

Sixty-second
Legislative Assembly
of North Dakota

SENATE BILL NO. 2149

Introduced by

Senators Grindberg, J. Lee, Robinson

Representatives Gruchalla, Klemin, Louser

1 A BILL for an Act to create and enact chapter 47-33 of the North Dakota Century Code, relating
2 to a prohibition on private transfer fee obligations.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 47-33 of the North Dakota Century Code is created and enacted as
5 follows:

6 **47-33-01. Definitions.**

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

8 1. "Private transfer fee" means a fee or charge required by a private transfer fee
9 obligation and payable upon the transfer of an interest in real property, or payable for
10 the right to make or accept this transfer, regardless of whether the fee or charge is a
11 fixed amount or is determined as a percentage of the value of the property, the
12 purchase price, or other consideration given for the transfer. The term does not
13 include:

14 a. Any consideration payable by the grantee to the grantor for the interest in real
15 property being transferred, including any subsequent additional consideration for
16 the property payable by the grantee based upon any subsequent appreciation,
17 development, or sale of the property, provided the additional consideration is
18 payable on a one-time basis only and the obligation to make such payment does
19 not bind successors in title to the property. For the purposes of this subdivision,
20 an interest in real property may include a separate mineral estate and its
21 appurtenant surface access rights.

22 b. Any commission payable to a licensed real estate broker for the transfer of real
23 property under an agreement between the broker and the grantor or the grantee,
24 including any subsequent additional commission for that transfer payable by the

1 grantor or the grantee based upon any subsequent appreciation, development, or
2 sale of the property.

3 c. Any interest, charges, fees, or other amounts payable by a borrower to a lender
4 under a loan secured by a mortgage against real property, including any fee
5 payable to the lender for consenting to an assumption of the loan or a transfer of
6 the real property subject to the mortgage, any fees or charges payable to the
7 lender for estoppel letters or certificates, and any shared appreciation interest or
8 profit participation or other consideration and payable to the lender in connection
9 with the loan.

10 d. Any rent, reimbursement, charge, fee, or other amount payable by a lessee to a
11 lessor under a lease, including any fee payable to the lessor for consenting to an
12 assignment, subletting, encumbrance, or transfer of the lease.

13 e. Any consideration payable to the holder of an option to purchase an interest in
14 real property or the holder of a right of first refusal or first offer to purchase an
15 interest in real property for waiving, releasing, or not exercising the option or right
16 upon the transfer of the property to another person.

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

19 g. Any fee, charge, assessment, fine, or other amount payable to a homeowners',
20 condominium, cooperative, mobile home, or property owners' association under a
21 declaration or covenant or law applicable to the association, including fees or
22 charges payable for estoppel letters or certificates issued by the association or its
23 authorized agent.

24 h. Any fee, charge, assessment, dues, contribution, or other amount imposed by a
25 declaration or covenant encumbering a community, and payable to a nonprofit or
26 charitable organization for the purpose of supporting cultural, educational,
27 charitable, recreational, environmental, conservation, or other similar activities
28 benefiting the community that is subject to the declaration or covenant.

29 i. Any fee, charge, assessment, dues, contribution, or other amount pertaining to
30 the purchase or transfer of a club membership relating to real property owned by

1 the member, including any amount determined by reference to the value,
2 purchase price, or other consideration given for the transfer of the real property.

3 2. "Private transfer fee obligation" means an obligation arising under a declaration or
4 covenant recorded against the title to real property, or under any other contractual
5 agreement or promise, whether or not recorded, that requires or purports to require
6 the payment of a private transfer fee to the declarant or other person specified in the
7 declaration, covenant, or agreement, or to the declarant's or other person's
8 successors or assigns, upon a subsequent transfer of an interest in the real property.

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

11 **47-33-02. Prohibition on private transfer fee obligation.**

12 A private transfer fee obligation recorded or entered in this state on or after the effective
13 date of this Act does not run with the title to real property and is not binding on or enforceable at
14 law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in real
15 property as an equitable servitude or otherwise. Any private transfer fee obligation that is
16 recorded or entered in this state on or after the effective date of this Act is void and
17 unenforceable. This section does not mean that a private transfer fee obligation recorded or
18 entered in this state before the effective date of this Act is presumed valid and enforceable.

19 **47-33-03. Liability for violation.**

20 Any person that records or enters an agreement imposing a private transfer fee obligation in
21 that person's favor on or after the effective date of this Act is liable for any and all damages
22 resulting from the imposition of the transfer fee obligation on the transfer of an interest in the
23 real property, including the amount of any transfer fee paid by a party to the transfer, and all
24 attorney's fees, expenses, and costs incurred by a party to the transfer or mortgagee of the real
25 property to recover any transfer fee paid or in connection with an action to quiet title. If an agent
26 acts on behalf of a principal to record or secure a private transfer fee obligation, liability is
27 deemed assessed to the principal, rather than the agent.

28 **47-33-04. Disclosure.**

29 A seller of real property shall furnish to any purchaser a written statement disclosing the
30 existence of any private transfer fee obligation. This written statement must include a

1 description of the private transfer fee obligation and must include a statement that private
2 transfer fee obligations are subject to certain prohibitions under this chapter.

3 **47-33-05. Notice requirements for existing transfer fee obligations.**

- 4 1. For a private transfer fee obligation imposed before the effective date of this Act, the
5 receiver of the fee shall record, before December 31, 2011, against the real property
6 subject to the private transfer fee obligation a separate document in the county
7 records in which the real property is located that meets all of the following
8 requirements:
- 9 a. The title of the document must be "Notice of Private Transfer Fee Obligation" in at
10 least fourteen-point boldfaced type;
- 11 b. The amount, if the fee is a flat amount, or the percentage of the sales price
12 constituting the cost of the transfer fee, or the other basis by which the transfer
13 fee is to be calculated;
- 14 c. If the real property is residential property, actual dollar-cost examples of the
15 transfer fee for a home priced at one hundred thousand dollars, two hundred fifty
16 thousand dollars, and five hundred thousand dollars;
- 17 d. The date or circumstances under which the private transfer fee obligation
18 expires, if any;
- 19 e. The purpose for which the funds from the private transfer fee obligation will be
20 used;
- 21 f. The name of the person to which funds are to be paid and specific contact
22 information regarding where the funds are to be sent;
- 23 g. The acknowledged signature of the payee; and
- 24 h. The legal description of the real property burdened by the private transfer fee
25 obligation.
- 26 2. The person to which the transfer fee is to be paid may file an amendment to the notice
27 of transfer fee containing new contact information, but the amendment must contain
28 the recording information of the notice of transfer fee which it amends and the legal
29 description of the property burdened by the private transfer fee obligation.
- 30 3. If the payee fails to comply fully with subsection 1, the grantor of any real property
31 burdened by the private transfer fee obligation may proceed with the conveyance of

1 any interest in the real property to any grantee and is deemed to have acted in good
2 faith and is not subject to any obligations under the private transfer fee obligation. In
3 this event, the real property is conveyed free and clear of the transfer fee and private
4 transfer fee obligation.

5 4. If the payee fails to provide a written statement of the transfer fee payable within thirty
6 days of the date of a written request for the same sent to the address shown in the
7 notice of transfer fee, then the grantor, on recording of the affidavit required under
8 subsection 5, may convey any interest in the real property to any grantee without
9 payment of the transfer fee and is not subject to any further obligations under the
10 private transfer fee obligation. In this event, the real property is conveyed free and
11 clear of the transfer fee and private transfer fee obligation.

12 5. An affidavit stating the facts enumerated under subsection 6 must be recorded in the
13 office of the county recorder in the county in which the real property is situated before
14 or simultaneously with a conveyance under subsection 4 of real property unburdened
15 by a private transfer fee obligation. An affidavit filed under this subsection must state
16 that the affiant has actual knowledge of, and is competent to testify to, the facts in the
17 affidavit and must include the legal description of the real property burdened by the
18 private transfer fee obligation, the name of the person appearing by the record to be
19 the owner of such real property at the time of the signing of the affidavit, a reference
20 by recording information to the instrument of record containing the private transfer fee
21 obligation, and an acknowledgment that the affiant is testifying under penalty of
22 perjury.

23 6. When recorded, an affidavit as described in subsection 5 constitutes prima facie
24 evidence that:

25 a. A request for the written statement of the transfer fee payable in order to obtain a
26 release of the fee imposed by the private transfer fee obligation was sent to the
27 address shown in the notification; and

28 b. The person listed on the notice of transfer fee failed to provide the written
29 statement of the transfer fee payable within thirty days of the date of the notice
30 sent to the address shown in the notification.