

CHAPTER 102

AN ACT regulating private transfer fees and supplementing Title 46 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.46:3-28 Declarations, findings relative to private transfer fees.

1. The Legislature declares that the public policy of this State favors the marketability of real property and the transferability of interests in real property free of title defects or unreasonable restraints on alienation. The Legislature finds that private transfer fee obligations impair the marketability and transferability of real property by constituting an unacceptable restraint on alienation regardless of the duration of the obligation to pay a private transfer fee, the amount of a private transfer fee, or the method by which any private transfer fee is created or imposed. The Legislature declares that a private transfer fee obligation shall not run with the title to property or bind subsequent owners of property under common law or equitable principles.

C.46:3-29 Definitions relative to private transfer fees.

2. As used in P.L.2010, c.102 (C.46:3-28 et seq.):

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

“Private transfer fee” means a fee or charge required by a private transfer fee obligation 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. The following are not private transfer fees for purposes of P.L.2010, c.102 (C.46:3-28 et seq.):

a. (1) Any consideration payable by the grantee to the grantor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the grantee based upon any 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 to the property. For the purposes of this subsection, an interest in real property may include a separate mineral estate and its appurtenant surface access rights.

(2) 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.

b. 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 for that transfer payable by the grantor or the grantee based upon any subsequent appreciation, development, or sale of the property.

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

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

e. Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon the transfer of the property to another person, or any consideration payable by the holder of an option to the property owner necessary to keep the option in force.

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

g. Any 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 including, but not limited to, fees or charges payable for estoppel letters or certificates issued by the association or its authorized agent.

h. Any 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.

i. Any 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, including, but not limited to, any amount determined by reference to the value, purchase price, or other consideration given for the transfer of the real property.

“Private transfer fee obligation” means a declaration or covenant recorded against the title to real property, 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 person specified in the declaration, obligation or agreement, or to their successors or assigns, upon a subsequent transfer of an interest in the real property.

C.46:3-30 Private transfer fee obligation shall not run with title to real property; exceptions.

3. a. A private transfer fee obligation recorded or entered into in this State on or after the effective date of P.L.2010, c.102 (C.46:3-28 et seq.) shall 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 of any interest in real property as an equitable servitude or otherwise. Any private transfer fee obligation that is recorded or entered into in this State on or after the effective date of P.L.2010, c.102 (C.46:3-28 et seq.) is void and unenforceable.

b. This section shall not apply to a private transfer fee obligation recorded or entered into in this State before the effective date of P.L.2010, c.102 (C.46:3-28 et seq.). This subsection does not mean that a private transfer fee obligation recorded or entered into in this State before the effective date of P.L.2010, c.102 (C.46:3-28 et seq.) is presumed valid and enforceable.

C.46:3-31 Liability for damages.

4. Any person who records or enters into an agreement imposing a private transfer fee obligation in their favor after the effective date of P.L.2010, c.102 (C.46:3-28 et seq.) shall be liable for both any and all damages resulting from the imposition of the private transfer fee obligation on the transfer of an interest in the real property, including, without limitation,

the amount of any transfer fee paid by a party to the transfer, and all 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. Where an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability shall be assessed to the principal, rather than the agent.

C.46:3-32 Disclosure of existence of private transfer fee obligation.

5. Prior to closing on any sale of real property, the seller shall furnish to any purchaser a written statement disclosing the existence of any private transfer fee obligation. This written statement shall include a description of the private transfer fee obligation and include a statement that private transfer fee obligations are subject to prohibitions under P.L.2010, c.102 (C.46:3-28 et seq.).

C.46:3-33 Recording of notice of private transfer fee; requirements.

6. a. The payee designated in a private transfer fee obligation made prior to the effective date of P.L.2010, c.102 (C.46:3-28 et seq.), shall ensure that the notice of private transfer fee, described in subsection b., is recorded, no later than six months following the effective date of P.L.2010, c.102 (C.46:3-28 et seq.), in the county recording office against the real property subject to the private transfer fee obligation.

b. A private transfer fee obligation made prior to the effective date of P.L.2010, c.102 (C.46:3-28 et seq.) shall be imposed and enforceable by recording of a notice of private transfer fee, which shall be a document, in recordable form that meets all of the following requirements:

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

(2) The names of all current owners of the real property subject to the transfer fee, and the legal description and assessor's parcel number for the affected real property;

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

(4) If the real property is residential property, actual dollar-cost examples of the transfer fee for a home priced at \$250,000, \$500,000, and \$750,000;

(5) The date or circumstances under which the private transfer fee covenant expires, if any;

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

(7) The name of the payee or any assigns, and specific contact information regarding where the funds are to be sent;

(8) The acknowledged signature of a representative of an entity to which a private transfer fee is to be paid; and

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

c. The payee may file an amendment to the notice of transfer fee containing new contact information, but such amendment must contain the recording information for the notice of transfer fee that the amendment modifies and the legal description of the property burdened by the private transfer fee obligation.

d. If the payee fails to comply fully with subsection a. of this section, the grantor of any real property burdened by the private transfer fee obligation may proceed with the conveyance of any interest in the real property to any grantee and in so doing shall be

deemed to have acted in good faith and shall not be subject to any obligations under the private transfer fee obligation. In such event, the real property thereafter shall be conveyed free and clear of such transfer fee and private transfer fee obligation.

e. Should the payee fail 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, on recording of the affidavit required under subsection f., may convey any interest in the real property to any grantee without payment of the transfer fee and shall not be subject to any further obligations under the private transfer fee obligation. In such event the real property shall be conveyed free and clear of the transfer fee and private transfer fee obligation.

f. An affidavit stating the facts enumerated under subsection a. of this section shall be recorded in the office of the county clerk or register of deeds, as the case may be, in the county in which the real property is situated prior to or simultaneously with a conveyance pursuant to subsection d. of this section of real property unburdened by a private transfer fee obligation. An affidavit filed under this subsection shall state that the affiant has actual knowledge of, and is competent to testify to, the facts in the affidavit and shall include the legal description of the real property burdened by the private transfer fee obligation, the name of the person appearing by the record to be the owner of such real property at the time of the signing of such affidavit, a reference (by recording information) to the instrument of record containing the private transfer fee obligation, and an acknowledgment that the affiant is testifying under penalty of perjury.

g. When recorded, an affidavit as described in subsection f. of this section shall constitute prima facie evidence that:

(1) A request for the written statement of the transfer fee payable in order to obtain a release of the fee imposed by the private transfer fee obligation was sent to the address shown in the notification; and

(2) The entity listed on the notice of private transfer fee failed to provide the written statement of the transfer fee payable within 30 days of the date of the notice sent to the address shown in the notification.

7. This act shall take effect immediately.

Approved December 8, 2010.