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1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Commerce & Economic Development
 Title: An Act requiring certain disclosures in real property transfers; and providing for an effective date. BRU: Occupational Licensing
 Sponsor: Senate Labor & Commerce Component: Administration
 Requestor: Senate Labor & Commerce COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Jennifer Strickler Phone: 465-2144
 Division: Occupational Licensing Date: 03/12/92
 Approved by Commissioner: Glenn A. Olds
 Agency: Commerce & Economic Development Date: 3.13.92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: SB 390

Page 1, line 1, following "in":

Insert "residential"

Page 1, line 6:

Following "of":

Insert "residential"

Following "property":

Insert ", as more specifically set out in AS 30.70.020,"

Page 1, line 13:

Delete "real property transfers"

Insert "transfers of one to four residential dwelling units"

Page 1, line 14:

Delete "(1)"

Page 2, lines 1 through 3:

Delete "; or

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

Page 7, line 29, following "of":

Insert "residential"

Amendment

Page 3, line 2:

Delete "not" before the word "required".

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
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Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

February 18, 1992

SUBJECT: Sectional summary of SB 390 (Work Order No. 17-LS1853\A)

TO: Senator Drue Pearce
Attn: Ken

FROM: Theresa L. Bannister ^{tb}
Legislative Counsel

You have requested a sectional summary of the above described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 contains the new chapter created by the bill.

Sec. 34.70.010 requires the transferor of real property to give the transferee a disclosure statement. Provides directions for delivering the statement.

Sec. 34.70.020 describes the real property transfers that are covered by the chapter.

Sec. 34.70.030 authorizes a transferee to terminate an offer within a certain time if a disclosure statement or amendment of the statement is delivered to the transferee after the transferee makes a written offer.

Sec. 34.70.040 establishes that the transferor or the transferor's agent is not liable for an error, inaccuracy, or omission in the disclosure statement under certain conditions.

Sec. 34.70.050 states that if events occurring after the disclosure statement is delivered make a disclosure statement inaccurate, the inaccuracy does not violate the chapter and the transferor is not required to deliver an amended statement. Allows the transferor to use approximations in the disclosure statement under certain conditions.

Sec. 34.70.060 lays out the form for the disclosure statement.

Senator Drue Pearce
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Sec. 34.70.070 requires that disclosures and acts under the chapter be done in good faith.

Sec. 34.70.080 states that the chapter doesn't affect other disclosure obligations required by statute or required in order to prevent fraud, intentional misrepresentation, or deceit.

Sec. 34.70.090 requires an amendment to a disclosure statement to be in writing.

Sec. 34.70.100 provides that persons, other than real estate brokers, who act as escrow agents for transfers under the chapter are not the agents of the transferor or transferee under the chapter unless provided by an express written agreement.

Sec. 34.70.110 states that transfers are not invalidated solely because of noncompliance with the chapter. Makes a person who wilfully, or negligently violates the chapter liable to the transferee for actual damages suffered.

Sec. 34.70.200 provides a definition for the chapter.

Section 2 makes the bill applicable to transfers of real property that occur on or after July 1, 1992.

Section 3 gives the bill an effective date of July 1, 1992.

If I may be of further assistance, please advise.

TLB:gc
92-136.glc



FEB 14 1992

ALASKA ASSOCIATION OF REALTORS®, INC.

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ANALYSIS OF PROPOSED LEGISLATION TO PROVIDE FOR
WRITTEN DISCLOSURE STATEMENT WITH RESPECT TO
THE CONDITION OF REAL PROPERTY IN ALASKA

Caveat emptor, "let the buyer beware," was the legal doctrine that applied in real property transactions in the early 1900s. Under this theory, the seller was not obligated to reveal all that he knew about property, but rather the buyer was under a duty to inquire and investigate. That legal doctrine has been eroded by case law in most jurisdictions. Today sellers are obligated to disclose existing defects relating to the value or desirability of a property.

Since a home is the largest single investment that most people make in a lifetime, it is important that all relevant information regarding its condition be provided to prospective purchasers. The seller, who is frequently also the occupant, is in a superior position to provide information relating to the condition of the property.

Disclosure forms are used to convey information of which the seller is aware to prospective purchasers regarding the property. By doing so, there should be no surprises to the buyer after the closing. The purpose of disclosure is to inform prospective purchasers of the condition of the property. Effective use of these forms results in individuals who are more knowledgeable about relevant items in a real estate transaction.

Experience in the States

Mandatory property condition disclosure by the seller is currently required in California and Maine, and several states are currently looking at the possibility of legislating or regulating similar requirements.

Property Condition Disclosure Forms

Why are property condition disclosure forms significant? Does the use of these forms really benefit all parties to a transaction? These questions have surfaced in various real estate and consumer forums over the past few years. The use of property condition disclosure forms results in the written documentation of information conveyed regarding the condition of property. Since statistics show that approximately sixty-seven percent of lawsuits involving real estate transactions are based on misrepresentation, a paper trail evidencing disclosures to a prospective buyer would assist in a timely and efficient resolution of these lawsuits. Property condition disclosure forms create such a paper trail.

Effect on Buyer

Use of these forms benefits the buyer. Purchasers who have been surveyed regarding the use of disclosure forms have consistently indicated that they find the forms to be useful and closely review the information contained therein. The buyer who is provided with a disclosure form prior to making an offer on property is able to make a more informed purchasing decision. For instance, buyers who are unfamiliar with the part of the country in which they are purchasing property may find information in a disclosure form useful in making them aware of and helping them understand various idiosyncracies which may affect property in that geographical area, such as landslides in California.

Purchasers who have been provided with a property condition disclosure form generally are more satisfied with their purchases because there are fewer surprises about the property. This ultimately decreases the likelihood of litigation over the transaction. Additionally, since forms state that the information provided does not negate the benefit of an independent home inspection, this reference can be useful in encouraging purchasers to obtain a home inspection.

Effect on Seller

There are also numerous benefits to the seller if property condition disclosure forms are utilized. The disclosure of material conditions is documented which can limit potential future liability.

Surveys indicate that it is neither costly nor time consuming for sellers to meet the disclosure requirement. In fact, completing the form may result in identification of some last minute home improvements which can be made in order to make the property sell more quickly and generate the highest price possible for the property. Disclosure should also result in sales prices properly reflecting the market value of the property.

The forms usually include a statement recommending that the purchaser obtain an independent home inspection, which shifts the burden on items of a specialized nature to an individual with the requisite experience.

Ultimately, since most sellers are buyers, they are beneficiaries of such property condition disclosure when they purchase their next home.

Those who oppose the use of property condition disclosure forms suggest that they are of little benefit to the seller and, in fact, can result in a lower sales price for property if the seller is honest and divulges specific deficiencies to the property. If not a lower price, repairs may be requested by the buyer during contract negotiations.

They also contend that use of the form places a greater responsibility upon the seller. If the seller negligently errs in disclosing information, a paper trail then exists to suggest that the seller should be liable for misrepresentation. Such a conclusion is usually drawn because some buyers may perceive representations in a property condition disclosure form to be warranties as to the condition of property. This concern, which is most frequently expressed by attorneys who

represent sellers, has resulted in the recommendation that forms include a statement that the information is not to be interpreted as a warranty. Further, under the legal doctrine of merger in many states, the information in the form would not constitute a warranty unless specific disclosures were listed and warranted in the sales contract.

Finally, some sellers have expressed dissatisfaction with these forms because of difficulty in completing certain items dealing with landfills, encroachments, easements, zoning violations, non-conforming uses and modifications not in compliance with building codes and permits. This dissatisfaction is tempered by use of an "unknown" check-off with an explanation on the form itself.

Effect on Real Estate Agent

The use of disclosure forms is gaining favor with real estate agents. This is because the responsibility for full disclosure is placed on the seller. The buyer also better understands that representations regarding the condition of property are within the knowledge of the seller rather than the real estate agent. Since disclosure is made by the seller, it should result in decreased liability to agents and a decrease in the number of lawsuits being filed in which real estate agents are named as defendants under the "deep pocket" theory. Fewer suits ultimately means lower errors and omissions insurance costs.

Use of disclosure forms should also result in uniform procedures and better documentation regarding the property transaction.

SUMMARY OF STATE PROPERTY CONDITION DISCLOSURE LEGISLATION

- o Mandatory property condition disclosure forms currently are used in only two states-- California and Maine. However, there are 19 states considering legislation/regulation that would mandate written property condition disclosure. Mississippi, Missouri, Oregon, Tennessee, Texas and Wisconsin introduced legislation during the 1991 session; however no laws were enacted. The remaining 13 states are considering introducing legislation/regulation in 1992 or 1993. They include Alaska, Arkansas (1993), Colorado, Delaware, Illinois, Louisiana, Maryland, Nevada (1993), Ohio, Oklahoma, Rhode Island, South Dakota and West Virginia.
- o There are seven states with environmentally related property condition disclosure requirements. They include Connecticut, Florida, Indiana, Massachusetts, Montana, New Hampshire and New Jersey.
- o Some state associations, such as the Minnesota Association of Realtors, have written their own property disclosure forms for their members to use on a voluntary basis. Ninety-six percent of Minnesota's members use its form.
- o There are 24 states with voluntary property condition disclosure forms, including Colorado, Connecticut, Hawaii, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Washington, Wisconsin and Wyoming.
- o There are six states that currently are developing voluntary property condition disclosure forms. They include, Georgia, Idaho, Illinois, Iowa, Vermont and Virginia.

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