

# **BIG TROUT CONDOMINIUM ASSOCIATION**

July 12, 2024

*Sent via email and posted on website at <https://www.bigtrouthoa.com/>.*

RE: Big Trout Condominium Association  
Capital Contribution Fee

Dear Big Trout community members:

Following some owner questions regarding whether the Association can charge the capital contribution fee mentioned in Section 6.8 of the Declaration, the Board of Directors asked the Association's general counsel to provide an analysis regarding that topic. Enclosed with this letter is a non-confidential memorandum drafted by the Association's general counsel that discusses the relevant law governing these types of fees and its application. In short, the Association has the ability to charge the capital contribution fee because it would fit within the Private Transfer Fee Obligation Act's ("PTF Act") exemption found at RCW 64.60.010(3).

Washington State has a specific statute regarding "private transfer fees," the PTF Act at RCW 64.60. With respect to the capital contribution fee in Section 6.8 of the Declaration, there is an applicable exception to what would be considered a private transfer fee prohibited by that statute. That exception is found at RCW 64.60.010(3)(g):

*(g) Any assessment, fee, charge, fine, dues, or other amount payable to an association pursuant to chapter 64.32, 64.34, or 64.38 RCW, payable by a purchaser of a camping resort contract, as defined in RCW 19.105.300, or a timeshare, as defined in RCW 64.36.010, or payable pursuant to a recorded servitude encumbering the real property being transferred, as long as no portion of the fee is required to be passed through or paid to a third party.*

Under RCW 64.60.010(3)(g), a fee for a capital contribution, for example, that meets the above requirements fits into the "charge" payable to an association described in the above exception. The fee in Section 6.8 of the Declaration is in the Association's covenants and is required to be paid to the Association for the Association to keep, as opposed to being passed through to the manager or other third party. Therefore, the fee in Section 6.8 of the Declaration is exempt from RCW 64.60 and can be charged to subsequent purchasers of a Lot in the Association upon transfer of a Lot.

Thank you in advance for your prompt attention to this matter. If you have any questions about the contents of this letter or would like further clarification regarding the non-confidential memo, please contact the Board President, Dg Garcia, at [dannetta3@gmail.com](mailto:dannetta3@gmail.com).

Sincerely,

Board of Directors  
Big Trout Condominium Association

Encl. as stated



**MEMO**

**DATE:** JULY 12, 2024  
**TO:** BIG TROUT CONDOMINIUM ASSOCIATION  
**FROM:** LAUREN C. OLSON, ATTORNEY  
**RE:** CAPITAL CONTRIBUTION FEE

---

*(Note: This memo contains no confidential advice or recommendations. Distributing this memo is not intended to, and does not, waive the attorney-client privilege that applies to confidential advice a board receives from a condominium association's general counsel.)*

**ISSUE**

The Board asked us to research whether the Association could charge a capital contribution fee on each subsequent purchase of a Lot pursuant to Section 6.8 of the Declaration of Covenants, Conditions, and Restrictions Big Trout Condominiums Spokane County, Washington recorded at Spokane County Auditor's No. 5791716 ("Declaration").

**BRIEF ANSWER**

As discussed below, the requirement to pay a fee upon the transfer of a Lot is known as a "Private Transfer Fee" under RCW 64.60. Private transfer fees are prohibited by that statute, but it contains several exceptions, one of which would allow to fee charged under Section 6.8 of the Declaration.

**ANALYSIS**

a. Private Transfer Fee Obligation Act of 2011 ("PTF Act")

The Private Transfer Fee Obligation Act (the "PTF Act") is reasonably interpreted to allow the fee in Section 6.8 of the Declaration. Enacted in 2011, the PTF Act (RCW 64.60) prohibits "Private Transfer Fees." At RCW 64.60.010(3), it defines a private transfer fee as follows:

*"Private Transfer Fee" means a fee or charge payable upon the transfer of an interest in real property, or payable for the right to make or accept such transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the real property, the purchase price, or other consideration given for the transfer.*

Per RCW 64.60.010(4), a “Private transfer fee obligation” is defined to mean an obligation *arising under a declaration or covenant recorded against the title to real property*. To make the fee under consideration “attach” to real property—placing buyers and sellers on constructive notice—it would need to be in the recorded covenants. And by virtue of being in the recorded covenants, this would place the fee under the purview of RCW 64.60. More on this is below.

The statute carves out a number of exceptions from what is considered a private transfer fee. Some exceptions are ubiquitous, and most brokers and managers probably do not realize certain common charges are actually exceptions under the PTF Act. One example is the charge for resale certificates at condominiums, which is specifically allowed by RCW 64.34.425(2). It is covered by the exception found at RCW 64.60.010(3)(g).

With regard to the fee in Section 6.8 of the Declaration, there is an exception to what is defined as a (prohibited) private transfer fee that is reasonably interpreted to except a “charge” on subsequent purchasers from the definition of a private transfer fee. RCW 64.60.010(3)(g) includes the following in a list of what are not considered private transfer fees:

*(g) Any assessment, fee, charge, fine, dues, or other amount payable to an association pursuant to chapter 64.32, 64.34, or 64.38 RCW, payable by a purchaser of a camping resort contract, as defined in RCW 19.105.300, or a timeshare, as defined in RCW 64.36.010, **or payable pursuant to a recorded servitude encumbering the real property being transferred, as long as no portion of the fee is required to be passed through or paid to a third party;***

Emphasis added. While it takes some parsing of the exceptions in the statute, a fee for a capital contribution, for example, that meets the above requirements fits into the “charge” payable to an association described in the above exception. The fee must be in the covenants and is required to be paid to the Association for the Association to keep (as opposed to being passed through to the manager or other third party). We also interpret this exception to mean that if the fee is charged *outside of the recorded covenants*, such as by rule or bylaw, it would still fit the definition of a private transfer fee, but it would not meet all the requirements to qualify for the exception listed above, which specifically references “recorded servitude.”