

CS FOR SENATE BILL NO. 390 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 3/23/92
Referred: Judiciary

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring 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 REAL PROPERTY TRANSFERS.

6 Sec. 34.70.010. DISCLOSURES REQUIRED. (a) A transferor of residential real
7 property, as more specifically set out in AS 34.70.020, shall complete and deliver to the
8 transferee as soon as practicable before the transfer a disclosure statement in the form set out in
9 AS 34.70.060.

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

13 Sec. 34.70.020. TRANSFERS COVERED. The provisions of this chapter apply only to
14 transfers of one to four residential dwelling units by sale, exchange, installment land sale

1 contract, lease with an option to purchase, other option to purchase, or ground lease coupled with
2 improvements.

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

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

12 (1) with regard to the liability of

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

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

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

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

29 Sec. 34.70.050. SUBSEQUENT EVENTS AND APPROXIMATIONS. (a) If
30 information disclosed in a disclosure statement becomes inaccurate as a result of an act or
31 agreement after the disclosure statement is delivered to the transferee, the resulting inaccuracy

1 is not a violation of this chapter; however, the transferor shall deliver an amended disclosure
2 statement to the transferee.

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

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

12 REAL ESTATE TRANSFER DISCLOSURE STATEMENT

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

21 I

22 TRANSFEROR INFORMATION

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

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

1 Transferor is occupying the property.

2 Transferor is not occupying the property.

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

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

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

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

9 Interior Walls Ceilings Floors Exterior Walls Insulation Roof(s)
10 Windows Doors Foundation Slab(s) Driveways Sidewalks
11 Walls/Fences Electrical Systems Plumbing/Sewers/Septics Other
12 Structural Components (Describe: _____
13 _____)

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

18 C. Are you (Transferor) aware of any of the following:

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

- 1 property Yes No
- 2 7. settling from any cause, or slippage, sliding, or other soil problems
- 3 Yes No
- 4 8. flooding, drainage, or grading problems Yes No
- 5 9. that the property is located in a flood plain, avalanche area, high wind
- 6 area, or earthquake zone Yes No
- 7 10. major damage to the property or any of the structures from fire, earthquakes,
- 8 floods, landslides, or avalanches Yes No
- 9 11. zoning violations, nonconforming uses, violations of setback
- 10 requirements Yes No
- 11 12. neighborhood noise problems or other nuisances Yes No
- 12 13. that the property has been or is being used in the commission of a
- 13 felony or a drug-related crime Yes No
- 14 14. that violent crimes were committed on the property Yes No
- 15 15. deed restrictions or obligations Yes No
- 16 16. homeowners' association that has authority over the subject
- 17 property Yes No
- 18 17. common areas (facilities such as pools, tennis courts, walkways, or
- 19 other areas co-owned in undivided interest with others) Yes No
- 20 18. notices of abatement or citations against the property ... Yes No
- 21 19. lawsuits against the transferor threatening to or affecting this real
- 22 property Yes No

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

24 _____

25 _____

26 _____

27 Transferor certifies that the information herein is true and correct to the best of the Transferor's

28 knowledge as of the date signed by the Transferor.

29 Transferor _____ Date _____

30 Transferor _____ Date _____

31 II

1 TRANSFEREE(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN PROFESSIONAL
2 ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR
3 APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN TRANSFEREE(S) AND
4 TRANSFEROR(S) WITH RESPECT TO ADVICE/INSPECTIONS/DEFECTS.

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

6 Transferor _____ Date _____ Transferee _____ Date _____

7 Transferor _____ Date _____ Transferee _____ Date _____

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

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

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

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

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

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

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

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

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

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