

SB-2 Basics

Prepared by:
Jennifer Felten

What Is SB-2?

New Affordable Housing and Job Acts Fee

- Establishes permanent, ongoing sources of funding dedicated to affordable housing development
- Money to be placed in Building Homes and Jobs Fund created within the State Treasury

New Fees –

Government Code 27388.1(a)(1)

Commencing January 1, 2018, and except as provided in paragraph (2), in addition to any other recording fees specified in this code, a fee of **seventy-five dollars (\$75)** shall be paid at the time of recording of **every real estate instrument, paper, or notice required or permitted by law to be recorded**, except those expressly exempted from payment of recording fees, **per each single transaction per parcel of real property**. The fee imposed by this section shall not exceed **two hundred twenty-five dollars (\$225)**.

Documents Covered – Government Code 27388.1(a)(1)

Real estate instrument, paper, or notice means 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.

Exemptions – Government Code 27388.1(a)(2)

The fee described in paragraph (1) shall not be imposed on any real estate instrument, paper, or notice recorded in connection with a **transfer subject to the imposition of a documentary transfer tax** as defined in Section 11911 of the Revenue and Taxation Code or on any real estate instrument, paper, or notice recorded in connection with the **transfer of real property that is a residential dwelling to an owner-occupier.**

New County Created Forms

- Some counties have created a coversheet for use in documenting whether the new fees are chargeable on a document
- Where a coversheet is required someone must prepare it
- It is reasonable to believe that the fee or exemption will need to be reflected on the actual document

Sample San Bernardino County

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL DOCUMENT TO:

NAME

STREET
ADDRESS

CITY, STATE &
ZIP CODE

SPACE ABOVE FOR RECORDER'S USE ONLY

Title of Document

Pursuant to Senate Bill 2 – Building Homes and Jobs Act (GC Code Section 27388.1), effective January 1, 2018, a fee of seventy-five dollars (\$75.00) shall be paid at the time of recording of every real estate instrument, paper, or notice required or permitted by law to be recorded, except those expressly exempted from payment of recording fees, per each single transaction per parcel of real property. The fee imposed by this section shall not exceed two hundred twenty-five dollars (\$225.00).

Reason for Exemption:

- ☐ Exempt from fee per GC 27388.1 (a) (2); recorded concurrently "in connection with" a transfer subject to the imposition of documentary transfer tax (DTT).
- ☐ Exempt from fee per GC 27388.1 (a) (2); recorded concurrently "in connection with" a transfer of real property that is a residential dwelling to an owner-occupier.
- ☐ Exempt from fee per GC 27388.1 (a) (1); fee cap of \$225.00 reached.
- ☐ Exempt from the fee per GC 27388.1 (a) (1); not related to real property.

Failure to include an exemption reason will result in the imposition of the \$75.00 Building Homes and Jobs Act fee. Fees collected are deposited to the State and may not be available for refund.

I hereby declare under penalty of perjury that the information provided above is true and correct.

Executed this _____ day of _____,

At _____, _____
City State

Signature

1853

THIS COVER SHEET ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(\$3.00 Additional Recording Fee Applies)

Sample San Diego County

RECORDING REQUESTED BY:

AND WHEN RECORDED
MAIL TO:

THIS SPACE FOR RECORDER'S USE

(Please fill in document title(s) on this line)

- 1 ☐ Exempt from fee per GC27388.1 due to being recorded in connection with concurrent transfer that is subject to the imposition of documentary transfer tax, or,
- 2 ☐ Exempt from fee per GC27388.1 due to being recorded in connection with a transfer that was subject to documentary transfer tax which was paid on document recorded previously on _____ (date) as document number _____ of Official Records, or,
- 3 ☐ Exempt from fee per GC27388.1 due to the maximum fees being paid on documents in this transaction, or,
- 4 ☐ Exempt from fee per GC27388.1 due to the maximum fees having been paid on documents in the transaction(s) recorded previously on _____ (date) as document number(s) _____ of Official Records, or
- 5 ☐ Exempt from fee per GC27388.1; document transfers real property that is a residential dwelling to an owner-occupier, or,
- 6 ☐ Exempt from fee per GC27388.1 due to being recorded in connection with concurrent transfer that is a residential dwelling to an owner-occupier, or,
- 7 ☐ Exempt from fee per GC27388.1 due to it being recorded in connection with a transfer of real property that is a residential dwelling to an owner-occupier. The recorded document transferring the dwelling to the owner-occupier was recorded on _____ (date) as document number(s) _____, or,
- 8 ☐ Exempt from the fee per GC 27388.1 (a) (1); Not related to real property, or,
- 9 ☐ Exempt from fee under GC27388.1 for the following reasons:

THIS PAGE ADDED TO PROVIDE SENATE BILL 2 EXEMPTION INFORMATION
(Additional recording fee applies)

County-by-County Interpretations

- Coversheet requirement
- Fee name
- Fee being charged per document or per parcel
- Counties determine which documents are “related”
- Fee being charged on document with transfer tax exemption language
- Additional fees for documents with “multiple titles”

Impact on New Lenders

- Additional fees must be quoted on Loan Estimate and/or Closing Disclosure within tolerance to be chargeable to the consumer
- Recording fees are in the 10% tolerance category under TRID
- So far we're hearing that many lenders are reluctant to add the fees to their documents
- Estimating high, but within reasonable range for specific transaction recommended
- Imperative that lender's instructions and disclosures be reviewed to determine risks
- Verbal and written push back likely appropriate and/or necessary to minimize future demands for reimbursement
- If (when) the actual numbers don't match who is responsible for the difference if additional funds are owed
- Notification to lender on changes (even weeks or months later) necessary to stay compliant with TRID re-disclosure requirements

Impact on Payoffs

- It is expected that payoff lenders will be adding these additional fees to their payoff demands
- Most conventional lenders record both a substitution of trustee and a reconveyance as separate documents so it is reasonable to expect an additional fee of \$150
- Sometimes an assignment has to be recorded also which would be an additional \$75 fee
- It has been reported that some payoff lenders are indicating that they will give the documents to the borrower to record to avoid paying the fees
- Where payoff documents are being recorded subsequent to closing the recorders' offices are unlikely to consider them part of same transaction for the \$225 cap

Sample New Payoff Demand

M&T BANK

(800) 724-2224

XP301

JH8

Re: [REDACTED]

PAYOFF STATEMENT

December 26, 2017

Re: Loan No. [REDACTED]

[REDACTED]

Interest Due To: January 25, 2018
Next Payment Due: January 01, 2018

At: 3.87500%

Principal Balance:	\$	649,046.88
Interest Through January 25, 2018		3,749.61
Document Preparation		.00
Federal Express		.00
Trustee Fee		.00
Subsequent Payoff Lt		10.00
Recording Fees		186.00
Fax Fee (s)		15.00
* * * * TOTAL AMOUNT TO PAY LOAN IN FULL * * * * \$		653,007.49
The current escrow balance is:		7,508.98

Per diem through the last day of the month only: \$ 68.91
Funds received after the requested payoff date will require additional per diem.

All figures are subject to change.

This statement expires on the last business day of the month. Figures must be updated after that date. In addition, figures will be adjusted if any transactions such as an escrow advance, payment reversal, or fee assessment take place.

PAYMENTS DUE

Issuance of this statement does not suspend the requirement to make the mortgage payment when due. If the payment or payoff is not received within 0 days of the current payment due date a late charge in the amount of \$ 123.94 will be assessed. Please add that amount to the payoff total.

If a payoff is received within 4 business days of a scheduled automatic deduction draft date, a draft may occur. Any overpayment will be refunded within ten business days. If you have your payment automatically drafted and you wish to cancel the drafting service a written request must be received by this office ten days prior to the payoff.

(IMPORTANT INFORMATION ON PAGE 2)

Dealing With Title Companies

- Talk to title company regarding their policies prior to time of scheduling of recording recommended
- Different title companies are taking different positions on how to handle the fee
- Post closing additional fees are a risk to title companies who may try to pass on costs to escrow and/or consumer

Questions?

Contact Us

RELAW, APC

Jennifer Felten, Esq.

2535 Townsgate Road, Suite 207

Westlake Village, CA 91361

Phone: (805) 265-1031

Fax: (805) 265-1032

Email: jennifer@relawapc.com