

twitter
facebook

linkedin
google+

home subscribe advertise reprints e-mail help RSS about us

LOG IN

email

Log In

Logout forgot password?

Search:

Find It!

Mortgage News

News by Subject

Complete list of specialty news sections.

Purchase Subscription

Subscribe to MortgageDaily.com and get immediate access to all news, statistics and archives.

Mortgage Advertising

Reach mortgage executives, loan originators and other people tied to mortgage industry.

Consumer Mortgage News

Free mortgage news for prospective borrowers.

Mortgage Newsletter

Free e-mail newsletter with the latest headlines from MortgageDaily.com.

Mortgage News

Reprints

Put entire MortgageDaily.com stories in your online or printed newsletter or publication.

Mortgage Feed

Condensed MortgageDaily.com stories free on your Web site or for your RSS reader.

News Archives

Archive of MortgageDaily.com stories by month going back to 1999.

Press Releases

Reports and announcements from MortgageDaily.com.

Mortgage Statistics

Data and statistics for real estate finance.

Mortgage Directories

Directories of lenders, branch operators and mortgage service providers.

Mortgage Graphs

Directories of lenders, branch operators and mortgage service providers.



HOT Topics

production servicing compliance legal fraud secondary jobs appraisal site map

What can a **true** digital mortgage do for you? You can't even imagine.



Get the free eBook

EllieMae

subscribe to free Mortgage Daily email newsletter

Mortgage Lawsuits News | Mortgage Litigation Index

Mortgage industry lawsuit news and mortgage litigation coverage. Stories about legal settlements, judgments and mortgage class actions.

Fee Simple: Understanding CA's New Recording Fees

Building Homes and Jobs Act signed into law in September 2017

March 16, 2018

By **JOAN C. SPAEDER-YOUNKIN, Esq., and MICHELLE A. MIERZWA, Esq.** Wright, Finlay & Zak LLP

The Rule

On Sept. 29, 2017, California Gov. Jerry Brown signed Senate Bill 2, the *Building Homes and Jobs Act*, authored by Senator Toni Atkins (D-San Diego).

The act creates a new source of funding for affordable homes by charging a \$75 fee for recording certain types of real estate documents. It is estimated that the new fee will generate \$250 million each year.

The act, which became effective immediately, is part of a comprehensive package of legislation that aims to address California's housing dilemma by imposing a new duty on counties to send quarterly revenues from this fee, after deduction of administrative costs, to the state controller for deposit in the Building Homes and Jobs Fund, created within the State Treasury.(1)

The act adds California Government Code section 27388.1, requiring a \$75 fee per document to be paid, commencing Jan. 1, 2018, at the time of the recording "of every real estate instrument, paper, or notice required or permitted by law to be recorded ... per each single transaction per parcel of real property."

The fee is capped at \$225 for transactions involving the recording of multiple documents.

Section 27388.1(a)(1) defines "real estate instrument, paper, or notice" to mean "a document relating to real property, including but not limited to, the following: deed, grant deed, trustee's deed, deed of trust, reconveyance, quit claim deed, fictitious deed of trust, assignment of deed of trust, request for notice of default, abstract of judgment, subordination agreement, declaration of homestead, abandonment of homestead, notice of default, release or discharge, easement, notice of trustee sale, notice of completion, UCC financing statement, mechanic's lien, maps, and covenants, conditions, and restrictions."(2) The statute does not limit the definition to a finite list; other real property related documents not specifically listed in the code section also remain subject to the fee, unless an exception applies.

Exceptions

Section 21388.1(a)(2) provides for certain exceptions to the \$75 fee, including transactions involving a transfer/sale of real property that is subject to the imposition of a documentary transfer tax, as defined by California Revenue and Taxation Code section 11911. Transactions covered by the documentary transfer tax under Revenue & Taxation Code section 11911 involve a purchase and sale or change of ownership when the consideration or value of the interest or property conveyed exceeds \$100.(3) This exception would apply to transfers of real property by court order, or pursuant to an eminent domain judgment, for example, since Revenue & Taxation Code section 11911 is not limited to voluntary vs. involuntary sales.(4)

Additionally, easements that may potentially endure for a substantial period of time, such as perpetual

ALTIS

New Homes
For 55+

LEARN MORE



easements and easements for life, are also subject to the provisions of the *Documentary Transfer Tax Act*, and thus also should be subject to an exception from the new fee.⁽⁵⁾

Section 2 of the Bill further describes the intention of the exception as follows: "In order to promote housing and homeownership opportunities, the recording fee imposed by this act shall not be applied to any recording made in connection with a sale of real property. Purchasing a home is likely the largest purchase made by Californians, and it is the intent of this act to not increase transaction costs associated with these transfers."

Section 21388.1(a)(2) also provides an exemption from the new fee in connection with a transfer of property to a grantee who will occupy the dwelling as a principal residence, even if the documentary transfer tax is not imposed on the transfer. Thus, documents recorded as part of a refinance loan on an owner occupied property, including, for example, transfer deeds, i.e., in and out of a trust, are exempt. However, in the same type of refinance transaction regarding a non-owner occupied property, the fee would be imposed as to both the deed transferring the ownership interest out of the trust and the deed transferring it back into the trust.

As a practical matter, county recorders do not take it upon themselves to determine whether a document is subject to the fee or the exception. Title companies have confirmed with the county recorders that any exception for payment of the fee on an individual document must be set forth on the face of the document or in a cover sheet when the document is presented for recording. A few select counties require inclusion of a declaration under penalty of perjury that an exception applies.

Interpreting the \$225 Fee Cap

For purposes of the \$225 fee cap, documents included in a single transaction are those presented together and related to the same parties and property.⁽⁶⁾ The Legislature's imposition of the cap "per each single transaction per parcel of real property" suggests that the \$225 fee limit is not intended to be for the life of a loan, but rather is a cap for all documents submitted simultaneously in one transaction.

Multiple documents that relate to a sale or transfer transaction of real property received from one party may include multiple "SB2" transactions. If not otherwise exempt, the fee would be \$75 for each recorded document, up to the cap of \$225.

Trailing documents that come in days or weeks after the other documents in a transaction would not be included in the calculation of the \$225 cap and would require payment of the \$75 fee if not otherwise exempt. Thus, for example, a transfer or assignment of a loan after origination (other than a simultaneous assignment of the loan upon origination), commencement of foreclosure proceedings, or reconveyance of the loan would be considered separate transactions for purposes of the statute, even though they may relate to the same parties to the loan.⁽⁷⁾

Practical Applications for Lenders and Loan Servicers

From a practical standpoint, lenders and loan servicers should now begin to include in their payoff demand statements an additional \$150 in recording fees for the recording of a Substitution of Trustee and Full Reconveyance (\$75.00 for each "title" on the document), necessary for the release of the loan following a full payoff.

Additional examples of a multiple title document include a Substitution of Trustee and Notice of Default, Deed of Trust with Assignment of Rents (also \$150), and an Assignment of Deed of Trust, Substitution of Trustee and Notice of Default combination (\$225). Title companies and county recorders have advised that such multi-purpose documents will be assessed the new fee for each title.

With respect to the disclosure of fee estimates on a new loan, it is advisable to obtain an estimate from the title company handling the closing, so that the loan estimate is as close as possible to the actual fees to be incurred.

While there is currently some uncertainty about the disclosure of good faith fee estimates for transactions and how many documents will need to be recorded in each transaction, once the act is put into practice and closing agents gain experience, the fee estimates will become easier.

In the meantime, it appears that the preferred method is to disclose the transaction maximum of \$225,⁽⁸⁾ as a refund can be given through an amended settlement statement in the event actual recording fees are lower. Otherwise, if the lender under-discloses and the difference exceeds applicable tolerances, the lender would be responsible for payment of the tolerance cure on every such transaction.⁽⁹⁾ These amounts could certainly add up over the course of many transactions.

(1) Legislative Counsel's Digest, SB 2, Atkins. Building Homes and Jobs Act; See newly added Cal. Health & Saf. Code § 50470.

(2) Cal. Gov. Code §12388.1(a)(1).

(3) California Revenue & Taxation Code §11911(a).

(4) People ex rel. Department of Public Works v. County of Santa Clara (Cal. App. 1st Dist. 1969), 275 Cal. App. 2d 372, 79 Cal. Rptr. 787, 1969 Cal. App. LEXIS 1927.

(5)62 Ops. Cal. Atty. Gen. 87.

(6) California Mortgage Bankers Association SB2 Compliance Webinar, January 25, 2018, Lisa Tyler, Fidelity National Financial, Inc., who has worked with all 58 County Recorders' Offices regarding implementation of the Bill.

(7) California Mortgage Bankers Association SB2 Compliance Webinar, January 25, 2018, Lisa Tyler, Fidelity National Financial, Inc., who has worked with all 58 County Recorders' Offices regarding implementation of the Bill.

(8) The disclosed finance charge is considered accurate if it is not understated by more than \$100, but overstatements are not violations. 12 C.F.R. §1026.18(d).

(9) 12 C.F.R. §1026.19(f)(2)(v)

About Wright, Finlay & Zak, LLP

Wright, Finlay & Zak, LLP specializes in mortgage-related litigation, compliance and regulatory matters for its clients throughout the Western United States, including California, Nevada, Arizona, Washington, Utah, Oregon, New Mexico, Idaho and Hawaii. If you have any questions regarding the new fees imposed by California Government Code section 27388.1 or any other matter, please contact Joan C. Spaeder-Younkin at jspaeder@wrightlegal.net or Michelle A. Mierzwa at mmierzwa@wrightlegal.net.

[next story](#)

[back to current headlines](#)

SUBSCRIBERS: [Edit Subscription](#) | [Subscription Help](#) | or call 214.521.1300



[Subscribe](#) [Contact Us](#) [Site Map](#)

Copyright © 2017 Mortgage Daily, D a l l a s

Subscribers Only:

AMC directory
ARM indexes
mortgage company directory
mortgage regulations
net branch directory
p r i c i n g engine directory
wholesale lender directory

More Mortgage News Resources (full site map):

advertising news	MBS	mortgage insurance news	mortgage technology
appraisal news	mortgage associations	mortgage lawsuits	mortgage video
bank news	mortgage-backed securities	mortgage leads	mortgage Webinars
biggest lenders	mortgage books	mortgage lender ranking	net branch
commercial mortgage news	mortgage brokers	mortgage licenses	net branch directory
corporate mortgage news	mortgage compliance	mortgage litigation	nonprime news
credit news	mortgage conferences	Mortgage Litigation Index	origination news
FHA news	mortgage directories	Mortgage Market Index	originator tools
financial regulation news	mortgage education	mortgage mergers	real estate news
foreclosure news	mortgage employment	mortgage news	refinance news
free mortgage news	mortgage employment index	mortgage politics	reverse mortgage news
GSE news	mortgage executives	mortgage press releases	sales blog
jumbo mortgage news	mortgage fraud	mortgage production	secondary marketing
interest rates	mortgage fraud blog	mortgage public relations	social media
loan modification news	mortgage fraud local news	mortgage rates	servicing news
loan originator survey	Mortgage Fraud Index	mortgage servicing	subprime news
LOS Newsletter	Mortgage Graveyard	mortgage statistics	wholesale lenders
			wireless mortgage news