

**REQUIRE SELLER DISCLOSURES IN
HOME SALES**

House Bill 5106
Sponsor: Rep. Floyd Clack
Committee: Consumers

Complete to 6-3-92

A SUMMARY OF HOUSE BILL 5106 AS INTRODUCED 9-11-91

The bill would create the Seller Disclosure Act, to require the sellers of residential property to make certain written disclosures about the property to prospective buyers.

Scope. The bill would apply to transfers of residential property of between one and four dwelling units; it would not apply to court-ordered transfers, divorce or separation settlements, or any of the following transfers of residential property: to lenders following mortgage defaults; by inheritance; from one co-owner to another; to a spouse or close relative; or to or from any governmental entity.

Timing of disclosures; grace period. In the case of a sale, the property seller would have to provide the prospective buyer with the required written statement as soon as practicable before transfer of the title. For land contracts, leases with options to purchase, or ground leases with improvements, the statement would have to be provided as soon as practicable before the contract was signed. Whether a sale or other arrangement, the transferor would have to indicate compliance with the bill on the deposit receipt, the land contract, the lease, on any addendum to them, or on a separate document. For any required disclosures made after a purchase offer was signed, the buyer would have three or five days, depending on circumstances, to terminate the offer.

Errors, etc. Neither the seller nor real estate agent would be liable for any error in information delivered under the bill if he or she had no personal knowledge of the error, or if the error was based on information provided by a surveyor, pest control operator, or other expert. If a surveyor, pest control operator, or other expert provided information directly to the prospective purchaser, the seller would be relieved of responsibility with regard to the disclosure of that item of information. It would not be a violation of the act if information disclosed under the act was subsequently rendered inaccurate. If information needed for a required disclosure was not reasonably available to the seller, he or she could use an approximation, as long as it was identified as such.

Disclosures. The bill would prescribe a disclosure form that would contain a disclaimer on the disclosures constituting a warranty, and would require disclosures on items included in the property and their condition, structural defects in the property, hazardous materials on the property, structures shared with other property owners, easements, zoning violations, neighborhood nuisances, deed restrictions, citations lodged against the property, pending lawsuits affecting the property, and other matters. Any real estate agent involved in the transaction would have to affirm the disclosures. The disclosure statement would

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warn the reader that professional inspections may be desirable, and suggest that an attorney, rather than a real estate broker, be consulted for legal advice.

Local options. The bill would offer a disclosure form that cities, townships, and counties could use to supplement the disclosure form described above. However, the bill would not limit the authority of a city, township, or county to rely on ordinances adopted before the bill took effect and require disclosures on forms different from those prescribed by the bill.

Amendments. Required disclosures could be amended in writing, but any amendment would have to meet the bill's deadlines for providing disclosures, and would be subject to the grace period.

Delivery of disclosures. A disclosure would have to be provided to the buyer in person or by mail. Delivery to his or her spouse would suffice, unless barred by contract.

Validity of sale; damages. A property transfer would not be invalidated solely because of a person's failure to comply with the bill. However, any person who wilfully or negligently failed to perform a duty required by the bill would be liable in the amount of actual damages suffered by a buyer.

Nearby munitions hazards. As soon as practicable before transfer of title, a seller who knew of former federal or state military practice areas within one mile of the property would have to give written notice of that fact.