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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **3786**

April 19, 2010

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The bill was read for the first time and referred to the Committee on Finance

1.1 A bill for an act
1.2 relating to real property transfers; prohibiting private transfer fees; proposing
1.3 coding for new law in Minnesota Statutes, chapter 513.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. **[513.73] DEFINITIONS.**

1.6 Subdivision 1. **Application.** As used in sections 513.73 to 513.76, the following
1.7 terms have the meanings given in this section.

1.8 Subd. 2. **Transfer.** "Transfer" means the sale, grant, gift, conveyance, assignment,
1.9 inheritance, or other transfer of an ownership interest in real property located in this state.

1.10 Subd. 3. **Private transfer fee.** "Private transfer fee" means a fee or charge required
1.11 by a private transfer fee obligation and payable upon the transfer of an interest in real
1.12 property, or payable for the right to make or accept the transfer, regardless of whether
1.13 the fee or charge is a fixed amount or is determined as a percentage of the value of the
1.14 property, the purchase price, or other consideration given for the transfer. The following
1.15 are not private transfer fees for purposes of this section:

1.16 (1) consideration payable by the grantee to the grantor for the interest in real
1.17 property being transferred, including any subsequent additional consideration for the
1.18 property payable by the grantee based upon any subsequent appreciation, development, or
1.19 sale of the property, provided that the additional consideration is payable on a onetime
1.20 basis only, and the obligation to make the payment does not bind successors in title to
1.21 the property. For the purposes of this clause, an interest in real property may include a
1.22 separate mineral estate and its appurtenant surface access rights;

1.23 (2) commission payable to a licensed real estate broker for the transfer of real
1.24 property pursuant to an agreement between the broker and the grantor or the grantee,

2.1 including any subsequent additional commission for that transfer payable by the grantor or
2.2 the grantee based upon any subsequent appreciation, development, or sale of the property;

2.3 (3) interest, charges, fees, or other amounts payable by a borrower to a lender
2.4 pursuant to a loan secured by a mortgage against real property, including but not limited
2.5 to a fee payable to the lender for consenting to an assumption of the loan or a transfer
2.6 of the real property subject to the mortgage, fees, or charges payable to the lender for
2.7 estoppel letters or certificates, and shared appreciation interest or profit participation or
2.8 other consideration and payable to the lender in connection with the loan;

2.9 (4) rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor
2.10 under a lease, including but not limited to a fee payable to the lessor for consenting to an
2.11 assignment, subletting, encumbrance, or transfer of the lease;

2.12 (5) consideration payable to the holder of an option to purchase an interest in real
2.13 property or the holder of a right of first refusal or first offer to purchase an interest in real
2.14 property for waiving, releasing, or not exercising the option or right upon the transfer of
2.15 the property to another person;

2.16 (6) consideration payable by a contract for deed vendee to the vendor pursuant to the
2.17 terms of a recorded contract for deed, including any subsequent additional consideration
2.18 for the property payable by the vendee based upon any subsequent appreciation,
2.19 development, or sale of the property;

2.20 (7) a tax, fee, charge, assessment, fine, or other amount payable to or imposed by a
2.21 governmental authority;

2.22 (8) a fee, charge, assessment, fine, or other amount payable to a homeowner's
2.23 condominium, cooperative, mobile home, or property owner's association pursuant to a
2.24 declaration or covenant or law applicable to the association, including but not limited
2.25 to fees or charges payable for estoppel letters or certificates issued by the association
2.26 or its authorized agent;

2.27 (9) a fee, a charge, an assessment, dues, a contribution, or other amount pertaining
2.28 to the purchase or transfer of a club membership relating to real property owned by the
2.29 member, including but not limited to any amount determined by reference to the value,
2.30 purchase price, or other consideration given for the transfer of the real property; and

2.31 (10) a mortgage from the purchaser of real property granted to the seller or to a
2.32 licensed real estate broker.

2.33 Subd. 4. **Private transfer fee obligation.** "Private transfer fee obligation" means a
2.34 declaration or covenant recorded or filed against the title to real property, or any other
2.35 contractual agreement or promise, whether or not recorded or filed, that requires or
2.36 purports to require the payment of a private transfer fee to the declarant or other person

3.1 specified in the declaration, covenant, or agreement, or to their successors or assigns, upon
3.2 a subsequent transfer of an interest in the real property.

3.3 **Sec. 2. [513.74] PROHIBITION.**

3.4 A private transfer fee obligation recorded, filed, or entered into in this state on or
3.5 after the effective date of this section does not run with the title to real property and is not
3.6 binding on or enforceable at law or in equity against any subsequent owner, purchaser,
3.7 or mortgagee of any interest in real property as an equitable servitude or otherwise. Any
3.8 private transfer fee obligation that is recorded, filed, or entered into in this state on or
3.9 after the effective date of this section is void and unenforceable. This section does not
3.10 require that a private transfer fee obligation recorded, filed, or entered into in this state
3.11 before the effective date of this section is presumed valid and enforceable. It is the public
3.12 policy of this state that no private transfer fee obligation should be valid or enforceable
3.13 whenever entered into, recorded, or filed.

3.14 **Sec. 3. [513.75] LIABILITY FOR VIOLATION.**

3.15 A person who records or files or enters into an agreement imposing a private transfer
3.16 fee obligation in the person's favor after the effective date of this section shall be liable for
3.17 (1) any and all damages resulting from the imposition of the transfer fee obligation on
3.18 the transfer of an interest in the real property, including, without limitation, the amount
3.19 of any transfer fee paid by a party to the transfer, and (2) all attorney fees, expenses,
3.20 and costs incurred by a party to the transfer or mortgagee of the real property to recover
3.21 the transfer fee paid or in connection with an action to quiet title or register the title or
3.22 a proceeding subsequent to initial registration. If an agent acts on behalf of a principal
3.23 to record or file or secure a private transfer fee obligation, liability shall be assessed to
3.24 the principal, but not to the agent.

3.25 **Sec. 4. [513.76] NOTICE REQUIREMENTS FOR EXISTING TRANSFER FEE**
3.26 **OBLIGATIONS.**

3.27 Subdivision 1. **Prior obligations.** For a private transfer fee obligation imposed prior
3.28 to the effective date of this section, the receiver of the fee shall record or file, prior to
3.29 December 31, 2010, against the real property subject to the private transfer fee obligation
3.30 a separate document with the county recorder or registrar of titles of the county in which
3.31 the real property is located that meets all of the following requirements:

3.32 (1) the title of the document shall be "Notice of Private Transfer Fee Obligation" in
3.33 at least 14-point boldface type;

4.1 (2) the amount, if the fee is a flat amount, or the percentage of the sales price
4.2 constituting the cost of the transfer fee, or any other basis by which the transfer fee is to
4.3 be calculated;

4.4 (3) the date or circumstances under which the private transfer fee obligation expires,
4.5 if any;

4.6 (4) the purpose for which the funds from the private transfer fee obligation will
4.7 be used;

4.8 (5) the name of the person or entity to which funds are to be paid and specific contact
4.9 information regarding where the funds are to be sent;

4.10 (6) the acknowledged signature of the payee; and

4.11 (7) the legal description of the real property burdened by the private transfer fee
4.12 obligation.

4.13 Subd. 2. **Amendments.** The person or entity to which the transfer fee is to be paid
4.14 may record or file an amendment to the notice of transfer fee containing new contact
4.15 information, but the amendment must contain the information of the notice of transfer fee
4.16 that it amends and the legal description of the property burdened by the private transfer
4.17 fee obligation.

4.18 Subd. 3. **Results of noncompliance.** (a) If the payee fails to comply fully with
4.19 subdivision 1, the grantor of any real property burdened by the private transfer fee
4.20 obligation may proceed with the conveyance of any interest in the real property to any
4.21 grantee. The grantor shall be deemed to have acted in good faith and shall not be subject
4.22 to any obligations under the private transfer fee obligation, and the real property thereafter
4.23 shall be conveyed free and clear of the transfer fee and private transfer fee obligation.

4.24 (b) If the payee fails to provide a written statement of the transfer fee payable within
4.25 30 days of the date of a written request for the statement sent to the address shown in the
4.26 notice of transfer fee, then the grantor, on recording or filing of the affidavit required
4.27 under subdivision 4, may convey any interest in the real property to any grantee without
4.28 payment of the transfer fee and shall not be subject to any further obligations under the
4.29 private transfer fee obligation. The real property shall be conveyed free and clear of the
4.30 transfer fee and private transfer fee obligation.

4.31 Subd. 4. **Affidavit requirement.** (a) An affidavit stating the facts enumerated under
4.32 paragraph (b) must be recorded or filed with the county recorder or registrar of titles in the
4.33 county in which the real property is located prior to or simultaneously with a conveyance
4.34 pursuant to subdivision 3, paragraph (a), of real property unburdened by a private transfer
4.35 fee obligation. An affidavit filed under this paragraph must state that the affiant has actual
4.36 knowledge of the facts in the affidavit and must include the legal description of the real

5.1 property burdened by the private transfer fee obligation, the name of the person appearing
5.2 by the record to be the owner of the real property at the time of the signing of the affidavit,
5.3 and a reference by recording or filing information to the instrument of record containing
5.4 the private transfer fee obligation.

5.5 (b) When recorded or filed, an affidavit as described in paragraph (a) constitutes
5.6 prima facie evidence that:

5.7 (1) a request for the written statement of the transfer fee payable in order to obtain a
5.8 release of the fee imposed by the private transfer fee obligation was sent to the address
5.9 shown in the notification; and

5.10 (2) the entity listed on the notice of transfer fee failed to provide the written
5.11 statement of the transfer fee payable within 30 days of the date of the notice sent to the
5.12 address shown in the notification.

5.13 **Sec. 5. EFFECTIVE DATE.**

5.14 Sections 1 to 4 are effective the day following final enactment.