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**2011 Texas House Bill 8 (HB 8) with Potential Impacts to
Real Estate Investors Sent to Governor for Signature**

Relating to prohibiting certain private transfer fees and the preservation of private real property rights; providing penalties.

Texas House Bill 8 has passed both the Texas House and Senate, and was sent to Governor Perry for signature on May 25, 2011. The bill is effective immediately upon signature by Governor Perry.

The Texas Property Code is being amended to make selected private transfer fees null and void, more specifically:

Sec. 5.201(4) "Private transfer fee" means an amount of money, regardless of the method of determining the amount, that is payable on the transfer of an interest in real property or payable for a right to make or accept a transfer.

Sec. 5.201(8) A "Transfer" means the sale, gift, conveyance, inheritance, assignment, or other transfer of an ownership interest in real property.

Sec. 5.201(5) "Private transfer fee obligation" means an obligation to pay a private transfer fee created under: (A) a declaration or other covenant recorded in the real property records in the county in which the property subject to the private transfer fee obligation is located; (B) a contractual agreement or promise; or (C) an unrecorded contractual agreement or promise.

Sec. 5.202 CERTAIN PRIVATE TRANSFER FEE OBLIGATIONS VOID. (a) Except as provided by this subchapter, a private transfer fee obligation created on or after the effective date of this subchapter is not binding or enforceable against a subsequent owner or subsequent purchaser of an interest in real property and is void.

BACKGROUND:

The bill was introduced as consumer protection legislation in an effort to control private transfer fees imposed by builders and real estate developers. In 2007 a company based in Georgetown Texas was marketing a clause that would impose a 1% transfer fee payable to the person imposing the fee for a period of 99 years. In 2009 this company expanded nationwide selling its program to small builders. In 2010 the real estate industry began moving to have these fees banned. As of today's date there are 22 states that have banned private transfer fees. The restrictions also impact a Homeowner's Association from imposing arbitrary transfer fees. HB 8 now requires that fees charged must touch and corner the property the fee is imposed on. In other words the property must actually be served or benefit from the fee being collected.

PENALTIES AND FINES:

The bill authorizes a fine of up to two-times the amount of the transfer fee as a penalty levied by the State of Texas, and chronic abusers of this regulation can face a \$250,000.00 fine if a continual pattern can be proven. Keep in mind that the fee is levied on the "payee" (i.e., the wholesaler).

ANALYSIS:

Based on the language used in the bill there are significant ramifications to any wholesalers who buy and sell on assignment contracts and/or receives an assignment fee. Within the bill, a "private transfer fee obligation" is an obligation to pay a "transfer fee" (insert any of the synonyms in the previous sentence, i.e. 'sale fee', 'conveyance fee', or 'assignment fee') created under any contractual agreement or promise, recorded or otherwise, against real property. Traditionally wholesalers close in one of two ways: (i) "By Assignment", and (ii) with a "Double Close". As an investor you need to be aware of the structure of the transactions for properties you are buying and selling whether they are assignment contracts or a double closing (i.e., A sells to B and B sells to C in two separate transactions with no pass-through of funds). It may be an unintended consequence of HB 8, but to avoid a payee of an assignment fee from attempting to declare that fee void, wholesalers will be limited to doing a double close incurring additional costs to do so.

Attached is the full text of the Bill that was sent to the Governor's desk to be signed.

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