



August 29, 2017

TO: Members, California State Assembly

FR: California Land Title Association  
 American Resort Development Association  
 California Business Properties Association  
 California Escrow Association  
 California Mortgage Association  
 California Pool & Spa Association  
 California Taxpayers Association  
 Community Associations Institute  
 California Legislative Action Committee  
 County Records' Association of California  
 Howard Jarvis Taxpayers Association  
 National Federation of Independent Business  
 United Trustees Association

**RE: SB 2 (ATKINS) – OPPOSE (as amended August 29, 2017)**

The above-listed groups, while sympathetic to the need for more affordable housing in California, strongly oppose SB 2. Recent amendments do not address the fact that this is a regressive tax on the middle class.

**SB 2 will result in exponential increases in recording fees/taxes paid by those consumers who can often ill afford it:**

As shown in the attached matrix that specifically delineates the documents that must be recorded under law. While all California consumers will have to pay these new recording fee/taxes, it is our opinion that these new fees/taxes will have the biggest impact on the following consumers:

- **Senior Spouses Recording Documents After the Loss of a Spouse:**  
*(Increase from \$36 to \$261)*
- **Low Wage Contractors, Laborers, Suppliers, and Employees Recording Mechanics Liens Seeking Reimbursement:**  
*(Increase from \$26 to \$176)*
- **Low-Income Homeowners Refinancing Their Loans:**  
*(Increase from \$102 - \$327)*
- **Struggling Homeowners Modifying Their Loans to Avoid Foreclosure:**  
*(Increase from \$43 to \$268)*
- **Struggling Homeowners Redeeming Their Delinquent Loan Just Prior to Foreclosure:**  
*(Increase from \$56 to \$375 or more)*
- **Custodial Parents Recording Child Support Liens Seeking Delinquent Child Support:**  
*(Increase from \$13 to \$88)*

**SB 2 will also dramatically increase costs to other recording consumers and businesses:**

As also shown in the attached matrix, other consumers and businesses will be affected as well with significant increases in recording fee/taxes:

- **Lot Line Adjustments to Resolve Property Line Disputes:** *(Increase from \$36 to \$261)*
- **Construction Loans:**  
*(Increase from \$128 to \$353)*

**SB 2's illogical and arbitrary exemption from imposition of the new SB recording fee/tax will result in confusion about when it should be charged:**

Proposed subsection 27388.1 (a) (2) creates an exemption from the imposition of the affordable fee recording fee/tax that will result in confusion as to when the new recording fee/tax will be imposed. It reads as follows:

(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 a transfer of real property that is a residential dwelling to an owner-occupier.* (Emphasis added)

This awkward language highlighted above will create confusion and inconsistent imposition of the new affordable housing recording fee/taxes that would be imposed by SB 2. This point is best made with the following examples:

- **Recording of a reconveyance or release:** Under current law, once a homeowner has paid off his or her mortgage in full, a “reconveyance” is *subsequently* recorded to provide notice that the debt has been paid off.

Since this document is nearly always recorded AFTER the original batch of documents are submitted by a consumer, lender, title or escrow company or consumer for recordation, it is uncertain whether this document would be excluded from the recording fee/tax. On the one hand, it should be excluded as related to the previously-recorded transfer. On the other hand, the reconveyance document does not refer to the previous sale transaction and would more likely be treated as subject to the additional \$75 fee, and there may be more than one reconveyance document. Other release documents may also be recorded on a delayed, post-purchase recording basis such as releases of liens, each at an additional cost of \$75. Uncertainty about this would likely result in uneven treatment among the 58 county recorders. Further, without this certainty and in an environment where escrow and title companies must report to the buyer’s new lender the exact amount of costs, a later added cost is not allowed.

- **Determination of Residential Dwelling, Owner Occupier:** The majority of documents recorded in a real estate transaction rarely if ever indicate that the property in question is residential and/or owner occupied, thus making this determination difficult at best and impossible at worst in terms of consistent application throughout the state.

Thus, the arbitrary exemption language will make it difficult to impose SB 2 in a consistent, fair, and non-capricious manner.

### **SB 2 should be amended to focus on Governor Brown’s stated goals to address affordable housing:**

The signatories of this letter strongly support the Governor’s publicly stated goals of cutting red tape, delays, and unnecessary expenses to housing construction that would make housing more affordable to all Californians.

We believe SB 2 should be rewritten to specifically target those obstacles to more affordable housing within our borders.

For these reasons, we strongly OPPOSE SB 2.

cc: The Honorable Toni Atkins  
William Weber, Consultant, Assembly Republican Caucus

## **SB 2 Fee impact for California Recording Transactions**

(Fees are calculated based on the average number of pages for type of document using the base statutory maximum calculation of \$10 for the first page and \$3 for each additional page. Fees will vary by county and specific transaction.)

<b>Transaction</b>	<b>Document Name</b>	<b>Current Fee</b>	<b>SB 2</b>
<b>Refinance</b>	Deed of Trust	\$49	\$124
	Assignment of Rents	\$10	\$85
	Request for Notice of Default	\$10	\$85
	Subordination Agreement	\$13	\$13
	Substitution of Trust	\$10	\$10
	Reconveyance	\$10	\$10
	<b>Total</b>	<b>\$102</b>	<b>\$327</b>
<b>Foreclosure</b>  (Cured by the borrower)	Notice of Default	\$13	\$88
	Notice of Trustee's Sale	\$10	\$85
	Rescission of Notice of Default	\$10	\$85
	Rescission of Trustee's Sale	\$10	\$10
	<b>Total</b>	<b>\$43</b>	<b>\$268</b>
<b>Mechanics Lien</b>	Notice of Mechanics Lien	\$16	\$91
	Release of Lien	\$10	\$85
	<b>Total</b>	<b>\$26</b>	<b>\$176</b>
<b>Lot Line Adjustment</b>	Lot Line Adjustment	\$16	\$91
	Deed (from Party A to Party B)	\$10	\$85
	Deed (from Party B to Party A)	\$10	\$85
	<b>Total</b>	<b>\$36</b>	<b>\$261</b>
<b>Construction Loan</b>	Construction Deed of Trust	\$49	\$124
	Notice of Completion	\$10	\$85
	Deed of Trust (conventional)	\$49	\$124
	Substitution of Trust	\$10	\$10
	Reconveyance	\$10	\$10
	<b>Total</b>	<b>\$128</b>	<b>\$353</b>
<b>Child Support Lien</b>	Lien	\$0	\$0
	Lien Release	\$13	\$88
	<b>Total</b>	<b>\$13</b>	<b>\$88</b>
<b>Death of a Spouse</b>	Affidavit of Death	\$13	\$88
	Trust Certification	\$13	\$88
	Deed	\$10	\$85
	<b>Total</b>	<b>\$36</b>	<b>\$261</b>