

LBD10855-03-1

1 OF THE DURATION OF THE OBLIGATION TO PAY A PRIVATE TRANSFER FEE, THE
2 AMOUNT OF A PRIVATE TRANSFER FEE, OR THE METHOD BY WHICH ANY PRIVATE
3 TRANSFER FEE IS CREATED OR IMPOSED. THUS, THE LEGISLATURE FINDS AND
4 DECLARES THAT A PRIVATE TRANSFER FEE OBLIGATION SHALL NOT RUN WITH THE
5 TITLE TO PROPERTY OR OTHERWISE BIND SUBSEQUENT OWNERS OF PROPERTY UNDER
6 ANY COMMON LAW OR EQUITABLE PRINCIPLE.

7 S 472. DEFINITIONS. 1. "TRANSFER" MEANS THE SALE, GIFT, CONVEYANCE,
8 ASSIGNMENT, INHERITANCE, OR OTHER TRANSFER OF AN OWNERSHIP INTEREST IN
9 REAL PROPERTY LOCATED IN THIS STATE.

10 2. "PRIVATE TRANSFER FEE" MEANS A FEE, CHARGE OR ANY PORTION THEREOF,
11 REQUIRED BY A PRIVATE TRANSFER FEE OBLIGATION AND PAYABLE, DIRECTLY OR
12 INDIRECTLY, UPON THE TRANSFER OF AN INTEREST IN REAL PROPERTY, OR PAYA-
13 BLE FOR THE RIGHT TO MAKE OR ACCEPT SUCH TRANSFER, REGARDLESS OF WHETHER
14 THE FEE OR CHARGE IS A FIXED AMOUNT OR IS DETERMINED AS A PERCENTAGE OF
15 THE VALUE OF THE PROPERTY, THE PURCHASE PRICE, OR OTHER CONSIDERATION
16 GIVEN FOR THE TRANSFER. THE FOLLOWING ARE NOT PRIVATE TRANSFER FEES FOR
17 PURPOSES OF THIS SECTION:

18 (A) ANY CONSIDERATION PAYABLE BY THE TRANSFEREE TO THE TRANSFEROR FOR
19 THE INTEREST IN REAL PROPERTY BEING TRANSFERRED, INCLUDING ANY SUBSE-
20 QUENT ADDITIONAL CONSIDERATION FOR THE PROPERTY PAYABLE BY THE TRANSFER-
21 EE BASED UPON ANY SUBSEQUENT APPRECIATION, DEVELOPMENT, OR SALE OF THE
22 PROPERTY, PROVIDED SUCH ADDITIONAL CONSIDERATION IS PAYABLE ON A
23 ONE-TIME BASIS ONLY AND THE OBLIGATION TO MAKE SUCH PAYMENT DOES NOT
24 BIND SUCCESSORS IN TITLE TO THE PROPERTY. FOR THE PURPOSES OF THIS
25 SUBPARAGRAPH, AN INTEREST IN REAL PROPERTY MAY INCLUDE A SEPARATE
26 MINERAL ESTATE AND ITS APPURTENANT SURFACE ACCESS RIGHTS.

27 (B) ANY COMMISSION PAYABLE TO A LICENSED REAL ESTATE BROKER FOR THE
28 TRANSFER OF REAL PROPERTY PURSUANT TO AN AGREEMENT BETWEEN THE BROKER
29 AND THE TRANSFEROR OR THE TRANSFEREE, INCLUDING ANY SUBSEQUENT ADDI-
30 TIONAL COMMISSION FOR THAT TRANSFER PAYABLE BY THE TRANSFEROR OR THE
31 TRANSFEREE BASED UPON ANY SUBSEQUENT APPRECIATION, DEVELOPMENT, OR SALE
32 OF THE PROPERTY.

33 (C) ANY INTEREST, CHARGES, FEES, OR OTHER AMOUNTS PAYABLE BY A BORROW-
34 ER TO A LENDER PURSUANT TO A LOAN SECURED BY A MORTGAGE AGAINST REAL
35 PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY FEE PAYABLE TO THE LENDER
36 FOR CONSENTING TO AN ASSUMPTION OF THE LOAN OR A TRANSFER OF THE REAL
37 PROPERTY SUBJECT TO THE MORTGAGE, ANY FEES OR CHARGES PAYABLE TO THE
38 LENDER FOR ESTOPPEL LETTERS OR CERTIFICATES, AND ANY SHARED APPRECIATION
39 INTEREST OR PROFIT PARTICIPATION OR OTHER CONSIDERATION AND PAYABLE TO
40 THE LENDER IN CONNECTION WITH THE LOAN.

41 (D) ANY RENT, REIMBURSEMENT, CHARGE, FEE, OR OTHER AMOUNT PAYABLE BY A
42 LESSEE TO A LESSOR UNDER A LEASE, INCLUDING, BUT NOT LIMITED TO, ANY FEE
43 PAYABLE TO THE LESSOR FOR CONSENTING TO AN ASSIGNMENT, SUBLETTING,
44 ENCUMBRANCE, OR TRANSFER OF THE LEASE.

45 (E) ANY CONSIDERATION PAYABLE TO THE HOLDER OF AN OPTION TO PURCHASE
46 AN INTEREST IN REAL PROPERTY OR THE HOLDER OF A RIGHT OF FIRST REFUSAL
47 OR FIRST OFFER TO PURCHASE AN INTEREST IN REAL PROPERTY FOR WAIVING,
48 RELEASING, OR NOT EXERCISING THE OPTION OR RIGHT UPON THE TRANSFER OF
49 THE PROPERTY TO ANOTHER PERSON.

50 (F) ANY TAX, FEE, CHARGE, ASSESSMENT, FINE, OR OTHER AMOUNT PAYABLE TO
51 OR IMPOSED BY A GOVERNMENTAL AUTHORITY.

52 (G) ANY FEE, CHARGE, ASSESSMENT, FINE, OR OTHER AMOUNT PAYABLE TO A
53 HOMEOWNERS', CONDOMINIUM, COOPERATIVE, MOBILE HOME, OR PROPERTY OWNERS'
54 ASSOCIATION PURSUANT TO A DECLARATION OR COVENANT OR LAW APPLICABLE TO
55 SUCH ASSOCIATION, INCLUDING, BUT NOT LIMITED TO, FEES OR CHARGES PAYABLE
56 FOR ESTOPPEL LETTERS OR CERTIFICATES ISSUED BY THE ASSOCIATION OR ITS

1 AUTHORIZED AGENT. NO AMOUNT SHALL BE PAID TO A HOMEOWNERS', CONDOMINIUM,
2 COOPERATIVE, MOBILE HOME, OR PROPERTY OWNERS' ASSOCIATION FOR THE
3 PAYMENT TO THE DECLARANT OF THE CONDOMINIUM OR THE CREATOR OF A HOMEOWN-
4 ERS', COOPERATIVE, MOBILE HOME OR PROPERTY OWNERS' ASSOCIATION, OR THEIR
5 DESIGNEE.

6 (H) ANY FEE, CHARGE, ASSESSMENT, DUES, CONTRIBUTION, OR OTHER AMOUNT
7 IMPOSED BY A DECLARATION OR COVENANT ENCUMBERING A COMMUNITY, AND PAYA-
8 BLE TO A NOT-FOR-PROFIT OR CHARITABLE ORGANIZATION FOR THE PURPOSE OF
9 SUPPORTING CULTURAL, EDUCATIONAL, CHARITABLE, RECREATIONAL, ENVIRON-
10 MENTAL, CONSERVATION, OR OTHER SIMILAR ACTIVITIES BENEFITING THE COMMU-
11 NITY THAT IS SUBJECT TO THE DECLARATION OR COVENANT.

12 (I) ANY FEE, CHARGE, ASSESSMENT, DUES, CONTRIBUTION, OR OTHER AMOUNT
13 PERTAINING TO THE PURCHASE OR TRANSFER OF A CLUB MEMBERSHIP RELATING TO
14 REAL PROPERTY OWNED BY THE MEMBER, INCLUDING, BUT NOT LIMITED TO, ANY
15 AMOUNT DETERMINED BY REFERENCE TO THE VALUE, PURCHASE PRICE, OR OTHER
16 CONSIDERATION GIVEN FOR THE TRANSFER OF THE REAL PROPERTY.

17 3. "PRIVATE TRANSFER FEE OBLIGATION" MEANS AN OBLIGATION ARISING UNDER
18 A DECLARATION OR COVENANT RECORDED AGAINST THE TITLE TO REAL PROPERTY,
19 OR UNDER ANY OTHER CONTRACTUAL AGREEMENT OR PROMISE, WHETHER OR NOT
20 RECORDED, THAT REQUIRES OR PURPORTS TO REQUIRE THE PAYMENT OF A PRIVATE
21 TRANSFER FEE TO THE DECLARANT OR OTHER PERSON SPECIFIED IN THE DECLARA-
22 TION, COVENANT OR AGREEMENT, OR TO THEIR SUCCESSORS OR ASSIGNS, UPON A
23 SUBSEQUENT TRANSFER OF AN INTEREST IN THE REAL PROPERTY.

24 S 473. PROHIBITION. A PRIVATE TRANSFER FEE OBLIGATION RECORDED OR
25 ENTERED INTO IN THIS STATE ON OR AFTER THE EFFECTIVE DATE OF THIS
26 SECTION DOES NOT RUN WITH THE LAND AND IS NOT BINDING ON OR ENFORCEABLE
27 AT LAW OR IN EQUITY AGAINST ANY OWNER, PURCHASER, OR MORTGAGEE OF ANY
28 INTEREST IN REAL PROPERTY AS AN EQUITABLE SERVITUDE OR OTHERWISE. ANY
29 PRIVATE TRANSFER FEE OBLIGATION THAT IS RECORDED OR ENTERED INTO IN THIS
30 STATE ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION IS VOID AND UNEN-
31 FORCEABLE. THIS SECTION SHALL NOT APPLY TO A PRIVATE TRANSFER FEE OBLI-
32 GATION RECORDED OR ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THIS
33 SECTION. THIS SECTION SHALL NOT BE DEEMED TO REQUIRE THAT A PRIVATE
34 TRANSFER FEE OBLIGATION RECORDED, FILED OR ENTERED INTO IN THIS STATE
35 BEFORE THE EFFECTIVE DATE OF THIS SECTION IS PRESUMED VALID AND ENFORCE-
36 ABLE. IT IS THE PUBLIC POLICY OF THIS STATE THAT NO PRIVATE TRANSFER FEE
37 OBLIGATION SHALL BE VALID OR ENFORCEABLE WHENEVER ENTERED INTO, RECORDED
38 OR FILED. FURTHERMORE, THIS ARTICLE SHALL NOT VALIDATE ANY PRIVATE
39 TRANSFER FEE AGREEMENT THAT IS CONTRARY TO THE LAWS OF THIS STATE.

40 S 474. LIABILITY FOR VIOLATION. ANY PERSON WHO RECORDS OR ENTERS INTO
41 AN AGREEMENT IMPOSING A PRIVATE TRANSFER FEE OBLIGATION IN THEIR FAVOR
42 OR IN THE FAVOR OF A THIRD PARTY AFTER THE EFFECTIVE DATE OF THIS
43 SECTION SHALL BE LIABLE FOR (1) ANY AND ALL DAMAGES RESULTING FROM THE
44 IMPOSITION OF THE TRANSFER FEE OBLIGATION ON THE TRANSFER OF AN INTEREST
45 IN THE REAL PROPERTY, INCLUDING, WITHOUT LIMITATION, THE AMOUNT OF ANY
46 TRANSFER FEE PAID BY A PARTY TO THE TRANSFER, AND (2) ALL ATTORNEYS'
47 FEES, EXPENSES AND COSTS INCURRED BY A PARTY TO THE TRANSFER OR MORTGA-
48 GEE OF THE REAL PROPERTY TO RECOVER ANY TRANSFER FEE PAID OR IN
49 CONNECTION WITH AN ACTION TO QUIET TITLE. WHERE AN AGENT ACTS ON BEHALF
50 OF A PRINCIPAL TO RECORD OR SECURE A PRIVATE TRANSFER FEE OBLIGATION,
51 LIABILITY SHALL BE ASSESSED TO THE PRINCIPAL, RATHER THAN THE AGENT.

52 S 475. DISCLOSURE. PRIOR TO THE SIGNING BY THE BUYER OF A BINDING
53 CONTRACT FOR THE SALE OF REAL PROPERTY, THE SELLER SHALL FURNISH TO ANY
54 PURCHASER A WRITTEN STATEMENT DISCLOSING THE EXISTENCE OF ANY PRIVATE
55 TRANSFER FEE OBLIGATION. THIS WRITTEN STATEMENT SHALL INCLUDE A
56 DESCRIPTION OF THE PRIVATE TRANSFER FEE OBLIGATION AND INCLUDE A STATE-

MENT THAT PRIVATE TRANSFER FEE OBLIGATIONS ARE SUBJECT TO PROHIBITIONS UNDER THIS SECTION.

S 476. NOTICE REQUIREMENTS FOR EXISTING TRANSFER FEE OBLIGATIONS. 1. FOR A PRIVATE TRANSFER FEE OBLIGATION IMPOSED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, THE RECEIVER OF THE FEE SHALL RECORD, PRIOR TO SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION, 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 SHALL BE "NOTICE OF PRIVATE TRANSFER FEE OBLIGATION" IN AT LEAST 14-POINT BOLDFACE TYPE;

(B) THE NAMES OF ALL CURRENT OWNERS OF THE REAL PROPERTY SUBJECT TO THE TRANSFER FEE, AND THE LEGAL DESCRIPTION AND ASSESSOR'S PARCEL NUMBER FOR THE AFFECTED REAL PROPERTY.

(C) THE AMOUNT, IF THE FEE IS A FLAT AMOUNT, OR THE PERCENTAGE OF THE SALES PRICE CONSTITUTING THE COST OF THE TRANSFER FEE, OR SUCH OTHER BASIS BY WHICH THE TRANSFER FEE IS TO BE CALCULATED;

(D) IF THE REAL PROPERTY IS RESIDENTIAL PROPERTY, ACTUAL DOLLAR-COST EXAMPLES OF THE TRANSFER FEE FOR A HOME PRICED AT TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000), FIVE HUNDRED THOUSAND DOLLARS (\$500,000), AND SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000);

(E) THE DATE OR CIRCUMSTANCES UNDER WHICH THE PRIVATE TRANSFER FEE OBLIGATION EXPIRES, IF ANY;

(F) THE PURPOSE FOR WHICH THE FUNDS FROM THE PRIVATE TRANSFER FEE OBLIGATION WILL BE USED;

(G) THE NAME OF THE PERSON OR ENTITY TO WHICH FUNDS ARE TO BE PAID AND SPECIFIC CONTACT INFORMATION REGARDING WHERE THE FUNDS ARE TO BE SENT;

(H) THE ACKNOWLEDGED SIGNATURE OF THE RECEIVER OF THE FEE; AND

(I) THE LEGAL DESCRIPTION OF THE REAL PROPERTY BURDENED BY THE PRIVATE TRANSFER FEE OBLIGATION.

2. THE PERSON OR ENTITY TO WHICH THE TRANSFER FEE IS TO BE PAID MAY FILE AN AMENDMENT TO THE NOTICE OF TRANSFER FEE CONTAINING NEW CONTACT INFORMATION, BUT SUCH 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 RECEIVER OF THE FEE FAILS TO COMPLY FULLY WITH SUBDIVISION ONE OF THIS SECTION, THE TRANSFEROR 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 TRANSFEREE AND IN SO DOING SHALL BE DEEMED TO HAVE ACTED IN GOOD FAITH AND SHALL NOT BE SUBJECT TO ANY OBLIGATIONS UNDER THE PRIVATE TRANSFER FEE OBLIGATION. IN SUCH EVENT, THE REAL PROPERTY THEREAFTER SHALL BE CONVEYED FREE AND CLEAR OF SUCH TRANSFER FEE AND PRIVATE TRANSFER FEE OBLIGATION.

4. SHOULD THE RECEIVER OF THE FEE FAIL 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 TRANSFEROR, ON RECORDING OF THE AFFIDAVIT REQUIRED UNDER SUBDIVISION FIVE OF THIS SECTION, MAY CONVEY ANY INTEREST IN THE REAL PROPERTY TO ANY TRANSFEREE WITHOUT PAYMENT OF THE TRANSFER FEE AND SHALL NOT BE SUBJECT TO ANY FURTHER OBLIGATIONS UNDER THE PRIVATE TRANSFER FEE OBLIGATION. IN SUCH EVENT THE REAL PROPERTY SHALL BE CONVEYED FREE AND CLEAR OF THE TRANSFER FEE AND PRIVATE TRANSFER FEE OBLIGATION.

5. AN AFFIDAVIT STATING THE FACTS ENUMERATED UNDER SUBDIVISION SIX OF THIS SECTION SHALL BE RECORDED IN THE OFFICE OF THE COUNTY CLERK AND RECORDER IN THE COUNTY IN WHICH THE REAL PROPERTY IS SITUATED PRIOR TO OR SIMULTANEOUSLY WITH A CONVEYANCE PURSUANT TO SUBDIVISION FOUR OF THIS

1 SECTION OF REAL PROPERTY UNBURDENED BY A PRIVATE TRANSFER FEE OBLI-
2 GATION. AN AFFIDAVIT FILED UNDER THIS SUBDIVISION SHALL STATE THAT THE
3 AFFIANT HAS ACTUAL KNOWLEDGE OF, AND IS COMPETENT TO TESTIFY TO, THE
4 FACTS IN THE AFFIDAVIT AND SHALL INCLUDE THE LEGAL DESCRIPTION OF THE
5 REAL PROPERTY BURDENED BY THE PRIVATE TRANSFER FEE OBLIGATION, THE NAME
6 OF THE PERSON APPEARING BY THE RECORD TO BE THE OWNER OF SUCH REAL PROP-
7 ERTY AT THE TIME OF THE SIGNING OF SUCH AFFIDAVIT, A REFERENCE (BY
8 RECORDING INFORMATION) TO THE INSTRUMENT OF RECORD CONTAINING THE
9 PRIVATE TRANSFER FEE OBLIGATION AND AN ACKNOWLEDGMENT THAT THE AFFIANT
10 IS TESTIFYING UNDER PENALTY OF PERJURY.

11 6. WHEN RECORDED, AN AFFIDAVIT AS DESCRIBED IN SUBDIVISION FIVE OF
12 THIS SECTION SHALL CONSTITUTE CONCLUSIVE EVIDENCE THAT:

13 (A) A REQUEST FOR THE WRITTEN STATEMENT OF THE TRANSFER FEE PAYABLE IN
14 ORDER TO OBTAIN A RELEASE OF THE FEE IMPOSED BY THE PRIVATE TRANSFER FEE
15 OBLIGATION WAS SENT TO THE ADDRESS SHOWN IN THE NOTIFICATION; AND

16 (B) THE ENTITY LISTED ON THE NOTICE OF TRANSFER FEE FAILED TO PROVIDE
17 THE WRITTEN STATEMENT OF THE TRANSFER FEE PAYABLE WITHIN THIRTY DAYS OF
18 THE DATE OF THE NOTICE SENT TO THE ADDRESS SHOWN IN THE NOTIFICATION.

19 S 2. This act shall take effect immediately.