

# TEXAS TITLE INSURANCE WORKS

## PRIVATE TRANSFER FEE STATUTE ENHANCEMENT

### HB 2447 (REP. DARBY) | SB 1578 (SEN. MENÉNDEZ)



*TLTA seeks introduction and passage of a bill enhancing the statute prohibiting Private Transfer Fee Covenants in Texas*

## Problem

Certain collection companies for private transfer fee covenants are successfully demanding payment from consumers on claims that are void by the Texas statutes. Consumers are faced with paying this claim or exposing themselves to protracted litigation. The consumer, facing years of court proceedings, is often forced to pay the disputed amount under economic duress in order to close their sale — even when the claim is invalid. This adversely affects home sellers, home buyers, developers, and builders.

## Solution

Enhance the existing statute prohibiting Private Transfer Fees in Texas (Subchapter G., Texas Property Code) by implementing the following to better protect the consumer:

1. Create a private cause of action for property owners to defend themselves against wrongful claims of these collection companies who failed to comply with the existing statute.
2. Create a “self-help” mechanism that allows consumers to demand the status of any potential claim of rights by a private transfer fee claimant.
3. Clarify when and how the party that originally created the covenant can release a covenant without the assent of the collection company.
4. Require more descriptive information in statutory notices, including disallowing vague property descriptions by reference, requiring notices to identify prior compliant recorded notices, and clearly identifying specific lots within a subdivision covered by a private transfer fee.

5. Require that the statutory notices of a private transfer fee covenant must be given by the private transfer fee claimant to affected homeowners.
6. Provide for finality of litigation outcomes by clarifying that court decisions on the claims be binding on all payees.
7. Create a statute of limitations for a covenant holder or collection company to enforce their claim or to challenge a release or termination of a covenant.
8. Create a Deceptive Trade Practices violation for asserting claims against properties based on a void covenant.

## Background

In 2011, the Texas Legislature prohibited private transfer fee covenants while grandfathering existing covenants but adding notice requirements for those existing covenants. Existing private transfer fee claimants were required to file an initial notice in the property records the following year and every three years thereafter for the private transfer fee to remain effective.

Recently, some pre-2011 private transfer fee claimants and collection companies that did not comply with the notice requirements have reasserted rights in the property records and demanded payment at the time of conveyance. Although these covenants are often void according to the statute, the economic duress created by their assertions and the realities of lengthy lawsuits creates uncertainty and risk. Consumers often simply pay the demands of the private transfer fee claimants and collection companies despite the questionable nature of the validity of the demand.

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Texas Land Title Association

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