

HOUSE BILL NO. 398**IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION****BY REPRESENTATIVES PARNELL, Gruenberg****Introduced: 1/14/92****Referred: Labor & Commerce, Judiciary****A BILL****FOR AN ACT ENTITLED**

1 "An Act requiring certain disclosures in real property sales; and providing for an effective
2 date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * Section 1. AS 34 is amended by adding a new chapter to read:

5 **CHAPTER 70. DISCLOSURES IN REAL PROPERTY SALES.**

6 **Sec. 34.70.010. DISCLOSURES REQUIRED. (a) A person who sells the person's**
7 **interest in improved residential real property that is used as a residence shall complete and**
8 **deliver to the prospective buyer before the sale a disclosure statement in the form set out in**
9 **AS 34.70.050.**

10 **(b) The disclosure statement shall be delivered to the buyer by personal delivery or mail.**
11 **Delivery to the spouse of the buyer constitutes delivery to the buyer unless the seller and the**
12 **buyer agree otherwise before the delivery.**

13 **(c) If a person who proposes to lend money to another person for the purchase of real**
14 **property that is in a multiple unit development governed by AS 34.07 or AS 34.08 discovers a**

1 physical defect in the sale property, the prospective lender shall disclose the defect to the
2 managing organization of the development in which the sale property is located. The disclosure
3 shall be made within one week of the discovery or before the loan is finalized, whichever is
4 earlier. In this subsection, "lender" includes the employees of the lender and a person who
5 contracts with the lender to provide services that are related to the making of the loan.

6 Sec. 34.70.020. TERMINATION OF OFFER. If a disclosure statement, or an
7 amendment of the disclosure statement that is substantial enough to affect the sale, is delivered
8 to the buyer after the buyer has made a written offer to purchase real property, the buyer may
9 terminate the offer by delivering a written notice of termination to the seller or the seller's agent
10 within three days after the disclosure statement or amendment is delivered in person or within
11 five days after the disclosure statement or amendment is delivered by deposit in the mail. In this
12 section, "material" means important enough to affect the sale.

13 Sec. 34.70.030. LIABILITY FOR ERRORS OR OMISSIONS. The seller and the seller's
14 agent are not liable for an error, inaccuracy, or omission in the information provided in the
15 disclosure statement if the

16 (1) seller and agent did not have personal knowledge of the error, inaccuracy, or
17 omission;

18 (2) error, inaccuracy, or omission was based on information provided by a public
19 agency or by a person who is an expert with regard to the information, including an engineer,
20 architect, or land surveyor; and

21 (3) seller and agent exercised ordinary care in obtaining and transmitting the
22 information.

23 Sec. 34.70.040. SUBSEQUENT EVENTS AND APPROXIMATIONS. (a) If
24 information disclosed in a disclosure statement becomes inaccurate as a result of an act or
25 agreement after the disclosure statement is delivered to the buyer, the resulting inaccuracy does
26 not violate this chapter and the seller is not required to deliver an amended disclosure statement
27 to the prospective buyer.

28 (b) If at the time a disclosure statement is required to be delivered to a buyer an item of
29 information that is required to be included in the statement is unknown or is not available to the
30 seller, and if the seller or the seller's agent has made a reasonable effort to ascertain the
31 information, the seller may insert an approximation of the information. The approximation must

1 be reasonable, clearly identified as an approximation, based on the best information available to
2 the seller or the seller's agent, and not used to avoid the requirements of this chapter.

3 Sec. 34.70.050. FORM OF DISCLOSURE STATEMENT. The disclosure statement must
4 read as follows:

5 REAL ESTATE TRANSFER DISCLOSURE STATEMENT
6 THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY LOCATED IN THE
7 CITY OF _____, _____ JUDICIAL DISTRICT, STATE OF ALASKA,
8 DESCRIBED AS _____ THIS
9 STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE-DESCRIBED
10 PROPERTY IN COMPLIANCE WITH AS 34.70. IT IS NOT A WARRANTY OF ANY KIND
11 BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS
12 TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR
13 WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN

14 I
15 SELLER INFORMATION

16 The Seller discloses the following information with the knowledge that even though this
17 is not a warranty, prospective Buyers may rely on this information in deciding whether and on
18 what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing
19 any principal(s) in this transaction to provide a copy of this statement to any person or entity in
20 connection with any actual or anticipated sale of the property.

21 THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE
22 NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A
23 DISCLOSURE AND IS NOT INTENDED TO BE PART OF A CONTRACT BETWEEN THE
24 BUYER AND SELLER.

25 Seller ___ is ___ is not occupying the property.

26 A. The subject property has the items checked below:

- | | | |
|----|---------------------|--------------------------|
| 27 | ___ Range | ___ Washer/Dryer Hookups |
| 28 | ___ Oven | ___ Window Screens |
| 29 | ___ Microwave | ___ Rain Gutters |
| 30 | ___ Dishwasher | ___ Burglar Alarms |
| 31 | ___ Trash Compactor | ___ Smoke Detector(s) |

- | | | |
|----|---|---|
| 1 | <input type="checkbox"/> Garbage Disposal | <input type="checkbox"/> Fire Alarm |
| 2 | <input type="checkbox"/> T.V. Antenna | <input type="checkbox"/> Number Remote Controls |
| 3 | <input type="checkbox"/> Satellite Dish | <input type="checkbox"/> Garage: Attached |
| 4 | <input type="checkbox"/> Intercom | <input type="checkbox"/> Garage: Not Attached |
| 5 | <input type="checkbox"/> Central Heating | <input type="checkbox"/> Carport |
| 6 | <input type="checkbox"/> Central Air Cndtng | Pool/Spa Heater: <input type="checkbox"/> Gas |
| 7 | <input type="checkbox"/> Evaporator Cooler(s) | <input type="checkbox"/> Solar |
| 8 | <input type="checkbox"/> Wall/Window Air Cndtng | <input type="checkbox"/> Electric Water |
| 9 | <input type="checkbox"/> Sprinklers | Heater: <input type="checkbox"/> Gas |
| 10 | <input type="checkbox"/> Public Sewer System | Water Supply: <input type="checkbox"/> City |
| 11 | <input type="checkbox"/> Septic Tank | <input type="checkbox"/> Well |
| 12 | <input type="checkbox"/> Sump Pump | <input type="checkbox"/> Private Utility or |
| 13 | <input type="checkbox"/> Water Softener | Other _____ |
| 14 | <input type="checkbox"/> Patio/Decking | Gas Supply: <input type="checkbox"/> Utility |
| 15 | <input type="checkbox"/> Built-in Barbecue | <input type="checkbox"/> Bottled |
| 16 | <input type="checkbox"/> Gazebo | Exhaust Fan(s) in _____ |
| 17 | <input type="checkbox"/> Sauna | 220 Volt Wiring in _____ |
| 18 | <input type="checkbox"/> Pool | Fireplace(s) in _____ |
| 19 | <input type="checkbox"/> Spa <input type="checkbox"/> Hot Tub | Gas Starter _____ |
| 20 | <input type="checkbox"/> Security Gate(s) | Roof(s): Type _____ |
| 21 | <input type="checkbox"/> Auto Garage Door Opener(s) | Age: _____ (approx.) |

22
23 Other: _____

24 Are there, to the best of your (Seller's) knowledge, any of the above that are not in
25 operating condition? Yes No. If yes, then describe: (Attach additional sheets
26 if necessary): _____
27 _____
28 _____
29 _____

30 B. Are you (Seller) aware of any significant defects/malfunctions in any of the following?
31 Yes No. If yes, check appropriate space(s) below.

1 Interior Walls Ceilings Floors Exterior Walls Insulation Roof(s)
2 Windows Doors Foundation Slab(s) Driveways Sidewalks
3 Walls/Fences Electrical Systems Plumbing/Sewers/Septics Other
4 Structural Components (Describe: _____
5 _____)

6 If any of the above is checked, explain. (Attach additional sheets if necessary):
7 _____
8 _____
9 _____

10 C. Are you (Seller) aware of any of the following:

- 11 1. substances, materials, or products that may be an environmental hazard
12 such as asbestos, formaldehyde, radon gas, lead based paint, fuel or chemical storage
13 tanks, and contaminated soil or water on the subject property Yes No
14 2. features of the property shared in common with adjoining landowners,
15 such as walls, fences, and driveways, whose use or responsibility for maintenance may
16 have an effect on the subject property Yes No
17 3. encroachments, easements, or similar matters that may affect your
18 interest in the subject property Yes No
19 4. room additions, structural modifications, or other alterations or repairs
20 made without necessary permits Yes No
21 5. room additions, structural modifications, or other alterations or repairs
22 not in compliance with building codes Yes No
23 6. landfill (compacted or otherwise) on the property or any portion of the
24 property Yes No
25 7. settling from any cause, or slippage, sliding, or other soil problems
26 Yes No
27 8. flooding, drainage, or grading problems Yes No
28 9. major damage to the property or any of the structures from fire,
29 earthquakes, floods, or landslides Yes No
30 10. zoning violations, nonconforming uses, violations of setback
31 requirements Yes No

- 1 11. neighborhood noise problems or other nuisances Yes No
- 2 12. deed restrictions or obligations Yes No
- 3 13. homeowners' association that has authority over the subject
- 4 property Yes No
- 5 14. common areas (facilities such as pools, tennis courts, walkways, or
- 6 other areas co-owned in undivided interest with others) Yes No
- 7 15. notices of abatement or citations against the property ... Yes No
- 8 16. lawsuits against the seller threatening to or affecting this real
- 9 property Yes No

10 If the answer to any of these is yes, explain. (Attach additional sheets if necessary):

11 _____

12 _____

13 _____

14 Seller certifies that the information herein is true and correct to the best of the Seller's knowledge

15 as of the date signed by the Seller

16 Seller _____ Date _____

17 Seller _____ Date _____

18 II

19 BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR

20 INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS

21 IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO

22 ADVICE/INSPECTIONS/DEFECTS.

23 I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT

24 Seller _____ Date _____ Buyer _____ Date _____

25 Seller _____ Date _____ Buyer _____ Date _____

26 Agent Representing Seller _____ By _____ Date _____

27 A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU

28 DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

29 Sec. 34.70.060. GOOD FAITH. A person who makes a disclosure or performs an act

30 under this chapter shall do so in good faith.

31 Sec. 34.70.070. EFFECT ON OTHER REQUIRED DISCLOSURES. The requirements

1 of this chapter do not affect other obligations for disclosure required by law.

2 Sec. 34.70.080. WRITTEN AMENDMENT. An amendment to a disclosure statement
3 must be in writing.

4 Sec. 34.70.090. ESCROW AGENTS. A person, other than a real estate broker, who acts
5 as an escrow agent for the transfer of real property whose sale is subject to this chapter is not
6 the agent of the seller or buyer under this chapter unless an express written agreement authorizes
7 the person to act as an agent. The extent of the agency is governed by the written agreement.

8 Sec. 34.70.100. DUTIES OF BROKER. (a) If more than one licensed real estate broker
9 is acting as an agent in a transfer subject to this chapter, the broker who has obtained the offer
10 made by the buyer shall, except as otherwise provided in this chapter, deliver the disclosure
11 statement required by this chapter to the prospective buyer unless the seller gives other written
12 instructions for delivery.

13 (b) If a real estate broker who is responsible for delivering the disclosure statement under
14 this chapter cannot obtain the disclosure document from the seller and does not have written
15 assurance from the buyer that the disclosure statement has been received, the broker shall advise
16 the buyer in writing that the buyer has the right to receive the disclosure statement.

17 (c) A real estate broker who is responsible for delivering the disclosure statement under
18 this chapter shall maintain a record of the action taken by the broker to comply with this chapter.

19 Sec. 34.70.120. FAILURE TO COMPLY. (a) The transfer of real property whose sale
20 is subject to this chapter is not invalidated solely because a person fails to comply with this
21 chapter.

22 (b) A person who wilfully or negligently violates this chapter or fails to perform a duty
23 required by this chapter is liable to the buyer for the amount of the actual damages suffered by
24 the buyer as a result of the violation or failure.

25 Sec. 34.70.200. DEFINITIONS. In this chapter,

26 (1) "disclosure statement" means the disclosure statement required by
27 AS 34.70.010;

28 (2) "sale" includes an exchange, option to buy, or a lease with an option to
29 buy.

30 * Sec. 2. This Act applies to sales of real property that occur on or after January 1, 1994.

31 * Sec. 3. This Act takes effect January 1, 1994.