

SENATE BILL NO. 390

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Introduced: 2/7/92
Referred: L&C, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring certain disclosures in real property transfers; and providing for an
2 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 REAL PROPERTY TRANSFERS.

6 Sec. 34.70.010. DISCLOSURES REQUIRED. (a) A transferor of real property shall
7 complete and deliver to the transferee as soon as practicable before the transfer a disclosure
8 statement in the form set out in AS 34.70.060.

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. TRANSFERS COVERED. The provisions of this chapter apply only to
13 real property transfers

14 (1) by sale, exchange, installment land sale contract, lease with an option to

1 purchase, other option to purchase, or ground lease coupled with improvements; or

2 (2) of units in common interest communities or cooperatives if the community
3 or cooperative consists of four or fewer units.

4 Sec. 34.70.030. TERMINATION OF OFFER. If a disclosure statement or an amendment
5 of the disclosure statement is delivered to the transferee after the transferee has made a written
6 offer to engage in a transfer that is subject to this chapter, the transferee may terminate the offer
7 by delivering a written notice of termination to the transferor or the transferor's agent within
8 three days after the disclosure statement or amendment is delivered in person or within five days
9 after the disclosure statement or amendment is deposited in the mail.

10 Sec. 34.70.040. LIABILITY FOR ERRORS OR OMISSIONS. (a) A transferor or the
11 transferor's agent is not liable for an error, inaccuracy, or omission in the information provided
12 in the disclosure statement if

13 (1) with regard to the liability of

14 (A) the transferor, the transferor did not have personal knowledge of the
15 error, inaccuracy, or omission, and the transferor exercised ordinary care in obtaining and
16 transmitting the information; or

17 (B) the agent, the agent did not have personal knowledge of the error,
18 inaccuracy, or omission, and the agent exercised ordinary care in transmitting the
19 information; or

20 (2) the error, inaccuracy, or omission was based on information provided by a
21 public agency, an expert, or another person, if the other person is capable of providing the
22 information.

23 (b) A report or opinion prepared by a licensed engineer, licensed land surveyor, geologist,
24 construction contractor, or other expert that deals with matters within the scope of the expert's
25 license or expertise, satisfies (a)(2) of this section if the information is provided in response to
26 a written or oral request for the information. When responding to the request, the expert may
27 indicate in writing the expert's understanding that the information provided will be used to satisfy
28 the disclosure requirement established by AS 34.70.010 and may indicate the required disclosures
29 or parts of required disclosures to which the information being furnished applies.

30 Sec. 34.70.050. SUBSEQUENT EVENTS AND APPROXIMATIONS. (a) If
31 information disclosed in a disclosure statement becomes inaccurate as a result of an act or

1 agreement after the disclosure statement is delivered to the transferee, the resulting inaccuracy
2 does not violate this chapter and the transferor is not required to deliver an amended disclosure
3 statement to the transferee.

4 (b) If at the time a disclosure statement is required to be delivered to a prospective
5 transferee an item of information that is required to be included in the statement is unknown or
6 is not available to the transferor, and if the transferor has made a reasonable effort to ascertain
7 the information, the transferor may insert an approximation of the information. The
8 approximation must be reasonable, clearly identified as an approximation, based on the best
9 information available to the transferor, and may not be used to avoid the requirements of this
10 chapter.

11 Sec. 34.70.060. FORM OF DISCLOSURE STATEMENT. The disclosure statement must
12 read as follows:

13 REAL ESTATE TRANSFER DISCLOSURE STATEMENT

14 THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY LOCATED IN THE
15 CITY OF _____, _____ JUDICIAL DISTRICT, STATE OF ALASKA,
16 DESCRIBED AS _____ THIS
17 STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE-DESCRIBED
18 PROPERTY IN COMPLIANCE WITH AS 34.70. IT IS NOT A WARRANTY OF ANY KIND
19 BY THE TRANSFEROR(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN
20 THIS TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR
21 WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN

22 I

23 TRANSFEROR INFORMATION

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

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

1 **CONTRACT BETWEEN THE TRANSFEROR AND TRANSFEREE.**

2 Transferor is occupying the property.

3 Transferor is not occupying the property.

4 **A. The subject property has the items checked below:**

- 5 Range Dishwasher
6 Oven Trash Compactor
7 Microwave Garbage Disposal
8 Washer/Dryer Hookups Spa Hot Tub
9 Window Screens Security Gate(s)
10 Rain Gutters Auto Garage Door Opener(s)
11 Burglar Alarms Number Remote Controls
12 Smoke Detector(s) Garage: Attached
13 Fire Alarm Garage: Not Attached
14 T.V. Antenna Carport
15 Satellite Dish Pool/Spa Heater: Gas
16 Intercom Solar
17 Central Heating Electric Water
18 _____ Type Water Heater: _____
19 Central Air Cndtng _____ Type
20 Evaporator Cooler(s) Water Supply: City
21 Wall/Window Air Cndtng Well
22 Sprinklers Private Utility or
23 Public Sewer System Other _____
24 Septic Tank Gas Supply: Utility
25 Sump Pump Bottled
26 Water Softener Exhaust Fan(s) in _____
27 Patio/Decking 220 Volt Wiring in _____
28 Built-in Barbecue Fireplace(s) in _____
29 Gazebo Gas Starter _____
30 Sauna Roof(s): Type _____
31 Pool Age: _____ (approx.)

1 Other: _____
2 Are there, to the best of your (Transferor's) knowledge, any of the above that are not in
3 operating condition? ___ Yes ___ No. If yes, then describe: (Attach additional sheets
4 if necessary): _____
5 _____
6 _____
7 _____

8 B. Are you (Transferor) aware of any significant defects/malfunctions in any of the
9 following? ___ Yes ___ No. If yes, check appropriate space(s) below.
10 ___ Interior Walls ___ Ceilings ___ Floors ___ Exterior Walls ___ Insulation ___ Roof(s)
11 ___ Windows ___ Doors ___ Foundation ___ Slab(s) ___ Driveways ___ Sidewalks
12 ___ Walls/Fences ___ Electrical Systems ___ Plumbing/Sewers/Septics ___ Other
13 Structural Components (Describe: _____
14 _____)

15 If any of the above is checked, explain. (Attach additional sheets if necessary):
16 _____
17 _____
18 _____

- 19 C. Are you (Transferor) aware of any of the following:
- 20 1. substances, materials, or products that may be an environmental hazard
21 such as asbestos, formaldehyde, radon gas, lead based paint, fuel or chemical storage
22 tanks, and contaminated soil or water on the subject property ___ Yes ___ No
 - 23 2. features of the property shared in common with adjoining landowners,
24 such as walls, fences, and driveways, whose use or responsibility for maintenance may
25 have an effect on the subject property ___ Yes ___ No
 - 26 3. encroachments, easements, or similar matters that may affect your
27 interest in the subject property ___ Yes ___ No
 - 28 4. room additions, structural modifications, or other alterations or repairs
29 made without necessary permits ___ Yes ___ No
 - 30 5. room additions, structural modifications, or other alterations or repairs
31 not in compliance with building codes ___ Yes ___ No

II

TRANSFeree(S) AND TRANSFEROR(S) MAY WISH 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 _____

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

Sec. 34.70.070. GOOD FAITH REQUIRED. A person who makes a disclosure or performs an act under this chapter shall do so in good faith.

Sec. 34.70.080. EFFECT ON OTHER REQUIRED DISCLOSURES. The requirements of this chapter do not affect other obligations for disclosure required by statute or required in order to prevent fraud, intentional misrepresentation, or deceit.

Sec. 34.70.090. WRITTEN AMENDMENT. An amendment to a disclosure statement must be in writing.

Sec. 34.70.100. ESCROW AGENTS. A person, other than a real estate broker, who acts as an escrow agent for a real property transfer that is subject to this chapter is not the agent of the transferor or transferee under this chapter unless an express written agreement authorizes the person to act as an agent. The extent of the agency is governed by the written agreement.

Sec. 34.70.110. FAILURE TO COMPLY (a) A real property transfer that is subject to this chapter is not invalidated solely because a person fails to comply with this chapter.

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

Sec. 34.70.200. DEFINITION. In this chapter, "disclosure statement" means the disclosure statement required by AS 34.70.010.

* Sec. 2. This Act applies to transfers of real property that occur on or after July 1, 1992.

* Sec. 3. This Act takes effect July 1, 1992.