

HOUSE No. 4350

The Commonwealth of Massachusetts

PRESENTED BY:

Tommy Vitolo

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act authorizing the town of Brookline to levy a real estate transfer fee on certain real property transfers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>7/24/2025</i>
<i>Cynthia Stone Creem</i>	<i>Norfolk and Middlesex</i>	<i>9/8/2025</i>

HOUSE No. 4350

By Representative Vitolo of Brookline, a petition (accompanied by bill, House, No. 4350) of Tommy Vitolo (by vote of the town) that the town of Brookline be authorized to levy a real estate transfer fee on certain real property transfers in said town. Revenue. [Local Approval Received.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

An Act authorizing the town of Brookline to levy a real estate transfer fee on certain real property transfers.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. DEFINITIONS.

2 For purposes of this section, the following words shall, unless the context clearly requires
3 otherwise, have the following meanings:

4 "Affidavit of transfer fee", an affidavit signed under the pains and penalties of perjury by
5 the settlement agent that attests to

6 (i) the true and complete purchase or sale price of the transfer of the real property
7 interest; (ii) the amount of the transfer fee owed or the basis, if any, upon which the transfer is
8 exempt from the fee imposed by said transfer; (iii) the amount that the seller shall pay as
9 required by the bylaw, ordinance or regulation; and

(iv) the obligation of the settlement agent to make payment of the transfer fee to the city or town.

"Affordable housing purposes" uses allowed by the Brookline Affordable Housing Trust fund into which funds are deposited hereunder, which shall include the acquisition, construction, rehabilitation, and preservation of affordable housing for the benefit of low- and moderate-income households as defined for the Brookline Affordable Housing Trust fund, assistance to a housing authority as defined under section 1 of chapter 121B or other affordable housing purposes pursuant to regulations promulgated by the Select Board.

"Affordable housing restriction", a recorded instrument held by a qualified holder which encumbers or restricts a real property interest so that the real property interest is perpetually or for a term of at least 30 years limited to use as a residence occupied by a low or moderate income household with area median income, as defined by the United States Department of Housing and Urban Development, not to exceed the income limits to which the Brookline Affordable Housing Trust fund is subject.

"Brookline Affordable Housing Trust fund", Brookline's trust fund established pursuant to section 55C for the benefit of low- and moderate-income households and the funding of community housing, as defined in and in accordance with chapter 44B.

"Brookline General Fund", is the fund which provides general operating expenses of the Town.

"Purchaser", the transferee, grantee, or recipient of any real property interest.

"Purchase price" or "sale price," all consideration paid or transferred by or on behalf of a purchaser to a seller or the seller's nominee, or for the seller's benefit, for the transfer of any real property interest, and shall include, but not be limited to: (i) all cash or its equivalent so paid or transferred;

(ii) all cash or other property paid or transferred by or on behalf of the purchaser to discharge or reduce any obligation of the seller; (iii) the principal amount of all notes or their equivalent, or other deferred payments, given or promised to be given by or on behalf of the purchaser to the seller or the seller's nominee; (iv) the outstanding balance of all obligations of the seller which are assumed by the purchaser or to which the real property interest transferred remains subject after the transfer, determined at the time of transfer, but excluding real estate taxes and other municipal liens or assessments which are not overdue at the time of transfer; (v) the fair market value, at the time of transfer, of any other consideration or thing of value paid or transferred by or on behalf of the purchaser, including, but not limited to, any property, goods or services paid, transferred or rendered in exchange for such real property interest.

"Qualified holder", a governmental body or charitable corporation or trust which qualifies under the terms of chapter 184 to hold an affordable housing restriction.

"Real property interest", any present or future legal or equitable interest in or to real property, and any beneficial interest therein, including the interest of any beneficiary in a trust which holds any legal or equitable interest in real property, the interest of a partner or member in a partnership or limited liability company, the interest of a stockholder in a corporation, the interest of a holder of an option to purchase real property, the interest of a purchaser or seller under a contract for purchase and sale of real property, and the transferable development rights

created under chapter 183A; but shall not include any interest which is limited to any of the following: the dominant estate in any easement or right of way; the right to enforce any restriction; any estate at will or at sufferance; any estate for years having a term of less than 30 years; any reversionary right, condition, or right of entry for condition broken; and the interest of a mortgagee or other secured party in any mortgage or security agreement.

"Seller", the transferor, grantor, or immediate former owner of any real property interest.

"Settlement Agent", an escrow agent, real estate attorney, or representative of a lender or title company that conducts the closing or settlement of the sale or transfer of a real property interest including the coordination of the attendance and document signing for all the parties, verification that each party to the transfer has performed their required responsibilities as outlined in the contract and the disbursement of all funds, along with the title and deed, to the appropriate parties after checking that all conditions are met at the close of the transfer transaction.

"Time of transfer", the time at which a transfer of a real property interest is legally effective as between the parties thereto, and, in any event, with respect to a transfer evidenced by an instrument recorded with the appropriate registry of deeds or filed with the assistant recorder of the appropriate registry district, not later than the time of such recording or filing.

"Transfer fee", a fee, to be paid by the seller pursuant to this section, upon the transfer of a real property interest between a seller and a buyer.

SECTION 2. REAL ESTATE TRANSFER FEE.

1. The Town of Brookline may impose a fee upon the transfer of any real property interest in any real property situated in the Town, as described and as subject to conditions and exemptions described herein.

74 2. The Town of Brookline may establish different transfer fee rates for different
75 classifications of properties, defined by the tax classification of such properties, and the purchase
76 price of a property; provided, however, that any transfer fee shall be not less than 0.5 per cent
77 and not more than 2 per cent of the portion of the purchase price of such real property interest in
78 excess of the exemption threshold established pursuant to paragraph (1) of Section 3.

79 3. The transfer fee shall be borne by the seller.

80 4. The seller or settlement agent shall, in advance of the time of transfer, request and
81 the Town shall provide to said seller or settlement agent in advance of the time of transfer a
82 certificate indicating the dollar amount of the transfer fee owed based on the agreed upon
83 purchase price as evidenced by an executed purchase and sale agreement, contract for sale or
84 other document evidencing the agreed upon purchase price or that the transfer is exempt from the
85 transfer fee, stating the basis for the exemption.

86 5. Whenever the transfer of a real property interest will occur at or about the same
87 time as a conveyance of personalty related thereto, the calculation of the fee with respect to such
88 transfer shall be determined by the Town, as applicable; provided, that the allocations of
89 payments between real estate and personalty agreed to by the purchaser and seller shall not
90 determine the calculation of the transfer fee due pursuant to this section.

91 6. The transfer fee shall be paid within 7 days of the time of transfer by the
92 settlement agent to the Town, or its designee, as applicable and shall be accompanied by a copy
93 of the deed or other instrument recorded or registered with the registry of deeds for the county in
94 which the real property interest is located, or the assistant recorder for the registry district of the
95 county in which the real property interest is located, and a copy of the affidavit of transfer fee.

The Town, or its designee, shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has been paid.

7. Upon receipt of a transfer fee, the Finance Director shall deposit 50% of the transfer fee in the Brookline Affordable Housing Trust fund and 50% of the transfer fee in the Brookline General Fund.

SECTION 3. EXEMPTIONS.

1. The following transfers of real property interests shall be exempt from a transfer fee established pursuant to this section:

a. Transfers for less than \$1,000,000; provided that the Town may adopt a higher threshold pursuant to this section;

b. Transfers made as gifts with consideration of less than \$100;

c. Transfers from the government of the United States, the Commonwealth and any of their instrumentalities, agencies, or subdivisions, including but not limited to transfers from the Town of Brookline or the Brookline Housing Authority;

d. Distributions by the trustees of a trust to the beneficiaries of such trust;

e. Transfers to the trustees of a trust in exchange for a beneficial interest received by the seller in such trust;

f. Transfers between family members as defined by bylaw or regulations adopted by the Town;

115 g. Transfers which, without additional consideration, confirm, correct, modify, or
116 supplement a transfer previously made;

117 h. Transfers by operation of law without actual consideration, including but not
118 limited to transfers occurring by virtue of the death or bankruptcy of the owner of a real property
119 interest;

120 i. Transfers made in partition of land and improvements thereto, pursuant to MGL
121 Chapter 241;

122 j. Transfers to any charitable or religious organization, as defined pursuant to
123 section 5 of MGL Chapter 59; provided, however, that the real property interest so transferred
124 will be held by the charitable or religious organization solely for affordable housing-related uses
125 that are consistent with the uses allowed by the Brookline Affordable Housing Trust fund;

126 k. Transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee,
127 and transfers of the property subject to a mortgage to the mortgagee in consideration of the
128 forbearance of the mortgagee from foreclosing said mortgage;

129 l. Transfers consisting of the division of marital assets under the provisions of section 34
130 of MGL Chapter 208 or other provisions of law; and

131 m. Transfers of an interest in real property containing not less than 3 residential units
132 in which not less than 1 residential unit or 25 per cent of the residential units, whichever is
133 greater, is governed by affordable housing restrictions; provided, however, that if less than 100
134 per cent of the residential units are governed by affordable housing restrictions, the exemption
135 shall apply only to the portion of the property that is governed by affordable housing restrictions

and the transfer fee imposed pursuant to this section shall be proportionately reduced based on the percentage of residential units subject to affordable housing restrictions, as compared to the total number of units located on that property.

n. Transfers from an owner eligible for senior circuit breaker tax assistance.

o. Other exemptions designated by the Town by bylaw or regulation.

2. The payor of the transfer fee shall have the burden of proving that an exemption applies to a transfer of real property interest pursuant to this section; and provided further, that any otherwise exempt transfer shall not be exempt in the event that such transfer, by itself or as part of a series of transfers, was made for the primary purpose of evading the fee established pursuant to this section.

SECTION 4. REPORTING REQUIREMENTS.

1. The Finance Director shall keep a full and accurate account stating when, from or to whom, and on what account, money has been paid or received relative to the activities of the Brookline Affordable Housing Trust fund and of the Brookline General Fund.

2. The Town of Brookline shall prepare and issue an annual report that:

a. Identifies fee receipts;

b. Quantifies affordable housing programs funded, including type and purpose; and

c. Evaluates the impact of said affordable housing programs, including but not limited to, to the extent reasonably possible and permitted by applicable law, the number and

demographics of individuals and families served as well as measures of housing stability and wealth generation in the community.

SECTION 5. ADOPTION AND ENFORCEMENT.

1. The adoption of any transfer fee pursuant to subsection (b) shall be determined by a majority vote by Town Meeting. The adoption of a transfer fee pursuant to subsection (b) shall take effect on the first day of the calendar quarter following 30 days after its acceptance pursuant to this subsection or on the first day of a later calendar quarter as the Select Board may designate.

2. The Town of Brookline may provide for the enforcement and collection of a transfer fee established pursuant to this section, including, but not limited to the denial, revocation or suspension of local licenses and permits pursuant to Section 57 of MGL Chapter 40 and the authority to impose a lien on real property pursuant to Section 58 of Chapter 40.

3. The Town of Brookline may issue rules, policies and procedures to effectuate its terms.

4. The Town of Brookline shall adopt a bylaw or regulation which establishes a procedure by which an aggrieved person may appeal the transfer fee amount, in whole or in part, or the denial of an exemption.

5. Any person aggrieved by a denial of relief pursuant to a bylaw or regulation established pursuant to paragraph (4) may, within 60 days from the receipt of the notice of such denial, petition the Appellate Tax Board under the provisions of MGL Chapter 58A.

176 SECTION 6. SEVERANCE CLAUSE.

177 1. The determination or declaration that any provision of this act is beyond the
178 authority of the general court or is preempted by law or regulation shall not affect the validity or
179 enforceability of any other provisions.

180 SECTION 7. EFFECTIVE DATE.

181 1. This act shall take effect immediately upon signing by the Governor.