

AMENDED IN SENATE MAY 1, 2007  
AMENDED IN SENATE APRIL 11, 2007

**SENATE BILL**

**No. 670**

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**Introduced by Senator Correa**

February 23, 2007

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~~An act to amend Section 711 of the Civil Code, relating to real~~ *An act to amend Section 11010 of, and to add Section 11025 to, the Business and Professions Code, and to add Section 711.3 to the Civil Code, relating to real property.*

LEGISLATIVE COUNSEL'S DIGEST

SB 670, as amended, Correa. Real property: transfer fees.

**Existing**

(1) *Existing* law permits various fees to be included in the price of a residential real estate transfer. Existing law requires specified disclosures to be made upon a transfer of residential real property and provides a form for this purpose. Existing law provides that conditions restraining transfer of property, also referred to as alienation, when repugnant to the interest created in the property, are void.

*Existing law requires any person who intends to offer subdivided lands within California for sale or lease to file with the Department of Real Estate an application for a public report consisting of a notice of intention and a completed questionnaire that includes, among other things, a statement that there is an airport in the vicinity, and that this may affect the use of the property. Existing law makes a violation of these provisions a crime.*

This bill would provide that any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of real property that contains a requirement

that any transferee pay a fee upon transfer of the real property ~~is a condition restraining alienation that is repugnant to the interest created and is void.~~ The bill would except from this ~~definition~~ *prohibition a covenant, restriction, or condition that was in effect on or before December 31, 2007, transfer fees that meet specified requirements regarding subdivided lands, taxes and fees imposed by governmental entities, mechanics' liens, and fees imposed by lenders, among others.* ~~The bill would also make a related statement of legislative findings.~~

*This bill would require the application for a public report in connection with subdivided lands to state whether the property offered for sale or lease is subject to a transfer fee, as specified, and if so, would require a description of how the fee will be used. By changing the definition of a crime, this bill would impose a state-mandated local program.*

*On and after January 1, 2008, the bill would permit the imposition of a transfer fee as a condition on the transfer of subdivided real property only if specific requirements are met. In this regard, the bill would prohibit a transfer fee from being imposed for a period that exceeds 30 years from the time it is first recorded and would require the fee obligation to be imposed on all buyers. The bill would require a subdivider to record a document making specified disclosures about the transfer fee. The bill would permit transfer fee funds to be paid only to nonprofit entities and would require any nonprofit entity collecting and using transfer fees to meet certain standards and to submit annual reports to the Department of Real Estate, as specified. The bill would provide that, if a nonprofit organization fails to file a required report, the Real Estate Commissioner may cause an examination and report to be made and charge the nonprofit organization, as specified. The bill would require the Department of Real Estate to make those reports accessible on its Web site.*

*(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 11010 of the Business and Professions*  
2     *Code is amended to read:*

3     11010. (a) Except as otherwise provided pursuant to  
4     subdivision (c) or elsewhere in this chapter, any person who intends  
5     to offer subdivided lands within this state for sale or lease shall  
6     file with the Department of Real Estate an application for a public  
7     report consisting of a notice of intention and a completed  
8     questionnaire on a form prepared by the department.

9     (b) The notice of intention shall contain the following  
10    information about the subdivided lands and the proposed offering:

11    (1) The name and address of the owner.

12    (2) The name and address of the subdivider.

13    (3) The legal description and area of lands.

14    (4) A true statement of the condition of the title to the land,  
15    particularly including all encumbrances thereon.

16    (5) A true statement of the terms and conditions on which it is  
17    intended to dispose of the land, together with copies of any  
18    contracts intended to be used.

19    (6) A true statement of the provisions, if any, that have been  
20    made for public utilities in the proposed subdivision, including  
21    water, electricity, gas, telephone, and sewerage facilities. For  
22    subdivided lands that were subject to the imposition of a condition  
23    pursuant to subdivision (b) of Section 66473.7 of the Government  
24    Code, the true statement of the provisions made for water shall be  
25    satisfied by submitting a copy of the written verification of the  
26    available water supply obtained pursuant to Section 66473.7 of  
27    the Government Code.

28    (7) A true statement of the use or uses for which the proposed  
29    subdivision will be offered.

30    (8) A true statement of the provisions, if any, limiting the use  
31    or occupancy of the parcels in the subdivision.

32    (9) A true statement of the amount of indebtedness that is a lien  
33    upon the subdivision or any part thereof, and that was incurred to  
34    pay for the construction of any onsite or offsite improvement, or  
35    any community or recreational facility.

36    (10) A true statement or reasonable estimate, if applicable, of  
37    the amount of any indebtedness which has been or is proposed to  
38    be incurred by an existing or proposed special district, entity, taxing

1 area, assessment district, or community facilities district within  
2 the boundaries of which, the subdivision, or any part thereof, is  
3 located, and that is to pay for the construction or installation of  
4 any improvement or to furnish community or recreational facilities  
5 to that subdivision, and which amounts are to be obtained by ad  
6 valorem tax or assessment, or by a special assessment or tax upon  
7 the subdivision, or any part thereof.

8 (11) A notice pursuant to Section 1102.6c of the Civil Code.

9 (12) (A) As to each school district serving the subdivision, a  
10 statement from the appropriate district that indicates the location  
11 of each high school, junior high school, and elementary school  
12 serving the subdivision, or documentation that a statement to that  
13 effect has been requested from the appropriate school district.

14 (B) In the event that, as of the date the notice of intention and  
15 application for issuance of a public report are otherwise deemed  
16 to be qualitatively and substantially complete pursuant to Section  
17 11010.2, the statement described in subparagraph (A) has not been  
18 provided by any school district serving the subdivision, the person  
19 who filed the notice of intention and application for issuance of a  
20 public report shall immediately provide the department with the  
21 name, address, and telephone number of that district.

22 (13) (A) The location of all existing airports, and of all proposed  
23 airports shown on the general plan of any city or county, located  
24 within two statute miles of the subdivision. If the property is  
25 located within an airport influence area, the following statement  
26 shall be included in the notice of intention:

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NOTICE OF AIRPORT IN VICINITY

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This property is presently located in the vicinity of an  
airport, within what is known as an airport influence area. For that  
reason, the property may be subject to some of the annoyances or  
inconveniences associated with proximity to airport operations  
(for example: noise, vibration, or odors). Individual sensitivities  
to those annoyances can vary from person to person. You may wish to  
consider what airport annoyances, if any, are associated with the  
property before you complete your purchase and determine whether they  
are acceptable to you.

(B) For purposes of this section, an “airport influence area,”  
also known as an “airport referral area,” is the area in which current

1 or future airport-related noise, overflight, safety, or airspace  
2 protection factors may significantly affect land uses or necessitate  
3 restrictions on those uses as determined by an airport land use  
4 commission.

5 (14) A true statement, if applicable, referencing any soils or  
6 geologic report or soils and geologic reports that have been  
7 prepared specifically for the subdivision.

8 (15) A true statement of whether or not fill is used, or is  
9 proposed to be used in the subdivision and a statement giving the  
10 name and the location of the public agency where information  
11 concerning soil conditions in the subdivision is available.

12 (16) On or after July 1, 2005, as to property located within the  
13 jurisdiction of the San Francisco Bay Conservation and  
14 Development Commission, a statement that the property is so  
15 located and the following ~~notice~~: **NOTICE** notice:

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17 *NOTICE OF SAN FRANCISCO BAY CONSERVATION AND*  
18 *DEVELOPMENT COMMISSION JURISDICTION*

19 This property is located within the jurisdiction of the San  
20 Francisco Bay Conservation and Development Commission. Use  
21 and development of property within the commission’s jurisdiction  
22 may be subject to special regulations, restrictions, and permit  
23 requirements. You may wish to investigate and determine whether  
24 they are acceptable to you and your intended use of the property  
25 before you complete your transaction.

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27 (17) (A) *A statement whether the real property that is intended*  
28 *to be offered pursuant to this chapter is subject to a transfer fee,*  
29 *which shall conform with the requirements of Section 11025.*

30 (B) *The identification and qualification of each nonprofit entity*  
31 *that will accept and use transfer fees pursuant to Section 11025.*

32 (C) *A description of each project to be funded by transfer fees,*  
33 *including, but not limited to, all of the following information:*

34 (i) *The project location.*

35 (ii) *The duration of the project, which shall not exceed 30 years.*

36 (iii) *The estimated budget for the duration of the project and*  
37 *documentation supporting that estimation.*

38 (iv) *A description of how the project benefits the real property*  
39 *subject to the transfer fee, pursuant to the requirements of Section*  
40 *11025.*

1 (v) Any other information required by the Department of Real  
2 Estate.

3 ~~(17)~~

4 (18) Any other information that the owner, his or her agent, or  
5 the subdivider may desire to present.

6 (c) The commissioner may, by regulation, or on the basis of the  
7 particular circumstances of a proposed offering, waive the  
8 requirement of the submission of a completed questionnaire if the  
9 commissioner determines that prospective purchasers or lessees  
10 of the subdivision interests to be offered will be adequately  
11 protected through the issuance of a public report based solely upon  
12 information contained in the notice of intention.

13 SEC. 2. Section 11025 is added to the Business and Professions  
14 Code, to read:

15 11025. (a) For purposes of this section, a “transfer fee” is  
16 any covenant, restriction, or condition contained in any deed,  
17 contract, security instrument, or other instrument affecting the  
18 transfer or sale of real property that contains a requirement that  
19 any transferee pay a fee upon transfer of the real property that  
20 was subject to Section 11010.

21 (b) A transfer fee imposed upon real property pursuant to this  
22 section is subject to the following requirements and limitations:

23 (1) The transfer fee payment obligation shall be imposed on all  
24 buyers of the property, including the initial buyer.

25 (2) Any lien arising from the transfer fee payment obligation  
26 shall be subordinate to a purchase money security instrument.

27 (3) The transfer fee payment obligation shall arise only pursuant  
28 to a transfer that results in the assessment of a documentary  
29 transfer tax, as described in Section 11911 of the Revenue and  
30 Taxation Code.

31 (4) The transfer fee payment amount shall be calculated as a  
32 percentage of the sale price of the property, and the total of  
33 transfer fee payments shall not exceed 1 percent of the sale price  
34 of the property.

35 (5) A transfer fee shall not be imposed for a period that exceeds  
36 30 years from the time it is first recorded.

37 (6) A transfer fee shall not be imposed on property upon which  
38 low- and moderate-income housing is to be built and that housing  
39 is subject to a restriction on resale price.

1 (c) Only a nonprofit organization that has tax exempt status  
2 under Section 501(c)(3) of the Internal Revenue Code and was  
3 identified in the notice of intention filed pursuant to Section 11010  
4 may receive and use a transfer fee.

5 (d) (1) A transfer fee may only be used for a project that funds  
6 a facility or provides a service that provides a public benefit to  
7 the real property that is subject to the transfer fee. In order to  
8 provide a public benefit to the real property, the facility shall be  
9 located in, or the service shall be provided in, the same county or  
10 within 25 miles of where the real property is located. For purposes  
11 of this subdivision, a transfer fee that funds a facility or service  
12 that supports affordable housing is deemed to provide a public  
13 benefit to the real property that is subject to it.

14 (2) A transfer fee shall only be used to fund a project for a  
15 limited term, not to exceed 30 years, or until a specified funding  
16 amount is collected, whichever occurs first.

17 (3) Of the transfer fee funds received by a nonprofit  
18 organization, the organization shall spend for administration of  
19 the project only the amounts reasonably necessary for that purpose,  
20 not to exceed 5 percent of the funds received.

21 (4) The transfer fee funds shall not be used for expenses related  
22 to lobbying or litigation and shall not be transferred to another  
23 entity for these purposes.

24 (e) Beginning on February 1, 2009, and annually thereafter, a  
25 nonprofit organization that accepts any transfer fee shall file an  
26 annual report with the department that describes the current status  
27 of the project funded by the transfer fee. The nonprofit organization  
28 shall also provide the department an independently audited  
29 financial statement to the department showing all of the following:

30 (1) The total amount of all transfer fees collected.

31 (2) The amount of transfer fees expended on each project and  
32 a description of each project.

33 (3) The total amount of transfer fees used for administrative  
34 overhead of the nonprofit organization.

35 (4) The percentage of transfer fees used for administrative  
36 overhead compared with the amount used to directly support all  
37 projects funded by transfer fees.

38 (5) Any other information required by the Department of Real  
39 Estate.

1 (f) The department, no later than March 1, 2009, and annually  
2 thereafter, shall post each nonprofit organization's annual report  
3 on its Web site and clearly show the identification of each  
4 subdivision affected by each report.

5 (g) If the nonprofit organization fails to file a report required  
6 by this section, the commissioner may cause an examination and  
7 report to be made and may charge the nonprofit organization one  
8 and one-half times the amount of the cost of making the  
9 examination and report.

10 (h) A person subdividing property that would be subject to a  
11 transfer fee shall record a document that contains the following:

12 (1) Notice that payment of a transfer fee is required upon  
13 transfer of the property.

14 (2) A statement of the percentage of the property price that  
15 constitutes the total of all transfer fees imposed on the property  
16 and examples of the total cost of the fees for property sales valued  
17 at two hundred fifty thousand dollars (\$250,000), five hundred  
18 thousand dollars (\$500,000), and seven hundred fifty thousand  
19 dollars (\$750,000).

20 (3) The date or circumstances under which the obligation to  
21 pay the transfer fee will expire.

22 (4) The name of any recipient of the transfer fee funds.

23 (5) A description of the purpose or purposes for which the  
24 transfer fee funds are to be expended.

25 (6) A statement indicating that the transfer fee obligation may  
26 potentially affect the future resale value of the property.

27 (i) A transfer fee that fails to meet the requirements of this  
28 section and that does not fall within an exception described in  
29 subdivision (b) of Section 711.3 of the Civil Code is void.

30 (j) This section shall apply to a transfer fee imposed upon real  
31 property on and after January 1, 2008.

32 SEC. 3. Section 711.3 is added to the Civil Code, to read:

33 711.3. (a) Except as provided in subdivision (b), any covenant,  
34 restriction, or condition contained in any deed, contract, security  
35 instrument, or other instrument affecting the transfer or sale of,  
36 or any interest in, real property that contains a requirement that  
37 any transferee pay a fee upon transfer of the real property is void.

38 (b) Subdivision (a) does not apply to any of the following:

39 (1) A covenant, restriction, or condition that was in effect on  
40 or before December 31, 2007.

1 (2) *A transfer fee that satisfies the requirements of Sections*  
2 *11010 and 11025 of the Business and Professions Code.*

3 (3) *Fees or taxes imposed by a governmental entity.*

4 (4) *Mechanics' liens.*

5 (5) *Court ordered transfers, payments, or judgments.*

6 (6) *Property agreements in connection with a legal separation*  
7 *or dissolution of marriage.*

8 (7) *Fees, charges, or payments in connection with the*  
9 *administration of estates or trusts pursuant to Division 7*  
10 *(commencing with Section 7000), Division 8 (commencing with*  
11 *Section 13000), or Division 9 (commencing with Section 15000)*  
12 *of the Probate Code.*

13 (8) *Fees, charges, or payments imposed by lenders or*  
14 *purchasers of loans, as these entities are described in subdivision*  
15 *(c) of Section 10232 of the Business and Professions Code.*

16 (9) *Any assessment, charge, penalty, or fee authorized by the*  
17 *Davis-Stirling Common Interest Development Act (Title 6*  
18 *(commencing with Section 1350) of Part 4).*

19 *SEC. 4. No reimbursement is required by this act pursuant to*  
20 *Section 6 of Article XIII B of the California Constitution because*  
21 *the only costs that may be incurred by a local agency or school*  
22 *district will be incurred because this act creates a new crime or*  
23 *infraction, eliminates a crime or infraction, or changes the penalty*  
24 *for a crime or infraction, within the meaning of Section 17556 of*  
25 *the Government Code, or changes the definition of a crime within*  
26 *the meaning of Section 6 of Article XIII B of the California*  
27 *Constitution.*

28 ~~SECTION 1. The Legislature finds and declares the following:~~

29 ~~(a) Transfer fees based on a percentage of the sales price of a~~  
30 ~~home are increasingly being imposed by developers on home~~  
31 ~~buyers. Often, the imposition of these fees is used to settle disputes~~  
32 ~~between builders and parties who are opposed to a development~~  
33 ~~or, in the alternative, by builders to avoid proactively a lawsuit by~~  
34 ~~these opponents or to smooth development negotiations with the~~  
35 ~~local government. Typically, in return for an agreement by the~~  
36 ~~opponents to the development to not pursue a lawsuit based on~~  
37 ~~one of the state's environmental protection acts, the builder agrees~~  
38 ~~to the imposition of one or more fees through a covenant that~~  
39 ~~remains in effect through each sale of a home.~~

1 ~~(b) Fees totaling 1.75 percent of a home's sales price have been~~  
2 ~~seen; however, there is no upper limit on the percentage of a~~  
3 ~~home's sales price at which a transfer fee can be established.~~

4 ~~(c) Purchasing a home is increasingly beyond the reach of many~~  
5 ~~Californians and these fees make housing even less affordable.~~  
6 ~~Today, less than a quarter of all first-time home buyers can afford~~  
7 ~~a median-priced home in California.~~

8 ~~(d) These transfer fees can be imposed for an unlimited period.~~  
9 ~~Generally, the duration of these transfer fees ranges from 20 to 25~~  
10 ~~years, however many fees are imposed in perpetuity. Consequently,~~  
11 ~~future generations will be saddled with paying fees established~~  
12 ~~decades earlier by developers.~~

13 ~~(e) The funds generated by these transfer fees can be used to~~  
14 ~~pay for projects that do not directly benefit the development or the~~  
15 ~~immediately surrounding community. As a result, the homeowners~~  
16 ~~that pay these fees do not receive any benefit whatsoever in return.~~

17 ~~(f) The number of transfer fees that can be imposed is unlimited.~~  
18 ~~Multiple fees have been imposed by developers on each home in~~  
19 ~~a development with each fee funding a different purported benefit.~~  
20 ~~Future homeowners will be required to pay these fees without any~~  
21 ~~say as to whether the recipients of the funds should continue to~~  
22 ~~benefit from this revenue source.~~

23 ~~(g) The requirements for disclosing the existence of a transfer~~  
24 ~~fee are limited. In addition, the requirement for payment of the fee~~  
25 ~~can be masked by it not applying to the first buyer but only to~~  
26 ~~subsequent buyers. Consequently, many home buyers may be~~  
27 ~~surprised to learn of the additional thousands of dollars that they~~  
28 ~~will be required to pay upon the close of escrow.~~

29 ~~(h) The organizations or developers that receive the transfer fee~~  
30 ~~funds are not required to account to any independent oversight~~  
31 ~~entity. Therefore, the public has no assurances that these~~  
32 ~~organizations will work to achieve the goals with which they have~~  
33 ~~been entrusted.~~

34 ~~(i) The transfer fees threaten a number of established public~~  
35 ~~policies, namely:~~

36 ~~(1) The prohibition on the restraint of alienation. The fees will~~  
37 ~~make it more difficult for homeowners to sell their homes because~~  
38 ~~home buyers will likely balk at paying the fees.~~

39 ~~(2) The taxing and spending authority reserved to local~~  
40 ~~governments. The imposition of these fees by developers arguably~~

1 ~~usurps functions that properly belong exclusively to local~~  
2 ~~government. Moreover, no public vote is required to impose or~~  
3 ~~extend the fee.~~

4 ~~(j) Based on the foregoing, The Legislature finds that the~~  
5 ~~imposition of transfer fees shall be prohibited.~~

6 ~~SEC. 2. Section 711 of the Civil Code is amended to read:~~

7 ~~711. (a) Conditions restraining alienation, when repugnant to~~  
8 ~~the interest created, are void.~~

9 ~~(b) Except as provided in subdivision (c), a condition restraining~~  
10 ~~alienation that is repugnant to the interest created includes, but is~~  
11 ~~not limited to, a covenant, restriction, or condition contained in~~  
12 ~~any deed, contract, security instrument, or other instrument~~  
13 ~~affecting the transfer or sale of, or any interest in, real property~~  
14 ~~that contains a requirement that any transferee pay a fee upon~~  
15 ~~transfer of the real property, unless the requirement was in effect~~  
16 ~~on or before December 31, 2007.~~

17 ~~(c) Subdivision (b) does not apply to any of the following:~~

18 ~~(1) Fees or taxes imposed by a governmental entity.~~

19 ~~(2) Mechanics' liens.~~

20 ~~(3) Court ordered transfers, payments, or judgments.~~

21 ~~(4) Property agreements in connection with a legal separation~~  
22 ~~or dissolution of marriage.~~

23 ~~(5) Fees, charges, or payments in connection with the~~  
24 ~~administration of estates or trusts pursuant to Division 7~~  
25 ~~(commencing with Section 7000), Division 8 (commencing with~~  
26 ~~Section 13000), or Division 9 (commencing with Section 15000)~~  
27 ~~of the Probate Code.~~

28 ~~(6) Fees, charges, or payments imposed by lenders or purchasers~~  
29 ~~of loans, as these entities are described in subdivision (c) of Section~~  
30 ~~10232 of the Business and Professions Code.~~

31 ~~(7) Any assessment, penalty, or fee authorized by the~~  
32 ~~Davis-Stirling Common Interest Development Act (Title 6~~  
33 ~~(commencing with Section 1350) of Part 4).~~