



# Get Ready to Pay More for Recording a Document in California

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For several years, we have been describing the (increasingly successful) efforts by California state and local government agencies to increase their tax take through new and expanded fees and taxes on real estate transactions. (See, for example, our e-alerts [here](#) and [here](#)). Here's a new one: Starting this year, California Government Code section 27388.1 imposes fees at the time of recording of every real estate instrument, paper, or notice required or permitted by law to be recorded (complementary to the documentary transfer tax and in addition to such other fees as a county recorder may impose). Unlike other provisions of the Government Code, which permit counties to impose fees on recordings in order to fund the operations of their recorders' offices, the new law requires counties to impose the fee and further requires them to remit collections from the fees (less any actual and necessary administrative costs incurred in imposing and collecting the new fee) to the state Controller for deposit in a new California Building Homes and Jobs Trust Fund for use in expanding housing and job training for homeless and low-income persons.

Leaving aside the constitutional question of whether this so-called fee is actually a tax (and, therefore, whether the California legislature followed proper procedures in enacting it), it is now a reality for persons trying to close a real estate transaction or record a document in California. Here are the highlights:

- The fee is \$75 per each single transaction per parcel of real property, except that the fee shall not exceed ... \$225. Therefore, it appears that 10 deeds each for one parcel would be subject to aggregate fees of \$750 whereas a single quitclaim deed for 10 parcels would be subject to a fee of \$225 (i.e. the lower of \$225 versus 10 parcels times \$75 per parcel).
- The fee applies to any real estate instrument, paper, or notice which term includes, but is not limited to, any deed, grant deed, trustee's deed, deed of trust, reconveyance, quitclaim 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. Many of these types of recordings are not subject to documentary transfer tax (DTT),

so the new fee essentially picks up transactions that the DTT does not.

- Continuing the theme that the new fee complements the DTT, the statute provides that the fee shall not be imposed on any real estate instrument, paper, or notice recorded in connection with a transfer subject to the imposition of a [DTT]. Therefore, for example, in the case of a grant deed where the proportionate interests of the grantors and grantees remain the same, such a deed is not subject to DTT but would be subject to the new fee. Similarly, a trust deed or other instrument securing a debt generally is not subject to DTT, but would be subject to the new fee.
- The statute also provides that there is no fee on a transfer of real property that is a residential dwelling to an owner-occupier.
- The statute does not appear to change the long-standing rule under Government Code section 27383 that [n]o fee shall be charged by the recorder for services rendered to the State, to any municipality, county in the State or other political subdivision thereof.

Local assessors (for example, Los Angeles County and San Francisco County) have put out information sheets and sample forms for claiming exemptions from the new fee. Those that believe that their document is exempt should specify the reason for the exemption in the form of a declaration of exemption on the face of the document, or on a coversheet, consistent with the requirements of the applicable county recorder's office. For example:

- The instrument is exempt because it is being recorded in connection with a transfer subject to the DTT;
- The instrument is exempt because it is being recorded in connection with the transfer of real property that is a residential dwelling to an owner-occupier;
- The instrument is exempt because the cap of \$225 has been reached in the same transaction; or
- The instrument is exempt because it is not related to real property (such would be the case, for example, with the filing of a power of attorney).

However, it will be up to the County Recorder to determine whether or not they agree with the stated reason for exemption. As a result, the cost of closing a real estate transaction in California will likely increase. It remains to be seen whether this fee will get challenged in the courts, and we will continue to monitor the issue.

In the meantime, if you would like further information or assistance regarding the fee and/or the Building Homes and Jobs Act, please contact us.