

CHAPTER 118

(HB 533)

AN ACT relating to private transfer fee obligations and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 382 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 3 of this Act:

- (1) *"Payee" means the person or entity who claims the right to receive or collect a private transfer fee payable under a private transfer obligation;*
- (2) *"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 the transfer, regardless of whether the fee or charge is a fixed amount or is stated as a percentage of the value of the property, the purchase price, or other consideration given for the transfer. A private transfer fee shall 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 if such additional consideration is payable on a one-time basis only and the obligation to make such payment does not bind successors in title to the property. For the purposes of this paragraph, 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 pursuant to an agreement between the broker and the grantor or the grantee including but not limited to any subsequent additional commission for that transfer payable by the grantor or the grantee based upon any subsequent appreciation, development, or sale of the property;*
 - (c) *Any interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage against real property including but not limited to any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage, any fees or charges payable to the lender for estoppel letters or certificates, and any shared appreciation interest 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 real property to another person;*
 - (f) *Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority;*
 - (g) *Any fee, charge, assessment, dues, fine, contribution, 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 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, fine, contribution, 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*
 - (i) *Any fee, charge, assessment, dues, fine, contribution, or other amount pertaining solely to the purchase or transfer of a club membership relating to real property owned by the member including*

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

- (3) *"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 an interest in real property; and*
- (4) *"Transfer" means the sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 382 IS CREATED TO READ AS FOLLOWS:

On and after the effective date of this Act:

- (1) *Private transfer fee obligations, whether recorded or not, shall be prohibited and any contract, covenant, or other instrument that attempts to create a private transfer fee obligation shall be void and unenforceable as against public policy.*
- (2) *Any person who records or enters into an agreement imposing a private transfer fee obligation in that person's favor shall be liable for:*
 - (a) *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 but not limited to the amount of any transfer fee paid by a party to the transfer; and*
 - (b) *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 against the principal rather than the agent.

- (3) *Any provision in a contract, covenant, or other instrument that purports to waive the rights of a buyer under this section shall be void.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 382 IS CREATED TO READ AS FOLLOWS:

On and after the effective date of this Act:

- (1) *Any contract or other instrument used for the sale of real property which obligates the buyer to pay a fee to the seller upon the subsequent resale of the real property, whether the fee or charge is a fixed amount or is stated as a percentage of the value of the property, the purchase price, or other consideration given for the subsequent transfer, shall include a conspicuous provision:*
 - (a) *Disclosing the existence of the obligation;*
 - (b) *Describing the obligation; and*
 - (c) *Stating that private transfer fee obligations, as that term is defined in Section 1 of this Act, are prohibited under Section 2 of this Act.*
- (2) *A contract or other instrument for the sale of real property subject to the provisions of this section and found not to be in compliance shall be void and shall:*
 - (a) *Not be enforceable by the seller against the buyer;*
 - (b) *Not subject the buyer to any liability to the seller for any damages; and*
 - (c) *Require the seller to return all deposits made in connection with the sale of the real property.*
- (3) *If a private transfer fee obligation is not discovered until after title of the property has passed to the buyer, the buyer may recover any and all damages resulting from the failure to disclose the obligation including but not limited to:*
 - (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 this section.*

- (4) *Any provision in a contract, covenant, or other instrument that purports to waive the rights of a buyer under this section shall be void.*

➔Section 4. Because there is an urgent need to provide for the clear transfer of title to real property and to avoid a predecessor in the chain of title, several times removed, from continuing to possess an interest in the transfer of real property after the transfer in which he or she was the grantor, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor April 11, 2012.