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Legislative Document

No. 1482

S.P. 463

In Senate, April 14, 2011

An Act To Provide That Private Transfer Fee Obligations on Real Property Are Void and Unenforceable

Reference to the Committee on Judiciary suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator COURTNEY of York.
Cosponsored by Representative FITTS of Pittsfield and
Senators: SAVIELLO of Franklin, SHERMAN of Aroostook, THIBODEAU of Waldo,
Representatives: CUSHING of Hampden, HARMON of Palermo, MOULTON of York,
PARKER of Veazie, WILLETTE of Mapleton.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 33 MRSA §163** is enacted to read:

3 **§163. Private transfer fee obligations void and unenforceable**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Private transfer fee" means a fee or charge payable upon the transfer of an
7 interest in real property, or payable for the right to make or accept such a transfer,
8 regardless of whether the fee or charge is a fixed amount or is determined as a
9 percentage of the value of the property, the purchase price or other consideration
10 given for the transfer. "Private transfer fee" does not include:

11 (1) Any consideration payable by the grantee to the grantor for the interest in
12 real property being transferred, including any subsequent additional consideration
13 for the property payable by the grantee based upon any subsequent appreciation,
14 development or sale of the property, if such consideration is payable on a
15 one-time basis only and the obligation to make such payment does not bind
16 successors in title to the property;

17 (2) Any commission payable to a licensed real estate broker or real estate
18 brokerage agency for the transfer of real property pursuant to an agreement
19 between the broker or agency and the grantor or the grantee;

20 (3) Any interest, charges, fees or other amounts payable by a borrower to a
21 lender pursuant to a loan secured by a mortgage against real property;

22 (4) Any rent, reimbursement, charge, fee or other amount payable by a lessee to
23 a lessor under a lease or license, including, but not limited to, any fee payable to
24 the lessor for consenting to an assignment, subletting, encumbrance or transfer of
25 the lease or license;

26 (5) Any consideration payable to the holder of an option to purchase an interest
27 in real property or the holder of a right of first refusal or first offer to purchase an
28 interest in real property for waiving, releasing or not exercising the option or
29 right upon the transfer of the property to another person;

30 (6) Any tax, fee, charge, assessment, fine, dues or other amount payable to or
31 imposed by a governmental authority;

32 (7) Any fee, charge, assessment, fine or other amount payable to a homeowners
33 association, condominium owners association, cooperative, mobile home owners
34 association or property owners association pursuant to a declaration or covenant
35 or law applicable to such an association for the maintenance, improvements,
36 services or expenses related to real property that is owned, used or enjoyed in
37 common by the members;

38 (8) Any fee, charge, assessment, dues, fine, contribution or other amount
39 pertaining solely to the purchase or transfer of a club membership relating to real
40 property owned by a club member, including, but not limited to, any amount

1 determined by reference to the value, purchase price or other consideration given
2 for the transfer of the real property;

3 (9) Any obligations created pursuant to affordable housing covenants under
4 chapter 6 or working waterfront covenants under chapter 6-A; or

5 (10) Any fee payable, upon a transfer of real property, to a nonprofit corporation,
6 organization or trust organized under the laws of this State, if the sole purpose of
7 the corporation, organization or trust is to support cultural, educational,
8 charitable, recreational, conservation, preservation or similar activities benefiting
9 the real property being transferred and the fee is used exclusively to fund such
10 activities.

11 B. "Private transfer fee obligation" means an obligation arising under a declaration or
12 covenant recorded against the title to real property or under any other contractual
13 agreement or promise, whether or not recorded, that requires or purports to require
14 the payment of a private transfer fee upon a subsequent transfer of an interest in the
15 real property.

16 C. "Transfer" means the sale, gift, grant, conveyance, lease, license, assignment,
17 inheritance or other act resulting in a transfer of an ownership interest in real property
18 located in this State.

19 **2. Void and unenforceable.** A private transfer fee obligation recorded or entered
20 into in connection with real property located in this State on or after the effective date of
21 this section does not run with the title to real property and is not binding on or
22 enforceable at law or in equity against any subsequent owner, purchaser, mortgagee or
23 holder of any interest in real property as an equitable servitude or otherwise. A private
24 transfer fee obligation that is recorded or entered into in connection with real property
25 located in this State on or after the effective date of this section is void and
26 unenforceable. This subsection may not be construed to mean that a private transfer fee
27 obligation recorded or entered into in connection with real property located in this State
28 before the effective date of this section is presumed valid and enforceable.

29 **3. Liability for violation.** A person who records, or enters into, an agreement
30 imposing a private transfer fee obligation in that person's favor after the effective date of
31 this section is liable for all damages resulting from the imposition of the private transfer
32 fee obligation on the transfer of an interest in the real property, including, but not limited
33 to, the amount of any private transfer fee paid by a party to the transfer and all attorney's
34 fees, expenses and costs incurred by a party to the transfer or mortgagee of the real
35 property to recover any private transfer fee paid or in connection with an action to quiet
36 title. When an agent acts on behalf of a principal to record or secure a private transfer fee
37 obligation, liability must be assessed to the principal rather than the agent.

38 **4. Effect of transfer of certain interests in real property.** A transfer, on or after
39 the effective date of this section, of an interest in real property subject to a private transfer
40 fee obligation recorded or entered into prior to the effective date of this section does not
41 constitute the recording or entering into of a new private transfer fee obligation on or
42 after the effective date of this section.

1 **5. Disclosure.** The following provisions govern the disclosure of private transfer fee
2 obligations.

3 A. A contract for the sale of real property subject to a private transfer fee obligation
4 must include a provision disclosing the existence of that obligation and a description
5 of that obligation. A contract for the sale of real property that does not conform to
6 the requirements of this paragraph is not enforceable by the seller, and the buyer is
7 not liable to the seller for damages under such a contract and is entitled to the return
8 of any deposits made under that contract.

9 B. When a private transfer fee obligation is not disclosed as required by paragraph A
10 and a buyer subsequently discovers the existence of the private transfer fee obligation
11 after title to the real property has passed to the buyer, the buyer has the right to
12 recover against the seller all damages resulting from the failure to disclose the private
13 transfer fee obligation, including, but not limited to, the amount of any private
14 transfer fee paid by the buyer and the difference between the market value of the real
15 property subject to the private transfer fee obligation and the market value of the real
16 property if the real property were not subject to the private transfer fee obligation.
17 The buyer is also entitled to recover all attorney's fees, expenses and costs incurred in
18 seeking the remedies under this subsection.

19 C. Any provision in a contract for the sale of real property that purports to waive the
20 rights of a buyer under this subsection is void.

21 **SUMMARY**

22 This bill provides that private transfer fee obligations on real property are void and
23 unenforceable.