CHAPTER 47-33
PRIVATE TRANSFER FEE OBLIGATION PROHIBITION

47-33-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "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 this 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 term does not include:
   a. Any consideration payable by the grantee to the grantor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the grantee based upon any subsequent appreciation, development, or sale of the property, 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. For the purposes of this subdivision, an interest in real property may include a separate mineral estate and its appurtenant surface access rights.
   b. Any 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 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 under a loan secured by a mortgage against real property, including 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 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.
   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, or property owners' association under a declaration or covenant or law applicable to the association, including 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 any amount determined by reference to the value, purchase price, or other consideration given for the transfer of the real property.
2. "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 person specified in the declaration, covenant, or agreement, or to the declarant's or other person's successors or assigns, upon a subsequent transfer of an interest in the real property.

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

47-33-02. Prohibition on private transfer fee obligation.

A private transfer fee obligation recorded or entered in this state on or after August 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 of any interest in real property as an equitable servitude or otherwise. Any private transfer fee obligation that is recorded or entered in this state on or after August 1, 2011, is void and unenforceable. This section does not mean that a private transfer fee obligation recorded or entered in this state before August 1, 2011, is presumed valid and enforceable.

47-33-03. Liability for violation.

Any 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 the imposition of the transfer fee obligation on the transfer of an interest in the real property, including the amount of any transfer fee paid by a party to the transfer, 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 behalf of a principal to record or secure a private transfer fee obligation, liability is deemed assessed to the principal, rather than the agent.

47-33-04. Disclosure.

A seller of real property shall furnish to any purchaser a written statement disclosing the existence of any private transfer fee obligation. This written statement must include a description of the private transfer fee obligation and must include a statement that private transfer fee obligations are subject to certain prohibitions under this chapter.

47-33-05. Notice requirements for existing transfer fee obligations.

1. For a private transfer fee obligation imposed before August 1, 2011, the receiver of the fee shall record, before December 31, 2011, against the real property subject to the private transfer fee obligation a separate document in the county records in which the real property is located that meets all of the following requirements:
   a. The title of the document must be "Notice of Private Transfer Fee Obligation" in at least fourteen-point boldfaced type;
   b. The amount, if the fee is a flat amount, or the percentage of the sales price constituting the cost of the transfer fee, or the other basis by which the transfer fee is to be calculated;
   c. If the real property is residential property, actual dollar-cost examples of the transfer fee for a home priced at one hundred thousand dollars, two hundred fifty thousand dollars, and five hundred thousand dollars;
   d. The date or circumstances under which the private transfer fee obligation expires, if any;
   e. The purpose for which the funds from the private transfer fee obligation will be used;
   f. The name of the person to which funds are to be paid and specific contact information regarding where the funds are to be sent;
   g. The acknowledged signature of the payee; and
   h. The legal description of the real property burdened by the private transfer fee obligation.

2. The person to which the transfer fee is to be paid may file an amendment to the notice of transfer fee containing new contact information, but the amendment must contain the recording information of the notice of transfer fee which it amends and the legal description of the property burdened by the private transfer fee obligation.
3. If the payee fails to comply fully with subsection 1, 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 is deemed to have acted in good faith and is not subject to any obligations under the private transfer fee obligation. In this event, the real property is conveyed free and clear of the transfer fee and private transfer fee obligation.
4. If the payee fails to provide a written statement of the transfer fee payable within thirty days of the date of a written request for the same sent to the address shown in the notice of transfer fee, then the grantor, on recording of the affidavit required under subsection 5, may convey any interest in the real property to any grantee without payment of the transfer fee and is not subject to any further obligations under the private transfer fee obligation. In this event, the real property is conveyed free and clear of the transfer fee and private transfer fee obligation.
5. An affidavit stating the facts enumerated under subsection 6 must be recorded in the office of the county recorder in the county in which the real property is situated before or simultaneously with a conveyance under subsection 4 of real property unburdened by a private transfer fee obligation. An affidavit filed under this subsection must state that the affiant has actual knowledge of, and is competent to testify to, the facts in the affidavit and must 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 the 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.
6. When recorded, an affidavit as described in subsection 5 constitutes prima facie evidence that:
    a. 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
    b. The person listed on the notice of transfer fee failed to provide the written statement of the transfer fee payable within thirty days of the date of the notice sent to the address shown in the notification.