

No. 1996-84

AN ACT

HB 1571

Providing for a real estate transfer disclosure statement.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Real Estate Seller Disclosure Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Agent.” Any broker, associate broker or salesperson, as defined in the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act.

“Buyer.” Any individual, partnership, corporation, trustee or combination thereof purchasing any estate or interest in real property as provided under section 3(a).

“Final settlement.” The time at which the buyer and seller have signed and delivered all papers and consideration to convey title to the estate or interest in real property being conveyed.

“Material defect.” A problem with the property or any portion of it that would have a significant adverse impact on the value of the residential real property or that involves an unreasonable risk to people on the land.

“Seller.” Any individual, partnership, corporation, trustee or combination thereof transferring any estate or interest in residential real property as provided under section 3(a).

Section 3. Applicability.

(a) General rule.—This act shall apply to the transfer of any interest in real estate consisting of not less than one nor more than four residential dwelling units, whether by sale, exchange, installment sales contract, lease with an option to purchase, grant or transfer of unit in a residential condominium or cooperative.

(b) Exceptions.—This act shall not apply to the following:

(1) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in the administration of an estate, transfers pursuant to a writ of execution, transfers by a trustee in bankruptcy, transfers by eminent domain and condemnation and transfers resulting from a decree for specific performance.

(2) Transfers to a mortgagee by a mortgagor or successor in interest who is in default, transfers to a beneficiary of a deed of trust by a trustee or successor in interest who is in default, transfers by any foreclosure sale after default in an obligation secured by a mortgage, transfers by a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale or transfers by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the real property by a deed in lieu of foreclosure.

(3) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship or trust.

(4) Transfers from one co-owner to one or more other co-owners.

(5) Transfers made to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors.

(6) Transfers between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to the decree.

(7) Transfers by a corporation to its shareholders pursuant to a plan of liquidation.

(8) Transfers by a partnership to its partners pursuant to a plan of liquidation.

(9) Transfers of new residential construction which has not been previously occupied when:

(i) the buyer has received a one-year written warranty covering such construction;

(ii) the dwelling has been inspected for compliance with the applicable building code or, if there is no applicable code, for compliance with a nationally recognized model building code; and

(iii) a certificate of occupancy or a certificate of code compliance has been issued for the dwelling.

(c) Limitations in the case of condominiums or cooperatives.—Any seller of a unit in a condominium created under the act of July 3, 1963 (P.L.196, No.117), known as the Unit Property Act, or 68 Pa.C.S. Pt. II Subpt. B (relating to condominiums), or a cooperative as defined in 68 Pa.C.S. § 4103 (relating to definitions), shall be obligated to make disclosures under this act only with respect to the seller’s own unit and shall not be obligated by this act to make any disclosure with respect to any common elements or common facilities of the condominium or cooperative. The provisions of 68 Pa.C.S. § 3407 (relating to resales of units) shall control disclosures a seller is required to make concerning common elements in a condominium and 68 Pa.C.S. § 4409 (relating to resales of cooperative interests) shall control disclosures a seller is required to make concerning common elements in a cooperative.

Section 4. Disclosure of material defects.

Any seller who intends to transfer any interest in real property shall disclose to the buyer any material defects with the property by completing all applicable items in a property disclosure statement prescribed under section 5 and shall deliver to the buyer in accordance with section 6 a signed and dated copy of the completed statement prior to the signing of a written agreement by the seller and prospective buyer that would, subject to the satisfaction of any negotiated contingencies, require the prospective buyer to accept a transfer of the residential real property.

Section 5. Disclosure form.

The disclosures required by this act pertaining to the property proposed to be transferred are set forth in and shall be made on a form that is substantially similar to the following disclosure form. Nothing in this act shall preclude a seller from including in this form additional provisions which require greater specificity or which call for the disclosure of the condition or existence of other features of the property.

SELLER’S PROPERTY DISCLOSURE STATEMENT

Property address:

.....
Seller:

A seller must disclose to a buyer all known material defects about property being sold that are not readily observable. This disclosure statement is designed to assist the seller in complying with disclosure

requirements and to assist the buyer in evaluating the property being considered.

This statement discloses the seller’s knowledge of the condition of the property as of the date signed by the seller and is not a substitute for any inspections or warranties that the buyer may wish to obtain. This statement is not a warranty of any kind by the seller or a warranty or representation by any listing real estate broker, any selling real estate broker or their agents. The buyer is encouraged to address concerns about the conditions of the property that may not be included in this statement. This statement does not relieve the seller of the obligation to disclose a material defect that may not be addressed on this form.

A material defect is a problem with the property or any portion of it that would have a significant adverse impact on the value of the residential real property or that involves an unreasonable risk to people on the land.

- (1) Seller’s expertise. The seller does not possess expertise in contracting, engineering, architecture or other areas related to the construction and conditions of the property and its improvements, except as follows:
- (2) Occupancy. Do you, the seller, currently occupy this property? yes no
If “no,” when did you last occupy the property?
- (3) Roof.
 - (i) Date roof was installed:
Documented? yes no unknown
 - (ii) Has the roof been replaced or repaired during your ownership? yes no
If “yes,” were the existing shingles removed?
..... yes no unknown
 - (iii) Has the roof ever leaked during your ownership? yes no
 - (iv) Do you know of any problems with the roof, gutters or downspouts? yes no

Explain any “yes” answers that you give in this section:
.....
.....

- (4) Basements and crawl spaces (Complete only if applicable).
 - (i) Does the property have a sump pump?
..... yes nounknown

(ii) Are you aware of any water leakage, accumulation or dampness within the basement or If crawl space? yes no
 If "yes," describe in detail:.....

(iii) Do you know of any repairs or other attempts to control any water or dampness problem in the basement or crawl space? yes no
 If "yes," describe the location, extent, date and name of the person who did the repair or control effort:

(5) Termites/wood destroying insects, dry rot, pests.

(i) Are you aware of any termites/wood destroying insects, dry rot or pests affecting the property? yes no

(ii) Are you aware of any damage to the property caused by termites/wood destroying insects, dry rot or pests? yes no

(iii) Is your property currently under contract by a licensed pest control company?
 yes no

(iv) Are you aware of any termite/pest control reports or treatments for the property in the last five years? yes no

Explain any "yes" answers that you give in this section:

(6) Structural items.

(i) Are you aware of any past or present water leakage in the house or other structures?
 yes no

(ii) Are you aware of any past or present movement, shifting, deterioration or other problems with walls, foundations or other structural components? yes no

(iii) Are you aware of any past or present problems with driveways, walkways, patios or retaining walls on the property? yes no

Explain any "yes" answers that you give in this section. When explaining efforts to control or repair, please describe the location and extent of the problem and the date and person by whom the work was done, if known:

(7) Additions/remodeling. Have you made any additions, structural changes or other alterations to the property? yes no

If "yes," please describe:

(8) Water and sewage.

(i) What is the source of your drinking water?

.... public community system

.... well on property other

If "other," please explain:

(ii) If your drinking water source is not public:

when was your water last tested?

what was the result of the test?

Is the pumping system in working order?

.... yes no

If "no," please explain:

(iii) Do you have a softener, filter or other purification system? yes no

If "yes," is the system: leased owned

(iv) What is the type of sewage system?

.... public sewer private sewer

.... septic tank cesspool other

If "other," please explain:

(v) Is there a sewage pump? yes no

If "yes," is it in working order?

.... yes no

(vi) When was the septic system or cesspool last serviced?

(vii) Is either the water or sewage system shared?

.... yes no

If "yes," please explain:

(viii) Are you aware of any leaks, backups or other problems relating to any of the plumbing, water and sewage-related items? yes no

If "yes," please explain:

(9) Plumbing system.

(i) Type of plumbing: copper galvanized

.... lead PVC unknown other

If "other," please explain:

(ii) Are you aware of any problems with any of your plumbing fixtures (including, but not limited to: kitchen, laundry or bathroom fixtures, wet bars, hot water heater, etc.)?

..... yes no

If "yes," please explain:

(10) Heating and air conditioning.

(i) Type of air conditioning: central electric
..... central gas wall none

Number of window units included in sale:

Location:

(ii) List any areas of the house that are not air conditioned:

(iii) Type of heating: electric
..... fuel oil natural gas other

If "other," please explain:

(iv) List any areas of the house that are not heated:

(v) Type of water heating: electric gas
..... solar other

If "other," please explain:

(vi) Are you aware of any underground fuel tanks on the property? yes no

If "yes," please describe:

Are you aware of any problems with any item in this section? yes no

If "yes," please explain:

(11) Electrical system. Are you aware of any problems or repairs needed in the electrical system?

..... yes no

If "yes," please explain:

(12) Other equipment and appliances included in sale (complete only if applicable).

(i) Electric garage door opener
Number of transmitters

(ii) Smoke detectors How many?
Location:

.....
 (iii) Security alarm system
 owned leased
 Lease information:

.....
 (iv) Lawn sprinkler
 Number Automatic timer

(v) Swimming pool Pool heater
 Spa/hot tub
 List all pool/spa equipment:

.....
 (vi) Refrigerator Range
 Microwave oven Dishwasher
 Trash compactor Garbage disposal

(vii) Washer Dryer

(viii) Intercom

(ix) Ceiling fans Number
 Location:

(x) Other:

Are any items in this section in need of repair or replacement? yes no unknown
 If "yes," please explain:

(13) Land (soils, drainage and boundaries).

(i) Are you aware of any fill or expansive soil on the property? yes no

(ii) Are you aware of any sliding, settling, earth movement, upheaval, subsidence or earth stability problems that have occurred on or that affect the property? yes no

NOTE TO BUYER: Your property may be subject to mine subsidence damage. Maps of the counties and mines where mine subsidence damage may occur and mine subsidence insurance are available through:

Department of Environmental Protection
 Mine Subsidence Insurance Fund
 3913 Washington Road
 McMurray, PA 15317
 412-941-7100

(iii) Are you aware of any existing or proposed mining, strip mining or any other excavations that might affect this property?
 yes no

(iv) To your knowledge, is this property or part of it located in a flood zone or wetlands area?

..... yes no

(v) Do you know of any past or present drainage or flooding problems affecting the property?

..... yes no

(vi) Do you know of any encroachments, boundary line disputes or easements? yes no

NOTE TO BUYER: Most properties have easements running across them for utility services and other reasons. In many cases, the easements do not restrict the ordinary use of the property, and the seller may not be readily aware of them. Buyers may wish to determine the existence of easements and restrictions by examining the property and ordering an abstract of title or searching the records in the Office of the Recorder of Deeds for the county before entering into an agreement of sale.

(vii) Are you aware of any shared or common areas (for example, driveways, bridges, docks, walls, etc.) or maintenance agreements?

..... yes no

Explain any "yes" answers that you give in this section:

.....
.....

(14) Hazardous substances.

(i) Are you aware of any underground tanks or hazardous substances present on the property (structure or soil), including, but not limited to, asbestos, polychlorinated biphenyls (PCBs), radon, lead paint, urea-formaldehyde foam insulation (UFFI), etc.? yes no

(ii) To your knowledge, has the property been tested for any hazardous substances? yes no

(iii) Do you know of any other environmental concerns that might impact upon the property?

..... yes no

Explain any "yes" answers that you give in this section:

.....
.....

(15) Condominiums and other homeowners associations (complete only if applicable).

Type: condominium cooperative

..... homeowners association other

If "other," please explain:

.....

NOTICE REGARDING CONDOMINIUMS AND COOPERATIVES: According to 68 Pa.C.S. §§ 3407 (relating to resales of units) and 4409 (relating to resales of cooperative interests), a buyer of a resale unit in a condominium or cooperative must receive a certificate of resale issued by the association in the condominium or cooperative. The buyer will have the option of canceling the agreement with return of all deposit moneys until the certificate has been provided to the buyer and for five days thereafter or until conveyance, whichever occurs first.

(16) Miscellaneous.

- (i) Are you aware of any existing or threatened legal action affecting the property?
..... yes no
- (ii) Do you know of any violations of Federal, State or local laws or regulations relating to this property? yes no
- (iii) Are you aware of any public improvement, condominium or homeowner association assessments against the property that remain unpaid or of any violations of zoning, housing, building, safety or fire ordinances that remain uncorrected?
..... yes no
- (iv) Are you aware of any judgment, encumbrance, lien (for example, comaker or equity loan) or other debt against this property that cannot be satisfied by the proceeds of this sale?
..... yes no
- (v) Are you aware of any reason, including a defect in title, that would prevent you from giving a warranty deed or conveying title to the property?
..... yes no
- (vi) Are you aware of any material defects to the property, dwelling or fixtures which are not disclosed elsewhere on this form?
..... yes no

A material defect is a problem with the property or any portion of it that would have a significant adverse impact on the value of the residential real property or that involves an unreasonable risk to people on the land.

Explain any "yes" answers that you give in this section:

.....
.....

The undersigned seller represents that the

information set forth in this disclosure statement is accurate and complete to the best of the seller's knowledge. The seller hereby authorizes any agent for the seller to provide this information to prospective buyers of the property and to other real estate agents. The seller alone is responsible for the accuracy of the information contained in this statement. The seller shall cause the buyer to be notified in writing of any information supplied on this form which is rendered inaccurate by a change in the condition of the property following the completion of this form.

SELLER DATE

SELLER DATE

SELLER DATE

.....

EXECUTOR, ADMINISTRATOR, TRUSTEE

The undersigned has never occupied the property and lacks the personal knowledge necessary to complete this disclosure statement.

.....

.....

..... DATE

.....

.....

RECEIPT AND ACKNOWLEDGMENT BY BUYER

The undersigned buyer acknowledges receipt of this disclosure statement. The buyer acknowledges that this statement is not a warranty and that, unless stated otherwise in the sales contract, the buyer is purchasing this property in its present condition. It is the buyer's responsibility to satisfy himself or herself as to the condition of the property. The buyer may request that the property be inspected, at the buyer's expense and by qualified professionals, to determine the condition of the structure or its components.

BUYER DATE

BUYER DATE

BUYER DATE

Section 6. Delivery of disclosure form.

(a) Method of delivery.—The seller's delivery of the property disclosure statement to the buyer as prescribed by this act shall be by personal delivery, ordinary mail, certified mail return receipt requested or facsimile transmission to the buyer or the buyer's agent.

(b) Parties to whom delivered.—For purposes of this act, delivery to one prospective buyer or buyer's agent is deemed delivery to all persons intending

to take title as cotenants, joint tenants or as a tenant by the entireties with the buyer. Receipt may be acknowledged on the statement, in an agreement for the conveyance of the residential real property or shown in any other verifiable manner.

Section 7. Information unavailable to seller.

If, at the time the disclosures are required to be made, an item of information required to be disclosed is unknown or not available to the seller and the seller has made an effort to ascertain it, the seller may make a disclosure based on the best information available to the seller, provided it is identified as a disclosure based on an incomplete factual basis.

Section 8. Information subsequently rendered inaccurate.

If information disclosed in accordance with this act is subsequently rendered inaccurate as a result of any act, occurrence or agreement subsequent to the delivery of the required disclosures, the seller shall notify the buyer of the inaccuracy.

Section 9. Affirmative duty of seller.

The seller is not obligated by this act to make any specific investigation or inquiry in an effort to complete the disclosure statement. In completing the disclosure statement, the seller shall not make any representations which he or his agent know or have reason to know are false, deceptive or misleading and shall not fail to disclose a known material defect.

Section 10. Nonliability of seller.

(a) General rule.—A seller shall not be liable for any error, inaccuracy or omission of any information delivered pursuant to this act if:

- (1) the seller had no knowledge of the error, inaccuracy or omission;
- (2) the error, inaccuracy or omission was based on a reasonable belief that a material defect or other matter not disclosed had been corrected; or
- (3) the error, inaccuracy or omission was based on information provided by a public agency, licensed engineer, land surveyor, structural pest control inspector, home inspector or contractor about matters within the scope of the contractor's occupation and the seller had no knowledge of the error, inaccuracy or omission.

(b) Delivery of information by public agency.—The delivery of any information required to be disclosed by this act to a prospective buyer by a public agency or other person providing information required to be disclosed under this act shall be deemed to comply with the requirements of this act and shall relieve the seller or his agent of any further duty under this act with respect to that item of information.

(c) Report by expert.—The delivery of a report or opinion prepared by a licensed engineer, land surveyor, geologist, structural pest control operator, contractor or other expert dealing with matters within the scope of the professional's license or expertise shall be sufficient compliance for application of the exemption provided under subsection (a)(3) if the information is provided to the prospective buyer in writing.

Section 11. Nonliability of agent.

An agent of a seller or a buyer shall not be liable for any violation of this act unless the agent had actual knowledge of a material defect which was not disclosed to the buyers or of any misrepresentation relating to a material defect.

Section 12. Failure to comply.

A transfer subject to this act shall not be invalidated solely because of the failure of any person to comply with any provision of this act. However, any person who willfully or negligently violates or fails to perform any duty prescribed by any provision of this act shall be liable in the amount of actual damages suffered by a buyer as a result of a violation of this act. This section shall not be construed as to restrict or expand the authority of a court to impose punitive damages or apply other remedies applicable under other provisions of law. An action for damages as a result of a violation of this act must be commenced within two years from the date of final settlement.

Section 13. Amendment of disclosure.

Any disclosure made pursuant to this act may be amended in writing by the seller prior to the signing of a written agreement by the seller and buyer that would, subject to the satisfaction of any negotiated contingencies, require the prospective buyer to accept a transfer of the residential real property.

Section 14. Specification of items for disclosure no limitation on other disclosure obligations.

(a) General rule.—The specification of items for disclosure in this act does not limit or abridge any obligation for disclosure created by any other provision of law or which may exist in order to avoid fraud, misrepresentation or deceit in the transfer transaction.

(b) Responsibility of licensee.—Nothing in this act shall abrogate or diminish the responsibility of a licensee under the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act.

(c) Duty to provide form.—An agent representing a seller must advise a seller of the seller's responsibilities under this act and must provide the seller with a copy of the disclosure form.

Section 15. Cause of action.

A buyer shall not have a cause of action against any seller or agent for the seller or buyer for:

(1) material defects to the property disclosed to the buyer prior to the signing of a written agreement by the seller and buyer that would, subject to the satisfaction of any negotiated contingencies, require the prospective buyer to accept a transfer of the residential real property;

(2) material defects which have developed after the signing of the written agreement by the seller and prospective buyer that, subject to satisfaction of any negotiated contingencies, require the prospective buyer to accept a transfer of the residential real property, provided the seller has complied with the terms of the written agreement; or

(3) material defects which occur after final settlement.

Section 16. Rules and regulations.

The Real Estate Commission shall have the power by regulation to make amendments, additions and deletions to the disclosure form prescribed under section 5.

Section 17. Effective date.

This act shall take effect in 60 days.

APPROVED—The 2nd day of July, A.D. 1996.

THOMAS J. RIDGE