

About SB 2:

SB 2 (Atkins) was signed by the Governor in late September. About 130 housing bills were introduced in 2017; SB 2 is one of about fifteen that were enacted to attempt to address housing shortages and affordability. Other bills included SB 3 (Beall), which will place a \$4 billion bond for affordable housing programs and a veteran's home ownership program on the November 6, 2018 ballot, and SB 35 (Wiener) which creates a streamlined local process for infill housing projects.

SB 2 adds a \$75 recording fee surcharge to certain documents at the time of recording.

SB 2 poses many practical problems for consumers, escrow professionals, title insurers, county recorders, lenders, real estate brokers and sales persons, attorneys, and anyone else involved in every type of real estate transaction, sometimes even those who handle non-real estate transactions.

The recording fee surcharge in SB 2 will begin on January 1, 2018. How this actually happens on and after that day will turn on matters of intent, interpretation, and implementation, and upon collaborative conversations that have been taking place over the last few and that continue now. Because of the variety of circumstances that come before escrow holders, regardless of the counties you work in and whether you work in residential, commercial, manufactured homes, bulk sales, or a combination of those, your transactions will be affected.

Among the questions created by SB 2 that CEA, CLTA, recorders, lenders, and other working groups seek to address are:

- What documents are subject to the fee?
- What is a "real estate document, paper, or notice"?
- What documents are exempt, and how is an exemption demonstrated?
- What if an exemption applies but is not requested or is requested and not granted?
- How does the \$225 "maximum cap" operate?
- What do the undefined terms "in connection with", "per parcel of real property" and "per each single transaction" mean?
- What about trailing documents (i.e. reconveyances and releases) for transactions closed before January 1, 2018?
- Are trailing documents (or to a lesser extent, preceding documents) part of the "in connection with"?
- Is a "double-document" subject to one \$75 fee or two?
- Are re-recordings subject to the additional recording fee?
- What transfers are considered exempt because they are a "transfer of a residential dwelling to an owner-occupier"? How will these be ascertained?
- For transactions that require TRID compliance, how will these fees be estimated correctly and disclosed properly?
- What about documents that might be, but are not necessarily, related to real estate, such as UCC-x documents, bulk-sale related documents, mining claims, solar energy-related documents, powers of attorney (general? specific?)
- What if a fee is charged, or not charged, incorrectly? Is there a refund process?

For your reference, the part of the statute most relevant to these questions is:

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).

“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.

(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.

A complete copy of the bill is available at:

[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB2](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB2)