

CS FOR HOUSE BILL NO. 398 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 3/16/92

Referred: Judiciary

Sponsor(s): REPRESENTATIVES PARNELL, Gruenberg, B.Davis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain disclosures in residential real property transfers; and providing
2 for an effective 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 RESIDENTIAL REAL PROPERTY TRANSFERS.**

6 **Sec. 34.70.010. DISCLOSURES REQUIRED.** (a) A transferor of that transferor's
7 interest in residential real property shall complete and deliver to the transferee before the
8 transferee makes a written offer a disclosure statement in the form set out in AS 34.70.050.

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

12 **Sec. 34.70.020. TERMINATION OF OFFER.** If a disclosure statement, or an
13 amendment of the disclosure statement that is material enough to affect the transfer, is delivered
14 to the transferee after the transferee has made a written offer to purchase residential real property,

1 the transferee may terminate the offer by delivering a written notice of termination to the
2 transferor or the transferor's agent within three days after the disclosure statement or amendment
3 is delivered in person or within five days after the disclosure statement or amendment is
4 delivered by deposit in the mail.

5 Sec. 34.70.030. DISCLOSURE LIABILITY. (a) A transferor is not liable for a defect
6 or other condition in the real property or the real property interest being transferred if the
7 transferor discloses the existence of the defect or condition in the disclosure statement.

8 (b) The agent of a transferor is not liable for an error, inaccuracy, or omission in the
9 information provided in the disclosure statement if the agent did not have personal knowledge
10 of the error, inaccuracy, or omission, and the agent exercised due diligence in obtaining and
11 transmitting the information.

12 Sec. 34.70.040. SUBSEQUENT EVENTS AND APPROXIMATIONS. (a) If
13 information disclosed in a disclosure statement becomes inaccurate as a result of an act or
14 agreement after the disclosure statement is delivered to the transferee, the resulting inaccuracy
15 does not violate this chapter and the transferor is required to deliver an amendment for the
16 disclosure statement to the transferee.

17 (b) If an item that is required in the disclosure statement is unknown or is unavailable
18 to the transferor, and if the transferor or the transferor's agent has made a reasonable effort to
19 ascertain the information, the transferor may insert an approximation of the information. The
20 approximation must be reasonable, clearly identified as an approximation, based on the best
21 information available to the transferor or the transferor's agent, and not used to avoid the
22 requirements of this chapter.

23 Sec. 34.70.050. FORM OF DISCLOSURE STATEMENT. The disclosure statement must
24 read as follows:

25 RESIDENTIAL REAL PROPERTY TRANSFER DISCLOSURE STATEMENT
26 THIS DISCLOSURE STATEMENT CONCERNS THE RESIDENTIAL REAL PROPERTY
27 LOCATED IN THE CITY OF _____, _____ JUDICIAL DISTRICT, STATE
28 OF ALASKA, DESCRIBED AS _____. THIS STATEMENT
29 IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN
30 COMPLIANCE WITH AS 34.70. IT IS NOT A WARRANTY OF ANY KIND BY THE
31 TRANSFEROR(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS

1 TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR
2 WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN

3 I

4 TRANSFEROR INFORMATION

5 The Transferor discloses the following information with the knowledge that even though
6 this is not a warranty, prospective Transferees may rely on this information in deciding whether
7 and on what terms to purchase the subject property. Transferor hereby authorizes any agent(s)
8 representing any principal(s) in this transaction to provide a copy of this statement to any person
9 or entity in connection with any actual or anticipated transfer of the property.

10 THE FOLLOWING ARE REPRESENTATIONS MADE BY THE TRANSFEROR(S)
11 AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS
12 INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF A
13 CONTRACT BETWEEN THE TRANSFEREE AND TRANSFEROR.

14 Transferor ___ is ___ is not occupying the property.

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

- | | |
|-------------------------------|----------------------------|
| 16 ___ Range | ___ Washer/Dryer Hookups |
| 17 ___ Oven | ___ Window Screens |
| 18 ___ Built-in Microwave | ___ Rain Gutters |
| 19 ___ Dishwasher | ___ Burglar Alarms |
| 20 ___ Trash Compactor | ___ Smoke Detector(s) |
| 21 ___ Garbage Disposal | ___ Fire Alarm |
| 22 ___ T.V. Antenna | ___ Number Remote Controls |
| 23 ___ Satellite Dish | ___ Garage: Attached |
| 24 ___ Intercom | ___ Garage: Not Attached |
| 25 ___ Central Heating | ___ Carport |
| 26 ___ Central Air Cndtng | Pool/Spa Heater: ___ Gas |
| 27 ___ Evaporator Cooler(s) | ___ Solar |
| 28 ___ Wall/Window Air Cndtng | ___ Electric Water |
| 29 ___ Sprinklers | Heater: ___ Gas |
| 30 ___ Public Sewer System | Water Supply: ___ City |
| 31 ___ Septic Tank | ___ Well |

1 Sump Pump Private Utility or
 2 Water Softener Other _____
 3 Patio/Decking Gas Supply: Utility
 4 Built-in Barbecue Bottled
 5 Gazebo Exhaust Fan(s) in _____
 6 Sauna 220 Volt Wiring in _____
 7 Pool Fireplace(s) in _____
 8 Spa Hot Tub Gas Starter _____
 9 Security Gate(s) Roof(s): Type _____
 10 Auto Garage Door Opener(s) Age: _____ (approx.)

11
12 Other: _____

13 Are there, to the best of your (Transferor's) knowledge, any of the above that are not in
 14 operating condition? Yes No. If yes, then describe: (Attach additional sheets
 15 if necessary): _____
 16 _____
 17 _____
 18 _____

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

21 Interior Walls Ceilings Floors Exterior Walls Insulation Roof(s)
 22 Windows Doors Foundation Slab(s) Driveways Sidewalks
 23 Walls/Fences Electrical Systems Plumbing/Sewers/Septics Other
 24 Structural Components (Describe: _____)

25 _____)
 26 If any of the above is checked, explain. (Attach additional sheets if necessary):
 27 _____
 28 _____
 29 _____

30 C. Are you (Transferor) aware of any of the following:
 31 1. substances, materials, or products that may be an environmental hazard

- 1 such as asbestos, formaldehyde, radon gas, lead based paint, fuel or chemical storage
2 tanks, and contaminated soil or water on the subject property Yes No
- 3 2. features of the property shared in common with adjoining landowners,
4 such as walls, fences, and driveways, whose use or responsibility for maintenance may
5 have an effect on the subject property Yes No
- 6 3. encroachments, easements, or similar matters that may affect your
7 interest in the subject property Yes No
- 8 4. room additions, structural modifications, or other alterations or repairs
9 made without necessary permits Yes No
- 10 5. room additions, structural modifications, or other alterations or repairs
11 not in compliance with building codes Yes No
- 12 6. landfill (compacted or otherwise) on the property or any portion of the
13 property Yes No
- 14 7. settling from any cause, or slippage, sliding, or other soil problems
15 Yes No
- 16 8. flooding, drainage, or grading problems Yes No
- 17 9. major damage to the property or any of the structures from fire,
18 earthquakes, floods, or landslides Yes No
- 19 10. zoning violations, nonconforming uses, violations of setback
20 requirements Yes No
- 21 11. that the property is located in a flood plain, avalanche area, high wind
22 area, permafrost area, or earthquake zone Yes No
- 23 12. neighborhood noise problems or other nuisances Yes No
- 24 13. deed restrictions or obligations Yes No
- 25 14. homeowners' association that has authority over the subject
26 property Yes No
- 27 15. common areas (facilities such as pools, tennis courts, walkways, or
28 other areas co-owned in undivided interest with others) Yes No
- 29 16. notices of abatement or citations against the property . . . Yes No
- 30 17. lawsuits against the transferor threatening to affect or affecting this
31 real property Yes No

1 this chapter cannot obtain the disclosure document from the transferor and does not have written
2 assurance from the transferee that the disclosure statement has been received, the broker shall
3 advise the transferee in writing that the transferee has the right to receive the disclosure
4 statement.

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

7 (d) In this section, "real estate broker" includes a listing agent.

8 Sec. 34.70.120. FAILURE TO COMPLY. (a) A transfer that is subject to this chapter
9 is not invalidated solely because a person fails to comply with this chapter.

10 (b) A person who negligently violates this chapter or fails to perform a duty required by
11 this chapter is liable to the transferee for the amount of the actual damages suffered by the
12 transferee as a result of the violation or failure.

13 (c) A person who wilfully violates this chapter or fails to perform a duty required by this
14 chapter is liable to the transferee for up to three times the actual damages suffered by the
15 transferee as a result of the violation or failure.

16 (d) In addition to the damages allowed under (b) or (c) of this section, a court may also
17 award the transferee costs and attorney fees to the extent allowed under the rules of court.

18 Sec. 34.70.200. DEFINITIONS. In this chapter,

19 (1) "disclosure statement" means the disclosure statement required by
20 AS 34.70.010;

21 (2) "real property" includes a unit in real property subject to AS 34.07 or
22 AS 34.08;

23 (3) "residential real property" means real property whose primary purpose is to
24 provide a single-family dwelling;

25 (4) "transfer" means transfers by sale, exchange, installment land sale contract,
26 lease with an option to purchase, other option to purchase, or a ground lease coupled with
27 improvements.

28 * Sec. 2. AS 08.88.071(a) is amended to read:

29 (a) The commission shall

30 (1) pass on qualifications of applicants for licenses and issue licenses to those
31 who qualify;

- 1 (2) prepare and grade examinations;
2 (3) after hearing, have the authority to suspend or revoke the license of a licensee
3 who
4 (A) with respect to a real estate transaction
5 (i) made a substantial misrepresentation;
6 (ii) made a false promise likely to influence, persuade, or induce;
7 (iii) in the case of a real estate broker, pursued a flagrant course
8 of misrepresentation or made a false promise through an agent, associate real
9 estate broker, or real estate salesman;
10 (iv) has engaged in conduct that is fraudulent or dishonest;
11 (v) violates AS 08.88.391;
12 (B) procures a license by deceiving the commission, or aids another to do
13 so;
14 (C) has engaged in conduct in which the commission had no knowledge
15 at the time the licensee was licensed demonstrating the licensee's unfitness to engage in
16 the business for which the licensee is licensed;
17 (D) knowingly authorizes, directs, connives at or aids in publishing,
18 distributing, or circulating a material false statement or misrepresentation concerning the
19 licensee's business or concerning real estate for sale in the licensee's business in this or
20 any other state;
21 (E) if a real estate broker, wilfully violates AS 08.88.171(d) or 08.88.291;
22 (F) if an associate real estate broker, claims to be a real estate broker, or,
23 if a real estate salesman, claims to be a real estate broker or associate real estate broker;
24 (G) if a real estate broker, employs an unlicensed associate real estate
25 broker or real estate salesman;
26 (H) if an associate real estate broker or real estate salesman, fails
27 immediately to turn money collected in a real estate transaction over to the employing
28 real estate broker;
29 (I) violates the licensee's obligations under AS 34.70.100 and the
30 violation occurs under circumstances that the commission determines by regulation
31 justify the suspension or revocation of the license;

1 (4) prosecute, through the Department of Law, violations of the provisions of this
2 chapter or lawful regulations adopted under this chapter;

3 (5) publish, on three consecutive weekends in a newspaper of general circulation
4 in the locale of the offending person's principal office licensed under this chapter, [ANY]
5 disciplinary action taken by the commission against a person licensed under this chapter;

6 (6) issue a temporary permit to the personal representative of the estate of a
7 deceased broker or to some other person designated by the commission with the approval of the
8 personal representative of the estate [,] in order to secure proper administration in concluding the
9 affairs of the decedent broker's real estate business.

10 * Sec. 3. This Act applies to transfers of interests in residential real property that occur on or after
11 January 1, 1993.

12 * Sec. 4. This Act takes effect January 1, 1993.