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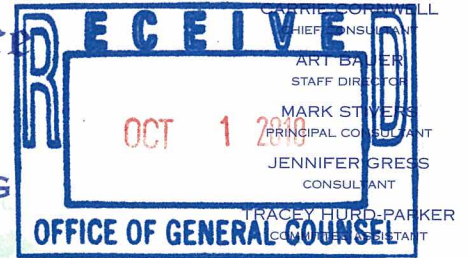
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# California Legislature

## SENATE COMMITTEE ON TRANSPORTATION AND HOUSING

ALAN LOWENTHAL  
CHAIRMAN



September 22, 2010

Mr. Alfred M. Pollard  
General Counsel  
Federal Housing Finance Agency  
Fourth Floor  
1700 G Street, NW  
Washington, DC 20552

Attn: Public Comments "Guidance on Private Transfer Fee Covenants, (No. 2010-N-11)"

Dear Mr. Pollard,

While I share your concerns about the use of transfer fees that provide purely private benefits to select market participants (*e.g.*, a developer or former property owner), I have seen that transfer fees can also be used to provide public benefits such as environmental mitigation and affordable housing. As a result, I strongly urge the Federal Housing Finance Agency (FHFA) not to adopt the guidance on private transfer fee covenants (No. 2010-N-11) that is currently proposed. In a subsequent rulemaking process, however, I urge FHFA instead to consider providing guidance to regulate, rather than prohibit, the use of transfer fees associated with properties on which the Enterprises purchase mortgages. Such guidance should differentiate between acceptable and unacceptable transfer fees and allow the Enterprises to purchase mortgages for properties subject to those transfer fees that conform to the regulations.

In 2007, the California Senate's Transportation and Housing Committee, which I then chaired and continue to chair, studied and wrestled long and hard with this very same issue. We were very concerned about the fact that businesses were offering their services to assist homeowners to place covenants on their properties creating transfer fees payable to the homeowners each time the properties were subsequently sold. We were also concerned about the prospect of private developers placing transfer fee obligations upon properties and earning future windfall profits. In the course of our studies, however, we also realized that California developers have used private transfer fees to purchase open space as environmental mitigation for a project or to support the development of affordable housing and homeless shelters. In the case of environmental benefits, the imposition of the fees in the two cases we were aware of resolved litigation that threatened to prevent housing from being built at all. We came to the conclusion that transfer fees can provide resources for important societal objectives and that the most prudent course of action is to regulate but not prohibit transfer fees and to require adequate disclosure to potential homebuyers when transfer fees exist.

In our attempts to define acceptable and unacceptable transfer fees, we developed the following criteria:

- Transfer fees may only be imposed upon properties for which the state's Department of Real Estate (DRE) has issued a public report under the Subdivided Lands Law (*i.e.*, new developments of five or more parcels). This was intended to prohibit an individual homeowner from imposing a transfer fee obligation upon an existing property.
- Transfer fee revenues must go to a public entity or 501(c)(3) non-profit entity to fund facilities or services that provide a public benefit. The facilities or services must be located within the same region as the property.
- A transfer fee may not exceed 2% of the property value.
- A transfer fee requirement may have a duration of no more than 99 years or until a specified funding amount is collected, whichever comes first. If an amount is specified, the recipient of the fee revenue must record a document stating that the fee obligation is no longer in effect once the specified amount has been collected.
- The imposition of a transfer fee must be approved by the DRE as part of the public report. Applications for a DRE public report must include a statement as to whether or not the property is subject to a transfer fee and, if so, include:
  - The identification of each public or nonprofit entity that will accept and use the transfer fees.
  - A description of the purposes for which the transfer fees will be used and how the expenditure of the fees will benefit the public.
  - The geographic area within which the transfer fees will be expended.
  - The duration of the fee requirement or the specific amount of funds to be collected.
  - The amount of the transfer fee or how the fee is calculated.
- A transfer fee must be imposed on all buyers including the initial buyer, unless the subdivider makes an equal or greater contribution for the same purpose.
- A transfer fee must be subordinate to purchase money security instruments and equity lines of credit.
- A transfer fee shall not apply to any home that is subject to a resale restriction ensuring affordability to low- or moderate-income households.
- A non-profit recipient may expend no more than 10% of the transfer fees for administration and overhead.
- Transfer fee revenues may not be used for expenses related to lobbying.
- A non-profit recipient of funds must report biannually to DRE on the status of the project funded by the fees and to provide an audited financial statement. DRE must post the annual report on its website. If a non-profit recipient fails to file the required report, DRE may "cause an examination and report" to be made and charge the organization the cost of the examination.

- Existing transfer fees obligations should be grandfathered in.
- Any transfer fee that does not meet these criteria is void.

Because disclosure of transfer fees requirements is critical to ensure an informed market, we also developed a two-fold disclosure process.

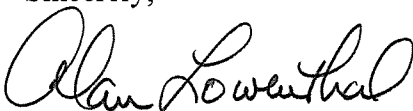
- The person imposing the fee must record a separate “Public Benefit Transfer Fee” document that contains all of the following:
  - The legal description and parcel number of the property.
  - The amount of the fee.
  - The name and contact information for the recipient of the fee.
  - The purpose for which the fees will be spent.
- A property seller subject to a transfer fee must disclose to potential homebuyers all of the following:
  - That the property is subject to a transfer fee.
  - The amount of the fee.
  - The recipient of the fees.
  - The public benefit that will be provided.
  - The date or circumstances under which the fee obligation will expire.

These provisions were placed into AB 1574 (Houston) of 2007, for which I am enclosing the text of the post-hearing bill (the July 5, 2007 version) and my committee’s analysis of the bill in print prior to the hearing (the June 26, 2007 version). Ultimately, this bill was stymied by the opposition of the California Association of Realtors, who wanted much stricter limitations or even an outright ban on transfer fees. Only the disclosure requirements mentioned above were enacted into law through a separate bill, AB 980 (Calderon) of 2007.

I provide these details in order to show that it is possible to craft a more refined approach that regulates rather than prohibits the use of transfer fees. By adopting this or a similar approach, FHFA could avoid the negative externalities associated with the use of transfer fees that provide purely private benefits to select market participants while maintaining the public benefits associated with transfer fees that serve legitimate societal needs.

Once again, I strongly urge FHFA not to adopt its currently proposed rule on private transfer fees and instead to propose a more nuanced regulatory approach to this important issue. Thank you for the opportunity to comment.

Sincerely,



Alan Lownenthal  
Chair, Senate Transportation and Housing Committee

**SENATE TRANSPORTATION & HOUSING COMMITTEE**  
**SENATOR ALAN LOWENTHAL, CHAIRMAN**

**BILL NO: AB 1574**  
**AUTHOR: HOUSTON**  
**VERSION: 6/19/07**  
**FISCAL: NO**

**Analysis by: Mark Stivers**  
**Hearing date: June 26, 2007**

**SUBJECT:**

Real estate transfer fees

**DESCRIPTION:**

This bill regulates private transfer fees recorded against residential real property.

**ANALYSIS:**

Current law allows various required fees to be included in the price of a residential real estate transfer. These include public fees such as transfer taxes and document recording fees as well as private fees such as homeowner association processing fees. All of these required fees and payments must be disclosed on statutorily required forms. In addition, various types of voluntary fees, including escrow fees, title insurance premiums, and realtor commissions, as well as liens, including mechanics' liens, judgment liens, and lender liens, are all paid out of escrow.

Recently, a new type of fee has been employed in certain situations: a private real estate transfer fee. Such a fee was first devised in Roseville three years ago when a project developer and the city agreed to a legal settlement with environmentalists allowing for the development of 8,400 new homes on the city's last large expanse of vacant land while preserving nearly 6,000 acres of open space. The \$85 million needed to purchase the agreed-upon open space will come from a charge of ½% of the sales price each time a home within the development is sold over the next 20 years. The fee goes to the private, non-profit Placer Land Trust for the purchase of the open space. These fees are required as part of the covenants recorded against the property.

Staff is aware of at least two other instances in which housing developers have imposed similar private transfer fees. To settle a lawsuit over housing development in the Martis Valley near Truckee, the developer and environmentalists agreed to impose transfer fees for the purchase of open space, mitigation of environmental impacts, and the development of affordable housing. In Orange County, Lennar Homes has used private transfer fees to direct funding to the Lennar Charitable Housing Foundation, a non-profit organization that supports the development and rehabilitation of homeless shelters.

Under the Subdivided Lands Law, the Department of Real Estate (DRE) ensures that a property owner who subdivides his or her property into five or more parcels complies with real estate and subdivision laws. Before marketing a new subdivision, a subdivider must obtain from DRE a

public report, which contains information on the covenants, conditions, and restrictions that govern the use of the property, the costs and assessments for maintaining homeowner associations and common areas, and other material disclosures. A subdivider is required to provide a copy of the public report to a prospective buyer before the buyer becomes obligated to purchase a lot or unit.

**This bill** regulates the prospective use of transfer fees recorded against residential property, including requiring that they provide a public benefit and remain in effect no longer than 99 years. The bill also requires disclosure to home buyers of both existing and prospective transfer fees. Specifically, the bill:

#### *Definitions*

- Defines a transfer fee as “any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, residential real property that contains a requirement that a fee be paid upon transfer of the real property” and clarifies that the following are not transfer fees:
  - Governmental fees or taxes.
  - Mechanics' liens.
  - Court-ordered transfers, payments, or judgments.
  - Property agreements in connection with a legal separation or dissolution of marriage.
  - Fees in connection with the administration of estates.
  - Fees imposed by lenders or purchasers of loans.
  - Assessments, charges, penalties, or fees authorized by the Davis-Stirling Common Interest Development Act, including those imposed by community service organizations.
  - Fees, charges, or payments included within a sales contract that is imposed upon one of the parties to the contract.

#### *Requirements for new fees*

- Limits the imposition of transfer fees to properties for which DRE has issued a public report under the Subdivided Lands Law (*i.e.*, new developments of five or more parcels).
- Requires that an application for a public report include a statement as to whether or not the property is subject to a transfer fee. If so, the application must also include:
  - The identification of each nonprofit entity that will accept and use the transfer fees.
  - A description of the purposes for which the transfer fees will be used and how the expenditure of the fees will benefit the public.
  - The geographic area within which the transfer fees will be expended.
  - The duration of the fee requirement or the specific amount of funds to be collected.
- Allows the subdivider, if the fee is proposed after the application for a public report is submitted, to submit the proposed fee for DRE approval up until the first lot or unit is sold.
- Limits a transfer fee requirement to a duration of no more than 99 years or until a specified funding amount is collected, whichever comes first. If an amount is specified, the bill requires the recipient to record a document stating that the fee obligation is no longer in effect.

- Exempts from the transfer fee any home that is subject to a resale restriction ensuring affordability to low- or moderate-income households.
- Requires that a transfer fee be imposed on all buyers including the initial buyer, unless the subdivider makes an equal or greater contribution for the same purpose.
- Requires subordination of a transfer fee to purchase money security instruments and equity lines of credit.
- Requires that transfer fees funds go to a public entity or 501(c)(3) non-profit entity to fund facilities or services that provide a public benefit. The facilities or services shall be located within the same region as the property.
- Limits a non-profit recipient to expending no more than 10% of the transfer fees for administration and overhead.
- Requires a non-profit recipient of funds, beginning on February 1, 2009, to report biannually to DRE on the status of the project funded by the fees and to provide an audited financial statement. DRE must post the annual report on its website. If a non-profit recipient fails to file the required report, DRE may “cause an examination and report” to be made and charge the organization the cost of the examination.
- Exempts from these requirements transfer fees that were in place before January 1, 2008; that are imposed in developments for which an application for a public report was submitted before January 1, 2008; and that are imposed in master planned developments where similar transfer fees have already been imposed.
- Provides that any transfer fee that does not meet these criteria is void.
- Provides that escrow holders are not liable if the fee is found to be void.

#### *Recording and disclosure*

- Requires that when a transfer fee is imposed after January 1, 2008, the person imposing the fee shall also record a separate “Public Benefit Transfer Fee” document that contains all of the following:
  - The legal description and parcel number of the property.
  - The amount of the fee.
  - The name and contact information for the recipient of the fee.
  - The purpose for which the fees will be spent.
- Requires sellers, when an existing or new transfer fee affects a property, to disclose to homebuyers all of the following:
  - That the property is subject to a transfer fee.
  - The amount of the fee.
  - The recipient of the fees.
  - The public benefit that will be provided.
  - The date or circumstances under which the fee obligation will expire.

#### **COMMENTS:**

1. Purpose of the bill. According to the author, businesses outside of California currently are offering their services to assist a homeowner to place a covenant on their property that creates a transfer fee that is payable to the homeowner who created the covenant. These fees

are triggered whenever the real property is sold to a new owner. Frequently, the transfer fee in these circumstances is calculated to be 1% of the sales price of the home. The goal of such a fee in these circumstances is to provide an income source to the property owner that created the covenant and for third parties that have never had an ownership interest in the property.

The author believes that the unrestricted use of transfer fees is inappropriate, because nothing prevents current and future property owners from placing multiple fees that serve no public benefit. The author does recognize, however, that home builders have created transfer fees to finance environmental mitigation and other endeavors that have a public benefit. The use of such a financing mechanism serves to reduce the up-front costs of such projects, resulting in a more affordable home price to an initial buyer.

This bill seeks to prohibit a homeowner from imposing such a fee for personal gain while preserving the ability for these fees to be used in circumstances that would provide a public benefit. Furthermore, by substantially increasing the disclosure requirements for these types of fees, the bill will ensure that a prospective owner of a home that is subject to this fee will be fully aware of the existence of this fee and will be able to make an informed decision to purchase this property or not.

2. Transfer fees can provide beneficial resources. To date, California developers have used private transfer fees to purchase open space as environmental mitigation for a project or to support the development of affordable housing and homeless shelters. In the case of environmental benefits, the imposition of the fees in the two cases to date has resolved litigation that threatened to prevent housing from being built at all. Transfer fees can provide resources for important societal objectives.
3. Disclosure critical. To the extent that transfer fees impact the value of the property, the market will adjust to the fee as long as the fee is fully disclosed. A homebuyer who knows that she must pay such a fee upon subsequent resale will pay the developer less for the home than for a comparable property. Likewise, future buyers will pay less to the seller. In order for prices to accurately reflect these fees, it is critical that buyers and sellers be aware of the fee and its magnitude.
4. Differences with SB 670. Earlier this year, this committee debated SB 670 (Correa), another bill that sought to regulate the use of transfer fees. While similar to SB 670, this bill differs in some significant respects:
  - SB 670 established a 1% cap on transfer fees. This bill has no cap.
  - SB 670 set a 30-year time limit on fees. This bill sets a 99-year time limit.
  - SB 670 required that the fees provide a benefit to the real property. This bill requires only that the fees provide a public benefit.
  - SB 670 required that fees be spent within the same county or within 25 miles of the property. This bill allows fees to be spent anywhere within the region.
  - SB 670 limited the administration costs of the recipient to 5%. This bill limits administration costs to 10%.
  - SB 670 prohibited the use of transfer fees for expenses related to lobbying or litigation. This bill does not.



5. Definition of region. This bill requires that transfer fees be spent within the same region as the housing development in which they are imposed. The bill includes within the definition of region all of the following: 1) the city where the development is located (or county if it is an unincorporated area); 2) a recognized habitat conservation planning area; 3) an area covered by a joint powers agency (JPA) of which the local government is a member; and 4) an area within five miles of the property. In some cases, this will provide the necessary flexibility to meet the needs for which the fee was created. In other cases, however, this definition will be severely limiting. If the city, for example, is not a member of a JPA or has not created a habitat conservation planning area, the fee will have to be spent within the city boundaries or within five miles of the development. This may not achieve the stated goals for the fee. **The committee may wish to consider broadening the definition of region to include at least the county in which the development is located and a radius of 25 miles from the development.**
6. Arguments in opposition. Opponents state that this bill legitimizes the use of transfer fees without imposing the safeguards needed to protect California homebuyers. They are specifically opposed to the lack of a cap on the amount of the fee, the authorization to impose fees for up to 99 years, the ability for the fee to “skip” the first buyer if the developer pays the fee, the lack of a prohibition on using the fees for lobbying or litigation, and the lack of a statement on the disclosure advising homebuyers to take the fee into account,
7. Technical amendments.
- On page 6, line 20 after “each” insert “public or”
  - On page 8, line 1 strike “any” and insert “any fee requirement imposed within a”
  - On page 8, line 3 strike “instrument” and insert “document”
  - On page 8, line 4 strike “contains a requirement that” and insert “requires”
  - On page 9, strike lines 25-27 and insert:
 

(B) An area within the boundaries of a recognized planning area, such as a habitat conservation planning area, that covers, at least in part, the territory over which the local government with authority to approve the subdivision has jurisdiction.
  - On page 10, line 17 after “fee” insert “, as a condition of payment of the fee,”
  - On page 10, after line 33 insert “(E) The date or circumstances under which the obligation to pay the transfer fee will expire.”
  - On page 10, line 37 after “entity” insert “within 30 days”
  - On page 10, lines 39-40 strike “stating that the transfer fee obligation is no longer in effect” and insert “extinguishing the fee imposed on the real property”
8. Double referral. The Senate Rules Committee has referred this bill both to the Transportation and Housing Committee and the Judiciary Committee. If the committee approves this bill, it will be re-referred to the Judiciary Committee.

**Assembly Votes:****Floor: 51-6****H&CD: 6-0****Jud: 10-0**



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**RELATED LEGISLATION**

**SB 670 (Correa)** regulates the use of transfer fees recorded against real property. *This bill died in the Senate Transportation and Housing Committee.*

**AB 980 (Calderon)** This bill requires the creator of a private transfer fee, as a condition of payment, to record a separate document with details of the fee. *This bill will be heard in the Senate Transportation and Housing Committee on June 26.*

**POSITIONS: (Communicated to the Committee before noon on Wednesday, June 20, 2007)**

**SUPPORT:** California Building Industry Association (sponsor)  
California Business Properties Association  
Community Action Partnership  
Lewis Operating Corporation  
Shapell Homes  
Standard Pacific Homes

**OPPOSED:** California Association of Realtors

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2007-2008 AB1574 - Real property: transfer fees. ( Version: 93 - Amended Senate 7/5/07 )



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Date:	Location:	Action:
July 05, 2007	Senate	Amended
June 19, 2007	Senate	Amended
May 15, 2007	Assembly	Amended
May 03, 2007	Assembly	Amended
April 23, 2007	Assembly	Amended
March 29, 2007	Assembly	Amended
February 23, 2007	Assembly	Introduced

Author:	Roles:	Name:
Lead Author	Assembly Member	Houston
Coauthor	Senator	Dutton

**Title:** An act to amend Section 11010 of, and to add Sections ~~11024 and 11025~~ Section 11025 to, the Business and Professions Code, and to add Sections ~~1098~~ 1098, 1098.5, and 1102.6e to the Civil Code, relating to real property.

**Subject:** Real property: transfer fees.

### Legislative Counsel's Digest

Existing law permits various fees to be included in the price of a residential real estate transfer. Existing law requires the disclosure of specified attributes of residential real property prior to the transfer of title, including disclosure of a continuing lien levy of special taxes, as specified.

Existing law requires any person who intends to offer subdivided lands within California for sale or lease to file with the Department of Real Estate an application for a public report consisting of a notice of intention and a completed questionnaire that includes, among other things, a statement that there is an airport in the vicinity, and that this may affect the use of the property. Existing law makes a violation of these provisions a crime.

This bill would regulate the imposition of transfer fees, to be defined as a fee payment requirement imposed in any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument document affecting the transfer or sale of real property that contains a requirement that requires a fee be paid upon transfer of the real property, with specified exceptions. The bill would provide that a transfer fee imposed upon residential real property not otherwise excepted may only be received and used by a public entity or a nonprofit organization to fund a project or facility or to provide a service that provides a public benefit, as specified. The bill would require the facility to be located in, or the service provided in, the same region where the real property is located, as defined. The bill would permit a transfer fee to be imposed only for a period of time no greater than 99 years from the time it is first recorded or until an amount of funding specified in the transfer fee covenant, if any, is collected, and would prohibit the total of transfer fees imposed from exceeding 2% of the sale price of the property. The bill would require a person imposing a transfer fee to make a specified recording in connection with the property, and requires an entity receiving funds from the fee to make a recording when the aggregate amount of funding has been satisfied. The bill would require a transferor of residential real property subject to transfer fees to make a specified disclosure regarding applicable transfer those fees.

The bill would require the application for a public report in connection with subdivided lands to state whether the property offered for sale or lease is subject to a transfer fee, as specified, and if so, would require a description of how the fee will be used, among other things. By changing the definition of a crime, this bill would impose a state-mandated local program. ~~The bill would provide that after a public report is submitted and before the first lot or unit is sold, a subdivider may apply to the Department of Real Estate to impose a transfer fee, as defined, and would require the subdivider to provide the department with specified information. The bill would require the department to make a determination that the transfer fee is consistent with certain requirements. The bill would require a nonprofit organization accepting a transfer fee, on February 1, 2009, and biennially thereafter, to file a specified report with the department and would authorize the Real Estate Commissioner to cause an examination and report to be made if the entity fails to do so.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

- **Vote:** majority.
- **Appropriation:** no.
- **Fiscal Committee:** yes.

- **Local Program:** yes.
- **Urgency:** no.
- **Tax Levy:** no.

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 11010 of the Business and Professions Code is amended to read:

**11010.** (a) Except as otherwise provided pursuant to subdivision (c) or elsewhere in this chapter, any person who intends to offer subdivided lands within this state for sale or lease shall file with the Department of Real Estate an application for a public report consisting of a notice of intention and a completed questionnaire on a form prepared by the department.

(b) The notice of intention shall contain the following information about the subdivided lands and the proposed offering:

- (1) The name and address of the owner.
- (2) The name and address of the subdivider.
- (3) The legal description and area of lands.
- (4) A true statement of the condition of the title to the land, particularly including all encumbrances thereon.
- (5) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any contracts intended to be used.
- (6) A true statement of the provisions, if any, that have been made for public utilities in the proposed subdivision, including water, electricity, gas, telephone, and sewerage facilities. For subdivided lands that were subject to the imposition of a condition pursuant to subdivision (b) of Section 66473.7 of the Government Code, the true statement of the provisions made for water shall be satisfied by submitting a copy of the written verification of the available water supply obtained pursuant to Section 66473.7 of the Government Code.
- (7) A true statement of the use or uses for which the proposed subdivision will be offered.
- (8) A true statement of the provisions, if any, limiting the use or occupancy of the parcels in the subdivision.
- (9) A true statement of the amount of indebtedness that is a lien upon the subdivision or any part thereof, and that was incurred to pay for the construction of any onsite or offsite improvement, or any community or recreational facility.
- (10) A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area, assessment district, or community facilities district within the boundaries of which, the subdivision, or any part thereof, is located, and that is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to that subdivision, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax upon the subdivision, or any part thereof.
- (11) A notice pursuant to Section 1102.6c of the Civil Code.
- (12) (A) As to each school district serving the subdivision, a statement from the appropriate district that indicates the location of each high school, junior high school, and elementary school serving the subdivision, or documentation that a statement to that effect has been requested from the appropriate school district.  
  
(B) In the event that, as of the date the notice of intention and application for issuance of a public report are otherwise deemed to be qualitatively and substantially complete pursuant to Section 11010.2, the statement described in subparagraph (A) has not been provided by any school district serving the subdivision, the person who filed the notice of intention and application for issuance of a public report shall immediately provide the department with the name, address, and telephone number of that district.
- (13) (A) The location of all existing airports, and of all proposed airports shown on the general plan of any city or county, located within two statute miles of the subdivision. If the property is located within an airport influence area, the following statement shall be included in the notice of intention:

### NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

(B) For purposes of this section, an "airport influence area," also known as an "airport referral area," is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission.

(14) A true statement, if applicable, referencing any soils or geologic report or soils and geologic reports that have been prepared specifically for the subdivision.

(15) A true statement of whether or not fill is used, or is proposed to be used in the subdivision and a statement giving the name and the location of the public agency where information concerning soil conditions in the subdivision is available.

(16) On or after July 1, 2005, as to property located within the jurisdiction of the San Francisco Bay Conservation and Development Commission, a statement that the property is so located and the following notice: NOTICE OF SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION JURISDICTION

This property is located within the jurisdiction of the San Francisco Bay Conservation and Development Commission. Use and development of property within the commission's jurisdiction may be subject to special regulations, restrictions, and permit requirements. You may wish to investigate and determine whether they are acceptable to you and your intended use of the property before you complete your transaction.

(17) (A) A true statement whether the real property that is intended to be offered pursuant to this chapter is subject to a transfer fee, as defined in Section 1098 of the Civil Code, and which shall conform with the requirements of that section.

(B) The identification of each *public or nonprofit* entity that will accept and use the transfer fees.

(C) A description of the purposes for which the transfer fees will be used and how the expenditure of the fees will benefit the public.

(D) The geographic area within which the transfer fees will be expended.

(E) The duration of the fee requirement or the specific amount of funds to be collected.

(F) The amount of the applicable transfer fee or how the fee is calculated.

(18) Any other information that the owner, his or her agent, or the subdivider may desire to present.

(c) The commissioner may, by regulation, or on the basis of the particular circumstances of a proposed offering, waive the requirement of the submission of a completed questionnaire if the commissioner determines that prospective purchasers or lessees of the subdivision interests to be offered will be adequately protected through the issuance of a public report based solely upon information contained in the notice of intention.

~~SEC. 2.~~ Section 11024 is added to the Business and Professions Code, to read: 11024.

~~After the application for a public report is submitted and before the first lot or unit is sold, a subdivider may apply to the department to impose a transfer fee, as defined in Section 1098 of the Civil Code, within the subdivision. The subdivider shall provide the department with the information specified in paragraph (17) of subdivision (b) of Section 11010, and the department shall make a determination that the transfer fee is consistent with the requirements of Section 1098 of the Civil Code.~~

~~SEC. 3.~~ **SEC. 2.** Section 11025 is added to the Business and Professions Code, to read:

**11025.** (a) ~~Beginning on~~ On or before February 1, 2009, and ~~biannually~~ *biennially* thereafter, a *public agency or nonprofit* organization that accepts any transfer fee, as defined in Section 1098 of the Civil Code, shall file a report with the department that describes the current status of the facilities and services funded by the transfer fee. The *public agency or nonprofit* organization shall also provide the department an independently audited financial statement covering the time period since the last report that contains all of the following:

(1) The total amount of all transfer fees collected.

(2) The amount of transfer fees expended on each facility or service and a description of each facility or service.

(3) The total amount of transfer fees used for administration and overhead of the *public agency or nonprofit* organization.

(4) The percentage of transfer fees used for administration and overhead compared with the amount of transfer fees collected in that year.

(b) The department, no later than March 1, 2009, and within 30 days of receiving a report thereafter, shall post each *public agency's and nonprofit organization's* report on its Web site and clearly identify each subdivision affected by each report.

(c) If the *public agency or nonprofit* organization fails to file a report required by this section, the commissioner may cause an examination and report to be made and may charge the *public agency or nonprofit* organization the cost of making the examination and report.

(d) This section shall apply to a transfer fee imposed upon residential real property pursuant to a public report for which an application is submitted on or after January 1, 2008, ~~unless the transfer fee 2008.~~ *This section shall not apply to a transfer fee that meets the criteria of paragraph (1) or (3) of subdivision (b) of Section 1098 of the Civil Code.*

~~SEC. 4.~~ **SEC. 3.** Section 1098 is added to the Civil Code, to read:

**1098.** (a) A "transfer fee" is any *fee payment requirement imposed within a covenant, restriction, or condition* contained in any deed, contract, security instrument, or other ~~instrument document~~ affecting the transfer or sale of, or any interest in, residential real property that ~~contains a requirement that requires~~ a fee be paid upon transfer of the real property. A transfer fee does not include:



- (1) Fees or taxes imposed by a governmental entity.
- (2) ~~Mechanics~~<sup>2</sup> Fees pursuant to mechanics' liens.
- (3) ~~Court-ordered~~ Fees pursuant to court-ordered transfers, payments, or judgments.
- (4) ~~Property~~ Fees pursuant to property agreements in connection with a legal separation or dissolution of marriage.
- (5) Fees, charges, or payments in connection with the administration of estates or trusts pursuant to Division 7 (commencing with Section 7000), Division 8 (commencing with Section 13000), or Division 9 (commencing with Section 15000) of the Probate Code.
- (6) Fees, charges, or payments imposed by lenders or purchasers of loans, as these entities are described in subdivision (c) of Section 10232 of the Business and Professions Code.
- (7) Assessments, charges, penalties, or fees authorized by the Davis-Stirling Common Interest Development Act (Title 6 (commencing with Section 1350) of Part 4), including those imposed pursuant to subdivision (c) of Section 1368.
- (8) Fees, charges, or payments included within a sales contract that ~~is~~ are imposed upon one of the parties to the contract *and that do not affect future transfers of the real property.*
- (b) A transfer fee *imposed on residential real property* is void unless it meets one of the following criteria:
- (1) The real property was encumbered by a recorded instrument imposing the transfer fee on or before December 31, 2007.
  - (2) The transfer fee is imposed prior to the sale of the first lot or unit in a development for which an application for a public report pursuant to Section 11010 of the Business and Professions Code was submitted on or before December 31, 2007.
  - (3) The transfer fee is imposed within any master planned development, as defined in Section 2792.32 of Title 10 of the California Code of Regulations, in which a ~~similar~~ transfer fee *instrument* has been recorded against any other real property interest within the master planned development on or before December 31, 2007.
  - (4) The transfer fee satisfies the requirements of Section 11010 ~~or 11024~~ of the Business and Professions Code and the requirements of subdivision (c).
- (c) A transfer fee *imposed on residential real property* that does not meet the criteria of paragraph (1), (2), or (3) of subdivision (b) is subject to the following requirements and limitations:
- (1) A transfer fee may only be received and used by a public entity or a nonprofit organization that has tax exempt status under Section 501(c)(3) of the Internal Revenue Code that has been identified in the notice of intention filed pursuant to Section 11010 ~~or Section 11024~~ of the Business and Professions Code, or by a successor public entity or nonprofit organization.
  - (2) A transfer fee may only be used to fund a *project or facility* or to provide a service, that provides a public benefit. ~~Funding a facility or providing a service shall include, but not be limited to, acquiring and benefit, including, but not limited to, acquiring or maintaining open-space lands, acquiring and managing affordable housing land and projects, and managing environmental restoration projects. The project or facility shall be located in, or the services provided in, the same region where the real property is located. For the purposes of this section, "region" shall mean any of the following:~~
    - (A) An area within the boundaries of the local government with authority to approve the subdivision *county* in which the real property is located.
    - (B) ~~An area within the boundaries of a planning area, such as a habitat conservation planning area, recognized by the local government with authority to approve the subdivision.~~
      - (B) *An area within the boundaries of a recognized planning area, such as a habitat conservation planning area, that covers, at least in part, the territory over which the local government with authority to approve the subdivision has jurisdiction.*
    - (C) An area within the boundaries of a joint powers agency or interagency body of which the local government with authority to approve the subdivision is a member.
    - (D) An area within 5 miles of where the property is located.
  - (3) A transfer fee may only be imposed for a period of time no greater than 99 years from the time it is first recorded or until an amount of funding specified in the transfer fee covenant, if any, is collected, whichever occurs first.
  - (4) The transfer fee payment obligation shall be imposed on all qualifying transfers of the property, including the initial sale, unless the subdivider makes an equal or greater contribution for the same purpose for which the transfer fee is collected.
  - (5) Any lien arising from the transfer fee payment obligation shall be subordinate to a purchase money security instrument and equity line of credit generated in escrow during the transfer of the real property.
  - (6) The transfer fee payment obligation shall arise only pursuant to a transfer that results in the assessment of a documentary transfer tax, as described in Section 11911 of the Revenue and Taxation Code.

(7) A transfer fee obligation shall be suspended during any time period during which the real property provides or is being transferred as low- and moderate-income housing subject to a recorded equity sharing agreement or restriction on resale price.

(8) Of the transfer fee funds received by a nonprofit organization, the organization shall spend no more than 10 percent of the funds received for administration and overhead.

(9) *The total of transfer fee payments shall be imposed as a percentage of the sale price and shall not exceed 2 percent of the sale price of the property.*

(10) *The transfer fee funds shall not be used for expenses related to lobbying and shall not be transferred to another entity for this purpose.*

~~(d) When a transfer fee is imposed upon real property, the person imposing the transfer fee shall concurrently record in the office of the county recorder for the county in which the real property is located a document that meets all of the following requirements:~~

~~(1) The title of the document shall include the phrase "Public Benefit Transfer Fee" in at least 12-point boldface type.~~

~~(2) The document shall include all of the following information:~~

~~(A) The legal description and assessor's parcel number for the affected real property.~~

~~(B) The amount of the fee required or a description of how the fee is calculated.~~

~~(C) The entity or entities to which funds from the fee will be paid and specific contact information regarding where the funds are to be sent.~~

~~(D) The purpose for which funds from the fee will be used.~~

~~(E) The date or circumstances under which the obligation to pay the transfer fee will expire.~~

~~(c) If the transfer fee covenant specifies an aggregate amount of funding to be collected and that amount of funding has been received by the entities described in paragraph (1) of subdivision (c), the receiving entity shall record in the office of the county recorder for the county in which the real property is located a document stating that the transfer fee obligation is no longer in effect.~~

~~(f) Any escrow holder collecting a transfer fee in escrow and paying them to a beneficiary of record shall not be held liable for those fees if the transfer fee is subsequently found to be void.~~

**SEC. 4. Section 1098.5 is added to the Civil Code, to read:**

*1098.5. (a) When a transfer fee, as defined in Section 1098, is imposed upon real property on or after January 1, 2008, the person or entity imposing the transfer fee, as a condition of payment of the fee, shall record in the office of the county recorder for the county in which the real property is located, concurrently with the instrument creating the transfer fee requirement, a separate document that meets all of the following requirements:*

*(1) The title of the document shall be "Payment of Transfer Fee Required" in at least 14-point boldface type.*

*(2) The document shall include all of the following information:*

*(A) The legal description and assessor's parcel number for the affected real property.*

*(B) The amount, if the fee is a flat amount, or the percentage of the home price constituting the cost of the fee.*

*(C) The entity or entities to which funds from the fee will be paid and specific contact information regarding where the funds are to be sent.*

*(D) The purpose for which funds from the fee will be used.*

*(E) The date or circumstances under which the obligation to pay the transfer fee will expire.*

*(b) If the transfer fee covenant specifies an aggregate amount of funding to be collected and that amount of funding has been received by the entities described in paragraph (1) of subdivision (c) of Section 1098, within 30 days of receiving that amount, the receiving entity shall record in the office of the county recorder for the county in which the real property is located a document extinguishing the fee imposed on the real property.*

*(c) Any escrow holder collecting a transfer fee in escrow and paying them to a beneficiary of record shall not be held liable for those fees if the transfer fee is subsequently found to be void.*

**SEC. 5. Section 1102.6e is added to the Civil Code, to read:**

**1102.6e.** If a property being transferred on or after January 1, 2008, is subject to a transfer fee, as defined in Section 1098, the transferor shall provide, at the same time as the transfer disclosure statement required pursuant to Section 1102.6 is provided, an additional disclosure statement containing all of the following:

(a) Notice that payment of a transfer fee is required upon transfer of the property.



(b) The amount of the fee required ~~or~~ based upon the asking price of the real property and a description of how the fee is calculated.

(c) Notice that the final amount of the fee will be different if the final sales price is different from the asking price.

(c)

(d) The entity or entities to which funds from the fee will be paid.

(c)

(e) The purpose for which funds from the fee will be used.

(c)

(f) The date or circumstances under which the obligation to pay the transfer fee will expire, if any.

**SEC. 6.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.