

**CS FOR HOUSE BILL NO. 398 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION**

BY THE HOUSE JUDICIARY COMMITTEE

**Offered: 3/30/92
Referred: Rules**

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. Before the transferee of an interest in
7 residential real property makes a written offer, the transferor shall deliver by mail or in person
8 a completed written disclosure statement in the form set out in AS 34.70.050. Delivery to the
9 spouse of the transferee constitutes delivery to the transferee unless the transferor and the
10 transferee agree otherwise before the delivery.**

**11 Sec. 34.70.020. TERMINATION OF OFFER. If a disclosure statement or material
12 amendment is delivered to the transferee after the transferee has made a written offer, the
13 transferee may terminate the offer by delivering a written notice of termination to the transferor
14 or the transferor's agent within three days after the disclosure statement or amendment is**

1 delivered in person or within six days after the disclosure statement or amendment is delivered
2 by deposit in the mail.

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

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

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

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

21 Sec. 34.70.050. FORM OF DISCLOSURE STATEMENT. The disclosure statement must
22 read as follows:

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

I

TRANSFEROR INFORMATION

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

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

Transferor ___ is ___ is not occupying the property.

A. The subject property has the items checked below:

- | | |
|----------------------------|----------------------------|
| ___ Range | ___ Washer/Dryer Hookups |
| ___ Oven | ___ Window Screens |
| ___ Built-in Microwave | ___ Rain Gutters |
| ___ Dishwasher | ___ Burglar Alarms |
| ___ Trash Compactor | ___ Smoke Detector(s) |
| ___ Garbage Disposal | ___ Fire Alarm |
| ___ T.V. Antenna | ___ Number Remote Controls |
| ___ Satellite Dish | ___ Garage: Attached |
| ___ Intercom | ___ Garage: Not Attached |
| ___ Central Heating | ___ Carport |
| ___ Central Air Cndtng | Pool/Spa Heater: ___ Gas |
| ___ Evaporator Cooler(s) | ___ Solar |
| ___ Wall/Window Air Cndtng | ___ Electric Water |
| ___ Sprinklers | Heater: ___ Gas |
| ___ Public Sewer System | Water Supply: ___ City |
| ___ Septic Tank | ___ Well |
| ___ Sump Pump | ___ Private Utility or |
| ___ Water Softener | Other _____ |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Transferor certifies that the information herein is true and correct to the best of the Transferor's knowledge as of the date signed by the Transferor.

Transferor _____ Date _____

Transferor _____ Date _____

II

TRANSFeree(S) AND TRANSFEROR(S) ARE ENCOURAGED TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN TRANSFeree(S) AND TRANSFEROR(S) WITH RESPECT TO ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT

Transferor _____ Date _____ Transferee _____ Date _____

Transferor _____ Date _____ Transferee _____ Date _____

Agent Representing Transferor _____ By _____ Date _____

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL PROPERTY. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

Sec. 34.70.060. GOOD FAITH. A person who makes a disclosure or performs an act under this chapter shall do so in good faith.

Sec. 34.70.070. EFFECT ON OTHER REQUIRED DISCLOSURES. The requirements of this chapter do not affect other obligations for disclosure required by law.

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

Sec. 34.70.100. DUTIES OF BROKER. (a) If one or more licensed real estate brokers are acting as agents in a transfer subject to this chapter, the broker who has obtained the offer made by the transferee shall, except as otherwise provided in this chapter, deliver the disclosure statement required by this chapter to the transferee unless the transferor gives other written instructions for delivery.

(b) If a real estate broker who is responsible for delivering the disclosure statement under this chapter cannot obtain the disclosure document from the transferor and does not have written assurance from the transferee that the disclosure statement has been received, the broker shall

1 advise the transferee in writing that the transferee has the right to receive the disclosure
2 statement.

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

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

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

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

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

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

16 Sec. 34.70.200. DEFINITIONS. In this chapter,

17 (1) "disclosure statement" means the disclosure statement required by
18 AS 34.70.010;

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

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

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

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

27 (a) The commission shall

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

30 (2) prepare and grade examinations;

31 (3) after hearing, have the authority to suspend or revoke the license of a licensee

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

who

(A) with respect to a real estate transaction

- (i) made a substantial misrepresentation;
- (ii) made a false promise likely to influence, persuade, or induce;
- (iii) in the case of a real estate broker, pursued a flagrant course of misrepresentation or made a false promise through an agent, associate real estate broker, or real estate salesman;
- (iv) has engaged in conduct that is fraudulent or dishonest;
- (v) violates AS 08.88.391;

(B) procures a license by deceiving the commission, or aids another to do

so;

(C) has engaged in conduct in which the commission had no knowledge at the time the licensee was licensed demonstrating the licensee's unfitness to engage in the business for which the licensee is licensed;

(D) knowingly authorizes, directs, connives at or aids in publishing, distributing, or circulating a material false statement or misrepresentation concerning the licensee's business or concerning real estate for sale in the licensee's business in this or any other state;

(E) if a real estate broker, wilfully violates AS 08.88.171(d) or 08.88.291;

(F) if an associate real estate broker, claims to be a real estate broker, or, if a real estate salesman, claims to be a real estate broker or associate real estate broker;

(G) if a real estate broker, employs an unlicensed associate real estate broker or real estate salesman;

(H) if an associate real estate broker or real estate salesman, fails immediately to turn money collected in a real estate transaction over to the employing real estate broker;

(I) violates the licensee's obligations under AS 34.70.100 and the violation occurs under circumstances that the commission determines by regulation justify the suspension or revocation of the license;

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

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

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

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

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