

Legislative Update



FAQs Concerning California Senate Bill (SB) 2 - Affordable Housing and Jobs Act - Assessment Fees for California Real Estate Recordings

What is the new the new Affordable Housing Recording Fee?

The new fee is an additional charge passed by the legislature and signed by the governor to fund Affordable Housing. The fee is assessed at the time documents are recorded into the public record with the county recorder's office.

Does the new Recording Fee replace previous charges for recording?

No, the new Recording Fee is charged in addition to previous recording charges collected by county recorders.

When does the new recording fee become due?

The recording fee becomes due at the time an instrument is recorded with the county recorder's office that is not otherwise exempt.

Is the Affordable Housing Recording Fee charged on all documents presented for recording?

No, the Affordable Housing Recording Fee is charged on real estate instruments, papers or notices permitted by law to be recorded.

What is considered a "real estate instrument, paper or notice"?

The new legislation defines this as a document relating to real property and includes the following as examples: 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.

What is the amount of the assessment?

The additional fee is \$75.00 per instrument, per each single transaction per parcel of real property.

What is considered a "Single Transaction"?

The development for future construction, sale and/or encumbrance of a piece of real property.

What is considered a "Parcel of Real Property"?

A parcel is defined, for the purposes of interpretation of new Government Code 27388.1, as "a piece of land of any size that is in one ownership." Thus, recorders are expected to treat a parcel as a transaction that is if there are 3 parcels in one single document subject to the additional fee, it would be \$75, not \$225.



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Is there a maximum aggregate charge per transaction?

Yes. The maximum aggregate charge for real estate instruments recorded in a single transaction is \$225.00

How will a county recorder determine that the maximum has been paid, such that additional instruments recorded in connection with a single transaction are not charged an additional recording fee?

The individual or entity recording documents after the maximum Affordable Housing Recording Fee has been met will have to indicate by stamp physically placed on the document declaring the maximum fee has been met.

Example:

Recorded at the Request of:

Fidelity National Title

This document is recorded in connection with, and concurrently with, other documents for the same parties and/or property for which the maximum \$225 fee has been paid.

Are any real estate instruments exempt from the Affordable Housing Recording Fee?

Yes. The following real estate instruments, papers or notices are exempt from the additional Recording Fee:

1. Those recorded in connection with a transfer subject to a documentary transfer tax; or
2. Those recorded in connection with a transfer of real property that is a residential dwelling to an owner-occupier.

What real estate instruments, papers or notices will be considered recorded "in connection with" a transfer subject to a documentary transfer tax?

"In connection with" will be interpreted to mean documents involving the same parties and/or same property that are recorded concurrently. Thus, documents recorded before or after, and not concurrently, will not benefit from an "in connection with" exemption and will be charged the \$75 fee, each to the \$225 concurrently recorded cap, unless otherwise exempt.

If a title company is recorded a Deed of Trust and Assignment of Rents subject to the new Recording Fee charge, will the charge be \$75 per document title?

Documents with multiple titles will be charged per title. Example: Substitution of Trustee and Full Reconveyance. The charge would be \$75 x 2 titles = \$150. Another Example: Assignment, Substitution of Trustee, Reconveyance Agreement (4 titles) would be charged the maximum \$225.



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What real estate instruments, papers or notices will be considered recorded “in connection with” a transfer of real property that is a residential dwelling to an owner-occupier?

All instruments necessary to transfer ownership, relinquish debt and secure new debt recorded in a single transaction will be considered to be in connection with an exempt transfer, if the buyer declares on the Preliminary Change of Ownership (PCOR) they intend to occupy the subject property.

Note: An entity such as a trust, partnership, corporation or limited liability company are not eligible to sign such a declaration and therefore their transfer, not subject to documentary transfer tax will not be exempt from assessment.

For a real estate instrument paper or notice to be considered recorded “in connection with” a transfer of real property that is a residential dwelling to an owner-occupier, must such document(s) be recorded concurrently with the document transferring a residential dwelling to an owner-occupier?

Yes, “in connection with” will be interpreted to mean documents involving the same parties and/or same property that are recorded concurrently. Thus, documents recorded before or after, and not concurrently, will not benefit from an “in connection with” exemption and will be charged the \$75 fee, each to the \$225 concurrently recorded cap, unless otherwise exempt.

No, documents recorded will have to be stamped indicating they are part of an exempt transaction.

Example:

Recorded at the Request of:

Fidelity National Title

This document is recorded in connection with, and concurrently with, a transfer of real property that is a residential dwelling to an owner-occupier/

If recording a subdivision map describing multiple lots in a subdivision, is an Affordable Housing Recording Fee due equal to (a) the number of lots in the subdivision times \$75, limited by the maximum assessment or (b) the number of lots in the subdivision times \$75?

One \$75 fee would be charged for a single transaction regardless of the number of parcels.

If, in addition to a subdivision map, a person simultaneously presents covenants conditions and restrictions (CCRs) on the same property, is an additional Affordable Housing Recording Fee due equal to the number of lots in the subdivision times \$75, limited by the Recording Fee maximum?

An additional \$75 Affordable Housing Recording Fee would be due to record the CCRs.

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Are documents re-recorded for reasons such as correcting a name or attaching a legal description subject to an Affordable Housing Recording Fee charge?

No, previously recorded documents being re-recorded to correct a previous omission or error are not subject to an Affordable Housing Recording Fee charge.

Are reconveyance and release documents recorded to release encumbrances paid prior to January 1st, 2018 subject to the Affordable Housing Recording Fee charge?

Yes, documents recorded after January 1st, 2018 related to transactions closed prior to that date will be charged the \$75 Affordable Housing Recording Fee, regardless if the overall transaction was otherwise exempt.

Lender concerns:

1. Estimating the Affordable Housing Recording Fee at the time the Loan Estimate and Closing Disclosure are prepared without knowing with certainty how many documents will ultimately be recorded subject to the additional \$75 fee.
2. Refunding overages at closing and providing amended Closing Disclosures, where the maximum additional fee of \$225 was charged, but not entirely due to the recorder's office.
3. Recording reconveyances for loans paid prior to the January 1st, 2018 effective date will be subject to the additional \$75 fee.
4. Recording reconveyances on a go forward basis will be charged an additional \$75 Affordable Housing Recording Fee.

For more information, visit leginfo.legislature.ca.gov > Bill Information > (Search) "SB2"

