
DIGEST

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Pinac, et al.

HB No. 92

Abstract: Requires sellers of residential real property to make certain disclosures to purchasers on a form to be adopted by the Louisiana Real Estate Commission. Provides for the termination of certain real estate contracts or offers to purchase in certain circumstances. Requires real estate licensees to inform clients of their duties and rights regarding disclosure.

Proposed law defines "known defect", "property disclosure document", "purchaser", "real estate contract", "residential real property", and "seller".

Proposed law provides that the provisions of proposed law shall apply to all transfers of interest in residential real property occurring on and after July 1, 2004, whether or not the assistance of a real estate licensee is utilized. It further provides that the following transfers shall be exempt from proposed law:

- (1) Transfers ordered by a court.
- (2) Transfers to a mortgagee by a mortgagor or successor in interest who is in default.
- (3) Transfers by a mortgagee who has acquired the property at a sale conducted pursuant to a power to sale or pursuant to a decree of foreclosure, or who has acquired the property by deed in lieu of foreclosure.
- (4) Transfers by a fiduciary in the course of administration of a decedent's estate, guardianship, conservatorship, or trust.
- (5) Transfers of newly constructed property.
- (6) Transfers from one or more co-owners solely to one or more of the remaining owners.
- (7) Transfers pursuant to testate or intestate succession.
- (8) Transfers of property that will be converted into a use other than residential.
- (9) Transfers of property to a spouse or relative in the line of consanguinity.
- (10) Transfers between spouses resulting from a judgment of divorce or a judgment of separate maintenance.
- (11) Transfers to or from any governmental entity.
- (12) Transfers from an entity that has acquired title or assignment of a real estate contract to assist the owner in relocation, as long as the entity makes available certain disclosure documents.
- (13) Transfers to an inter vivos trust.
- (14) Acts that, without changing ownership, confirm, correct, modify, or supplement a deed or conveyance already recorded.

Proposed law requires the seller of residential real property to complete a property disclosure statement on a form prescribed by the Louisiana Real Estate Commission or some such similar form. The commission shall promulgate the form by rule no later than April 1, 2004.

Proposed law requires the seller to complete the form to the best of his belief and knowledge and deliver it to the purchaser no later than the time an offer is made to purchase the property. If the disclosure is delivered after an offer

is made, the purchaser may terminate any resulting real estate contract or withdraw his offer no later than seventy-two hours, excluding holidays and weekends, after receipt of the disclosure. Such termination of a contract shall not result in any penalty to the purchaser, and any deposit money shall be returned to the purchaser.

Proposed law provides that any rights of the purchaser to terminate the real estate contract are waived if not exercised prior to transfer of title or occupancy, whichever is earlier.

Proposed law provides that if any information in the disclosure becomes inaccurate as a result of any action after delivery of the disclosure, the resulting inaccuracy shall not be a violation of proposed law.

Proposed law provides that a property disclosure shall not be considered a warranty by the seller and may not be used as a substitute for any inspections or warranties that the purchaser or seller may obtain.

Proposed law exempts a seller from liability for any error, inaccuracy, or omission of any information in the disclosure if either of the following exists:

- (1) The error, inaccuracy, or omission was not a willful misrepresentation.
- (2) The error, inaccuracy, or omission was based on information provided by a public body or by another person with special knowledge who provided a report that the seller believed to be correct and was transmitted to the purchaser.

Proposed law requires a real estate licensee representing a seller or buyer to inform his clients of their duties and rights under proposed law. It further exempts a licensee representing a seller from any liability, unless he has actual knowledge of an error, inaccuracy, or omission.

Proposed law provides that the provisions of proposed law shall not limit or modify any obligation between buyers and sellers created by any other statute or that may exist in law.

Present law allows the Louisiana Real Estate Commission to censure a licensee, suspend or revoke his license, levy fines or penalties not to exceed \$5,000, or impose continuing education requirements if the licensee is found to have engaged in various acts.

Proposed law retains present law and adds to those acts the failure of a licensee to provide a buyer or seller with a written property disclosure form for certain sales and leases of residential real property.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 9:3195-3199 and R.S. 37:1455(A)(33))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. Provides for disciplinary action against a licensee for failure to provide a disclosure form to a buyer or seller.

House Floor Amendments to the engrossed bill.

1. Extends the time period which buyers may withdraw an offer from 1 day to 72 hours.
2. Clarifies that the disclosure shall not limit or modify any existing legal obligation between buyers and sellers.