



## Private Transfer Taxes



Private transfer taxes are a troubling development in real property law that allows for private parties to impose real estate transfer taxes or fees on the sale of real property. Private transfer taxes are similar to the real estate transfer tax, except that it is a private party that collects the fee upon every single sale of a particular home, rather than a governmental entity.

At its most basic elements, the imposition of private transfer fee allows a third party to collect a fee upon every purchase of a particular property, calculated as a percentage of the sale price far into the future. While the legality and enforceability of this approach is the topic of much debate, South Carolina REALTORS® are seeking to proactively protect South Carolina consumers by prohibiting the imposition of new private transfer taxes or fees.

### **How does Private Transfer Fees Work?**

A property owner adds a covenant to the deed of their home prior to sale of the property. This covenant attaches to that particular sale of the property, in addition to all future sales of the property, often as long as ninety-nine years. The covenant requires future buyers of the property, for as long as the covenant is in effect, to pay a certain percentage of the sale price as a transfer fee back to the original property owner.

In order to administer and enforce the covenant, there is typically a third party involved who takes a percentage of the fee collected on all subsequent transfers. Despite the fact that the third party never maintained any form of ownership interest in the property, they typically receive upwards of fifty percent of the proceeds for all sales of the property to consumers who were never aware that such a restriction was present.

South Carolina consumers must be protected from the imposition of private transfer taxes or fees, as they represent a number of obstacles for South Carolinians who wish to purchase a home:

- The imposition of a fee based on the sales price of a home adversely impacts the affordability of home in South Carolina, similar to government imposed real estate transfer taxes;
- Private transfer taxes represent a substantial barrier to potential buyers in seeking financing, as the fee is often placed in the form of a deed restriction, which very likely could lead to a subsequent lien. With the ever-tightening lending standards, the presence of a potential private transfer fee lien will make financing more difficult to obtain.
- Private transfer fees are a nightmare for potential purchasers trying to obtain clear title to the property. In fact, some title insurance providers will no longer underwrite title insurance for properties with a deed restricted transfer fee covenant.

South Carolina REALTORS® support legislation prohibiting the imposition of private transfer taxes via, covenant, condition, restriction or other agreements that impose a servitude on real property, which are typically not obvious to the average consumer. Further, South Carolina REALTORS® support legislation providing that through the imposition of private transfer fees any agreement may not reserve to any person that right to share

in property value appreciation, impose a fee, commission or payment upon the future transfer of real property, excepting those transfer fees and considerations already in place. Five states (TX, MO, FL, OR, and CA) have already passed bills into law, which prohibit private transfer fees, and several other states have pending legislation. In passing similar legislation, South Carolina has the opportunity to be at the forefront in protecting consumers from what is a new invention in property law. This is a common sense and consumer-friendly proposal.