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HOME SELLER DISCLOSURES

House Bill 4375
Sponsor: Rep. Floyd Clack
Committee: Consumers

Complete to 3-11-93

A SUMMARY OF HOUSE BILL 4375 AS INTRODUCED 2-25-93

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-tenant 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 before the purchase agreement was signed. For land contracts, leases with options to purchase, or ground leases with improvements, the statement would have to be provided before the contract was signed. Whether a sale or other arrangement, the transferor would have to indicate compliance with the bill on the purchase agreement, 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 72 or 120 hours, depending on circumstances, to terminate the offer. A buyer's right to terminate would expire upon transfer of the property by deed or land contract.

Errors, etc. Neither the seller nor his or her 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 entirely on information provided by a public agency, a surveyor, pest control operator, or other expert. If a public agency or 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, unless the seller had knowledge of contradictory 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 unknown or unavailable to the seller, and the seller had made a reasonable effort to ascertain it, he or she could satisfy the bill's requirements by so notifying the purchaser. It would not be a violation to fail to disclose information that could be obtained only by inspecting inaccessible parts of the property or discovered only by someone with science or trade expertise beyond the knowledge of the seller.

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

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materials on the property, structures shared with other property owners, easements, and other matters. The disclosure statement would warn the reader that professional inspections may be desirable, and that the information provided was not intended to be a part of any contract between buyer and seller.

Local options. A city, township, or county could require additional disclosures, and could require disclosures on a form different from the bill's.

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, by fax, or by mail.

Validity of sale. A property transfer would not be invalidated solely because of a person's failure to comply with the bill.

Liability. 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. A seller's agent would not be liable for a seller's violation unless any agent [sic] knowingly acted in concert with a seller to violate the bill.

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.