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DELAWARE STATE SENATE
145th GENERAL ASSEMBLY

SENATE BILL NO. 322

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO TITLES AND CONVEYANCES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 3, Title 25 of the Delaware Code by adding a new §319 as follows:

2 “§319 Private Transfer Fee Prohibition.

3 (a) Definitions.

4 The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in
5 this section, except where the context clearly indicates a different meaning:

6 (1) “Private Transfer Fee”

7 a. "Private Transfer Fee" means a fee or charge payable upon the Transfer of an estate or interest
8 in real property, or payable for the right to make or accept a Transfer of an estate or interest in real
9 property, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the
10 value of the property, the purchase price, or other consideration given for the Transfer.

11 b. "Private Transfer Fee" does not include any of the following:

12 (1) Any consideration payable by the transferee to the transferor for the estate or
13 interest in real property being transferred or for a purchase money mortgage from the
14 purchaser to the seller, or for payments from the transferee to transferor under a
15 conditional sales agreement or installment sale.

16 (2) Any commission or fee payable to the personal representative of an estate of a
17 deceased person, a guardian, or trustee upon Transfer of property.

18 (3) Any commission or fee payable to an auctioneer or a licensed real estate broker
19 upon the Transfer of property under an agreement between the auctioneer or broker and
20 the transferor or transferee.

21 (4) Any commission or fee payable to a trustee in bankruptcy proceedings.

22 (5) Any principal, interest, charges, fees, or other amounts payable by a borrower to a
23 lender under a bona fide loan secured by a mortgage against real property, including but
24 not limited to any fee payable to the lender for consenting to an assumption of the loan
25 or a transfer of the real property subject to the mortgage, any fees or charges payable to
26 the lender for estoppel letters or certificates, and any other consideration allowed by
27 law and payable to the lender in connection with the loan or forgiveness of all or part of
28 the loan. A payment by a transferor or transferee to a developer or builder or its assigns
29 for a transfer of an estate or interest after the initial sale by the developer or builder is
30 not a bona fide loan.

31 (6) Any rent, reimbursement, charge, fee, or other amount payable by a tenant to a
32 landlord under a rental agreement or lease, including but not limited to any fee payable
33 to the landlord for consenting to an assignment, subletting, encumbrance, or transfer of
34 the rental agreement or lease.

35 (7) Any consideration payable to the holder of an option to purchase an estate or
36 interest in real property or the holder of a right of first refusal or first offer to purchase
37 an estate or interest in real property for waiving, releasing, or not exercising the option
38 or right upon the transfer of the property to another person.

39 (8) Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by
40 any governmental authority, a Sustainable Energy Utility under Title 29 section 8059,
41 or a public utility. or

42 (9) Any fee, charge, assessment, fine, or other amount payable to the unit owners
43 association of a common interest community or of a condominium for the benefit of
44 the unit owners pursuant to a declaration, covenant, or law applicable to such
45 association, including, but not limited to, permissible charges payable for resale
46 certificates issued by the association or its authorized agent, or a start-up fee or capital
47 contribution to the reserve fund providing such fund is not for the payment of financing
48 arranged by the developer or builder.

49 (2) "Transfer" means the sale, gift, conveyance, assignment, devise by will, inheritance through intestate
50 laws, or other transfer or release of an estate or interest in real property located in this State.

51 (3) "Transfer Fee Covenant" means a declaration or covenant purporting to affect real property which
52 requires or purports to require the payment of a Private Transfer Fee to the declarant or other person or
53 entity specified in the covenant or declaration, or to their successors or assigns, upon a subsequent
54 Transfer of an estate or interest in the real property.

55 (b) Transfer Fee Covenant prohibition.

56 A Transfer Fee Covenant recorded in this State on or after the effective date of this Act or unrecorded shall not run
57 with the title to real property and is not binding on or enforceable at law or in equity against any owner (legal or equitable),
58 subsequent owner (legal or equitable), purchaser, or mortgagee of any estate or interest in real property as an equitable
59 servitude, contract, or otherwise. Any lien purporting to secure the payment of a Private Transfer Fee under a Transfer Fee
60 Covenant recorded in this State on or after the effective date of this Act is void and unenforceable. This Section does not
61 mean that a Transfer Fee Covenant or lien arising from a Transfer Fee Covenant recorded in this State before the effective
62 date of this section or unrecorded is presumed valid and enforceable.

63 (c) The Attorney General may charge the use of a Transfer Fee Covenant in violation of this section as a violation
64 of consumer law under Title 6 Section 2513 or this section may be enforced by private action."

65 Section 2. This Act shall be effective as of the date of its enactment.

SYNOPSIS

This Bill prohibits individuals or private entities from charging Private Transfer Fees on real property. This bill does not change the ability of the State of Delaware or its political subdivisions from levying transfer taxes as authorized by statute. This bill is patterned after similar legislation adopted in nine states.

Author: Senator Bunting