transfer Fee Obligation" in the conveyance records of the parish in which the immovable is located. See "Permitted private transfer fees" for details regarding the recording requirement.

If the payee fails to provide a written statement of the transfer fee payable within 30 days of the date of a written request, the seller, upon recording an affidavit described in § 3136(E), may:

- convey an interest in the immovable to a buyer without paying the transfer fee; and
- is not be subject to any further obligations under the private transfer fee obligation.

In that case, the immovable may be conveyed free and clear of the transfer fee and private transfer fee obligation.

### **EXCEPTIONS**

The above disclosure requirements apply only to private transfer fee obligations arising under a declaration or agreement entered into before July 2, 2010, whether or not recorded. However, neither the provisions of § 3136 nor compliance with its requirements "shall be construed to validate or authorize private transfer fee obligations that were purportedly created prior to July 2, 2010, or to make such private transfer restrictions enforceable against third persons."

Statutory sections enacted 2010.

[La. Rev. Stat. §§ 9:3135, :3136 \(2019\)](#)

## Louisiana, Licensee responsibility

No specifically relevant provisions were located. However, generally, a licensee must treat all customers honestly and fairly.

Statutory section enacted 1997.

[La. Rev. Stat. § 9:3894\(A\) \(2019\)](#)

## Louisiana, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

Effective July 2, 2010, a private transfer fee obligation does not "create real rights" and is not binding on subsequent owners of immovables or on other third parties, whether or not evidenced by a recorded instrument. The legislature finds that Louisiana's public policy favors the marketability of immovables and the transferability of interests free of title defects or unreasonable restraints on alienation. The legislature also finds that private transfer fees violate that public policy, regardless of the obligation's duration, the fee amount, or the method by which the private transfer fee is created or imposed.

Louisiana's Civil Code also provides that building restrictions may not impose on an immovable's owner (or his successors) the obligation to pay a fee or charge "on the occasion of an alienation, lease or encumbrance of the immovable."

#### *Relevant definitions*

"Private transfer fee" is "a fee or charge required by a private transfer fee obligation and payable upon the transfer of an interest in an immovable, 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 immovable, the purchase price, or other consideration given for the transfer."

"Private transfer fee obligation" is an "obligation arising under any recorded or unrecorded declaration or agreement, whether or not purporting to create a servitude, building restriction or other real right, to pay a private transfer fee to a party to the declaration or agreement, or his successors or assigns, or a third person upon a subsequent transfer of an interest in the immovable."

"Transfer" is "the sale, donation, conveyance, assignment, inheritance, or other transfer of an ownership interest in an immovable" located in Louisiana.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

The Louisiana legislature finds that private transfer fees violate public policy regardless of the fee amount.

### **TIME LIMITS**

The Louisiana legislature finds that private transfer fees violate public policy regardless of the obligation's duration.

### **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory sections enacted 2010. Code article amended 2010.

[La. Rev. Stat. §§ 9:3131, :3132 \(2019\); La. Civ. Code art. 778 \(2019\)](#)

## Louisiana, Permitted private transfer fees

### **PERMITTED FEES**

Effective July 2, 2010, the term "private transfer fee" does *not* include the following:

- consideration payable by the buyer to the seller for the interest in the immovable being transferred, including any subsequent additional consideration based upon any subsequent appreciation, development, or sale of the immovable, provided that additional consideration is payable only on a one-time basis and the obligation to make the payment does not bind successors in title;
- a commission payable to a licensed real estate broker for the transfer of an immovable pursuant to an agreement between the broker and the buyer or seller, including any subsequent additional commission for the transfer payable by the seller or the buyer based upon any subsequent appreciation, development, or sale;
- interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage;
- any rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease;
- consideration payable to the holder of an option to purchase or a right of first refusal or first offer for waiving, releasing, or not exercising the option or right upon the transfer of the immovable to another person;

- any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority; and
- any fee, charge, assessment, fine, or other amount authorized under Louisiana Condominium Act, the Louisiana Timesharing Act, or the Louisiana Homeowners Association Act.

### **RECORDING REQUIREMENTS**

Generally, a private transfer fee obligation "does not constitute a real right and is not effective or enforceable against third persons, whether or not the declaration or agreement under which it arises is recorded."

For a private transfer fee obligation imposed before July 2, 2010, the person entitled to receive the fee must have recorded, before December 31, 2010, in the conveyance records of the parish in which the immovable is located a document that contains:

- the title "Notice of Private Transfer Fee Obligation" in at least fourteen-point boldface type;
- the fee amount, percentage of the sales price, or other basis by which the transfer fee is to be calculated;
- if the immovable includes a residential use, the actual dollar-cost;
- any date or circumstances under which the private transfer fee obligation expires;
- the purpose for which the funds from the private transfer fee obligation will be used;

- the name of the person or entity to which funds are to be paid and specific contact information regarding where the funds are to be sent;
- the acknowledged signature of the person filing the notice; and
- the legal description of the burdened immovable.

If the above filing was not made, "any effect that private transfer fee obligations might otherwise have had against third persons shall cease and shall not be susceptible of revival by a later filing."

Statutory sections enacted 2010.

[La. Rev. Stat. §§ 9:3132, :3133, :3136 \(2019\)](#)

## Louisiana, Private transfer fee relief provisions

### **VOID PROVISIONS**

Effective July 2, 2010, a private transfer fee obligation does not constitute a real right and is not effective or enforceable against third persons, whether or not the declaration or agreement under which it arises is recorded.

### **LIABILITY FOR DAMAGES**

A person who records or enters into an agreement imposing a private transfer fee obligation in their favor after July 2, 2010, is liable for the following:

- all damages resulting from the imposition of the transfer fee, including the amount of any transfer fee paid; and

- all attorney fees, expenses, and costs incurred by a party to the transfer or mortgagee to recover any transfer fee paid or in connection with an action to quiet title or to declare the private transfer fee unenforceable.

## **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

### *Failure to record notice*

In the absence of timely recording of private transfer fee obligations imposed before July 2, 2010, any effect that private transfer fee obligations might otherwise have had against third persons ceases and is not revived by a later filing.

## **OTHER RELIEF**

### *Failure to respond to written request*

If a payee fails to provide a written statement of the transfer fee payable within 30 days of a written request, the seller, on recording of an affidavit:

- may convey any interest to a buyer without payment of the transfer fee; and
- is not subject to any further obligations under the private transfer fee obligation.

In that event, the immovable may be conveyed free and clear of the private transfer fee.

The affidavit, which must be recorded in the conveyance records of the parish in which the immovable is located, must:

- state that the affiant "has actual knowledge of, and is competent to testify to, the facts in the affidavit"; and
- include the legal description, the name of the person or entity appearing to be the owner at the time of the signing of the affidavit, and a reference to the recorded instrument containing the private transfer fee obligation.

These requirements apply only to private transfer fee obligations arising under a declaration or agreement entered into before July 2, 2010, whether or not recorded.

Statutory sections enacted 2010.

[La. Rev. Stat. §§ 9:3131, :3133, :3134, :3136 \(2019\)](#)

## Maine

### Maine, Disclosure requirements

#### **REQUIRED DISCLOSURES**

A contract for the sale of real property subject to a private transfer fee obligation must disclose and describe the obligation. If the seller does not conform to this requirement:

- the seller may not enforce the sale contract; and
- the buyer is not liable to the seller for damages under the contract and is entitled to the return of any deposits made under the contract.

#### **EXCEPTIONS**

No relevant provisions were located.



Statutory section enacted 2011.

[Me. Rev. Stat. tit. 33, § 163 \(2019\)](#)

## Maine, Licensee responsibility

No specifically relevant provisions were located.

However, generally, a seller's agent, in his or her relationship with the buyer, must, among other things,

- treat all prospective buyers honestly; and
- not knowingly give false information.

A buyer's agent, in his or her relationship with the buyer, generally must disclose to the buyer material facts the buyer's agent knows or should have known concerning the transaction.

Statutory sections amended 2005.

[Me. Rev. Stat. tit. 32, §§ 13273, 13274 \(2019\)](#)

## Maine, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

A private transfer fee obligation recorded or entered into in connection with Maine real property on or after September 28, 2011:

- does not run with the real property's title;
- is not binding on or enforceable against a subsequent owner, purchaser, mortgagee, or holder of any interest in the real property; and
- is void and unenforceable.

This provision "may not be construed to mean" that a private transfer fee obligation recorded or entered into before September 28, 2011, is presumed valid and enforceable.

#### *Relevant definitions*

"Private transfer fee" means a fee or charge payable upon the transfer of a real property interest, or payable for the right to make or accept such a transfer, whether the amount is fixed or determined as a percentage of the property's value, purchase price, or other consideration.

"Private transfer fee obligation" means an obligation arising under a declaration or covenant recorded against real property or pursuant to any other recorded or unrecorded contractual agreement that requires or purports to require the payment of a private transfer fee upon a subsequent transfer of a real property interest.

"Transfer" means the "sale, gift, grant, conveyance, lease, license, assignment, inheritance or other act" resulting in a transfer of an interest in Maine real property.

#### **PAYEE RESTRICTIONS**

No relevant provisions were located.

#### **MAXIMUM FEES**

No relevant provisions were located.

### **TIME LIMITS**

No relevant provisions were located.

### **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory section enacted 2011.

[Me. Rev. Stat. tit. 33, § 163 \(2019\)](#)

Maine, Permitted private transfer fees

### **PERMITTED FEES**

*Existing transfer fees*

Certain private transfer fee obligations imposed before September 28, 2011, may be permitted. However, the statutory provision prohibiting transfer fee obligations explicitly provides that the provision "may not be construed to mean" that a private transfer fee obligation recorded or entered into before September 28, 2011, is presumed valid and enforceable.

A transfer on or after September 28, 2011, of real property subject to a private transfer fee obligation recorded or entered into before September 28, 2011, "does not constitute the recording or entering into of a new private transfer fee obligation" on or after September 28, 2011.

*Fees not deemed to be private transfer fees*

The following are *not* private transfer fees for the purpose of the statutory provisions prohibiting private transfer fees:

- consideration payable by a grantee to a grantor for real property, including any additional amount based upon the property's subsequent appreciation, development, or sale, provided the consideration is payable on a one-time basis only and the obligation does not bind successors in title;
- a commission payable to a licensed real estate broker or brokerage agency for a real property transfer pursuant to an agreement between the broker or agency and the grantor or the grantee;
- interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a mortgage loan;
- rent or other amount payable by a lessee to a lessor under a lease or license;
- consideration payable to the holder of an option to purchase real property or the holder of a right of first refusal or first offer to purchase real property for waiving, releasing, or not exercising the option or right upon transfer of the property to another;
- a "tax, fee, charge, assessment, fine, dues or other amount payable to or imposed by a governmental authority";
- a fee or other amount payable to "a homeowners association, condominium owners association, cooperative, mobile home owners association or property owners association" for maintenance, improvements, services, or expenses related to real property owned, used, or enjoyed in common by the members;

- a fee, charge, dues, or other amount pertaining "solely to the purchase or transfer of a club membership relating to real property owned by a club member";
- "obligations created pursuant to affordable housing covenants under chapter 6 or working waterfront covenants under chapter 6-A"; or
- a fee payable upon a real property transfer to a Maine nonprofit corporation, organization, or trust, if the entity's sole purpose "is to support cultural, educational, charitable, recreational, conservation, preservation or similar activities benefiting the real property being transferred" and the fee is used exclusively to fund those activities.

## **RECORDING REQUIREMENTS**

No specific recording requirements were located. However, a contract for the sale of real property subject to a private transfer fee obligation must include a provision disclosing the existence of the obligation and a description of the obligation.

Statutory section enacted 2011.

[Me. Rev. Stat. tit. 33, § 163 \(2019\)](#)

## Maine, Private transfer fee relief provisions

### **VOID PROVISIONS**

A private transfer fee obligation recorded or entered into in connection with Maine real property on or after September 28, 2011:

- does not run with the real property's title;

- is not binding on or enforceable against a subsequent owner, purchaser, mortgagee, or holder of any real property interest; and
- is void and unenforceable.

This provision "may not be construed to mean" that a private transfer fee obligation recorded or entered into before September 28, 2011, is presumed valid and enforceable.

### **LIABILITY FOR DAMAGES**

A person who records or enters into an agreement imposing a private transfer fee obligation in that person's favor after September 28, 2011, is liable for all damages resulting from the private transfer fee obligation, including:

- the amount paid for a private transfer fee; and
- all attorney's fees, expenses, and costs incurred by a party to the transfer or a mortgagee to recover a private transfer fee paid or in connection with a quiet title action.

If an agent acts on behalf of a principal to record or secure a private transfer fee obligation, the liability is assessed to the principal, not the agent.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No provisions specifically requiring a party to record an existing private transfer fee was located.

### **OTHER RELIEF**

### *Failure to disclose in sale contract*

A contract for the sale of real property subject to a private transfer fee obligation must disclose and describe the obligation. If the seller does not conform to this requirement:

- the seller may not enforce the sale contract; and
- the buyer is not liable to the seller for damages under the contract and is entitled to the return of any deposits made under the contract.

If a party does not disclose a private transfer fee obligation as required and a buyer subsequently discovers the existence of the private transfer fee obligation after title has passed, the buyer may recover from the seller all damages resulting from the failure to disclose the private transfer fee obligation, including:

- the amount of any private transfer fee paid by the buyer;
- the difference between "the market value of the real property subject to the private transfer fee obligation and the market value of the real property if the real property were not subject to the private transfer fee obligation"; and
- all attorney's fees, expenses, and costs incurred in seeking these remedies.

A provision in a sale contract that purports to waive these buyers' rights is void.

Statutory section enacted 2011.

[Me. Rev. Stat. tit. 33, § 163 \(2019\)](#)

## Maryland

### Maryland, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Maryland, Licensee responsibility

No specifically relevant provisions were located. However, generally, a licensee must, among other things,

- disclose to his or her client all material facts, as required by statute;
- treat all parties honestly and fairly; and
- answer all questions truthfully.

Statutory section amended 2017.

[Md. Code, Bus. Occ. & Prof. § 17-532\(b\)\(iii\), \(iv\) \(2019\)](#)

### Maryland, Limitations on private transfer fees

#### **BENEFICIARY AND USE RESTRICTIONS**

##### *Prohibited fees*

Effective May 4, 2010, a person who conveys a fee simple interest in real property generally may not record a covenant against the real property's title for the payment of a transfer fee. A covenant that requires a transfer fee upon the conveyance of a fee simple interest in real property is void.

##### *Relevant definitions*



"Transfer fee" means a charge payable on the transfer of a real property interest or payable for the right to accept a transfer of a real property interest.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

No relevant provisions were located.

### **TIME LIMITS**

No relevant provisions were located.

### **OTHER RELEVANT PROVISIONS**

No relevant provisions were located.

Statutory section enacted 2010.

[Md. Code, Real Prop. § 10-708 \(2019\)](#)

[Maryland, Permitted private transfer fees](#)

### **PERMITTED FEES**

Section 10-708, which prohibits transfer fees, does *not* apply to:

- an "instrument conveying a fee simple interest in real property that provides for consideration paid by the purchaser to the vendor for the interest being transferred";
- a payment for principal, interest, or fees pursuant to a mortgage loan agreement on the mortgagee's sale of property;
- a "limited liability company, limited liability partnership, corporation, joint venture, or partnership agreement in which a member, shareholder, or partner contributes real property" to the entity;
- an agreement "providing for a series of related transfers of a fee simple interest in real property," if the agreement states the transferred interest's price, any consideration exchanged, the vendor's and purchaser's name, and any other essential terms for each transfer;
- an "affordable housing covenant, servitude, easement, condition, or restriction in a deed, declaration, land sale contract, loan agreement, promissory note, trust deed, mortgage, security agreement, or other instrument," including instruments executed by a public body, the federal government, a corporation whose purposes include providing affordable housing for low-income and moderate-income households or a limited liability company with at least one member that is such a corporation, a consumer housing cooperative, or a federally recognized Indian tribe;
- a fee required to be paid to a homeowners association, a council of unit owners, a managing entity of a timeshare plan, certain other owners associations that are governed by recorded documents, or an agent for such an association or managing entity; or
- an agreement with a person licensed to provide real estate brokerage services to pay a commission to the licensee for the real estate brokerage services provided.

## **RECORDING REQUIREMENTS**

No relevant provisions were located.

Statutory section enacted 2010.

[Md. Code, Real Prop. § 10-708 \(2019\)](#)

## Maryland, Private transfer fee relief provisions

### **VOID PROVISIONS**

Generally, effective May 4, 2010, a covenant that requires the payment of a transfer fee upon the conveyance of a real property fee simple interest is void.

### **LIABILITY FOR DAMAGES**

No relevant provisions were located.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

### **OTHER RELIEF**

No relevant provisions were located.

Statutory section enacted 2010.

[Md. Code, Real Prop. § 10-708 \(2019\)](#)

## Massachusetts

### Massachusetts, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Massachusetts, Licensee responsibility

No specifically relevant provisions were located.

### Massachusetts, Limitations on private transfer fees

No relevant provisions were located.

### Massachusetts, Permitted private transfer fees

No relevant provisions were located.

### Massachusetts, Private transfer fee relief provisions

No relevant provisions were located.

## Michigan

### Michigan, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Michigan, Licensee responsibility

No specifically relevant provisions were located.

### Michigan, Limitations on private transfer fees

#### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees—nonresidential and residential real property*

A transfer fee covenant executed on or after May 24, 2011, does not run with the real property's title and is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee. A lien purporting to secure a transfer fee payment under a transfer fee covenant executed on or after May 24, 2011, is void.

*Relevant definitions—nonresidential real property*

"Transfer fee" means a "fee or charge payable upon the subsequent sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest" in nonresidential real property in Michigan, or payable for the right to make or accept such a transfer, whether the amount is fixed or a percentage of the property's value, purchase price, or other consideration.

"Transfer fee covenant" means "a declaration or covenant that requires or purports to require the payment of a transfer fee" to the declarant or other specified person or to that person's successors or assigns.

*Relevant definitions—residential real property*

"Transfer fee" means a "fee or charge payable upon the subsequent sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest" in residential real property in Michigan, or payable for the right to make or accept such a transfer, whether the amount is fixed or determined as a percentage of the property's value, purchase price, or other consideration.

"Transfer fee covenant" means "a declaration or covenant that requires or purports to require the payment of a transfer fee" to the declarant or other specified person or to that person's successors or assigns.

**PAYEE RESTRICTIONS**

No relevant provisions were located.

**MAXIMUM FEES**

No relevant provisions were located.

## **TIME LIMITS**

No relevant provisions were located.

## **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory sections enacted 2011.

[Mich. Comp. Laws §§ 565.881, .882, .883, .891, .892, .893 \(2020\)](#)

Michigan, Permitted private transfer fees

## **PERMITTED FEES**

*Existing transfer fees—nonresidential and residential real property*

Certain private transfer fee obligations imposed before May 24, 2011, may be permitted. The acts prohibiting transfer fee obligations apply only to fee applications executed on or after May 24, 2011.

*Fees not deemed to be private transfer fees—nonresidential and residential real property*

The following are *not* private transfer fees for the purpose of the statutory provisions prohibiting private transfer fees:

- consideration payable by the grantee to the grantor for the real property interest being transferred, including additional consideration based on the property's subsequent appreciation, development, or sale, provided the additional consideration is "payable on a 1-time basis only and the obligation to make such payment does not bind successors in title";
- a commission payable to a licensed real estate broker pursuant to an agreement between the broker and the grantor or the grantee, including any additional commission payable by the grantor or the grantee based on the property's subsequent appreciation, development, or sale;
- interest, charges, fees, or other amounts payable to a lender pursuant to a mortgage loan;
- any rent or other amount payable by a lessee to a lessor pursuant to a lease;
- consideration payable to the holder of an option to purchase real property or the holder of a right of first refusal or first offer to purchase real property for waiving, releasing, or not exercising the option or right upon the transfer of the property to another;
- a "tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority";
- a fee, charge, or other amount payable to "a homeowners', condominium, cooperative, mobile home, or property owners' association";
- a fee, charge, or other amount imposed by a "declaration or covenant encumbering a community, and payable to a nonprofit or charitable organization for the purpose of supporting cultural, educational, charitable, recreational, environmental, conservation, or other similar activities" benefiting the subject community; or
- a fee, charge, or other amount "pertaining to the purchase or transfer of a club membership" relating to real property the member owns.

## **RECORDING REQUIREMENTS**

No relevant provisions were located.

Statutory sections enacted 2011.

[Mich. Comp. Laws §§ 565.881, .882, .883, .891, .892, .893 \(2020\)](#)

Michigan, Private transfer fee relief provisions

## **VOID PROVISIONS**

A transfer fee covenant executed on or after May 24, 2011, does not run with the real property's title and is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee. A lien purporting to secure the payment of a transfer fee under a transfer fee covenant executed on or after May 24, 2011, is void.

## **LIABILITY FOR DAMAGES**

A person aggrieved by a transfer fee's imposition may bring an action to clear the title, to void the transfer fee, and for other equitable relief. In a successful action, the court may award reasonable attorneys' fees and other costs.

## **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

## **OTHER RELIEF**

No relevant provisions were located.



Statutory sections enacted 2011.

[Mich. Comp. Laws §§ 565.882, .883, .884, .892, .893, .894 \(2020\)](#)

## Minnesota

### Minnesota, Disclosure requirements

#### **REQUIRED DISCLOSURES**

The receiver of a private transfer fee imposed before May 20, 2010, must record or file, before December 31, 2010, a separate document entitled "Notice of Private Transfer Fee Obligation." The document must be recorded with the county recorder or registrar of titles of the county in which the real property is located and must meet certain requirements specified by statute. See "Permitted private transfer fees" for details regarding the recording requirements.

The person or entity to which the transfer fee is to be paid may record or file an amendment to the notice containing new contact information, but the amendment must also contain:

- the information in the notice of transfer fee that it amends; and
- the legal description of the burdened property.

A payee must also provide a written statement of the transfer fee payable within 30 days of the date of a written request for the statement.

#### **EXCEPTIONS**

No relevant provisions were located.

Statutory section enacted 2010.

[Minn. Stat. § 513.76 \(2019\)](#)

## Minnesota, Licensee responsibility

No specifically relevant provisions were located. However, generally, a licensee must disclose to a prospective purchaser all known material facts that could “adversely and significantly affect an ordinary purchaser's use or enjoyment of the property, or any intended use of the property of which the licensees are aware.” Nothing indicates whether this requirement extends to factors that affect only the property's future sale.

Statutory section amended 2020.

[Minn. Stat. § 82.68, subd. 3](#) (as amended by [2020 Minn. Laws ch. 80, § 18](#))

## Minnesota, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

A private transfer fee obligation recorded, filed, or entered into in Minnesota on or after May 20, 2010, does not run with the real property's title and is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee. A private transfer fee obligation that is recorded, filed, or entered into in Minnesota on or after May 20, 2010, is void and unenforceable.

As of May 20, 2010, it is Minnesota's public policy that no private transfer fee obligation should be valid or enforceable whenever entered into, recorded, or filed.

#### *Relevant definitions*

"Transfer" means the "sale, grant, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest" in Minnesota real property.

"Private transfer fee" generally means a fee or charge required by a private transfer fee obligation and payable upon the transfer a real property interest, or payable for the right to make or accept the transfer, regardless of whether the amount is fixed or determined as a percentage of the property's value, purchase price, or other consideration.

"Private transfer fee obligation" means a "declaration or covenant recorded or filed against the title to real property, or any other contractual agreement or promise, whether or not recorded or filed, that requires or purports to require the payment of a private transfer fee" to the declarant or other specified person upon a subsequent transfer of the real property.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

No relevant provisions were located.

### **TIME LIMITS**

No relevant provisions were located.

### **OTHER RELEVANT PROVISIONS**

Before the Minnesota Legislature enacted Minn. Stat. §§ 513.73—.76 in 2010, Minnesota real estate laws generally limited any long-term private covenants by providing that, unless an exception

applies, "all private covenants, conditions, or restrictions created by which the title or use of real property is affected, cease to be valid and operative 30 years after the date" of the instrument that created the restrictions. However, a possibly relevant exception permits restrictions "created by a declaration or bylaws of a common interest community created under or governed by chapter 515B."

Statutory section 500.20 amended 2005; §§ 513.73 and .74 enacted 2010.

[Minn. Stat. §§ 500.20; 513.73, .74 \(2019\)](#)

## Minnesota, Permitted private transfer fees

### **PERMITTED FEES**

#### *Existing transfer fees*

Certain private transfer fee obligations imposed before May 20, 2010, may be permitted. The receiver of a private transfer fee imposed before May 20, 2010, must record or file, before December 31, 2010, a "Notice of Private Transfer Fee Obligation" against the real property. The document must be filed with the county recorder or registrar of titles of the county in which the real property is located and must meet all requirements set forth by statute.

#### *Fees not deemed to be private transfer fees*

The following are *not* private transfer fees for the purpose of the statutory provisions prohibiting private transfer fees:

- consideration payable by the grantee to the grantor for the real property interest being transferred, including any subsequent additional consideration based upon any subsequent appreciation, development, or sale of the property, provided that the additional consideration is payable on a one-time basis only, and the obligation to make the payment does not bind successors in title;

- a "commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the grantor or the grantee, including 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";
- interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage against real property;
- any rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease;
- consideration payable to the holder of an option to purchase a real property interest or the holder of a right of first refusal or first offer to purchase a real property interest for waiving, releasing, or not exercising the option or right upon the transfer of the property to another;
- consideration payable by a contract for deed vendee to the vendor pursuant to the terms of a recorded contract for deed;
- a "tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority";
- a "fee, charge, assessment, fine, or other amount payable to a homeowner's condominium, cooperative, mobile home, or property owner's association pursuant to a declaration or covenant or law applicable to the association";
- a fee, charge, assessment, dues, contribution, or other amount pertaining to the purchase or transfer of a club membership relating to real property owned by the member; and
- a mortgage from the purchaser of real property granted to the seller or to a licensed real estate broker.

## **RECORDING REQUIREMENTS**

The receiver of a private transfer fee obligation imposed before May 20, 2010, must record or file, before December 31, 2010, a separate document entitled "Notice of Private Transfer Fee Obligation." The document must be recorded with the county recorder or registrar of titles of the county in which the real property is located and must meet certain requirements specified by statute.

The person or entity to which the transfer fee is to be paid may record or file an amendment to the notice of transfer fee containing new contact information, but the amendment must contain the information of the notice of transfer fee that it amends and the legal description of the burdened property.

The "Notice of Private Transfer Fee Obligation" document must contain all of the following:

- the title of the document must be "Notice of Private Transfer Fee Obligation" in at least 14-point boldface type;
- the flat-fee amount, percentage of sales price, or any other basis by which the transfer fee is to be calculated;
- any date or circumstances under which the private transfer fee obligation expires;
- the purpose for which the private transfer fee funds will be used;
- the name of the person or entity to which funds are to be paid and specific information regarding where the funds are to be sent;
- the payee's acknowledged signature; and

- the real property's legal description.

Statutory sections enacted 2010.

[Minn. Stat. §§ 513.73, .76 \(2019\)](#)

## Minnesota, Private transfer fee relief provisions

### **VOID PROVISIONS**

A private transfer fee obligation recorded, filed, or entered into in Minnesota on or after May 20, 2010, does not run with the property's title and is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee. A private transfer fee obligation that is recorded, filed, or entered into on or after May 20, 2010, is void and unenforceable.

### **LIABILITY FOR DAMAGES**

A person who records, files, or enters into "an agreement imposing a private transfer fee obligation in the person's favor after May 20, 2010", is liable for:

- damages resulting from imposing the transfer fee obligation on the transfer of a real property interest, including, without limitation, the fee amount paid by a party to the transfer; and
- all "attorney fees, expenses, and costs incurred by a party to the transfer or mortgagee of the real property to recover the transfer fee paid or in connection with an action to quiet title or register the title or a proceeding subsequent to initial registration."

If an agent acts on behalf of a principal to record, file, or secure a private transfer fee obligation, liability is assessed to the principal, not the agent.

## **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

### *Failure to record notice*

If a payee fails to comply fully with the notice and recording requirements for private transfer fee obligations imposed before May 20, 2010, the grantor may "proceed with the conveyance of any interest in the real property to any grantee." The grantor is deemed to have acted in good faith and is not subject to any obligations under the private transfer fee obligation, and the real property will be conveyed free and clear of the transfer fee and private transfer fee obligation.

## **OTHER RELIEF**

### *Failure to respond to written request*

If the payee fails to provide a written statement of the transfer fee payable within 30 days of the date of a written request for the statement, then the grantor, upon the recording or filing of an affidavit, may convey a real property interest to a grantee without paying the transfer fee. In that case, the grantor is not subject to any further obligations under the private transfer fee obligation, and the real property is conveyed free and clear of the transfer fee and private transfer fee obligation. Details regarding the filing and contents of that affidavit are set forth in Minn. Stat. § 513.76, subd. 4.

Statutory sections enacted 2010.

[Minn. Stat. §§ 513.74, .75, .76 \(2019\)](#)

## Mississippi

### Mississippi, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Mississippi, Licensee responsibility



No specifically relevant provisions were located.

## Mississippi, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

Effective July 1, 2010, Mississippi statutes prohibited a deed restriction or other covenant that ran with the land and applied to a *residential* real property conveyance if the restriction or covenant required a transferee to pay a "declarant or other person imposing the deed restriction or covenant on the property or a third party designated by a transferor of the property" a fee in connection with the property's future transfer. Effective July 1, 2011, that prohibition applies to *all* real property. A deed restriction or covenant that violates this prohibition, or a lien purporting to encumber the land to secure a right that violates this prohibition, is void and unenforceable. In this context, a conveyance of real property includes a "conveyance or other transfer of an interest or estate in real property."

#### *Relevant definitions*

"Property owners' association" means an association that:

- is designated as the representative of the owners of property in a subdivision;
- has a membership primarily consisting of the owners of the property covered by the dedicatory instrument; and
- manages or regulates the subdivision for those property owners' benefit.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

## **MAXIMUM FEES**

No relevant provisions were located.

## **TIME LIMITS**

No relevant provisions were located.

## **OTHER RELEVANT PROVISIONS**

No relevant provisions were located.

Statutory section amended 2019, effective July 1, 2019.

Miss. Code § 89-1-69 (as amended by [2019 Miss. Laws H.B. 962](#))

Mississippi, Permitted private transfer fees

## **PERMITTED FEES**

Miss. Code § 89-1-69, which prohibits certain transfer fees, does *not* apply to a deed restriction or other covenant that requires a fee associated with the transfer of property in a subdivision that is payable to:

- a property owners' association that manages or regulates the subdivision or the association's managing agent, provided the subdivision contains more than one platted lot and, effective July 1, 2019, "the right to collect a fee in connection with a future transfer of the property is evidenced by a deed restriction or covenant running with the land filed in the public land records;"

- an "entity organized under Section 501(c)(3), Internal Revenue Code of 1986" and, effective July 1, 2019, "if the entity has a right to collect a fee in connection with a future transfer of the property evidenced by a deed restriction or covenant running with the land filed in the public land records;" or
- a governmental entity.

### **RECORDING REQUIREMENTS**

See above.

Statutory section amended 2019, effective July 1, 2019.

Miss. Code § 89-1-69 (as amended by [2019 Miss. Laws H.B. 962](#))

Mississippi, Private transfer fee relief provisions

### **VOID PROVISIONS**

A transfer fee deed restriction or other covenant that violates Miss. Code § 89-1-69, or a lien purporting to encumber land to secure a right under a deed restriction or other covenant that violates Miss. Code § 89-1-69, is void and unenforceable.

### **LIABILITY FOR DAMAGES**

No relevant provisions were located.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

## **OTHER RELIEF**

No relevant provisions were located.

Statutory section amended 2019, effective July 1, 2019.

Miss. Code § 89-1-69 (as amended by [2019 Miss. Laws H.B. 962](#))

## Missouri

### Missouri, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Missouri, Licensee responsibility

Effective September 1, 2008, private transfer fee covenants are void.

For any earlier covenant that may be valid, no specifically relevant provisions were located. However, generally, a licensee representing a buyer has the duty, among others, to disclose to his or her client adverse material facts that the licensee knows or should know.

A seller's agent:

- owes no duty or obligation to a customer, except to disclose all adverse material facts the licensee knows or should know; and
- need not conduct an independent inspection or discover any adverse material facts for the customer's benefit.

Statutory sections 339.730 and 339.740 amended 1998; § 442.558 enacted 2008.

[Mo. Rev. Stat. §§ 339.730, .740; 442.558 \(2020\)](#)

## Missouri, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

A transfer fee covenant recorded in Missouri on or after September 1, 2008,

- does not run with the title to the real property; and
- is "not binding on or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in real property as an equitable servitude or otherwise."

Any liens "purporting to secure the payment of a transfer fee under a transfer fee covenant" recorded in Missouri on or after September 1, 2008, are void and unenforceable.

#### *Relevant definitions*

"Transfer" means the "sale, gift, conveyance, assignment, inheritance, or other transfer of ownership interest in real property" located in Missouri.

"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 property, the purchase price, or other consideration given for the transfer."

"Transfer fee covenant" means a declaration or covenant that "requires or purports to require the payment of a transfer fee to the declarant or other person specified in the declaration or covenant or to their successors or assigns upon a subsequent transfer" of an interest in the property.

### **PAYEE RESTRICTIONS**

No specifically relevant provisions were located.

### **MAXIMUM FEES**

The term "transfer fee" includes the defined fees, "regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price, or other consideration given for the transfer."

### **TIME LIMITS**

No specifically relevant provisions were located.

### **OTHER RELEVANT PROVISIONS**

No specifically relevant provisions were located.

Statutory section enacted 2008.

[Mo. Rev. Stat. § 442.558 \(2020\)](#)

### **Missouri, Permitted private transfer fees**

No specifically relevant provisions were located. However, the following are *not* included in the definition of "transfer fee":

- consideration payable by the grantee to the grantor for the real property interest being transferred;
- a commission payable to a licensed real estate broker for the real property transfer pursuant to an agreement between the broker and the grantor or grantee;
- "interest, charges, fees, or other amounts" payable by a borrower to a lender pursuant to a loan secured by a real property mortgage;
- "rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease";
- consideration payable to the holder of a purchase option or a right of first refusal or first offer for waiving, releasing, or not exercising the option or right upon the property's transfer to another person; or
- taxes, fees, charges, assessments, fines, or other amounts payable to or imposed by a governmental authority.

Statutory section enacted 2008.

[Mo. Rev. Stat. § 442.558 \(2020\)](#)

## Missouri, Private transfer fee relief provisions

### **VOID PROVISIONS**

Any liens "purporting to secure the payment of a transfer fee under a transfer fee covenant" recorded in Missouri on or after September 1, 2008, are void and unenforceable.

## **LIABILITY FOR DAMAGES**

No relevant provisions were located.

## **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

## **OTHER RELIEF**

No relevant provisions were located.

Statutory section enacted 2008.

[Mo. Rev. Stat. § 442.558 \(2020\)](#)

## Montana

### Montana, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Montana, Licensee responsibility

No specifically relevant provisions were located. However, generally, a licensee must try to ascertain all pertinent facts concerning property in any transaction in which the licensee acts, so that the licensee may "avoid error, exaggeration, misrepresentation, or concealment of pertinent facts."

Statutory section amended 2017.



[Mont. Code § 37-51-313 \(2019\)](#)

## Montana, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

Effective April 21, 2011, a transfer fee covenant (or a lien to enforce a transfer fee) does not run with the real property's title and is not binding upon or enforceable against any subsequent owner, purchaser, or mortgagee.

#### *Relevant definitions*

"Transfer fee" means a fee or charge payable upon the transfer of title to a real property interest, regardless of whether the amount is fixed or a percentage of the property's value or purchase price or other consideration.

"Transfer fee covenant" means a covenant or declaration recorded or filed against a real property's title that requires the payment of a transfer fee to the declarant or other specified person, or his or her successor or assign, upon each subsequent transfer of an interest in the real property.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

No relevant provisions were located.

## **TIME LIMITS**

No relevant provisions were located.

## **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory section enacted 2011.

[Mont. Code Ann. § 70-17-212 \(2019\)](#)

Montana, Permitted private transfer fees

## **PERMITTED FEES**

*Existing transfer fees*

No specifically relevant provision were located. However, the act prohibiting private transfer fees applies only to transfer fee covenants filed on or after the act's effective date of April 21, 2011.

*Fees not deemed to be private transfer fees*

The following are *not* private transfer fees for the purpose of the statutory provisions prohibiting private transfer fees:

- consideration payable by the transferee to the transferor for the real property being transferred, including subsequent additional consideration based upon the property's subsequent appreciation, development, or sale, if the additional consideration is payable on

a one-time basis only and the obligation does not bind the original transferee's successors in interest to the property;

- a commission payable to a licensed real estate salesperson or broker for the transfer of real property pursuant to an agreement between the broker and the transferor or the transferee, including any subsequent additional commission based upon the property's subsequent appreciation, development, or sale;
- interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage or other security interest against real property;
- consideration payable by a buyer under a contract for deed as a condition of allowing a buyer to acquire title to real property;
- an amount payable to an association of unit owners, homeowners, mobile home owners, townhouse owners, or other property owners "created pursuant to a recorded declaration that has the power to require owners to pay the costs and expenses incurred in the performance of the association's obligations"; or
- an amount payable to a nonprofit corporation.

## **RECORDING REQUIREMENTS**

No relevant provisions were located.

Statutory section enacted 2011.

[Mont. Code Ann. § 70-17-212 \(2019\); 2011 Mont. Laws ch. 259, § 6](#)

[Montana, Private transfer fee relief provisions](#)

## **VOID PROVISIONS**

A transfer fee covenant and a lien to enforce a transfer fee do not run with the title to real property and are not binding upon or enforceable against any subsequent owner, purchaser, or mortgagee of any real property interest.

## **LIABILITY FOR DAMAGES**

No relevant provisions were located.

## **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

## **OTHER RELIEF**

No relevant provisions were located.

Statutory sections enacted 2011.

[Mont. Code Ann. § 70-17-212 \(2019\)](#)

## Nebraska

### Nebraska, Disclosure requirements

## **REQUIRED DISCLOSURES**

The receiver in a private transfer fee obligation that existed before March 10, 2011, must have recorded, by the earlier of 30 days after March 10, 2011, or before a transfer of real property subject

to the private transfer fee, a separate "Notice of Private Transfer Fee Obligation." The document must have been recorded in the register of deeds office of the county in which the real property is located and must have met certain requirements specified by statute. See "Permitted private transfer fees" for details regarding the recording requirements.

The person to whom the private transfer fee is to be paid may file an amendment to the notice containing new contact information. The amendment must contain:

- the notice's recording information; and
- the property's legal description.

A payee must also provide a written statement of the private transfer fee payable within 30 days of the date of a written request for the statement.

A sale contract for real property subject to a private transfer fee obligation must:

- disclose the obligation's existence;
- describe the obligation; and
- contain a statement that private transfer fee obligations are subject to certain prohibitions.

Effective March 10, 2011, a seller's disclosure statement must disclose, among other things, the existence of any private transfer fee obligations. Nebraska's regulations provide the state's Seller Property Disclosure Statement.

## **EXCEPTIONS**

No relevant provisions were located.

Statutory sections 76-3111 and 76-3112 enacted 2011; § 76-2,120 amended 2015. Regulation amended 2015.

[Neb. Rev. Stat. §§ 76-2,120, -3111, -3112 \(2019\); 302 Neb. Admin. Code § 1-001 \(2020\)](#)

## Nebraska, Licensee responsibility

No specifically relevant provisions were located. However, generally, a buyer's agent is a limited agent with the duty, among others, to disclose in writing to the client known adverse material facts. A seller's agent owes no duty to a buyer, except that the licensee must disclose in writing all known adverse material facts, including, *but not limited to*, those pertaining to environmental hazards that are required to be disclosed by law, the property's physical condition, material defects in the property or its title, or any material limitation on the client's ability to perform the contract's terms. Nothing indicates whether this duty would include the disclosure of any private transfer fees.

Note that a seller's disclosure statement must disclose the existence of any private transfer fee obligation.

Statutory sections 76-2417 and 76-2418 amended 2011; § 76-2,120 amended 2015.

[Neb. Rev. Stat. §§ 76-2417, -2418, -2,120 \(2019\)](#)

## Nebraska, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

A private transfer fee obligation recorded or entered into in Nebraska on or after March 10, 2011:

- does not run with the real property's title;
- is not binding on or enforceable against any subsequent owner, purchaser, mortgagee, or trustee of any real property interest; and
- is void and unenforceable.

This provision does *not* mean that a private transfer fee obligation recorded or entered into in Nebraska before March 10, 2011, is presumed valid and enforceable.

#### *Relevant definitions*

"Environmental covenant" means a "servitude that imposes activity and use limitations on real property and meets the requirements of section 76-2604."

"Payee" means the "person who claims the right to receive or collect a private transfer fee payable under a private transfer fee obligation."

"Private transfer fee" means a fee or charge payable upon the transfer of a real property interest, or payable for the right to make or accept such transfer, whether the fee or charge is fixed or determined as a percentage of the property's value, purchase price, or other consideration.

"Private transfer fee obligation" means an "obligation arising under a declaration or covenant" recorded against real property or under any other contractual agreement or promise that requires, or purports to require, the payment of a private transfer fee upon a subsequent transfer of the real property.

"Transfer" means "sale, gift, conveyance, assignment, inheritance, or other transfer" of a Nebraska real property interest.

## **PAYEE RESTRICTIONS**

No relevant provisions were located.

## **MAXIMUM FEES**

A private transfer fee obligation violates Nebraska's public policy regardless of the private transfer fee's amount.

## **TIME LIMITS**

A private transfer fee obligation violates Nebraska's public policy regardless of the private transfer fee's duration.

## **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory sections enacted 2011.

[Neb. Rev. Stat. §§ 76-3102, -3104, -3105, -3106, -3107, -3108, -3109 \(2019\)](#)

[Nebraska, Permitted private transfer fees](#)

## **PERMITTED FEES**

*Existing transfer fees*



Certain private transfer fee obligations imposed before March 10, 2011, may be permitted. The receiver in a private transfer fee obligation that existed before March 10, 2011, must, within the earlier of 30 days after March 10, 2011, or before a transfer of real property subject to the private transfer fee, have recorded a separate "Notice of Private Transfer Fee Obligation." However, the relevant law explicitly provides that it may *not* be construed to mean that a private transfer fee obligation recorded or entered into in Nebraska before March 10, 2011, is presumed valid and enforceable.

*Fees not deemed to be private transfer fees*

The following are *not* private transfer fees for the purpose of the statutory provisions prohibiting private transfer fees:

- consideration payable by the grantee to the grantor for the real property being transferred, including any additional consideration based on the property's subsequent appreciation, development, or sale, if "the 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 property";
- a "commission payable to a licensed real estate broker or salesperson for the transfer of real property pursuant to an agreement between the broker or salesperson and the grantor or the grantee," including any additional commission based on the property's subsequent appreciation, development, or sale;
- interest, charges, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage or trust deed;
- rent or other amount payable by a lessee to a lessor pursuant to a lease;
- consideration payable to the holder of an option to purchase real property or the holder of a right of first refusal or first offer to purchase real property for waiving, releasing, or not exercising the option or right upon the property's transfer to another;

- a "tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority";
- a fee, charge, assessment, or other amount payable to "a homeowners, condominium, cooperative, mobile home, or property owners association pursuant to a declaration or covenant or bylaw applicable to such association";
- a fee, charge, or other amount "pertaining solely to the purchase or transfer of a club membership relating to real property owned by the member"; or
- a payment required by an environmental covenant.

### **RECORDING REQUIREMENTS**

The receiver in a private transfer fee obligation that existed before March 10, 2011, must, within the earlier of 30 days after March 10, 2011, or before a transfer of real property subject to the private transfer fee, have recorded a separate "Notice of Private Transfer Fee Obligation." The "Notice of Private Transfer Fee Obligation" document must contain all of the following:

- the document's title in at least 14-point, boldface type;
- the fee amount, if the fee is a flat amount, or the percentage or other basis for calculating the fee;
- any date or circumstances under which the private transfer fee obligation expires;
- the purpose for which the funds will be used;
- the name and contact information of the person to whom funds are to be paid;

- the payee's acknowledged signature; and
- the property's legal description.

Statutory sections enacted 2011.

[Neb. Rev. Stat. §§ 76-3106, -3109, -3112 \(2019\)](#)

## Nebraska, Private transfer fee relief provisions

### **VOID PROVISIONS**

A private transfer fee obligation recorded or entered into in Nebraska on or after March 10, 2011:

- does not run with the real property's title;
- is not binding on or enforceable against any subsequent owner, purchaser, mortgagee, or trustee of a real property interest; and
- is void and unenforceable.

### **LIABILITY FOR DAMAGES**

A person who records or enters into an agreement imposing a private transfer fee obligation in his or her favor after March 10, 2011, is liable for:

- damages resulting from the imposition of the private transfer fee obligation on a real property transfer, including the amount of any transfer fee a party paid; and

- attorneys' fees, expenses, and cost incurred to recover a private transfer fee paid or in connection with a quiet title action.

If an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability is assessed to the principal, not the agent.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

#### *Failure to record notice*

If a payee fails to comply fully with the notice and recording requirements, the grantor of burdened real property may proceed with the transfer to a grantee. In that case:

- the grantor is deemed to have acted in good faith and is not subject to the private transfer fee obligation; and
- any subsequent transfers of the real property are free and clear of the private transfer fee and private transfer fee obligation.

### **OTHER RELIEF**

#### *Failure to respond to written request*

If the payee fails to provide a written statement of the transfer fee payable within 30 days after a written request is sent, the grantor, upon recording the required affidavit, may transfer the real property to a grantee without paying the private transfer fee. In that case,

- the grantor is not subject to any further obligations under the private transfer fee obligation; and
- any real property transfer will be free and clear of the private transfer fee and private transfer fee obligation.

The affidavit must be recorded in the office of the register of deeds in the county in which the real property is located before or simultaneously with a transfer unburdened by a private transfer fee obligation. The affidavit must contain the provisions required by statute. Once recorded, the affidavit constitutes prima facie evidence that:

- a request for the written statement of the private transfer fee payable was sent to the address shown in the notification; and
- the entity listed on the notice of private transfer fee obligation failed to provide the written statement of the private transfer fee payable within 30 days after the date the notice was sent.

#### *Failure to disclose in contract*

A contract for the sale of real property subject to a private transfer fee obligation must disclose and describe the obligation and contain a statement that private transfer fee obligations are subject to certain prohibitions under the Private Transfer Fee Obligation Act. If a sale contract does not contain that disclosure:

- the seller may not enforce the contract against the buyer;
- the buyer is not liable to the seller for damages under the contract; and
- the buyer is entitled to the return of all deposits made in connection with the real property's sale.

If a private transfer fee obligation is not properly disclosed and a buyer subsequently discovers the existence of a private transfer fee obligation after property's title has passed to the buyer, the buyer has the right to recover:

- damages resulting from the failure to disclose the private transfer fee obligation, including the fee the buyer paid, or the difference between (a) the property's market value if it were not subject to a private transfer fee obligation and (b) the property's market value as subject to a private transfer fee obligation; and
- attorneys' fees, expenses, and costs the buyer incurred seeking the above remedies.

A provision in a contract for sale that purports to waive the buyer's rights to these remedies is void.

Statutory sections enacted 2011.

[Neb. Rev. Stat. §§ 76-3109, -3110, -3111, -3112 \(2019\)](#)

## Nevada

### Nevada, Disclosure requirements

#### **REQUIRED DISCLOSURES**

##### *Notice*

The payee under a private transfer fee obligation that was created before May 20, 2011, must, on or before July 31, 2012, record a "Notice of Private Transfer Fee Obligation" in the office of the county recorder of the county in which the property is located. The notice must include:

- the title in at least 14-point boldface type;

- the property's legal description;
- the private transfer fee amount or the method by which the private transfer fee is calculated;
- if the real property is residential property, the private transfer fee amount that would be imposed on the sale of a home for \$100,000, \$250,000 and \$500,000;
- any date or circumstances under which the private transfer fee obligation expires;
- the purpose for which the funds will be used;
- the payee's name, address and telephone number; and
- if the payee is a natural person, his or her notarized signature, or if the payee is an entity, the an authorized officer's or employee's notarized signature.

Upon any change in the above information, the payee may record an amendment to the notice.

*Written statement*

A seller of real property that is subject to a private transfer fee obligation must provide a buyer with a written statement that:

- discloses the private transfer fee obligation's existence;
- describes the private transfer fee obligation; and

- sets forth a notice in substantially the following form:

A private transfer fee obligation has been created with respect to this property. The private transfer fee obligation may lower the value of this property. The laws of this State prohibit the enforcement of certain private transfer fee obligations that are created or recorded on or after the effective date of this act (section 10 of this act) and impose certain notice requirements with respect to private transfer fee obligations that were created before the effective date of this act (section 11 of this act).

*Written request for information*

If a written request for a written statement of the transfer fee amount due upon the sale of real property is sent by certified mail, return receipt requested, to the payee under a private transfer fee obligation that was created before May 20, 2011, the payee must provide a written statement no later than 30 days after the date the request was mailed.

**EXCEPTIONS**

No relevant provisions were located.

Statutory sections enacted 2011.

[Nev. Rev. Stat. Ann. §§ 111.870, .875; 113.085 \(2019\)](#)

**Nevada, Licensee responsibility**

No specifically relevant provisions were located. However, generally, a licensee who has entered into a brokerage agreement must, among other things,

- disclose material facts to his or her client; and
- not deal with any party to a transaction in a "deceitful, fraudulent or dishonest manner."

Also, a licensee acting as an agent in a real estate transaction must disclose to each party any material facts that he or she knows or should have known, among other things.



The disclosures must be made as soon as practicable, but no later than the date and time the client or any party not represented by a licensee signs any written document.

Statutory sections 645.252 and 645.254 amended 2007; § 645.3205 enacted 1995.

[Nev. Rev. Stat. Ann. §§ 645.252, .254, .3205 \(2019\)](#)

## Nevada, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

Except as otherwise provided, on or after May 20, 2011, a person may not create or record a private transfer fee obligation in Nevada. A private transfer fee obligation created or recorded on or after May 20, 2011, is void and unenforceable. This provision does not "validate or make enforceable any private transfer fee obligation that was created or recorded" in Nevada before May 20, 2011.

#### *Relevant definitions*

"Private transfer fee" means "a fee or charge required by a private transfer fee obligation and payable upon the transfer" of a real property interest, or "payable for the right to make or accept such a transfer," regardless of whether the fee or charge is a fixed amount or a percentage of the property's value or purchase price or other consideration.

"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" that "requires or purports to require the payment of a private transfer fee" to the declarant or other specified person upon a subsequent transfer of a real property interest.

"Transfer" means the "sale, gift, conveyance, assignment, inheritance or other transfer" of a real property interest.

**PAYEE RESTRICTIONS**

No relevant provisions were located.

**MAXIMUM FEES**

No relevant provisions were located.

**TIME LIMITS**

No relevant provisions were located.

**OTHER RELEVANT PROVISIONS**

No relevant provisions were located.

Statutory section enacted 2011.

[Nev. Rev. Stat. Ann. §§ 111.840, .845, .855, .865 \(2019\)](#)

[Nevada, Permitted private transfer fees](#)

**PERMITTED FEES**

### *Existing transfer fees*

Certain existing transfer fees may be permitted. However, the statutory provision prohibiting new transfer fees explicitly states that it does *not* "validate or make enforceable any private transfer fee obligation that was created or recorded" in Nevada before May 20, 2011.

The payee under a private transfer fee obligation that was created before May 20, 2011, must, on or before July 31, 2012, record a "Notice of Private Transfer Fee Obligation" in the office of the county recorder of the county in which the real property is located. The payee may record an amendment to the notice. The notice must meet all requirements set forth by statute.

### *Fees not deemed to be private transfer fees*

The following are *not* private transfer fees for the purpose of the statutory provisions prohibiting private transfer fees:

- consideration payable by the buyer to the seller for the real property interest, including any additional consideration based on the property's subsequent appreciation, development, or sale, if "the additional consideration is payable on a one-time basis only and the obligation to make the payment does not bind successors in title to the property";
- a commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the seller or buyer, including any additional commission based on the property's subsequent appreciation, development or sale;
- interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a mortgage loan agreement;
- rent or other amount payable by a lessee to a lessor under a lease;

- consideration payable to the holder of an option to purchase a real property interest or to the holder of a right of first refusal for waiving, releasing, or not exercising the option or right upon the real property's transfer to another person;
- taxes, fees, charges, assessments, fines, or other amounts payable to or imposed by a governmental entity;
- fees, charges, assessments, fines, or other amounts payable to an association or other organization of property owners; or
- fees or charges "payable to the master developer of a planned community by the first purchaser of each lot in the planned community in the event that the first purchaser fails to construct and obtain a municipal certificate of occupancy for a residence on the lot and retain ownership of the residence for 1 year before conveying the residence, provided that the obligation of the first purchaser of the lot to pay the fee or charge is on a one-time basis only and does not bind subsequent purchasers of the lot."

## **RECORDING REQUIREMENTS**

The payee under a private transfer fee obligation that was created before May 20, 2011, must record, on or before July 31, 2012, in the office of the county recorder of the county in which the real property is located, a notice that includes specified information.

Statutory sections enacted 2011.

[Nev. Rev. Stat. Ann. §§ 111.840, .865, .870, .875 \(2019\)](#)

[Nevada, Private transfer fee relief provisions](#)

## **VOID PROVISIONS**

A private transfer fee obligation created or recorded on or after May 20, 2011, is void and unenforceable. This provision does *not* "validate or make enforceable any private transfer fee obligation that was created or recorded" in Nevada before May 20, 2011.

A private transfer fee created or recorded before May 20, 2011, is void and unenforceable if the payee:

- fails to record a "Notice of Private Transfer Fee Obligation" on or before July 31, 2012; or
- fails to provide a response to a written request for a written statement of the transfer fee amount due upon sale.

### **LIABILITY FOR DAMAGES**

A person who creates or records a private transfer fee obligation in the person's favor on or after May 20, 2011, or who fails to comply with an applicable statutory requirement is liable for:

- damages resulting from the enforcement of the private transfer fee obligation upon the transfer of the real property, including the amount of any private transfer fee paid by a party to the transfer; and
- 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.

A principal is liable for the acts or omissions of the principal's authorized agent.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

*Failure to record notice*

If the payee fails to record a "Notice of Private Transfer Fee Obligation" on or before July 31, 2012:

- the private transfer fee obligation is void and unenforceable;
- any interest in the real property subject to the private transfer fee obligation may be conveyed free and clear of the private transfer fee obligation; and
- the payee is subject to liability.

A person with an interest in real property subject to a private transfer fee obligation may record an affidavit that states, among other things, that a private transfer fee was created before May 20, 2011, and that the payee failed to record the required notice on or before July 31, 2012. A properly recorded affidavit constitutes prima facie evidence that:

- the real property was subject to a private transfer fee obligation created before May 20, 2012;
- the payee failed to record the required notice on or before July 31, 2012;
- the private transfer fee obligation is void and unenforceable; and
- the real property may be conveyed free and clear of the private transfer fee obligation.

### **OTHER RELIEF**

#### *Failure to respond to written request*

If a written request for a written statement of the transfer fee amount due upon the sale of real property is sent by certified mail, return receipt requested, to the payee under a private transfer fee obligation that was created before May 20, 2011, the payee must provide a written statement no

later than 30 days after the date the request was mailed. If the payee fails to respond to the written request:

- the private transfer fee obligation is void and unenforceable;
- the real property may be conveyed free and clear of the private transfer fee obligation; and
- the payee is liable for damages.

The person who requested the written statement may record an affidavit that contains, among other things:

- an express reference to the recorded notice;
- a statement that a written request for a written statement of the transfer fee amount due upon the sale of the real property was sent by certified mail, return receipt requested, to the payee at the address in the recorded notice, and that the payee failed to provide that written statement within 30 days.

A properly recorded affidavit constitutes prima facie evidence that:

- a written request for a written statement of the amount of the transfer fee due upon the sale of the real property was sent by certified mail, return receipt requested, to the payee at the address contained in the recorded notice;
- the payee failed to provide the written statement within 30 days after the request was mailed;
- the private transfer fee obligation is void and unenforceable; and

- any interest in the real property may be conveyed free and clear of the private transfer fee obligation.

Statutory sections enacted 2011.

[Nev. Rev. Stat. Ann. §§ 111.865, .870, .875, .880 \(2019\)](#)

## New Hampshire

### New Hampshire, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### New Hampshire, Licensee responsibility

No specifically relevant provisions were located. However, generally, a licensee who provides services pursuant to a brokerage agreement has the duty of disclosure, among others. A licensee also may not knowingly commit or be a party to any "material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or device, whereby any other person relies upon the word, representation or conduct of the licensee."

Furthermore, a seller's licensee must treat all prospective buyers honestly.

Statutory section 331-A:25-a enacted 1996; § 331-A:25-b amended 2008; § 331-A:26 amended 2019.

[N.H. Rev. Stat. §§ 331-A:25-a, -b; :26 \(2019\)](#)

### New Hampshire, Limitations on private transfer fees

No relevant provisions were located.

### New Hampshire, Permitted private transfer fees

No relevant provisions were located.



## New Hampshire, Private transfer fee relief provisions

No relevant provisions were located.

## New Jersey

### New Jersey, Disclosure requirements

#### **REQUIRED DISCLOSURES**

##### *Disclosure of permitted private transfer fee obligations*

Before closing a real property sale, a seller must furnish to the purchaser a written statement disclosing any private transfer fee obligations. The written statement must include:

- a description of the private transfer fee obligation; and
- a statement that private transfer fee obligations are subject to prohibitions under N.J. Stat. §§ 46:3-28 *et seq.*

##### *Recording of notice of private transfer fee*

The payee designated in a private transfer fee obligation made before December 8, 2010, must ensure that the notice of private transfer fee is recorded no later than six months following December 8, 2010. A private transfer fee obligation made before December 8, 2010, is imposed and enforceable by recording of a notice of private transfer fee. See "Permitted private transfer fees" for details regarding recording requirements.

#### **EXCEPTIONS**

No relevant provisions were located.

Statutory sections enacted 2010.

[N.J. Rev. Stat. §§ 46:3-32, -33 \(2020\)](#)

## New Jersey, Licensee responsibility

No specifically relevant provisions were located. However, generally, a licensee must deal fairly with all parties to a transaction.

Regulation amended 2009.

N.J. Admin. Code § 11:5-6.4(a) (LexisNexis 2020)

## New Jersey, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

A private transfer fee obligation recorded or entered into in New Jersey on or after December 8, 2010, does not run with the title to real property and is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee. A private transfer fee obligation that is recorded or entered into in New Jersey on or after December 8, 2010, is void and unenforceable.

New Jersey public policy favors the marketability of real property and the transferability of real property interests free of title defects or unreasonable restraints on alienation. The New Jersey Legislature has found that private transfer fee obligations constitute an unacceptable restraint on alienation, regardless of the obligation's duration, the transfer fee's amount, or the method by which any private transfer fee is created or imposed.

#### *Relevant definitions*

"Transfer" means the "sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest" in New Jersey real property.

"Private transfer fee" means "a fee or charge required by a private transfer fee obligation" and payable upon a real property interest transfer or for the right to make or accept such transfer, regardless of whether the amount is fixed or determined as a percentage of the property's value, purchase price, or other consideration.

"Private transfer fee obligation" means a declaration or covenant recorded against a real property's title, or "any other contractual agreement or promise, whether or not recorded, that requires or purports to require the payment of a private transfer fee" to the declarant or other specified person upon a subsequent transfer of a real property interest.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

Private transfer fee obligations impair the marketability and transferability of real property by constituting an unacceptable restraint on alienation regardless of the fee amount.

### **TIME LIMITS**

Private transfer fee obligations impair the marketability and transferability of real property by constituting an unacceptable restraint on alienation regardless of the obligation's duration.

### **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory sections enacted 2010.

[N.J. Rev. Stat. §§ 46:3-28, -29, -30 \(2020\)](#)

## New Jersey, Permitted private transfer fees

### **PERMITTED FEES**

*Fees existing before December 8, 2010*

N.J. Rev. Stat. § 46:3-30, which provides that private transfer fee obligations do not run with a real property title, does not apply to a private transfer fee obligation recorded or entered into in New Jersey before December 8, 2010. However, this provision does not mean that a private transfer fee obligation recorded or entered into in New Jersey before December 8, 2010, is presumed valid and enforceable.

*Fees excluded from definition of "private transfer fee"*

The following are *not* included in the definition of "private transfer fees":

- consideration payable by the grantee to the grantor for the real property interest being transferred, including any subsequent additional consideration based upon "subsequent appreciation, development, or sale of the property, provided such additional consideration is payable on a one-time basis only and obligation to make such payment does not bind successors in title";
- any "subsequent additional consideration payable to the grantor of an interest in unimproved real property by the first successor-in-interest to the original grantee, provided that the additional consideration is payable on a one-time basis only and follows the construction of an improvement on the property";

- any "commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the grantor or the grantee," including any subsequent additional commission based upon "any subsequent appreciation, development, or sale of the property";
- interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a real property mortgage;
- rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease;
- consideration payable to the holder of a purchase option to a right of first refusal or first offer to purchase a real property interest for "waiving, releasing, or not exercising the option or right upon the transfer of the property to another person," or any consideration payable by the option holder to the property owner in order to keep the option in force;
- a "tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority";
- a "fee, charge, assessment, fine, or other amount payable to a homeowners', condominium, cooperative, mobile home, private residential leasehold community, or property owners' association pursuant to a declaration or covenant authorized in a master deed or bylaws";
- a "fee, charge, assessment, dues, contribution, or other amount imposed by a declaration or covenant encumbering a community, and payable to a nonprofit or charitable organization, for the purpose of supporting cultural, educational, charitable, recreational, environmental, conservation, or other similar activities benefiting the community that is subject to the declaration or covenant"; or
- a "fee, charge, assessment, dues, contribution, or other amount pertaining to the purchase or transfer of a club membership relating to real property owned by the member."

## **RECORDING REQUIREMENTS**

### *Recording of notice of private transfer fee*

A private transfer fee obligation made before December 8, 2010, is imposed and enforceable by recording of a notice of private transfer fee. The payee designated in a private transfer fee obligation made before December 8, 2010, must ensure that a notice of private transfer fee is recorded in the county recording office no later than six months following December 8, 2010.

The notice of private transfer fee must contain:

- the title, "Notice of Private Transfer Fee Obligation," in at least 14-point boldface type;
- all current owners' names;
- the property's legal description;
- the assessor's parcel number;
- the flat-fee amount or percentage of the sales price constituting the transfer fee, or other basis by which the transfer fee is to be calculated;
- if the property is residential property, actual dollar-cost examples of the transfer fee for a home priced at \$250,000, \$500,000, and \$750,000;
- any date or circumstances under which the private transfer fee covenant expires;
- the purpose for which the funds will be used;

- the name of the payee or any assigns;
- specific contact information regarding where the funds are to be sent;
- the acknowledged signature of a representative of an entity to which a private transfer fee is to be paid; and
- the burdened property's legal description.

#### *Amendments to the notice of transfer fee*

The payee may file an amendment to the notice of transfer fee containing new contact information. The amendment must contain:

- the recording information for the notice of transfer fee that the amendment modifies; and
- the burdened property's legal description.

Statutory sections enacted 2010.

[N.J. Rev. Stat. §§ 46:3-29, -30, -33 \(2020\)](#)

### [New Jersey, Private transfer fee relief provisions](#)

#### **VOID PROVISIONS**

A private transfer fee obligation recorded or entered into in New Jersey on or after December 8, 2010, does not run with the property's title and is not binding on or enforceable against any

subsequent owner, purchaser, or mortgagee. A private transfer fee obligation that is recorded or entered into in New Jersey on or after December 8, 2010, is void and unenforceable.

### **LIABILITY FOR DAMAGES**

A person who records or enters into an agreement imposing a private transfer fee obligation in their favor after December 8, 2010, is liable for both:

- any and all damages resulting from the imposition of the private transfer fee obligation on the real property interest transfer, including, without limitation, any transfer fee amount paid; and
- all attorney 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 incurred in connection with a quiet-title action.

If an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability is assessed to the principal, not the agent.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

#### *Failure to record notice*

If the payee fails to record a private transfer fee notice as required by N.J. Stat. § 46:3-33, the grantor of any real property burdened by the private transfer fee obligation may convey any interest in the real property to any grantee. That grantor will be deemed to have acted in good faith and will not be subject to any obligations under the private transfer fee obligation. In that case, the real property may thereafter be conveyed free and clear of the transfer fee and private transfer fee obligation.

### **OTHER RELIEF**



### *Failure to respond to written request*

If the payee fails to provide a written statement of the transfer fee payable within 30 days of the date of a written request for the same sent to the address shown in the notice of private transfer fee, then the grantor, upon recording an affidavit, may convey any interest in the real property to a grantee without payment of the transfer fee. In that case, the grantor is not subject to any further obligations under the private transfer fee obligation, and the real property is conveyed free and clear of the transfer fee and private transfer fee obligation. See N.J. Stat. § 46:3-33 for details regarding the contents, recording, and effect of the affidavit.

Statutory sections enacted 2010.

[N.J. Rev. Stat. §§ 46:3-28, -30, -31, -33 \(2020\)](#)

## New Mexico

### New Mexico, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### New Mexico, Licensee responsibility

No specifically relevant provisions were located. However, generally, licensees owe the following duties to their customers and clients:

- to act with honesty; and
- to disclose in writing any adverse material facts the broker actually knows about the property or the transaction.

Regulation amended 2019.

[N.M. Admin. Code tit. 16, § 61.19.8 \(2020\)](#)

## New Mexico, Limitations on private transfer fees

No relevant provisions were located. [S.B. 504, 50th Leg., 1st Sess. \(N.M. 2011\)](#), which would have prohibited private transfer fee covenants, did not pass into law.

## New Mexico, Permitted private transfer fees

No relevant provisions were located.

## New Mexico, Private transfer fee relief provisions

No relevant provisions were located.

## New York

### New York, Disclosure requirements

#### **REQUIRED DISCLOSURES**

##### *Recorded notice*

The receiver of a private transfer fee imposed before September 23, 2011, must record by March 23, 2012, a separate document entitled "Notice of Private Transfer Fee Obligation." The document must be recorded in the county in which the real property is located and must meet certain requirements specified by statute. The person or entity receiving the transfer fee may also file an amendment to the notice containing new contact information. See "Permitted private transfer fees" for details regarding these recording requirements.

##### *Pre-sale disclosure*

Before a buyer signs a binding sale contract, the seller must provide the purchaser with a written statement disclosing the private transfer fee obligation. The statement must include:

- a description of the private transfer fee obligation; and
- a statement that private transfer fee obligations are subject to statutory prohibitions.

### *Requested statement of transfer fee*

A payee must also provide a written statement of the transfer fee payable within 30 days of the date of a written request for the information. If the fee receiver fails to provide the written statement in a timely manner, the transferor, upon recording an affidavit:

- may convey the real property without paying the transfer fee; and
- is not subject to further obligations under the private transfer fee obligation.

In that case, the real property may be conveyed free and clear of the transfer fee and the private transfer fee obligation. See "Private transfer fee relief provisions" for details regarding the required affidavit's contents.

### **EXCEPTIONS**

No relevant provisions were located.

Statutory sections enacted 2011.

[N.Y. Real Prop. Law §§ 475, 476 \(2020\)](#)

### **New York, Licensee responsibility**

No specifically relevant provisions were located. However, generally, the disclosure form set forth at § 443(4)(a) states that a buyer's agent owes the buyer the duty of full disclosure. A seller's agent dealing with a buyer must, among other things,

- deal honestly, fairly and in good faith; and
- disclose all known facts that materially affect the value or desirability of property, unless otherwise provided by law.

Statutory section amended 2010.

[N.Y. Real Prop. Law § 443\(4\)\(a\) \(2020\)](#)

## New York, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

A private transfer fee obligation recorded or entered into in New York on or after September 23, 2011:

- does not run with the land;
- is not binding on or enforceable against an owner, purchaser, or mortgagee of a real property interest; and
- is void and unenforceable.

The provision described above does not apply to a private transfer fee obligation recorded or entered into before September 23, 2011. However, the relevant statute may not be "deemed to require that a private transfer fee obligation recorded, filed or entered into" in New York before September 23, 2011, is presumed valid and enforceable. The relevant statute also states:

It is the public policy of this state that no private transfer fee obligation shall be valid or enforceable whenever entered into, recorded or filed. Furthermore, this

article shall not validate any private transfer fee agreement that is contrary to the law of this state.

### *Relevant definitions*

"Transfer" means the "sale, gift, conveyance, assignment, inheritance, or other transfer" of an ownership interest in New York real property.

"Private transfer fee" means a fee or charge required by a private transfer fee obligation and payable upon the transfer of a real property interest or payable for the right to make or accept a transfer, whether the amount is fixed or determined as percentage of the property's value, purchase price, or other consideration.

"Private transfer fee obligation" means an obligation arising under a recorded declaration or covenant or under a contractual agreement or promise that requires or purports to require the payment of a private transfer fee to the declarant or other specified person upon the property's subsequent transfer.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

The New York legislature finds that private transfer fee obligations violate the state's public policy regardless of the amount of the fee.

### **TIME LIMITS**

The New York legislature finds that private transfer fee obligations violate the state's public policy regardless of the obligation's duration.

## **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory section 471 enacted 2011; §§ 472 and 473 amended 2012.

[N.Y. Real Prop. Laws §§ 471, 472, 473 \(2020\)](#)

## New York, Permitted private transfer fees

### **PERMITTED FEES**

#### *Existing transfer fees*

Certain private transfer fee obligations imposed before September 23, 2011, may be permitted. The provision prohibiting private transfer fees does not apply to a private transfer fee obligation recorded or entered into before September 23, 2011. However, the relevant statute may not be "deemed to require that a private transfer fee obligation recorded, filed or entered into" in New York before September 23, 2011, is presumed valid and enforceable. The relevant statute also provides:

It is the public policy of this state that no private transfer fee obligation shall be valid or enforceable whenever entered into, recorded or filed. Furthermore, this article shall not validate any private transfer fee agreement that is contrary to the law of this state.

The receiver of a private transfer fee imposed before September 23, 2011, must record by March 23, 2012, a separate document entitled "Notice of Private Transfer Fee Obligation." The person or entity to which the transfer fee is to be paid may file an amendment to the notice containing new contact information.

Also, before a buyer signs a binding contract for the sale of burdened real property, the seller must furnish the purchaser with a written statement disclosing the private transfer fee obligation. This written statement must include:

- a description of the private transfer fee obligation; and
- a statement that private transfer fee obligations are subject to statutory prohibitions.

*Fees not deemed to be private transfer fees*

The following are *not* private transfer fees for the purpose of the statutory provisions prohibiting private transfer fees:

- consideration payable by a transferee to a transferor for real property, including additional consideration payable upon the property's subsequent appreciation, development, or sale, provided the 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 property";
- a "commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the transferor or the transferee," including additional commission based on the property's subsequent appreciation, development, or sale;
- interest, charges, or other amounts payable by a borrower to a lender pursuant to a mortgage loan;
- rent, reimbursements, or other amounts payable by a lessee to a lessor pursuant to a lease;
- consideration payable to the holder of an option to purchase real property or the holder of a right of first refusal or first offer to purchase real property for waiving, releasing, or not exercising the option or right upon the property's transfer to another;

- a "tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority";
- a fee, charge, or other amount payable to a "homeowners', condominium, cooperative, mobile home, or property owners' association pursuant to a declaration, covenant, duly adopted by-law, proprietary lease or law applicable to such association," except that no amount may be paid to an association for payment to the condominium's declarant or the association's creator (or a designee);
- a fee, charge, or other amount imposed by a "declaration or covenant encumbering a community, and payable to a not-for-profit or charitable organization" to support "cultural, educational, charitable, recreational, environmental, conservation, or other similar activities" benefiting the subject community;
- a fee, charge, or other amount "pertaining to the purchase or transfer of a club membership relating to real property" the member owns;
- a fee, charge, or assessment payable by the buyer to a corporation or company that was formed pursuant to the private housing finance law or that has received a loan or subsidy pursuant to the private housing finance law or general municipal law; or
- an amount payable to a governmental entity.

### **RECORDING REQUIREMENTS**

The receiver of a private transfer fee imposed before September 23, 2011, must record by March 23, 2012, a separate document entitled "Notice of Private Transfer Fee Obligation." The document must be recorded in the records of the county in which the real property is located and must contain:

- its title in at least 14-point boldface type;



- all current owners' names;
- the affected real property's legal description and assessor's parcel number;
- the fee amount, if the fee is a flat fee, or the percentage of the sales price or other basis by which the transfer fee is to be calculated;
- if the real property is residential property, examples of the transfer fee for a home priced at \$250,000, \$500,000, and \$750,000;
- any date or circumstances pursuant to which the private transfer fee obligation expires;
- the purpose for which the funds will be used;
- the name of the person or entity to which funds are to be paid;
- specific contact information indicating where the funds are to be sent;
- the fee receiver's acknowledged signature; and
- the burdened real property's legal description.

The person or entity to which the transfer fee is to be paid may file an amendment to the notice containing new contact information, but the amendment must contain:

- the recording information of the notice it amends; and

- the burdened property's legal description.

Statutory sections 475 and 476 enacted 2011; §§ 472 and 473 amended 2012.

[N.Y. Real Prop. Law §§ 472, 473, 475, 476 \(2020\)](#)

## New York, Private transfer fee relief provisions

### **VOID PROVISIONS**

A private transfer fee obligation recorded or entered into in New York on or after September 23, 2011:

- does not run with the land;
- is not binding on or enforceable against an owner, purchaser, or mortgagee of any real property interest; and
- is void and unenforceable.

The provision does not apply to a private transfer fee obligation recorded or entered into before September 23, 2011. However, the relevant statute may not be "deemed to require that a private transfer fee obligation recorded, filed or entered into" in New York before September 23, 2011, is presumed valid and enforceable.

### **LIABILITY FOR DAMAGES**

A person who records or enters into an agreement imposing a private transfer fee obligation after September 23, 2011, is liable for:

- damages resulting from the imposition of the transfer fee obligation, including, without limitation, the amount of any transfer fee a party paid; and
- attorneys' fees, expenses, and costs a party or a mortgagee incurred to recover any transfer fee paid or in connection with a quiet title action.

If an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability is assessed to the principal, not the agent.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

#### *Failure to record notice*

The receiver of a private transfer fee imposed before September 23, 2011, must record by March 23, 2012, a separate document entitled "Notice of Private Transfer Fee Obligation." If the receiver fails to comply fully with this recording requirement, the transferor of any burdened real property:

- may proceed with the conveyance of the real property interest to a transferee;
- is deemed to have acted in good faith; and
- is not subject to any obligations under the private transfer fee obligation.

In that case, the real property may be conveyed free and clear of the transfer fee and the private transfer fee obligation.

### **OTHER RELIEF**

### *Failure to respond to written request*

If the receiver of the fee fails to provide a written statement of the transfer fee payable within 30 days of the date of a written request for the information, the transferor, upon recording the required affidavit:

- may convey the real property without paying the transfer fee; and
- is not subject to any further obligations under the private transfer fee obligation.

In that case, the transferor may convey the real property "free and clear of the transfer fee and private transfer fee obligation."

The transferor must record the affidavit before or simultaneously with a conveyance of the property.

The affidavit must include:

- the burdened property's legal description;
- the property owner's name;
- a reference to the recording information of the instrument containing the private transfer fee obligation; and
- an acknowledgment that the affiant is testifying under penalty of perjury.

The recorded affidavit constitutes conclusive evidence that:

- a request for the written statement of the transfer fee payable was sent to the address shown in the notification; and
- the entity failed to provide a written statement within 30 days of the date the notice was sent.

Statutory section 474 and 476 enacted 2011; § 473 amended 2012.

[N.Y. Real Prop. Law §§ 473, 474, 476 \(2020\)](#)

## North Carolina

### North Carolina, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### North Carolina, Licensee responsibility

No specifically relevant provisions were located. However, generally, the Commission may reprimand, suspend, or revoke a real estate license if the licensee makes a willful or negligent misrepresentation or omits a material fact.

Statutory section amended 2011.

[N.C. Gen. Stat. § 93A-6 \(2019\)](#)

### North Carolina, Limitations on private transfer fees

#### **BENEFICIARY AND USE RESTRICTIONS**

##### *Prohibited fees*

A transfer fee covenant or a lien that is filed to enforce a transfer fee covenant or purports to secure

payment of a transfer fee does not run with the real property's title and is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee. North Carolina public policy favors the marketability of real property and the transferability of real property interests free from title defects, unreasonable restraints on alienation, and covenants or servitudes that do not "touch and concern" the property. The North Carolina legislature has found that a transfer fee covenant impairs the marketability of title to the affected real property and constitutes an unreasonable restraint on alienation and transferability of property, regardless of the covenant's duration or the transfer fee amount.

North Carolina's laws prohibiting transfer fees apply to:

- any transfer fee covenant that is recorded after July 1, 2010;
- any lien that is filed to enforce a transfer fee covenant recorded after July 1, 2010, or that purports to secure payment of a transfer fee recorded after July 1, 2010; and
- any agreement imposing a private transfer fee obligation entered into after July 1, 2010.

Nothing in chapter 39A should be interpreted to mean that a transfer fee covenant recorded before July 1, 2010, is valid or enforceable.

#### *Relevant definitions*

"Transfer" means the "sale, gift, conveyance, assignment, inheritance, or other transfer" of an ownership interest in real property located in North Carolina.

"Transfer fee" means a fee or charge payable upon the transfer of a real property interest or payable for the right to make or accept such transfer, regardless of whether the amount is fixed or determined as a percentage of the property's value, purchase price, or other consideration given for the transfer.

"Transfer fee covenant" means "a declaration or covenant purporting to affect real property that requires or purports to require the payment of a transfer fee" to the declarant or other specified person upon a subsequent transfer of a real property interest.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

A transfer fee covenant violates North Carolina's public policy regardless of the transfer fee amount.

### **TIME LIMITS**

A transfer fee covenant violates North Carolina's public policy regardless of the covenant's duration.

### **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory sections 39A-2 and 39A-3 enacted 2010; §§ 39A-1 and 39A-4 amended 2015.

[N.C. Gen. Stat. §§ 39A-1, -2, -3, -4 \(2019\)](#)

North Carolina, Permitted private transfer fees

### **PERMITTED FEES**

*Fees existing before July 1, 2010*

A transfer fee covenant recorded before July 1, 2010, may be effective. The act prohibiting transfer fees is effective as of July 1, 2010, and applies to:

- any transfer fee covenant recorded after July 1, 2010;
- any lien filed to enforce a transfer fee covenant recorded after July 1, 2010, or that purports to secure payment of a transfer fee recorded after July 1, 2010; and
- any agreement imposing a private transfer fee obligation entered into after July 1, 2010.

However, nothing in chapter 39A prohibiting transfer fees should be "interpreted to mean that a transfer fee covenant recorded prior to July 1, 2010, is valid or enforceable."

*Fees excluded from the definition of "private transfer fee"*

North Carolina law does *not* consider the following to be a "transfer fee":

- consideration payable by the grantee to the grantor for the real property interest, including any subsequent additional consideration based upon "subsequent appreciation, development, or sale of the property that, once paid, shall not bind successors in title to the property";
- any "commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the transferor or transferee", including any subsequent additional commission based upon additional commission payable by the transferor based upon subsequent appreciation, development, or sale of the property;



- interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage;
- rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease;
- consideration payable to the holder of an option to purchase a real property interest or the holder of a right of first refusal or first offer to purchase a real property interest "for waiving, releasing, or not exercising the option or right upon the transfer of the property to another person";
- a "tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority";
- a fee that is a "typical real estate closing cost";
- a reasonable fee charged for the preparation of certain unpaid assessments statements or resale certificates;
- a reasonable fee payable by the original transferee to a unit owners' association or owners' association, as long as "no portion of the fee is required to be passed through to a third party designated or identifiable by description" in the document or another referenced document; or
- a fee payable as part of a conservation or preservation agreement.

## **RECORDING REQUIREMENTS**

No relevant provisions were located.

Statutory section 39A-2 enacted 2010; § 39A-4 amended 2015.

[N.C. Gen. Stat. §§ 39A-2, -4 \(2019\)](#)

## North Carolina, Private transfer fee relief provisions

### **VOID PROVISIONS**

Effective July 1, 2010, a transfer fee covenant or lien that is filed to enforce a transfer fee covenant or purports to secure payment of a transfer fee does not run with the real property's title and is not binding on or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee.

### **LIABILITY FOR DAMAGES**

Effective July 1, 2010, a person who records a transfer fee covenant, files a lien that purports to secure payment of a transfer fee, or enters into an agreement imposing a private transfer fee obligation is liable for:

- all damages resulting from the imposition of the transfer fee obligation on the transfer of a real property interest, including the transfer fee amount paid; and
- all attorney fees, expenses, and costs incurred by a party to the transfer or mortgagee of the real property to recover the transfer fee paid, in connection with an action to quiet title or register the title, or in a proceeding subsequent to initial registration.

If an agent acts on behalf of a principal to file or secure a private transfer fee obligation, the liability is assessed to the principal, not the agent.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

### **OTHER RELIEF**

No relevant provisions were located.

Statutory section 39A-3 enacted 2010; § 39A-4 amended 2015.

[N.C. Gen. Stat. §§ 39A-3, -4 \(2019\)](#)

## North Dakota

### North Dakota, Disclosure requirements

#### **REQUIRED DISCLOSURES**

##### *Notice*

The receiver of a private transfer fee imposed before August 1, 2011, must record a separate document entitled "Notice of Private Transfer Fee Obligation" before December 31, 2011. The document must be recorded in the county records of the county in which the real property is located and must meet certain requirements specified by statute. See "Permitted private transfer fees" for details regarding the recording requirements.

The person that receives the transfer fee may file an amendment to the transfer fee notice containing new contact information. The amendment must contain the recording information of the transfer fee notice it amends and the property's legal description.

##### *Written statement*

A real property seller must furnish to a purchaser a written statement disclosing any private transfer fee obligation. This written statement must include:

- a description of the private transfer fee obligation; and
- a statement that private transfer fee obligations are subject to certain prohibitions set forth in chapter 47-33.

*Written request for information*

If the payee fails to provide a written statement of the transfer fee payable within 30 days of the date a written request is sent to the address shown in the transfer fee notice, the grantor, upon recording an affidavit:

- may convey the real property interest to a grantee without paying the transfer fee; and
- is not subject to any further obligations under the private transfer fee obligation.

In this case, the real property is conveyed free and clear of the transfer fee and private transfer fee obligation. The affidavit must be recorded in the office of the county recorder in the county in which the real property is located before or simultaneously with a conveyance of the subject real property and must contain the provisions required by statute.

**EXCEPTIONS**

No relevant provisions were located.

Statutory sections enacted 2011.

[N.D. Cent. Code §§ 47-33-04, -05 \(2019\)](#)

## North Dakota, Licensee responsibility

No specifically relevant provisions were located. However, generally, a real estate brokerage firm and any licensees that provide services pursuant to a written agency agreement have the duties of disclosure and diligence (among others) to a client. Effective August 1, 2011, a brokerage firm also has a duty to disclose known adverse material facts to customers.

In a real estate transaction involving residential property with dwelling units for one to four families, a licensee must present a written disclosure that states, among other things, that a licensee must deal honestly with any party, regardless of whether the party is represented by that licensee.

Statutory section amended 2011. Regulation amended 2012.

[N.D. Cent. Code § 43-23-12.1 \(2019\)](#); [N.D. Admin. Code § 70-02-03-15.1\(7\)\(d\) \(2020\)](#)

## North Dakota, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

A private transfer fee obligation recorded or entered on or after August 1, 2011:

- does not run with the real property's title;
- is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee; and
- is void and unenforceable.

This provision explicitly does *not* mean that a private transfer fee obligation recorded or entered before August 1, 2011, is presumed valid and enforceable.

### *Relevant definitions*

"Private transfer fee" means a "fee or charge required by a private transfer fee obligation" and payable upon the transfer of real property, or payable for the right to make or accept a transfer, regardless of how the amount is determined.

"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, whether or not recorded, that requires or purports to require the payment of a private transfer fee" to the declarant or other specified person (or its successors or assigns), upon a subsequent transfer of real property.

"Transfer" means the "sale, gift, conveyance, assignment, inheritance, or other transfer" of an ownership interest in real property located in North Dakota.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

No relevant provisions were located.

### **TIME LIMITS**

No relevant provisions were located.

### **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory sections enacted 2011.

[N.D. Cent. Code §§ 47-33-01, -02 \(2019\)](#)

## North Dakota, Permitted private transfer fees

### **PERMITTED FEES**

#### *Existing transfer fees*

Certain existing transfer fees recorded or entered in North Dakota before August 1, 2011, may be permitted. However, the statute prohibiting transfer fees on or after August 1, 2011, explicitly provides that the provision does *not* mean that a private transfer fee obligation recorded or entered before August 1, 2011, is "presumed valid and enforceable."

#### *Fees not deemed to be private transfer fees*

The following are *not* private transfer fees for the purpose of the statutory provisions prohibiting private transfer fees:

- consideration payable by the grantee to the grantor for the real property interest being transferred, including any additional consideration based upon the property's subsequent appreciation, development, or sale, "provided the 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 property";

- a commission "payable to a licensed real estate broker for the transfer of real property under an agreement between the broker and the grantor or the grantee, including any subsequent additional commission for that transfer" based on the property's subsequent appreciation, development, or sale;
- interest, charges, fees, or other amounts payable by a borrower to a lender under a loan secured by a mortgage;
- any rent or other amount payable by a lessee to a lessor under a lease;
- consideration payable to the holder of an option to purchase a real property interest;
- consideration payable to the holder of a right of first refusal or first offer to purchase real property for waiving, releasing, or not exercising the option or right upon the property's transfer to another;
- a tax, fee, or other amount payable to or imposed by a governmental authority;
- a fee, charge, or other amount payable to "a homeowners', condominium, cooperative, mobile home, or property owners' association under a declaration or covenant or law applicable to the association";
- a fee, charge, or other amount imposed by "a declaration or covenant encumbering a community, and payable to a nonprofit or charitable organization for the purpose of supporting cultural, educational, charitable, recreational, environmental, conservation, or other similar activities benefiting the community"; or
- a fee, charge, or other amount "pertaining to the purchase or transfer of a club membership relating to real property owned by the member."



## **RECORDING REQUIREMENTS**

For a private transfer fee obligation imposed before August 1, 2011, the person that receives the fee must record, before December 31, 2011, a "Notice of Private Transfer Fee Obligation" in the county in which the real property is located. The notice must meet all of the following requirements:

- the title must be in at least 14-point boldfaced type;
- the amount of a flat fee or the percentage of the sales price constituting the transfer fee, or any other basis by which the transfer fee is to be calculated;
- if the real property is residential property, actual dollar-cost examples of the transfer fee for a \$100,000, \$250,000, and \$500,000 home;
- any date or circumstances under which the private transfer fee obligation expires;
- the purpose for which the transfer fee funds will be used;
- the name of the person to which funds are to be paid and specific contact information;
- the payee's acknowledged signature; and
- the property's legal description.

Statutory sections enacted 2011.

[N.D. Cent. Code §§ 47-33-01, -02, -05 \(2019\)](#)

## North Dakota, Private transfer fee relief provisions

### **VOID PROVISIONS**

A private transfer fee obligation recorded or entered on or after August 1, 2011, does not run with the real property's title and is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee. A private transfer fee obligation that is recorded or entered in North Dakota on or after August 1, 2011, is void and unenforceable.

### **LIABILITY FOR DAMAGES**

A person that records or enters an agreement imposing a private transfer fee obligation in that person's favor on or after August 1, 2011, is liable for any and all damages resulting from imposing the transfer fee obligation on a real property transfer, including:

- the amount of any transfer fee paid; and
- all attorney's fees, expenses, and costs incurred by "a party to the transfer or mortgagee of the real property to recover any transfer fee paid or in connection with an action to quiet title."

If an agent acts on a principal's behalf to record or secure a private transfer fee obligation, liability is assessed to the principal, not the agent.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

#### *Failure to record notice*

If the payee for a private transfer fee obligation imposed before August 1, 2011, fails to record, before December 31, 2011, a "Notice of Private Transfer Fee Obligation," the grantor of the real property burdened by the private transfer fee obligation:

- may proceed with the property's conveyance;
- is deemed to have acted in good faith; and
- is not subject to any obligations under the private transfer fee obligation.

In this case, the real property is conveyed free and clear of the transfer fee and private transfer fee obligation.

### **OTHER RELIEF**

#### *Failure to respond to written request*

If a payee fails to provide a written statement of the transfer fee payable within 30 days of the date of a written request sent to the address indicated in the transfer fee notice, the grantor, upon recording the required affidavit:

- may convey the real property without paying the transfer fee; and
- is not subject to any further obligations under the private transfer fee obligation.

In that case, the real property is conveyed free and clear of the transfer fee and private transfer fee obligation.

The affidavit must contain the information required by statute and must be recorded with the county recorder in the county in which the real property is located before or simultaneously with the conveyance not burdened by a private transfer fee obligation. The recorded affidavit constitutes prima facie evidence that:

- a request for the written statement of the transfer fee payable was sent to the address indicated in the notice; and
- the person listed on the transfer fee notice failed to provide the written statement within 30 days of the date the notice was sent.

Statutory sections enacted 2011.

[N.D. Cent. Code §§ 47-33-02, -03, -04, -05 \(2019\)](#)

## Ohio

### Ohio, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Ohio, Licensee responsibility

No specifically relevant provisions were located. However, generally, a licensee, acting as a client's agent or subagent, is the client's fiduciary and must use best efforts to further the client's interest, including disclosing to the client any material fact that the licensee knows or should know and that is not confidential information. Also, a licensee may not knowingly give false information to any party to a real estate transaction.

Statutory section 4735.61 enacted 1996; § 4735.62 amended 2011.

[Ohio Rev. Code §§ 4735.61, .62 \(2019\)](#)

### Ohio, Limitations on private transfer fees

#### **BENEFICIARY AND USE RESTRICTIONS**

*Prohibited fees*

A transfer fee covenant recorded in Ohio on or after September 13, 2010, does not run with the real property's title and is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee.

### *Relevant definitions*

"Environmental covenant" means:

- a "servitude that imposes activity and use limitations on real property and meets the requirements of section 5301.82 of the Revised Code"; or
- a conservation or agricultural easement.

"Transfer" means the "sale, gift, conveyance, assignment, inheritance, or other transfer" of an ownership interest in Ohio real property.

"Transfer fee" means a fee or charge required by a transfer fee covenant and payable upon the transfer of a real property interest or "payable for the right to make or accept such a transfer," regardless of whether the amount is fixed or determined as a percentage of the property's value, purchase price, or other consideration given for the transfer.

"Transfer fee covenant" means a recorded declaration or covenant that requires or purports to require the payment of a transfer fee to the declarant or another specified person upon a subsequent transfer of a real property interest.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

No relevant provisions were located.

### **TIME LIMITS**

No relevant provisions were located.

### **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory section amended 2012.

[Ohio Rev. Code § 5301.057 \(2019\)](#)

Ohio, Permitted private transfer fees

### **PERMITTED FEES**

*Fees existing before September 13, 2010*

Ohio law is silent regarding the validity of private transfer fees that existed before September 13, 2010. However, the statute prohibits only those transfer fee covenants recorded in Ohio *on or after* September 13, 2010.

*Fees excluded from the definition of "private transfer fee"*

The following are *not* considered to be transfer fees:

- consideration payable by the grantee to the grantor for the real property interest being transferred;
- a "commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the grantor or the grantee, including any subsequent additional commission for that transfer payable by the grantor or the grantee based upon any subsequent appreciation, development, or sale of real property";
- interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a real property mortgage;
- "rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease";
- consideration payable to the holder of a purchase option or a right of first refusal or first offer to purchase a real property interest for waiving, releasing, or not exercising the option or right upon the transfer of the property to another person;
- a "tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority";
- a "fee, charge, assessment, fine, or other amount payable to a homeowners, condominium, cooperative, mobile home, or property owners association pursuant to a declaration or covenant" or applicable law; or
- a payment required pursuant to an "environmental covenant."

## **RECORDING REQUIREMENTS**

No relevant provisions were located.

Statutory section amended 2012.

[Ohio Rev. Code § 5301.057 \(2019\)](#)

## Ohio, Private transfer fee relief provisions

### **VOID PROVISIONS**

Any lien purporting to secure the payment of a transfer fee under a transfer fee covenant recorded in Ohio on or after September 13, 2010, is void.

### **LIABILITY FOR DAMAGES**

No relevant provisions were located.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

### **OTHER RELIEF**

No relevant provisions were located.

Statutory section amended 2012.

[Ohio Rev. Code § 5301.057 \(2019\)](#)



## Oklahoma

### Oklahoma, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Oklahoma, Licensee responsibility

No specifically relevant provisions were located. However, generally, a broker must treat all parties with honesty.

Statutory section amended 2013.

[Okla. Stat. Ann. tit. 59, § 858-353 \(2019\)](#)

### Oklahoma, Limitations on private transfer fees

#### **BENEFICIARY AND USE RESTRICTIONS**

##### *Prohibited fees*

A transfer fee covenant recorded, filed, or entered into in Oklahoma on or after November 1, 2011:

- does not run with the real property's title;
- is not binding on or enforceable against any owner, subsequent owner, purchaser, or mortgagee; and
- is void and unenforceable.

Nothing in the statute described above implies that a transfer fee covenant recorded before November 1, 2011, is valid or enforceable.

### *Relevant definitions*

"Transfer" means the "sale, gift, grant, conveyance, assignment, inheritance, or other transfer" of a real property interest in Oklahoma.

"Transfer fee" means a "fee or charge imposed by a transfer fee covenant."

"Transfer fee covenant" means a provision in a document that:

- "purports to run with the land or bind current owners, purchasers or successors in title to specified real property"; and
- obligates a transferee or transferor "to pay a fee or charge to a third person or entity upon transfer of an interest in all or part of the property, or in consideration for permitting any such transfer."

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

The Oklahoma Legislature finds that public policy favors the transferability of a real property interest "free from unreasonable restraints on alienation and covenants or servitudes that do not touch and concern the property." A transfer fee covenant violates this public policy, regardless of the transfer fee amount.

### **TIME LIMITS**

The Oklahoma Legislature finds that public policy favors the transferability of a real property interest "free from unreasonable restraints on alienation and covenants or servitudes that do not touch and concern the property." A transfer fee covenant violates this public policy, regardless of the covenant's duration.

### **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory section enacted 2011.

[Okla. Stat. Ann. tit. 60, § 350 \(2019\)](#)

Oklahoma, Permitted private transfer fees

### **PERMITTED FEES**

*Existing transfer fees*

Certain private transfer fee obligations imposed before November 1, 2011, *may* be permitted. However, the statutory provision prohibiting new transfer fees explicitly provides that nothing in the section implies that a transfer fee covenant recorded before November 1, 2011, is valid or enforceable.

*Fees not deemed to be private transfer fees*

The following are *not* private transfer fees for the purpose of the statutory provisions prohibiting private transfer fees:

- a tax, assessment, fee, or charge imposed by a governmental authority pursuant to applicable laws;
- a provision of "a purchase contract, option, mortgage, security agreement, real property listing agreement, or other agreement that obligates one party to the agreement to pay the other party as full or partial consideration for the agreement or for a waiver of rights under the agreement" if the amount is a loan assumption fee (or similar fee) and a fee or commission paid to a licensed real estate broker for brokerage services rendered in connection with the property's transfer;
- a provision in a deed or other document recorded in order to provide record notice of certain agreements;
- rent or other amount payable by a lessee to a lessor under a lease;
- consideration payable to the holder of an option to purchase real property;
- consideration payable to the holder of a right of first refusal or first offer to purchase real property and paid for waiving, releasing or not exercising the option or right upon transfer of the property to another person;
- a "fee, charge, assessment, dues, contribution or other amount relating to the purchase or transfer of a club membership related to the real property owner by the transferor";
- a provision of a document requiring payment of a fee or charge to an association comprised of property owners to be used for purposes authorized in the document, as long as no portion of the fee must be passed through to a third party or to an entity designated or identifiable by description; and
- a fee that is "charged as a typical real estate closing cost."

## **RECORDING REQUIREMENTS**

No relevant provisions were located.

Statutory section enacted 2011.

[Okla. Stat. Ann. tit. 60, § 350 \(2019\)](#)

Oklahoma, Private transfer fee relief provisions

## **VOID PROVISIONS**

A transfer fee recorded, filed, or entered into in Oklahoma on or after November 1, 2011:

- does not run with the real property's title;
- is not binding on or enforceable against any owner, subsequent owner, purchaser, or mortgagee; and
- is void and unenforceable.

Nothing in this statutory provision implies that a transfer fee covenant recorded before November 1, 2011, is valid or enforceable.

## **LIABILITY FOR DAMAGES**

No relevant provisions were located.

## **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

## **OTHER RELIEF**

No relevant provisions were located.

Statutory section enacted 2011.

[Okla. Stat. Ann. tit. 60, § 350 \(2019\)](#)

## Oregon

### Oregon, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Oregon, Licensee responsibility

No specifically relevant provisions were located. However, generally, a buyer's agent owes the buyer, other principals and their agents the following duties, among others:

- to "deal honestly and in good faith"; and
- to disclose known material facts that are "not apparent or readily ascertainable."

Similarly, a seller's agent owes the seller, other principals, and their agent the following duties, among others:

- to "deal honestly and in good faith"; and

- to disclose known material facts that are "not apparent or readily ascertainable."

Statutory sections amended 2005.

[Or. Rev. Stat. §§ 696.805, .810 \(2019\)](#)

## Oregon, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

Effective June 17, 2009, an instrument that conveys, or contracts to convey, a fee simple interest in real property may not "cause, or purport to cause, a declaration or covenant to be filed or recorded" against the property, if the declaration or covenant requires a payment to the declarant or another specified person (or their successors or assigns) upon a transfer of a fee simple interest in the property. Such a declaration or covenant is void. This prohibition does not apply to certain specified instruments. (See *Permitted private transfer fees*.)

The restriction applies to:

- any instrument that conveys or contracts to convey a real property interest and that is signed by the transferee on or after June 17, 2009; and
- a declaration or covenant that is filed on or after June 17, 2009.

#### *Relevant definitions*

No relevant definitions were located.

## **PAYEE RESTRICTIONS**

No specifically relevant provisions were located.

## **MAXIMUM FEES**

Prohibited transfer fee covenants are void regardless of the transfer fee amount.

## **TIME LIMITS**

Prohibited transfer fee covenants are void regardless of the covenant's duration.

## **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory section amended 2015.

[Or. Rev. Stat. § 93.269 \(2019\); 2009 Or. Laws ch. 298, § 2 \(H.B. 2481\)](#) (regarding effective date)

[Oregon, Permitted private transfer fees](#)

*Effective until January 1, 2016*

Effective until January 1, 2016, Oregon's prohibition of private transfer fees does *not* apply to the following:



- an instrument that conveys or contracts to convey a fee simple interest in real property and that provides for any consideration payable by a grantee to a grantor for the interest in real property being transferred," including any additional consideration based on any subsequent appreciation, development, or sale of the property;
- a requirement in a mortgage loan agreement for the payment of mortgage principal, interest, and fees upon mortgagee's sale of the property;
- a "limited liability company, limited liability partnership, corporation, joint venture or partnership agreement in which a member, shareholder, joint venturer or partner contributes real property" to the entity;
- an agreement providing for a series of related transfers of the fee simple interest in a real property, provided the agreement identifies the price, all consideration, party names, and other essential terms for each transfer;
- certain affordable housing covenants, servitudes, easements, conditions, or restrictions;
- a requirement for the payment of a fee to specified homeowners' associations; associations of unit owners; managing entities of timeshare plans; other owners' associations governed by recorded covenants, conditions, and restrictions; and agents for certain associations or managing entities; or
- an agreement between a real estate licensee and a grantor or grantee providing for a commission payable to the licensee for the real property transfer.

*Effective as of January 1, 2016*

Effective as of January 1, 2016, Oregon's prohibition of private transfer fees does *not* apply to the following:

- an instrument that conveys or contracts to convey a fee simple interest in real property and that provides for a grantee to pay consideration to a grantor for the real property interest being transferred, including any additional consideration based on any subsequent appreciation, development, or sale of the property;
- a requirement in a mortgage loan agreement for paying mortgage principal, interest, and fees upon mortgagee's sale of the property;
- a "limited liability company, limited liability partnership, corporation, joint venture or partnership agreement in which a member, shareholder, joint venturer or partner contributes real property" to the entity;
- an agreement that provides for a series of related transfers of the fee simple interest in a real property, provided the agreement identifies the price, all consideration, party names, and other essential terms for each transfer;
- certain affordable housing covenants, servitudes, easements, conditions, or restrictions if (a) the proceeds are used exclusively to benefit the property, or to support activities that directly benefit the property's residents; and (b) the instrument is executed by a public body; a federal agency; a public benefit corporation, religious corporation, or foreign corporation, if the corporation's purposes include providing affordable housing for low and moderate income households (or a limited liability company that has a membership composed of such corporations); a consumer housing cooperative; a manufactured dwelling park nonprofit cooperative; or a federally recognized Indian tribe;
- a requirement for the payment of a fee to specified homeowners' associations; associations of unit owners; managing entities of timeshare plans; other owners' associations governed by recorded covenants, conditions, and restrictions; and agents for certain associations or managing entities; or
- an agreement between a real estate licensee and a grantor or grantee that provides for a commission payable to the licensee for the real property transfer.

Statutory section amended 2015.

[Or. Rev. Stat. § 93.269 \(2019\)](#)

## Oregon, Private transfer fee relief provisions

### **VOID PROVISIONS**

A prohibited transfer-fee declaration or covenant is void.

### **LIABILITY FOR DAMAGES**

No relevant provisions were located.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

### **OTHER RELIEF**

No relevant provisions were located.

Statutory section amended 2015.

[Or. Rev. Stat. § 93.269 \(2019\)](#)

## Pennsylvania

### Pennsylvania, Disclosure requirements

### **REQUIRED DISCLOSURES**

### *Sale contracts*

A contract for the sale of real property subject to a private transfer fee obligation must:

- disclose and describe the obligation; and
- contain a statement that private transfer fee obligations are subject to certain statutory restrictions.

If a sale contract does not conform to this requirement:

- the seller may not enforce the contract against the buyer;
- the buyer is not liable to the seller for damages under the contract; and
- the buyer is entitled to the return of all deposits made in connection with the sale.

In this context, "buyer" includes all subsequent buyers, and "seller" includes payees.

### *Recording requirements for existing obligations*

The holder of a private transfer fee obligation imposed before June 24, 2011, must record, within six months after June 24, 2011, a separate "Notice of Private Transfer Fee Obligation" in the office of the recorder of deeds for each county in which the real property is located. The payee may file an amendment to the notice containing new contact information. See "Permitted private transfer fees" for details regarding the recording requirements.

### *Written statements*

A payee must also provide a written statement of the transfer fee payable within 30 days of the date of a written request for the statement.

### **EXCEPTIONS**

No relevant provisions were located.

Statutory sections enacted 2011.

[68 Pa. Cons. Stat. §§ 8106, 8107 \(2019\)](#)

### **Pennsylvania, Licensee responsibility**

No specifically relevant provisions were located. However, generally, a licensee owes consumers the duty to deal honestly and in good faith.

Statutory section amended 2009.

[63 Pa. Stat. § 455.606a\(a\)\(2\) \(2019\)](#)

### **Pennsylvania, Limitations on private transfer fees**

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

A private transfer fee obligation recorded or entered into in Pennsylvania on or after June 24, 2011:

- does not run with the real property's title; and
- is not binding on or enforceable against a subsequent owner, purchaser, or mortgagee.

A private transfer fee obligation recorded or entered into before June 24, 2011, is presumed valid and enforceable, provided it complies with all applicable laws, including § 8106 (regarding required disclosures) and § 8107 (regarding required notice requirements).

#### *Relevant definitions*

"Payee" means a person that "claims the right to receive or collect a private transfer fee payable under a private transfer obligation."

"Private transfer fee" means a fee or charge payable upon the transfer of a real property interest, or payable for the right to make or accept the transfer, if the obligation runs with property's title or otherwise binds the property's subsequent owners, whether the amount is fixed or determined as a percentage of the property's value, purchase price, or other consideration.

"Private transfer fee obligation" means an obligation arising under a declaration or covenant recorded against real property, or under any other contractual agreement or promise, that requires or purports to require the payment of a private transfer fee upon a subsequent transfer of the real property.

"Transfer" means the "sale, gift, conveyance, assignment, inheritance or other transfer" of Pennsylvania real property.

#### **PAYEE RESTRICTIONS**

No relevant provisions were located.

## **MAXIMUM FEES**

The Pennsylvania General Assembly finds that private transfer fee obligations violate Pennsylvania's public policy regardless of the fee's amount or the method by which it is created or imposed.

## **TIME LIMITS**

The Pennsylvania General Assembly finds that private transfer fee obligations violate Pennsylvania's public policy regardless of the obligation's duration.

## **OTHER RELEVANT PROVISIONS**

### *Condominium associations*

A condominium unit owners' association may "impose a capital improvement fee, *but no other fees*, on the resale or transfer of units." (Emphasis added.) A unit's capital improvement fee may not "exceed the annual assessments for general common expense" charged to the unit during the association's most recently completed fiscal year, except that:

- in a resale or transfer of a unit consisting of unimproved real estate, the capital improvement fee may not exceed one-half of the annual assessments for general common expenses charged to the unit during the association's most recently completed fiscal year;
- in a resale or transfer of a unit that was created or added to the condominium pursuant to § 3211 (regarding the conversion and expansion of flexible condominiums) during the association's most recently completed fiscal year, but that did not exist for the entire fiscal year, the capital improvement fee may not exceed one-half of the annual assessments for general common expenses charged to a comparable unit; and
- "capital improvement fees are not refundable upon any sale, conveyance or any other transfer of the title to a unit."

The association must maintain the capital improvement fees in a separate capital account and may use them only for new capital improvements or for replacing or improving existing common elements. The capital improvement fee may *not* be imposed on:

- a gratuitous transfer between specified family members;
- a transfer by foreclosure sale or deed in lieu of foreclosure; or
- a person who acquires a unit "consisting of unimproved real estate and signs and delivers to the association at the time of such person's acquisition a sworn affidavit declaring the person's intention to reconvey such unit within 18 months" and who actually completes the reconveyance within 18 months.

Similar provisions apply to cooperative associations and planned community unit owner's associations.

Statutory sections 3302, 4302, and 5302 amended 2018; §§ 8102, 8103, and 8104 enacted 2011.

[68 Pa. Cons. Stat. §§ 3302\(a\)\(12\), 4302\(a\)\(12\), 5302\(a\)\(12\), 8102, 8103, 8104 \(2019\)](#)

## Pennsylvania, Permitted private transfer fees

### **PERMITTED FEES**

#### *Existing transfer fees*

Certain private transfer fee obligations imposed before June 24, 2011, may be permitted. A private transfer fee obligation recorded or entered into before June 24, 2011, is presumed valid and enforceable, provided it complies with all applicable laws, including § 8106 (regarding required disclosures) and § 8107 (regarding required notice requirements).



The holder of a private transfer fee obligation imposed before June 24, 2011, must record, within six months after June 24, 2011, a separate a "Notice of Private Transfer Fee Obligation." The document must be recorded in the office of the recorder of deeds for each county in which the real property is located and must meet all requirements set forth by statute. The payee may file an amendment to the notice containing new contact information.

*Fees not deemed to be private transfer fees*

The following are *not* private transfer fees for the purpose of the statutory provisions prohibiting private transfer fees:

- consideration payable by the grantee to the grantor for the real property interest being transferred, including additional consideration based on the property's subsequent appreciation, development, or sale, if the additional consideration is "payable on a one-time basis only and the obligation to make the payment does not bind successors in title";
- a "commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the grantor or the grantee," including any additional commission based on the property's subsequent appreciation, development, or sale;
- an interest, charge, or other amount payable to a lender or financial institution pursuant to a "mortgage, deed of trust, lien or security interest in or against real property";
- rent, reimbursements, or other amounts payable by a lessee to a lessor under a lease;
- consideration payable to the holder of an option to purchase real property or the holder of a right of first refusal or first offer to purchase real property for waiving, releasing, or not exercising the option or right upon the real property's transfer to another;

- a "tax, fee, charge, assessment, fine or other amount payable to or imposed by a governmental authority";
- a fee, charge, or other amount payable to a "homeowners', condominium, cooperative, manufactured home or property owners' association and its agent pursuant to a declaration or covenant or law applicable to the association";
- a fee, charge, or other amount that is imposed by a declaration or covenant and payable "solely to a nonprofit corporation, charitable association or charitable trust" that has existed for at least two years and holds certain agricultural conservation or conservation easements;
- a fee, charge, or other amount "pertaining solely to the purchase or transfer of a club membership relating to real property" the member owns; or
- a payment or other amount "due for or upon the removal or extraction of timber, crops or minerals, including oil, gas and water."

## **RECORDING REQUIREMENTS**

The holder of a private transfer fee obligation imposed before June 24, 2011, must record, within six months after June 24, 2011, a separate "Notice of Private Transfer Fee Obligation." The document must be recorded in the office of the recorder of deeds for each county in which the real property is located and must contain:

- the document's title in at least 14-point boldface type;
- the amount, if the private transfer fee is a flat amount, or the percentage or other basis by which the fee is to be calculated;
- if the real property is residential, "actual dollar cost examples of the private transfer fee for a home priced at \$250,000, \$500,000 and \$750,000";

- any date or circumstances pursuant to which the private transfer fee obligation expires;
- the purpose for which the funds will be used;
- the payee's name;
- specific contact information regarding where the funds are to be sent;
- the holder's (or a representative's) acknowledged signature;
- the burdened property's legal description; and
- if more than one person or entity claims the right to receive or collect a private transfer fee, a single person or entity designated as the payee.

The payee may file an amendment to the notice containing new contact information. The amendment must contain:

- recording information of the notice it amends; and
- the burdened property's legal description.

### *Condominium fees*

Subject to certain limitations and restrictions, a condominium unit owners' association may "impose a capital improvement fee, *but no other fees*, on the resale or transfer of units." (Emphasis added.) The capital improvement fee for any unit generally may not "exceed the annual

assessments for general common expense charged to the unit" during the association's most recently completed fiscal year. The association must maintain the capital improvement fees in a separate capital account and may use them only for new capital improvements or for replacing or improving existing common elements.

Similar provisions apply to cooperative associations and planned community unit owner's associations.

Statutory sections 3302, 4302, and 5302 amended 2018; §§ 8103, 8104, and 8107 enacted 2011.

[68 Pa. Cons. Stat. §§ 3302\(a\)\(12\), 4302\(a\)\(12\), 5302\(a\)\(12\), 8103, 8104, 8107 \(2019\)](#)

## Pennsylvania, Private transfer fee relief provisions

### **VOID PROVISIONS**

A private transfer fee obligation recorded or entered into in Pennsylvania on or after June 24, 2011:

- does not run with the real property's title; and
- is not binding on or enforceable against a subsequent owner, purchaser, or mortgagee.

A private transfer fee obligation recorded or entered into before June 24, 2011, is presumed valid and enforceable, provided it complies with all applicable laws, including § 8106 (regarding required disclosures) and § 8107 (regarding required notice requirements).

### **LIABILITY FOR DAMAGES**

A person who records or enters into an agreement imposing a private transfer fee obligation in his or her favor after June 24, 2011, may be liable for:

- damages resulting from the imposition of the private transfer fee obligation on a real property transfer, including, but not limited to, the amount of any transfer fee a party paid; and
- attorneys' fees, expenses, and costs a party or mortgagee incurred to recover a private transfer fee paid or in connection with a quiet title action.

If an agent acts on behalf of a disclosed principal to record or secure a private transfer fee obligation, liability is assessed to the principal, not the agent.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

#### *Failure to record notice*

If a payee fails to file the required notice:

- the grantor of burdened real property may convey a real property interest to a grantee;
- the grantor is "conclusively deemed to have acted in good faith";
- the grantor is not subject to any obligations under the private transfer fee obligation;
- the private transfer fee obligation is null and void; and
- the real property is conveyed free and clear of the private transfer fee and private transfer fee obligation.

If a payee records a materially defective or misleading notice:

- the grantor, upon recording an affidavit, may convey the real property to a grantee without paying the private transfer fee;
- the grantor is not subject to any further obligations under the private transfer fee obligation;
- the private transfer fee obligation is null and void; and
- the property is conveyed free and clear of the private transfer fee and the private transfer fee obligation.

#### **OTHER RELIEF**

##### *Failure to respond to written request*

If the payee fails to provide a written statement of the transfer fee within 30 days of the date of a written request for the information:

- the grantor, upon recording an affidavit, may convey the real property to a grantee without paying the private transfer fee;
- the grantor is not subject to any further obligations under the private transfer fee obligation;
- the private transfer fee obligation is null and void; and
- the real property is conveyed free and clear of the private transfer fee and the private transfer fee obligation.

The affidavit must be recorded in the office of the recorder of deeds for each county in which the real property is located before or simultaneously with a conveyance of the subject real property. The affidavit must state that the affiant has actual knowledge of and is competent to testify to the facts in the affidavit and must contain:

- the burdened real property's legal description;
- the record owner's name;
- a reference by recording information to the instrument containing the private transfer fee obligation; and
- an "acknowledgment that the affiant is testifying under penalty of perjury."

A filed affidavit constitutes prima facie evidence that either:

- the payee has failed to comply with the recording requirement set forth in § 8107(a); or
- a request for the written statement of the private transfer fee was sent to the payee at the address indicated, and the payee failed to provide the statement within 30 days of the date of the notice was sent.

*Failure to disclose in sale contract*

A contract for the sale of real property subject to a private transfer fee obligation must:

- disclose and describe the private transfer fee obligation; and

- contain a statement that private transfer fee obligations are subject to certain statutory restrictions.

If a sale contract does not conform to this requirement:

- the seller may not enforce the contract against the buyer;
- the buyer is not liable to the seller for damages under the contract; and
- the buyer is entitled to the return of all deposits made in connection with the sale.

In this context, "buyer" includes all subsequent buyers, and "seller" includes payees.

If a private transfer fee obligation is not appropriately disclosed and a buyer discovers its existence after title has passed to the buyer, the buyer may be awarded:

- damages resulting from the failure to disclose the private transfer fee obligation, including the amount of any private transfer fee the buyer paid, or the difference between the property's market value if it were not subject to a private transfer fee obligation and the property's market value as subject to a private transfer fee obligation; and
- attorneys' fees, expenses, and costs the buyer incurred seeking the above remedies.

A provision in a sale contract that purports to waive these rights is void.

Statutory sections enacted 2011.

[68 Pa. Cons. Stat. §§ 8104, 8105, 8106, 8107 \(2019\)](#)



## Puerto Rico

### Puerto Rico, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Puerto Rico, Licensee responsibility

No specifically relevant provisions were located. However, generally, a licensee may not deliberately conceal essential information regarding a property's *condition*, with the purpose of inducing a party to conclude the transaction in certain terms that, if he had been aware of the information, he would not have completed the transaction or would have paid a lower price. Nothing specifies whether this restriction applies only to physical conditions.

Statutory section amended 2014.

P.R. Laws tit. 20, § 3054 (LexisNexis 2019) (as amended by [2014 P.R. Leyes 97](#) (not readily available in English))

### Puerto Rico, Limitations on private transfer fees

No relevant provisions were located.

### Puerto Rico, Permitted private transfer fees

No relevant provisions were located.

### Puerto Rico, Private transfer fee relief provisions

No relevant provisions were located.

## Rhode Island

### Rhode Island, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Rhode Island, Licensee responsibility

No specifically relevant provisions were located. However, a designated client representative must promote his or her client's best interest "in good faith and honesty" and perform agreed upon ministerial acts with "honesty, good faith, reasonable skill and care." A transaction facilitator

similarly owes a customer the duty to perform agreed upon ministerial acts with "honesty, good faith, reasonable skill and care."

Statutory sections amended 2014.

[R.I. Gen. Laws §§ 5-20.6-4, -5 \(2019\)](#)

## Rhode Island, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

Effective July 1, 2012, no person or business entity that sells real property may "charge, collect, receive, or be entitled to a fee based solely" on the property's subsequent resale or transfer. This prohibition includes fees a real estate developer imposes on the property's subsequent resale or transfer.

Any covenant recorded on or after July 1, 2012, that imposes a charge or fee that violates this statutory prohibition on transfer fees is void and unenforceable against any subsequent owner, purchaser, or mortgagee.

#### *Relevant definitions*

No relevant provisions were located.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

## **MAXIMUM FEES**

No relevant provisions were located.

## **TIME LIMITS**

No relevant provisions were located.

## **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory section enacted 2012.

[R.I. Gen. Laws § 34-11-42 \(2019\)](#)

Rhode Island, Permitted private transfer fees

## **PERMITTED FEES**

*Existing transfer fees*

No relevant provisions were located. However, the statutory provision that renders transfer fees void applies only to covenants recorded on or after July 1, 2012.

*Fees not deemed to be private transfer fees*

The following are exempt from Rhode Island's transfer fee prohibition:

- a housing development that is "covered by the definition in subdivision 45-53-3(9)" (regarding "low or moderate income housing");
- a fee or charge connected with the transfer of properties with a conservation restriction; and
- "community associations, including, but not limited to, condominium associations, homeowners associations and cooperative associations."

### **RECORDING REQUIREMENTS**

No relevant provisions were located.

Statutory section enacted 2012.

[R.I. Gen. Laws § 34-11-42 \(2019\)](#)

Rhode Island, Private transfer fee relief provisions

### **VOID PROVISIONS**

Any covenant recorded on or after July 1, 2012, that imposes a charge or fee that violates the state's statutory prohibition on transfer fees is void and unenforceable against any subsequent owner, purchaser, or mortgagee.

### **LIABILITY FOR DAMAGES**

No relevant provisions were located.

## **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

## **OTHER RELIEF**

No relevant provisions were located.

Statutory section enacted 2012.

[R.I. Gen. Laws § 34-11-42 \(2019\)](#)

## South Carolina

### South Carolina, Disclosure requirements

## **REQUIRED DISCLOSURES**

In order for a transfer fee covenant recorded before February 1, 2012, to be valid and enforceable, a separate disclosure document must be filed in each county in which the real property subject to the transfer fee covenant is located. The document, which must have been recorded within 180 days of February 1, 2012, must contain the following:

- the title "Notice of Transfer Fee Covenant" in at least 14-point boldface type;
- the amount or method of calculating the transfer fee;
- dollar-cost examples for a home priced \$250,000, \$500,000, and \$750,000;
- any date or circumstances pursuant to which the transfer fee covenant expires; and

- instructions and contact information concerning the payment of the fee.

## **EXCEPTIONS**

No relevant provisions were located.

Statutory section enacted 2012.

[S.C. Code § 27-1-70 \(2019\)](#)

### South Carolina, Licensee responsibility

No specifically relevant provisions were located. However, effective January 1, 2017, a buyer's agent generally must disclose to the buyer all material adverse facts concerning the transaction that are actually known to the licensee. Also, a licensee must treat all parties honestly and may not knowingly give them false or misleading information about the property's condition that is known to the licensee.

A transaction broker has the duty of honesty and fair dealing and must disclose "material adverse facts that affect the transaction, or the value or condition of the real property and that are not readily ascertainable." A licensee offering services to a customer must be "fair and honest and provide accurate information in all dealings."

Statutory section rewritten and renumbered 2016.

[S.C. Code §§ 40-57-350\(E\), \(G\), \(L\) \(2019\)](#)

### South Carolina, Limitations on private transfer fees

## **BENEFICIARY AND USE RESTRICTIONS**

### *Prohibited fees*

South Carolina's General Assembly has found that the state's public policy favors the transferability of real property interests "free from unreasonable restraints on alienation and covenants or servitudes that do not touch and concern the property." A transfer fee covenant violates this public policy by impairing an affected property's marketability of title and constitutes an unreasonable restraint on alienation. Therefore, a transfer fee covenant recorded after February 1, 2012, or a lien that purports to secure the payment of a transfer fee, is not binding on or enforceable against the real property or any subsequent owner, purchaser, or mortgagee.

### *Relevant definitions*

"Association" means a "nonprofit, mandatory membership organization comprised of owners of homes, condominiums, cooperatives, manufactured homes, or any interest in real property, created pursuant to a declaration, covenant, or other applicable law."

"Transfer" means the "sale, gift, grant, conveyance, assignment, inheritance, or other transfer" of an interest in South Carolina real property.

"Transfer fee" means a fee or charge imposed by a transfer fee covenant, except certain specified taxes or charges.

"Transfer fee covenant" means a provision in a document that "purports to run with the land or bind current owners or successors in title" to South Carolina real property and that obligates a transferee or transferor to pay a fee or charge to a third person upon transfer of an interest in the property, or in consideration for permitting a transfer.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

## **MAXIMUM FEES**

A transfer fee covenant impairs the property's marketability of title and constitutes an unreasonable restraint on alienation, regardless of the transfer fee amount.

## **TIME LIMITS**

A transfer fee covenant impairs the property's marketability of title and constitutes an unreasonable restraint on alienation, regardless of the covenant's duration.

## **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory section enacted 2012.

[S.C. Code § 27-1-70 \(2019\)](#)

South Carolina, Permitted private transfer fees

## **PERMITTED FEES**

*Existing transfer fees*

Certain private transfer fee obligations imposed before February 1, 2012, may be permitted. In order for a transfer fee covenant recorded before February 1, 2012, to be valid and enforceable, a separate disclosure document must be filed in each county in which the real property is located.

*Fees not deemed to be private transfer fees*



The definition of "transfer fee" explicitly excludes "any tax, assessment, fee, or charge imposed by a governmental authority pursuant to applicable laws, ordinances, or regulations." Also, a "transfer fee covenant" does *not* include:

- a provision of a purchase contract, option, mortgage, or other agreement that obligates one party to pay the other party, as consideration for the agreement or for a waiver of rights under the agreement, an amount determined by the agreement, if that amount:
  - is payable on a one-time basis only upon the next transfer of an interest in the property and, once paid, does not bind the property's successors in title;
  - is a loan assumption or similar fee charged by a lender with a lien on the property;
  - constitutes a fee or commission paid to a licensed real estate broker for brokerage services rendered in connection with the property's transfer; or
  - is the actual cost to copy governing documents of a community association and is charged to a transferee or transferor for governing documents delivered to a real estate closing, provided the cost is not passed through to a third party other than the association's agent;
- a provision in a deed, memorandum, or other document recorded to provide notice of an agreement described above;
- a provision requiring payment of a fee or charge to an association "to be used exclusively for purposes authorized in the document if no portion of the fee is required to be passed through to a third party designated or identifiable by description in the document or another document referenced in it";
- a provision requiring payment of a fee or charge to certain nonprofit organizations "to be used exclusively to support cultural, educational, charitable, recreational, environmental,

conservation, social, or other similar activities benefiting the real property affected by the provision or the community of which the property is a part"; or

- a fee or other amount payable in connection with a conservation or preservation easement, whether such easement is donated or purchased.

### **RECORDING REQUIREMENTS**

In order for a transfer fee covenant recorded before February 1, 2012, to be valid and enforceable, a separate disclosure document must be filed within 180 days of February 1, 2012, in each county in which the real property subject to the transfer fee covenant is located.

Statutory section enacted 2012.

[S.C. Code § 27-1-70 \(2019\)](#)

South Carolina, Private transfer fee relief provisions

### **VOID PROVISIONS**

A transfer fee covenant recorded after February 1, 2012, or a lien that purports to secure the payment of a transfer fee, is not binding on or enforceable against the affected real property or against any subsequent owner, purchaser, or mortgagee.

### **LIABILITY FOR DAMAGES**

No relevant provisions were located.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

In order for a transfer fee covenant recorded before February 1, 2012, to be valid and enforceable, a separate disclosure document must be filed within 180 days of February 1, 2012, in each county in which the real property is located.

## **OTHER RELIEF**

No other relief provisions were located.

Statutory section enacted 2012.

[S.C. Code § 27-1-70 \(2019\)](#)

## South Dakota

### South Dakota, Disclosure requirements

## **REQUIRED DISCLOSURES**

### *Disclosure of private transfer fee obligations*

For residential real property transfers subject to the state's seller disclosure requirements set forth in §§ 43-4-38 to 43-4-44, a seller must disclose private transfer fee obligations on the seller's property condition disclosure statement. Effective July 1, 2011, South Dakota's property condition disclosure statement requires a seller to disclose whether he or she is "aware of any private transfer fee obligations . . . that would require a buyer or seller of the property to pay a fee or charge upon the transfer of the property," regardless of whether the fee amount is fixed or determined as a percentage of the property's value.

For real property transfers not subject to the disclosure requirements set forth in §§ 43-4-38 to 43-4-44, a seller must furnish a purchaser with a written statement that:

- discloses and describes the private transfer fee obligation;

- includes a statement that private transfer fee obligations are subject to certain statutory prohibitions; and
- the following statement:

A private transfer fee obligation has been imposed with respect to this property. A private transfer obligation may lower the value of this property. State law prohibits the creation of private transfer fee obligations pursuant to § 43-4-49 and requires certain notice procedures to be followed with respect to private transfer fee obligations pursuant to §§ 43-4-52 to 43-4-57, inclusive.

*Recorded notice of private transfer fee obligation*

The receiver of a private transfer fee obligation imposed before July 1, 2011, must record a separate "Notice of Private Transfer Fee Obligation" before December 31, 2011. The document must be recorded in the office of the register of deeds in the county in which the real property is located and must meet certain requirements specified by statute. See "Permitted private transfer fees" for details regarding the recording requirements.

*Written statement of private transfer fee*

If a payee fails to provide a written statement of the transfer fee payable within 30 days of the date of a written request for the statement, the grantor, upon recording an affidavit:

- may convey the real property to a grantee without paying the transfer fee; and
- is not subject to any further obligation under the private transfer fee obligation.

In that case, the real property may be conveyed free and clear of the transfer fee and private transfer fee obligation.

**EXCEPTIONS**

No relevant provisions were located.

Statutory section 43-4-44 amended 2020; §§ 43-4-51, -52, and -52 enacted 2011.

[S.D. Codified Laws §§ 43-4-44, -51, -52, -55 \(2020\)](#)

## South Dakota, Licensee responsibility

No specifically relevant provisions were located. However, generally, a buyer's agent must disclose to his or her client known adverse material facts. Also, although a seller's agent owes no fiduciary duty to a customer, the licensee must disclose all known adverse material facts to any customer.

Statutory sections enacted 1998.

[S.D. Codified Laws §§ 36-21A-134, -136 \(2020\)](#)

## South Dakota, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

A private transfer fee obligation recorded or entered into in South Dakota "after June 30, 2011":

- does not run with the real property's title;
- is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee;  
and
- is void and unenforceable.

No private transfer fee obligation recorded or entered into in South Dakota "before June 30, 2011," is presumed valid and enforceable.

*Relevant definitions*

"Transfer" means the "sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest" in South Dakota real property.

"Private transfer fee" means a fee or charge required by a private transfer fee obligation and payable upon the transfer of real property, or payable for the right to make or accept such transfer, whether the amount is fixed or a percentage of the property's value, purchase price, or other consideration.

"Private transfer fee obligation" means an obligation arising under a declaration or covenant recorded against real property, or under any other contractual agreement or promise that "requires or purports to require the payment of a private transfer fee to the declarant" or other specified person upon the property's subsequent transfer.

**PAYEE RESTRICTIONS**

No relevant provisions were located.

**MAXIMUM FEES**

No relevant provisions were located.

**TIME LIMITS**

No relevant provisions were located.

## **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory sections enacted 2011.

[S.D. Codified Laws §§ 43-4-46, -47, -48, -49 \(2020\)](#)

## South Dakota, Permitted private transfer fees

### **PERMITTED FEES**

#### *Existing transfer fees*

Certain private transfer fee obligations imposed before June 30, 2011, may be permitted. For any private transfer fee obligation imposed before July 1, 2011, the receiver of the fee must record a separate "Notice of Private Transfer Fee Obligation" before December 31, 2011. The document must be recorded in the office of the register of deeds in the county in which the real property is located and must meet all requirements set forth by statute.

A private transfer fee obligation recorded or entered into in South Dakota "after June 30, 2011":

- does not run with the real property's title;
- is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee;  
and
- is void and unenforceable.

No private transfer fee obligation recorded or entered into in South Dakota "before June 30, 2011," is presumed valid and enforceable.

*Fees not deemed to be private transfer fees*

The following are *not* private transfer fees for the purpose of the statutory provisions prohibiting private transfer fees:

- consideration payable by a grantee to a grantor for the real property interest being transferred, including additional consideration based on the property's subsequent appreciation, development, or sale, provided the additional consideration "is payable on a onetime basis only and the obligation to make such payment does not bind successors in title";
- a "commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the grantor or the grantee," including any additional commission based on the property's subsequent appreciation, development, or sale;
- interest, charges, or other amounts payable by a borrower to a lender pursuant to a mortgage loan;
- any rent, reimbursement, or other amount payable by a lessee to a lessor under a lease;
- consideration payable to the holder of an option to purchase real property or the holder of a right of first refusal or first offer to purchase real property for waiving, releasing, or not exercising the option or right upon the property's transfer to another;
- a "tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority";



- a fee, charge, or other amount payable to a "homeowners', condominium, cooperative, mobile home, or property owners' association pursuant to a declaration or covenant or law applicable to such association"; or
- a fee, charge, dues, or other amount "pertaining to the purchase or transfer of a club membership relating to real property" the member owned.

### **RECORDING REQUIREMENTS**

The receiver of a fee pursuant to a private transfer fee obligation imposed before July 1, 2011, must record a separate "Notice of Private Transfer Fee Obligation" before December 31, 2011. The document must be recorded with the register of deeds in the county in which the real property is located and must meet the following requirements:

- the document's title must be in at least 14-point boldface type;
- the amount, if the fee is a flat amount, or the percentage of the sales price or other basis by which the transfer fee is to be calculated;
- for residential real property, dollar-cost examples of the transfer fee for a home priced at \$100,000, \$250,000, and \$500,000;
- any date or circumstances under which the private transfer fee obligation expires;
- the purpose for which the funds will be used;
- the name of the person to which funds are to be paid;
- specific information regarding where the funds are to be sent;

- the payee's acknowledged signature; and
- the burdened property's legal description.

The person to whom the transfer fee is to be paid may file an amendment to the notice of transfer fee containing new contact information. The amendment must contain:

- the recording information of the notice it amends; and
- the burdened property's legal description.

Statutory sections enacted 2011.

[S.D. Codified Laws §§ 43-4-47, -49, -52, -53 \(2020\)](#)

## South Dakota, Private transfer fee relief provisions

### **VOID PROVISIONS**

A private transfer fee obligation recorded or entered into in South Dakota "after June 30, 2011":

- does not run with the title to real property;
- is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee; and
- is void and unenforceable.

No private transfer fee obligation recorded or entered into in South Dakota "before June 30, 2011," is presumed valid and enforceable.

### **LIABILITY FOR DAMAGES**

A person who records or enters into an agreement imposing a private transfer fee obligation in that person's favor after June 30, 2011, is liable for damages resulting from the imposition of the transfer fee obligation on a real property transfer, including:

- any transfer fee paid by a party to the transfer; and
- attorneys' fees, expenses, and costs incurred by a party or a mortgagee to recover any transfer fee paid or in connection with a quiet title action.

If an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability is assessed to the principal, not the agent.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

#### *Failure to record notice*

If a payee fails to comply fully with the recording requirements set forth in § 43-4-52, the grantor of any burdened real property:

- may convey the real property to a grantee;
- is deemed to have acted in good faith; and

- is not subject to the private transfer fee obligation.

In that case, the real property may thereafter be conveyed free and clear of the transfer fee and the private transfer fee obligation.

## **OTHER RELIEF**

### *Failure to respond to written request*

If a payee fails to provide a written statement of the transfer fee payable within 30 days of the date of a written request for the statement, the grantor, upon recording an affidavit:

- may convey the real property to a grantee without paying the transfer fee; and
- is not subject to any further obligation under the private transfer fee obligation.

In that case, the real property may be conveyed free and clear of the transfer fee and the private transfer fee obligation.

The affidavit must be recorded in the office of the register of deeds in the county in which the real property is located before or simultaneously with a conveyance of the real property. The affidavit must state that the affiant has actual knowledge of, and is competent to testify to, the facts in the affidavit and must include:

- the property's legal description;
- the owner's name;

- a reference to the recorded instrument containing the private transfer fee obligation; and
- an "acknowledgment that the affiant is testifying under penalty of perjury."

A recorded affidavit constitutes prima facie evidence that:

- a request for the written statement of the transfer fee payable was sent to the address indicated in the notification; and
- the person listed on the notice of transfer fee failed to provide the written statement within 30 days of the date of the notice.

Statutory sections enacted 2011.

[S.D. Codified Laws §§ 43-4-49, -50, -54, -55, -56, -57 \(2020\)](#)

## Tennessee

### Tennessee, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Tennessee, Licensee responsibility

No specifically relevant provisions were located. However, generally, a licensee must disclose to each party any known adverse facts.

Statutory section amended 1996.

Tenn. Code § 62-13-403 (LexisNexis 2018)

## Tennessee, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

A transfer fee covenant recorded after June 10, 2011, or any lien that purports to secure the payment of a transfer fee, is not binding on or enforceable against real property or any subsequent owner, purchaser, or mortgagee.

This provision does *not* "imply that a transfer fee covenant recorded prior to June 10, 2011 is valid or enforceable."

#### *Relevant definitions*

"Association" means a "nonprofit, mandatory membership organization comprised of owners of homes, condominiums, cooperatives, manufactured homes, or any interest in real property, created pursuant to a declaration, covenant, or other applicable law."

"Transfer" means the "sale, gift, grant, conveyance, assignment, inheritance, or other transfer" of Tennessee real property.

"Transfer fee" means a "fee or charge imposed by a transfer fee covenant."

"Transfer fee covenant" means a "provision in a document . . . that purports to run with the land or bind current owners or successors in title to specified" Tennessee real property and that obligates a transferee or transferor to pay a fee to a third person upon the property's transfer, or in consideration for permitting any such transfer.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

A transfer fee covenant violates Tennessee public policy, regardless of the fee's amount.

### **TIME LIMITS**

A transfer fee covenant violates Tennessee public policy, regardless of the covenant's duration.

### **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory sections enacted 2011.

Tenn. Code Ann. §§ 66-37-102, -103, -104 (LexisNexis 2018)

[Tennessee, Permitted private transfer fees](#)

### **PERMITTED FEES**

*Existing transfer fees*

Certain private transfer fee obligations imposed before June 10, 2011, may be permitted. A transfer fee covenant recorded after June 10, 2011, or any lien that purports to secure the payment of a transfer fee, is not binding on or enforceable against real property or any subsequent owner, purchaser, or mortgagee.

This provision does *not* "imply that a transfer fee covenant recorded prior to June 10, 2011 is valid or enforceable."

*Fees not deemed to be private transfer fees*

The following are *not* private transfer fees for the purpose of the statutory provisions prohibiting private transfer fees:

- "any tax, assessment, fee or charge imposed by a governmental authority pursuant to applicable laws, ordinances, or regulations";
  
- a provision of a "purchase contract, option, mortgage, security agreement, real property listing agreement, or other agreement that obligates one party to the agreement to pay the other, as full or partial consideration for the agreement or for a waiver of rights under the agreement, an amount determined by the agreement," provided that amount:
  - is "payable on a one-time basis only upon the next transfer of an interest in the specified real property" and, once paid, does not bind successors;
  
  - constitutes a loan assumption or similar fee charged by a lender with a lien on the property; or
  
  - constitutes a "fee or commission paid to a licensed real estate broker for brokerage services rendered in connection with the transfer of the property for which the fee or commission is paid";
  
- a fee charged by an association for a service rendered contemporaneously with the fee's imposition, provided the fee is not to be passed through to a third party (other than an agent of the association);



- a provision in a deed, memorandum, or other document recorded to provide notice of an agreement described above;
- a provision of a document requiring payment of a fee or charge to an association (or its managing agent) to be used exclusively for purposes authorized in the document, as long as no portion of the fee must be passed through to a designated third party; or
- a provision of a document requiring payment of a fee to certain nonprofit organizations, to be "used exclusively to support cultural, educational, charitable, recreational, environmental, conservation, or other similar activities" benefiting the affected real property or the property's community.

### **RECORDING REQUIREMENTS**

No relevant provisions were located.

Statutory sections enacted 2011.

Tenn. Code Ann. §§ 66-37-102, -104 (LexisNexis 2018)

[Tennessee, Private transfer fee relief provisions](#)

### **VOID PROVISIONS**

A transfer fee covenant recorded after June 10, 2011, or any lien that purports to secure the payment of a transfer fee, is not binding on or enforceable against real property or any subsequent owner, purchaser, or mortgagee.

### **LIABILITY FOR DAMAGES**

No relevant provisions were located.

## **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

## **OTHER RELIEF**

No relevant provisions were located.

Statutory section enacted 2011.

Tenn. Code Ann. § 66-37-104 (LexisNexis 2018)

## Texas

### Texas, Disclosure requirements

## **REQUIRED DISCLOSURES**

### *Continuation of existing private transfer fee obligations*

A receiver of a private transfer fee pursuant to a private transfer fee obligation created before June 17, 2011, must, on or before January 31, 2012, record a "Notice of Private Transfer Fee Obligation." The document must be recorded in the real property records of each county in which the property is located and must meet certain requirements specified by statute. See "Permitted private transfer fees" for details regarding the notice's recording requirements.

Multiple payees of a single private transfer fee under a private transfer fee obligation must designate one payee as the payee of record.

### *Disclosure of existing fee in sale contract*

A seller of real property that may be subject to a private transfer fee obligation must provide written notice to a potential purchaser stating that the obligation may be governed by Subchapter G of Chapter 5 of the Texas Property Code. This provision applies only to a sale contract entered into on or after January 1, 2012.

### **EXCEPTIONS**

No relevant provisions were located.

### **OTHER RELEVANT PROVISIONS**

Resale certificates required for subdivisions with a property owners' association that may levy regular or special assessments must contain, among other disclosures, "the amount of any administrative transfer fee charged by the property owners' association for a change of ownership of property in the subdivision." (As of September 1, 2015, this requirement does not apply to a condominium council of owners governed by Chapter 81 or a condominium unit owners' association governed by Chapter 82 of the Texas Property Code.) No later than the seventh business day after a written request for an update of a resale certificate is received from an owner (or his or her agent or title insurance company), the property owners' association must deliver an updated resale certificate that contains, among other things, any changes to the information contained in the resale certificate.

Statutory sections 5.203 and 5.205 enacted 2011; § 207.003 amended 2011; § 207.002 amended 2015.

[Tex. Prop. Code §§ 207.002, .003\(b\); 5.203, .205 \(2019\); H.B. 8, § 3, 82nd Leg., Reg. Sess. \(Tex. 2011\)](#) (regarding applicability)

### [Texas, Licensee responsibility](#)

No specifically relevant provisions were located.

### [Texas, Limitations on private transfer fees](#)

## **BENEFICIARY AND USE RESTRICTIONS**

### *Prohibited fees*

Except as otherwise provided, a private transfer fee obligation created on or after June 17, 2011, is:

- not binding or enforceable against a subsequent owner or purchaser of a real property interest; and
- void.

### *Relevant definitions*

"Encumbered property" means "all property, including the property of a subsequent purchaser, subject to the same private transfer fee obligation."

"Payee" means "a person who claims the right to receive or collect a private transfer fee payable under a private transfer fee obligation and who may or may not have a pecuniary interest in the obligation."

"Private transfer fee" means an amount that is payable upon the transfer of a real property interest or payable for a right to make or accept a transfer.

"Private transfer fee obligation" means "an obligation to pay a private transfer fee" created pursuant to:

- a recorded declaration or other covenant;

- a "contractual agreement or promise"; or
- an "unrecorded contractual agreement or promise."

"Subsequent purchaser" means a person who "purchases real property from a person other than the person who is the seller on the date the private transfer fee obligation is created." The term includes a lender that provides a mortgage loan to a subsequent purchaser.

"Transfer" means the "sale, gift, conveyance, assignment, inheritance, or other transfer" of a real property ownership interest.

#### **PAYEE RESTRICTIONS**

No relevant provisions were located.

#### **MAXIMUM FEES**

No relevant provisions were located.

#### **TIME LIMITS**

No relevant provisions were located.

#### **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory section 5.201 amended 2011; § 5.202 amended 2017.

[Tex. Prop. Code §§ 5.201, .202 \(Tex. 2019\)](#)

## Texas, Permitted private transfer fees

### **PERMITTED FEES**

#### *Existing transfer fees*

Certain private transfer fee obligations imposed before June 17, 2011, may be permitted. The receiver of a private transfer fee created before June 17, 2011, must file, on or before January 31, 2012, a "Notice of Private Transfer Fee Obligation." The document must be filed in the real property records of each county in which the property is located and must meet all requirements set forth by statute.

Multiple payees of a single private transfer fee must designate one payee as the payee of record. The payee of record must accept a payment on or before the 30th day after the date the payment is tendered.

A seller of real property that may be subject to a private transfer fee obligation must provide written notice to a potential purchaser stating that the obligation may be governed by subchapter G of chapter 5 of the Texas Property Code. Section 5.205 of the Property Code applies only to sale contracts entered into on or after January 1, 2012.

#### *Fees not deemed to be private transfer fees*

The following are *not* private transfer fees for the purpose of the statutory provisions prohibiting private transfer fees:

- consideration paid by a purchaser to a seller for a real property interest, including consideration paid to a seller for the property's appreciation, development, or sale after the property interest has been transferred to the purchaser, provided "the additional

consideration is paid only once and that payment does not bind successors in interest to the property to any private transfer fee obligation";

- a "commission paid to a licensed real estate broker under a written agreement between a seller or purchaser and the broker," including an additional commission for the property's subsequent appreciation, development, or sale;
- interest, fee, or other payment to a lender pursuant to a mortgage loan;
- rent, reimbursement, or other payment to a lessor under a lease;
- consideration paid to the holder of an option to purchase real property, or to the holder of a right of first refusal or first offer to purchase real property, for waiving, releasing, or not exercising the option or right when the property is transferred to another;
- a "fee payable to or imposed by a governmental entity in connection with recording" a property transfer;
- dues, fees, or other payments pursuant to a declaration or other covenant or under law, provided that "no portion of the fee or charge is required to be passed through" to a designated third party, unless paid to certain specified associations;
- dues, fees, or other payments for the "transfer of a club membership related to the property";
- dues, fees, or other payments paid to certain nonprofit organizations, provided the organization uses the payments to benefit the encumbered property by supporting or maintaining the encumbered property, constructing or repairing improvements to the encumbered property, or "providing activities or infrastructure to support quality of life, including cultural, educational, charitable, recreational, environmental, and conservation activities and infrastructure, that directly benefit the encumbered property"; or

- a fee payable to or imposed by the Veterans' Land Board for consent to an assumption or transfer of a sale contract.

## **RECORDING REQUIREMENTS**

A person who receives a private transfer fee under a private transfer fee obligation created before June 17, 2011, must, on or before January 31, 2012, file for record a "Notice of Private Transfer Fee Obligation" in the real property records of each county in which the property is located. Multiple payees of a single private transfer fee must designate one payee as the payee of record.

The notice must:

- be printed in at least 14-point boldface type;
- state the fee amount and method of determination, if applicable;
- state any date or circumstance under which the private transfer fee obligation expires;
- state the purpose for which the funds will be used;
- state each payee's name and contact information;
- state the payee-of-record's name and address;
- include each payee's acknowledged signature; and
- state the subject property's legal description.



A person required to file the above notice must:

- refile the notice no earlier than the 30th day before the third anniversary of the original filing date and within a "similar 30-day period every third year thereafter"; and
- amend the notice to reflect any change in the payee's name or address no later than the 30th day after the date the change occurs.

The amendment must include:

- the original notice's recording information; and
- the subject property's legal description.

Statutory sections enacted 2011; § 5.02 amended 2017.

[Tex. Prop. Code §§ 5.202, .203, .204, .205 \(2019\); H.B. 8, § 3, 82nd Leg., Reg. Sess. \(Tex. 2011\)](#) (regarding applicability)

## Texas, Private transfer fee relief provisions

### **VOID PROVISIONS**

Except as otherwise provided, a private transfer fee obligation created on or after June 17, 2011, is:

- not binding or enforceable against a subsequent owner or purchaser of a real property interest; and

- void.

### **LIABILITY FOR DAMAGES**

The attorney general may:

- institute an action for injunctive or declaratory relief to restrain a violation of the state's statutes prohibiting private transfer fees; and
- institute an action for civil penalties against a payee.

Generally, the civil penalty may not exceed an amount equal to two times the amount of the prohibited private transfer fee charged or collected.

If the court finds that a payee violated the private transfer fee provisions "with a frequency that constitutes a pattern or practice," the court may assess a civil penalty of up to \$250,000.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

#### *Failure to record notice*

If a person required to file a notice required by § 5.203 fails to comply with the notice requirement,

- payment of the private transfer fee may not be a requirement for the conveyance of a real property interest to a purchaser;
- the property "is not subject to further obligation under the private transfer fee obligation"; and

- the obligation is void.

## **OTHER RELIEF**

### *Failure to accept payment*

The payee must accept a transfer fee payment on or before the 30th day after the remitter tenders the payment to the payee. If the payee fails to comply with this requirement:

- the payment must be returned to the remitter;
- payment of the private transfer fee is not a requirement for the property's conveyance to a purchaser; and
- the property is no longer subject to the private transfer fee obligation.

### *Waiver void*

A provision that purports to waive a purchaser's rights under subchapter G is void.

Statutory section 5.202 amended 2017; §§ 5.203, 5.204, 5.206, and 5.207 enacted 2011.

[Tex. Prop. Code §§ 5.202, .203, .204, .206, .207 \(2019\)](#)

Utah

Utah, Disclosure requirements

## **REQUIRED DISCLOSURES**

A transfer fee covenant recorded on or after March 16, 2010, is void and unenforceable, so no disclosure or notice requirements apply to new transfer fee covenants.

A reinvestment fee covenant recorded *on or after* March 16, 2010, is void and unenforceable unless a separate notice is recorded in the recorder's office of each county in which any of the burdened property is located. See "Permitted private transfer fees" for additional details regarding the recorded notice.

Similarly, a reinvestment or transfer fee covenant recorded *before* March 16, 2010, is not enforceable after May 31, 2010, unless:

- a notice consistent with the notice described in § 57-1-46(6) is recorded in the recorder's office in each county in which any of the burdened property is located; or
- a notice of reinvestment fee covenant or transfer fee covenant, as described in § 57-1-46(7)(b), is recorded in the recorder's office in each county in which any of the burdened property is located.

See "Permitted private transfer fees" for additional details regarding the recorded notices.

## **EXCEPTIONS**

No relevant provisions were located.

Statutory section enacted 2010.

[Utah Code § 57-1-46\(2\), \(6\), \(7\) \(2020\)](#)

## Utah, Licensee responsibility

No specifically relevant provisions were located. However, Utah's regulations provide that an individual licensee has a duty of "full disclosure, which obligates the agent to inform the principal of any material fact the agent learns" about the other party or the transaction.

Regulatory chapter amended 2019.

See [Utah Admin. Code r. 162-2f-401a \(2020\)](#)

## Utah, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

A transfer fee covenant recorded on or after March 16, 2010, is void and unenforceable.

#### *Relevant definitions*

"Association expenses" means expenses a common interest association incurred for:

- administering the common interest association;
- the "purchase, ownership, leasing, construction, operation, use, administration, maintenance, improvement, repair, or replacement of association facilities";
- "providing, establishing, creating, or managing a facility, activity, service, or program for the benefit of property owners, tenants, common areas, the burdened property, or property governed by the common interest association"; or

- other facilities, activities, services, or programs that are required or permitted under the common interest association's organizational documents.

"Association facilities" means real property, improvements, or personal property "owned, leased, constructed, developed, managed, or used by a common interest association, including common areas."

"Burdened property" means the real property subject to a reinvestment fee covenant or transfer fee covenant.

"Common interest association" means an association (as defined in § 57-8a-102), an association of unit owners (as defined in § 57-8-3), or a nonprofit association. It also includes a person authorized by an association, association of unit owners, or nonprofit association, as applicable.

"Large master planned development" means an approved development of at least 500 acres or 500 units that includes a commitment to fund, construct, develop, or maintain:

- common infrastructure;
- association facilities;
- community programming;
- resort facilities;
- open space; or
- recreation amenities.

"Nonprofit association" means a nonprofit corporation organized under the Utah Revised Nonprofit Corporation Act to "benefit, enhance, preserve, govern, manage, or maintain burdened property."

"Organizational documents" means:

- for an association, governing documents;
- for an association of unit owners, its declaration; and
- for a nonprofit association, a written instrument by which the association exercises powers or manages, maintains, or otherwise affects its property, including articles of incorporation, bylaws, plats, charters, rules, and declarations.

"Reinvestment fee covenant" means a covenant, restriction, or agreement that affects real property and obligates a future buyer or seller to pay to a common interest association upon transfer a fee that is dedicated to benefitting the burdened property, including payment for:

- common planning, facilities, and infrastructure;
- obligations arising from an environmental covenant;
- community programming;
- resort facilities;
- open space;

- recreation amenities;
- charitable purposes; or
- association expenses.

"Transfer fee covenant" generally means an obligation expressed in a covenant, restriction, agreement, or other instrument or document that:

- affects real property; and
- is imposed on a future buyer or seller (other than a person who is a party to the covenant, restriction, agreement, or other document) requiring him or her to pay a fee upon transfer of the real property.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

A reinvestment fee covenant recorded on or after March 16, 2010, may not obligate the payment of a fee that exceeds 0.5 percent of the burdened property's value, unless the burdened property is part of a large master planned development.

### **TIME LIMITS**

No relevant provisions were located.



## **OTHER RELEVANT PROVISIONS**

No relevant provisions were located.

Statutory section enacted 2010.

[Utah Code § 57-1-46\(1\), \(2\), \(5\) \(2020\)](#)

Utah, Permitted private transfer fees

## **PERMITTED FEES**

*Private transfer fees recorded in 2009*

Utah statutes provide that transfer fee covenants recorded on or after March 16, 2010, are void and unenforceable.

*Transactions not deemed to be "transfer fee covenants"*

The term "transfer fee covenant" does *not* include:

- an obligation imposed by a court judgment, order, or decree;
- an obligation imposed by the federal government;
- an obligation imposed by a state or local government entity; or

- a reinvestment fee covenant.

#### *Permitted reinvestment fee covenants*

A reinvestment fee covenant recorded on or after March 16, 2010:

- is not enforceable if it is "intended to affect property that is the subject of a previously recorded transfer fee covenant or reinvestment fee covenant"; and
- may not obligate the payment of a fee that exceeds 0.5 percent of the burdened property's value, unless the burdened property is part of a large master planned development.

Generally, a reinvestment fee covenant may not be "sold, assigned, or conveyed unless the sale, assignment, or conveyance is to a common interest association that was formed to benefit the burdened property." However, a common interest association may assign or pledge to a lender the right to receive payments under a reinvestment fee covenant if:

- the assignment or pledge is collateral for a credit facility; and
- the lender releases the collateral interest upon payment in full.

#### **RECORDING REQUIREMENTS**

##### *Reinvestment fee covenant recorded on or after March 16, 2010*

A reinvestment fee covenant recorded *on or after* March 16, 2010, is void and unenforceable unless a separate notice of reinvestment fee covenant is recorded in the recorder's office in each county in which any of the burdened property is located. That notice, which is described in § 57-1-46(6)(b), must include:

- the common interest association's name and address;
- the notarized signature of the common interest association's authorized representative;
- a statement that the burden of the reinvestment fee covenant is intended to run with the land and to bind successors in interest and assigns;
- a statement that the reinvestment fee covenant's existence precludes imposing an additional reinvestment fee covenant on the burdened property;
- the fee covenant's duration;
- the fee's purpose; and
- a statement that the fee is required to benefit the burdened property.

*Reinvestment or transfer fee covenant recorded before March 16, 2010*

A reinvestment fee covenant or transfer fee covenant recorded *before* March 16, 2010, is not enforceable after May 31, 2010, unless:

- a notice consistent with the notice required by § 57-1-46(6)(b) (described above) is recorded in the recorder's office in each county in which any of the burdened property is located; or
- a notice of reinvestment fee covenant or transfer fee covenant, as set forth in § 57-1-46(7)(b) (described below), is recorded in the recorder's office in each county in which any of the burdened property is located.

The notice described in § 57-1-46(7)(b) must include:

- the notarized signature of the beneficiary of the reinvestment fee covenant or transfer fee covenant, or of the beneficiary's authorized representative;
- the name and current address of the beneficiary;
- a statement that the burden of the reinvestment fee covenant or transfer fee covenant is intended to run with the land and to bind successors in interest and assigns; and
- the fee's duration.

Statutory section enacted 2010.

[Utah Code § 57-1-46\(1\), \(3\)–\(7\) \(2020\)](#)

## Utah, Private transfer fee relief provisions

### **VOID PROVISIONS**

A transfer fee covenant recorded on or after March 16, 2010, is void and unenforceable.

A reinvestment fee covenant recorded on or after March 16, 2010, may not be enforced upon:

- an involuntary transfer;
- a court-ordered transfer;

- a bona fide transfer to a family member within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity;
- a transfer or change of interest due to death; or
- a financial institution's transfer of burdened property, except to the extent that the reinvestment fee covenant requires the payment of "a common interest association's costs directly related to the transfer of the burdened property", the amount of which may not exceed \$250.

### **LIABILITY FOR DAMAGES**

No relevant provisions were located.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

### **OTHER RELIEF**

No relevant provisions were located.

Statutory section enacted 2010.

[Utah Code § 57-1-46 \(2020\)](#)

## Vermont, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

## Vermont, Licensee responsibility

No specifically relevant provisions were located. However, generally, it is "unprofessional conduct" for a licensee to fail to disclose to a buyer all known material facts concerning the property being sold. Vermont regulations include, as examples of a material fact,

- a "limitation in the deed that could substantially impair the marketability or use of the property and thereby diminish its value"; or
- a fact a licensee "reasonably believes may directly impact" the property's future value.

Statutory section amended 2019. Regulatory title amended 2015.

[Vt. Stat. tit. 26, § 2296\(a\)\(9\) \(2019\)](#); [04-030-290 Vt. Code R. § 4.5\(a\) \(2020\)](#)

## Vermont, Limitations on private transfer fees

No relevant provisions were located.

## Vermont, Permitted private transfer fees

No relevant provisions were located.

## Vermont, Private transfer fee relief provisions

No relevant provisions were located.

## Virgin Islands

### Virgin Islands, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Virgin Islands, Licensee responsibility

No specifically relevant provisions were located. However, generally, a licensee may be disciplined for pursuing “a continued and flagrant course of misrepresentation.”

Statutory section amended 1986.

V.I. Code tit. 27, § 429 (LexisNexis 2019)

### Virgin Islands, Limitations on private transfer fees

No relevant provisions were located.

### Virgin Islands, Permitted private transfer fees

No relevant provisions were located.

### Virgin Islands, Private transfer fee relief provisions

No relevant provisions were located.

## Virginia

### Virginia, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Virginia, Licensee responsibility

No specifically relevant provisions were located. However, effective July 1, 2007, a buyer’s agent must disclose to the buyer known material facts related to the property or concerning the transaction. Also, a licensee must treat all prospective buyers honestly and not knowingly give them false information.

Statutory sections amended 2016.

[Va. Code §§ 54.1-2131, -2132 \(2019\)](#)

### Virginia, Limitations on private transfer fees

## **BENEFICIARY AND USE RESTRICTIONS**

### *Prohibited fees*

A transfer fee covenant recorded in Virginia on or after July 1, 2011:

- does not run with the real property's title; and
- is not binding on or enforceable against a subsequent owner, purchaser, or mortgagee.

A lien purporting to secure the payment of a transfer fee pursuant to a transfer fee covenant recorded on or after July 1, 2011, is void and unenforceable.

### *Relevant definitions*

"Transfer" means an "assignment, conveyance, gift, inheritance, sale, or other transfer" of an interest in Virginia real property.

"Transfer fee" means a "fee or charge payable to a nongovernmental person or entity upon transfer or payable for the right to make or accept such transfer," whether the amount is fixed or a percentage of the property's value, purchase price, or other consideration.

"Transfer fee covenant" means a covenant that "purports to affect real property and that requires or purports to require, upon a subsequent transfer of such property, the payment of a transfer fee to the declarant" or other specified nongovernmental person or entity.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.



## **MAXIMUM FEES**

No relevant provisions were located.

## **TIME LIMITS**

No relevant provisions were located.

## **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory section renumbered and recodified 2019.

[Va. Code § 55.1-358 \(2019\)](#)

Virginia, Permitted private transfer fees

## **PERMITTED FEES**

*Existing transfer fees*

Certain transfer fee covenants recorded before July 1, 2011, may be permitted. The relevant statute prohibits only transfer fee covenants recorded in Virginia on or after July 1, 2011.

*Fees not deemed to be private transfer fees*

The following are *not* private transfer fees for the purpose of the statutory provisions prohibiting private transfer fees:

- consideration payable by a grantee to a grantor for the real property interest being transferred;
- a commission "payable to a licensed real estate broker for a transfer under an agreement between the broker and the grantor or grantee";
- an "amount, charge, fee, or interest that is payable by a borrower to a lender under a loan secured by a deed of trust or mortgage";
- rent or other amount payable by a lessee to a lessor pursuant to a lease;
- consideration payable to the holder of an option to purchase real property, the holder of a right of first refusal, or the holder of a right of first offer, for releasing, waiving, or not exercising the option or right upon the transfer of the property to another;
- an "assessment, charge, or fee authorized by statute, the recorded condominium instrument, or the recorded declaration to be charged by, or payable to," certain common interest communities; or
- an "amount, assessment, charge, fee, fine, or tax that is payable to or imposed by a governmental authority."

### **RECORDING REQUIREMENTS**

No relevant provisions were located.

Statutory section renumbered and recodified 2019.

[Va. Code § 55.1-358 \(2019\)](#)

## Virginia, Private transfer fee relief provisions

### **VOID PROVISIONS**

A transfer fee covenant recorded in Virginia on or after July 1, 2011:

- does not run with the real property's title; and
- is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee.

A lien purporting to secure the payment of a transfer fee pursuant to a transfer fee covenant recorded on or after July 1, 2011, is void and unenforceable.

### **LIABILITY FOR DAMAGES**

No relevant provisions were located.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No relevant provisions were located.

### **OTHER RELIEF**

No relevant provisions were located.

Statutory section renumbered and recodified 2019.

[Va. Code § 55.1-358 \(2019\)](#)

## Washington

### Washington, Disclosure requirements

#### **REQUIRED DISCLOSURES**

A payee of a private transfer fee obligation imposed before April 13, 2011, must record, before December 31, 2011, a separate "Notice of Private Transfer Fee Obligation." The document must be recorded in the county auditor's office in the county in which the real property is located and must meet certain requirements specified by statute. See "Permitted private transfer fees" for details regarding the recording requirements.

#### **EXCEPTIONS**

No relevant provisions were located.

Statutory section enacted 2011.

[Wash. Rev. Code § 64.60.040 \(2019\)](#)

### Washington, Licensee responsibility

No specifically relevant provisions were located. However, generally, a broker, whether or not an agent, owes to all parties to whom the broker renders real estate brokerage services the following duties, among others:

- to deal honestly and in good faith; and
- to disclose all known material facts that are not apparent or readily ascertainable.

Statutory section amended 2013.

[Wash. Rev. Code § 18.86.030 \(2019\)](#)

## Washington, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

A private transfer fee obligation recorded or entered into in Washington on or after April 13, 2011:

- does not run with the property's title; and
- is not binding on or enforceable against any subsequent owner, purchaser, mortgagee, or holder of any interest.

A private transfer fee obligation that is recorded or entered into in Washington on or after April 13, 2011, is void and unenforceable.

A private transfer fee obligation recorded or entered into before April 13, 2011, is *not* presumed valid and enforceable. It must be interpreted and enforced according to principles of applicable real estate, servitude contract, and other laws.

#### *Relevant definitions*

"Association" means an apartment owners' association, a unit owners' association, a homeowners' association, certain corporations organized to own 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."

"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."

"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," whether the amount is fixed or determined as a percentage of the property's value, purchase price, or other consideration.

"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 . . . that requires or purports to require the payment of a private transfer fee upon a subsequent transfer" of a real property interest.

"Transfer" means the "sale, gift, grant, conveyance, lease, license, assignment, inheritance, or other act resulting in a transfer of ownership interest" in Washington real property.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

The Washington legislature finds that private transfer fee obligations violate the state's public policy regardless of the fee amount or the method by which the fee is created or imposed.

### **TIME LIMITS**

The Washington legislature finds that private transfer fee obligations violate the state's public policy regardless of the obligation's duration.

### **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory sections enacted 2011.

[Wash. Rev. Code §§ 64.60.005, .010, .020 \(2019\)](#)

## Washington, Permitted private transfer fees

### **PERMITTED FEES**

#### *Existing transfer fees*

Certain private transfer fee obligations imposed before April 13, 2011, may be permitted. A payee of a private transfer fee obligation imposed before April 13, 2011, must record, before December 31, 2011, a separate "Notice of Private Transfer Fee Obligation." The document must be recorded in the county auditor's office in the county in which the real property is located and must meet certain requirements specified by statute.

However, a private transfer fee obligation recorded or entered into before April 13, 2011, is not presumed valid and enforceable. The existing 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.

#### *Fees not deemed to be private transfer fees*

The following are *not* private transfer fees for the purpose of the statutory provisions prohibiting private transfer fees:

- consideration payable by the grantee to the grantor for the real property interest being transferred, including any additional consideration upon the property's subsequent appreciation, development, or sale, provided the 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";
- a "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 any additional commission based on the property's subsequent appreciation, development, or sale;
- interest, charges, or other amounts payable by a borrower to a lender pursuant to a mortgage loan;
- rent, reimbursements, or other amounts payable by a lessee or licensee to a lessor or licensor pursuant to a lease or license;
- consideration payable to the holder of an option to purchase real property or the holder of a right of first refusal or first offer to purchase real property for waiving, releasing, or not exercising the option or right upon the property's transfer to another;
- a "tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority";
- certain assessments, fees, or other amounts payable to an association, payable by a purchaser of a camping resort contract or a timeshare, 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";



- a fee payable upon a transfer of property to certain nonprofit organizations, provided the organization's sole purpose 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";
- a fee, charge, or other amount "pertaining solely to the purchase or transfer of a club membership relating to real property owned by the member"; or
- a fee an association charged to a transferor or transferee for a service rendered contemporaneously with imposing the fee, provided "the fee is not to be passed through to a third party other than an agent of the association."

### **RECORDING REQUIREMENTS**

A payee of a private transfer fee obligation imposed before April 13, 2011, must record, before December 31, 2011, a separate "Notice of Private Transfer Fee Obligation." The document must be recorded in the county auditor's office of the county in which the real property is located and must contain:

- the title, "Notice of Private Transfer Fee Obligation";
- the fee amount, if the private transfer fee is a flat amount, or the percentage of the sales price or another basis by which the fee is to be calculated;
- any expiration date;
- the payee's name and address;
- the payee's (or a representative's) acknowledged signature; and

- the burdened property's legal description.

A payee may file an amendment to the notice containing new contact information. The amendment must contain:

- the notice's recording information; and
- the burdened property's legal description.

Statutory sections enacted 2011.

[Wash. Rev. Code §§ 64.60.010, .020, .040 \(2019\)](#)

## Washington, Private transfer fee relief provisions

### **VOID PROVISIONS**

A private transfer fee obligation recorded or entered into in Washington on or after April 13, 2011:

- does not run with the property's title; and
- is not binding on or enforceable against any subsequent owner, purchaser, mortgagee, or holder of any interest.

A private transfer fee obligation recorded or entered into in Washington on or after April 13, 2011, is void and unenforceable.

### **LIABILITY FOR DAMAGES**

A person who records or enters into an agreement imposing a private transfer fee obligation in that person's favor after April 13, 2011, is liable for:

- damages resulting from imposing the private transfer fee obligation on a real property transfer, including the transfer fee amount a party paid; and
- reasonable attorneys' fees, expenses, and costs a party or mortgagee incurred to recover a private transfer fee paid or in connection with a quiet title action.

If an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability is assessed to the principal, not the agent.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

#### *Failure to record notice*

If a payee fails to file the required "Notice of Private Transfer Fee Obligation" before December 31, 2011, the payee may not enforce the obligation.

### **OTHER RELIEF**

No relevant provisions were located.

Statutory sections enacted 2011.

[Wash. Rev. Code §§ 64.60.020, .030, .040 \(2019\)](#)

West Virginia

West Virginia, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### West Virginia, Licensee responsibility

No specifically relevant provisions were located.

### West Virginia, Limitations on private transfer fees

No relevant provisions were located.

### West Virginia, Permitted private transfer fees

No relevant provisions were located.

### West Virginia, Private transfer fee relief provisions

No relevant provisions were located.

## Wisconsin

### Wisconsin, Disclosure requirements

Research located no state statutes or regulations specifically addressing the disclosure of private transfer fees.

### Wisconsin, Licensee responsibility

No specifically relevant provisions were located. However, generally, a brokerage firm and its brokers and salespersons owe the following duties, among others, to all parties to a transaction:

- to provide services "honestly and fairly"; and
- to disclose timely in writing all known material adverse facts that the firm knows and that the party "does not know or cannot discover through reasonably vigilant observation," unless disclosure is prohibited by law.

Statutory section amended 2017.

[Wis. Stat. Ann. § 452.133 \(2019\)](#)

## Wisconsin, Limitations on private transfer fees

No relevant provisions were located.

## Wisconsin, Permitted private transfer fees

No relevant provisions were located.

## Wisconsin, Private transfer fee relief provisions

No relevant provisions were located.

## Wyoming

### Wyoming, Disclosure requirements

#### **REQUIRED DISCLOSURES**

The payee of a private transfer fee obligation imposed before April 1, 2012, or an obligation under Wyo. Stat. § 34-28-101(a)(ii)(H) (regarding certain condominium, association, or nonprofit land-trust fees), must record a notice of any private transfer fee obligations. The notice must meet the requirements set forth in § 34-28-103.

#### **EXCEPTIONS**

No relevant provisions were located.

Statutory section amended 2013.

[Wyo. Stat. § 34-28-103 \(2019\)](#)

### Wyoming, Licensee responsibility

No specifically relevant provisions were located. However, generally, both a buyer's agent and a seller's agent must disclose to the buyer known adverse material facts.

Statutory section 33-28-304 amended 2009; § 33-28-303 amended 2011.

[Wyo. Stat. §§ 33-28-303, -304 \(2019\)](#)

## Wyoming, Limitations on private transfer fees

### **BENEFICIARY AND USE RESTRICTIONS**

#### *Prohibited fees*

A private transfer fee obligation recorded or entered into in Wyoming on or after April 1, 2012:

- does not run with the real property's title; and
- is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee.

#### *Relevant definitions*

"Transfer" means the "sale, gift, conveyance, assignment, inheritance or other transfer" of an ownership interest in Wyoming real property.

"Private transfer fee" means a fee or charge payable upon the transfer of a real property interest, or "payable for the right to make or accept the transfer," whether the fee is a fixed amount or determined as a percentage of the property's value, purchase price, or other consideration given for the transfer.

"Private transfer fee obligation" means an "obligation arising under a declaration or covenant purporting to affect real property that requires or purports to require the payment of a private transfer fee" upon a subsequent transfer of a real property interest.

### **PAYEE RESTRICTIONS**

No relevant provisions were located.

### **MAXIMUM FEES**

No relevant provisions were located.

### **TIME LIMITS**

No relevant provisions were located.

### **OTHER RELEVANT PROVISIONS**

No other relevant provisions were located.

Statutory sections amended 2013.

[Wyo. Stat. §§ 34-28-101, -102 \(2019\)](#)

Wyoming, Permitted private transfer fees

### **PERMITTED FEES**

*Existing transfer fees*

The payee of a private transfer fee obligation imposed before April 1, 2012, or an obligation under Wyo. Stat. § 34-28-101(a)(ii)(H) (regarding certain condominium, association, or nonprofit land trust fees), must record a notice of the obligation. The notice must meet the requirements set forth in § 34-28-103.

*Fees not deemed to be private transfer fees*

The following are *not* deemed to be private transfer fees:

- consideration payable by the grantee to the grantor for the real property interest being transferred, including "subsequent additional consideration . . . based upon any subsequent appreciation, development, lease, or sale of the separate mineral estate and its appurtenant surface access rights";
- consideration payable by the grantee to the grantor for the real property interest being transferred (other than a mineral estate and surface access rights), including any additional consideration based on the property's subsequent appreciation, development, or sale, provided the additional consideration is payable only one time and the obligation does not bind the property's successors in title;
- a commission payable to a licensed real estate broker for the transfer of real property pursuant to an agreement between the broker and the grantor or the grantee, including any additional commission for that transfer based on the property's subsequent appreciation, development, or sale;
- interest, charges, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage;
- any rent, fee, or other amount payable by a lessee to a lessor pursuant to a lease;
- consideration payable to the holder of an option to purchase a real property interest or of a right of first refusal or first offer to purchase a real property interest for "waiving, releasing or not exercising the option or right upon the transfer of the property to another person";
- any "tax, fee, charge, assessment, fine or other amount payable to or imposed by a governmental authority";



- a fee, charge, or other amount "payable to a homeowners', condominium, cooperative, mobile home or property owners' association or to a nonprofit land trust pursuant to a declaration or covenant or law applicable to the association or nonprofit land trust";
- a fee, charge, or other amount pertaining to the purchase or transfer of a club membership relating to real property owned by the member; and
- a fee, charge, assessment, or other amount imposed on a recorded conservation-easement holder that is designated to compensate the holder for the cost of ensuring compliance with the easement's terms.

The provisions set forth in chapter 34-28 do not apply to:

- a transfer of "mineral rights, interests and obligations"; or
- the transfer of a "surface right appurtenant to a mineral right, interest or obligation" that has been severed from the surface estate.

## **RECORDING REQUIREMENTS**

The payee of a private transfer fee obligation imposed before April 1, 2012, or an obligation under Wyo. Stat. § 34-28-101(a)(ii)(H) (regarding certain condominium, association, or nonprofit land trust fees), must record a notice of the private transfer fee obligation. The notice must contain the following:

- a "clearly identified disclosure" of the private transfer fee obligation's existence and amount;
- a description of the private transfer fee obligation's "type and nature";
- a description of the "type and nature of any penalty which may be incurred" as a result of failing to pay the obligation;

- the real property's legal description; and
- the payee's name and address.

Statutory sections amended 2013.

[Wyo. Stat. §§ 34-28-101, -102, -103 \(2019\)](#)

## Wyoming, Private transfer fee relief provisions

### **VOID PROVISIONS**

A private transfer fee obligation recorded or entered into in Wyoming on or after April 1, 2012:

- does not run with the real property's title; and
- is not binding on or enforceable against any subsequent owner, purchaser, or mortgagee.

### **LIABILITY FOR DAMAGES**

No relevant provisions were located.

### **FAILURE TO RECORD EXISTING PRIVATE TRANSFER FEES**

No Wyoming court has jurisdiction to enforce a private transfer fee obligation that is not recorded as required by statute against a purchaser who receives title to the property after April 1, 2012.

### **OTHER RELIEF**

No relevant provisions were located.

Statutory sections amended 2013.

[Wyo. Stat. §§ 34-28-102, -103 \(2019\)](#)