

House Research Act Summary

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TOPIC: Residential Real Estate Disclosures

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Overview

The act establishes written disclosures of adverse facts about residential property that a seller must give in writing to a prospective buyer. It creates exceptions, allows a waiver, and creates a cause of action against a seller who violates disclosure requirements.

- 1 **Definitions.** Defines prospective buyer, seller, residential real estate, and real estate licensee for purposes of the act. Residential real estate includes property intended to be occupied as a single-family residence and includes common interest properties.
- 2 **Applicability.** The act applies to the transfer of any interest in residential real estate.
- 3 **Exceptions.** The act does not apply to 14 listed situations, including a gift, a transfer under court order, transfer to a government entity, foreclosure, inheritance, marriage dissolution, and transfers between co-tenants or between spouses, parents and children, grandparents and grandchild.
- 4 **General disclosure requirements.** Requires a seller, before making a written agreement to transfer residential real property, to disclose to the prospective buyer in writing, known adverse physical conditions in the property that could adversely and significantly affect the purchaser's use and enjoyment of the property or any intended uses of which the seller is aware. Disclosure must be in good faith and based upon the best of the seller's knowledge at the time of disclosure. Allows a seller to make the disclosure to a real estate licensee working with the prospective buyer. Requires the realtor to give the buyer a copy.
- 5 **Disclosures not required.** States that the following are not required to be disclosed: that an occupant has HIV or was suspected to have it; that the residence was the site of a death, paranormal activity, or felony; or that the residence is in a neighborhood with a nursing home, residential facility, or adult family home.
Specifies that a seller need not disclose information about offenders who are subject to

registration laws if the seller notifies the prospective buyer that offender registration information can be obtained by contacting law enforcement.

Excuses a seller from disclosing adverse physical conditions in the property if he or she gives the prospective buyer a written inspection report prepared by a qualified third party. Defines "qualified third party" to mean a government agency or any person a party reasonably believes has the necessary expertise. Requires the seller to disclose known material facts that contradict anything in the report, if the seller gets a copy of the report.

- 6 **Liability for error, inaccuracy, or omission.** Absent a written agreement with the prospective buyer to the contrary, the seller is not liable for errors in disclosures under the act if the error was not personally known to the seller or was based on information provided by a seller making disclosure to a realtor. It is not a violation to fail to disclose information that can be obtained only by inspecting inaccessible portions of the property or could only be known by someone with scientific or trade knowledge that the seller lacks.

A seller who fails to make a required disclosure and knew or had reason to know the condition of the property is liable to the prospective buyer. An injured party may sue for damages, costs, and disbursements, including attorney fees, and may receive equitable relief (make the other party do something, such as take back the property). An action must be brought within two years after the purchase closes. This remedy is not exclusive.

- 7 **Amendment to disclosure.** Requires the seller to notify the prospective buyer if there is property loss or damage for any reason between the date of disclosure and the date of closing. Allows the prospective buyer to sue under section 6 if the seller fails to make the disclosure required by this section.

- 8 **Transfer not invalidated.** A real estate transfer is not invalidated solely because a person fails to comply with a provision of the act, but the court may order cancellation of the transaction.

- 9 **Waiver.** Lets the buyer and seller agree in writing to waive the disclosures in the act. This waiver does not waive any obligation of seller disclosure under other law.