

Regular Session, 2003

# ACT No. 308

HOUSE BILL NO. 92

BY REPRESENTATIVES PINAC, BALDONE, AND PEYCHAUD

## AN ACT

To enact Chapter 8 of Code Title VII of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:3195 through 3199, and R.S. 37:1455(A)(33), relative to real estate; to require certain disclosures; to provide for definitions; to provide for applicability; to provide for exemptions; to provide for the duties of the seller; to provide for conditions for termination of the real estate contract; to provide relative to information contained in the property disclosure document; to provide relative to the liability of the seller; to provide relative to the duties and liability of a real estate licensee; to provide relative to other statutory disclosure obligations; to provide for certain penalties for real estate licensees, registrants, and certificate holders; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 8 of Code Title VII of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:3195 through 3199, is hereby enacted to read as follows:

### CHAPTER 8. RESIDENTIAL PROPERTY DISCLOSURE

#### §3195. Definitions

As used in this Chapter, the following terms shall have the meanings hereinafter ascribed to them:

(1) "Known defect" means a condition found within the property that was actually known by the seller and that results in one or all of the following:

(a) Has a substantial adverse effect on the value of the property.

(b) Significantly impairs the health or safety of future occupants of the property.

(c) If not repaired, removed, or replaced, significantly shortens the expected normal life of the premises.

(2) "Property disclosure document" means a document in a form prescribed by the Louisiana Real Estate Commission, or a form that contains at least the minimum language prescribed by the commission, which is presented by the seller to the purchaser in the manner set forth in R.S. 9:3197(B) and which discloses, at a minimum, known defects in the residential real property.

(3) "Purchaser" means a transferee or prospective transferee in any of the types of transactions described in R.S. 9:3196(A).

(4) "Real estate contract" means any written agreement, entered into prior to the perfection of the contract of sale or contract to lease or otherwise with an option to purchase, which relates to the sale, offer for sale, purchase, offer to purchase, lease with option to purchase, offer to lease with option to purchase, any other option to purchase, or any other offer which includes an option to purchase any residential real property or improvements thereon.

(5) "Residential real property" means real property consisting of one or not more than four residential dwelling units, which are buildings or structures each of which are occupied or intended for occupancy as single family residences.

(6) "Seller" means an owner of residential real property, whether an individual, partnership, corporation, or trust, who sells or attempts to sell residential real property in a manner described in R.S. 9:3196(A).

§3196. Applicability; exemptions

A. On and after July 1, 2004, the provisions of this Chapter shall apply to the transfer of any interest in residential real property, whether by sale, exchange, bond for deed, lease with option to purchase, or any other option to purchase, including transactions in which the assistance of a real estate licensee is utilized and those in which such assistance is not utilized.

B. The provisions of this Chapter shall not apply to any of the following:

(1) Transfers ordered by a court, including but not limited to a transfer ordered by a court in the administration of an estate, a transfer pursuant to a writ of execution, a transfer by any foreclosure sale, a transfer by a trustee in bankruptcy, a transfer by eminent domain, and any transfer resulting from a decree of specific performance.

(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 residential real property at a sale conducted pursuant to a power of sale under a mortgage or a sale pursuant to decree of foreclosure, or who has acquired the residential property by a 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 residential real property, which has never been occupied.

(6) Transfers from one or more co-owners solely to one or more of the remaining co-owners.

(7) Transfers pursuant to testate or intestate succession.

(8) Transfers of residential real property that will be converted by the purchaser into a use other than residential use.

(9) Transfers of residential real 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 or from a property settlement agreement incidental to such a judgment.

(11) Transfers or exchanges to or from any governmental entity.

(12) Transfers from an entity that has acquired title or assignment of a real estate contract to a piece of residential real property to assist the prior owner in relocating, as long as the entity makes available to the purchaser a copy of the property disclosure statement, any inspection reports if any furnished to the entity by the prior owner, or both.

(13) Transfers to an inter vivos trust.

(14) Acts that, without additional consideration and without changing ownership or ownership interest, confirm, correct, modify, or supplement a deed or conveyance previously recorded.

§3197. Duties of the seller; delivery of property disclosure document; termination of real estate contract; information contained in document and inaccuracies; liability of seller

A. The seller of residential real property shall complete a property disclosure document in a form prescribed by the Louisiana Real Estate Commission or a form that contains at least the minimum language prescribed by the commission. The promulgation of this form shall be conducted in accordance with the Administrative Procedure Act no later than April 1, 2004.

B.(1) The seller shall complete the property disclosure document in good faith to the best of the seller's belief and knowledge as of the date the disclosure is completed and signed by the seller. If the seller has no knowledge or information required by the disclosure document, the seller shall so indicate on the disclosure statement and shall be in compliance with this Chapter.

(2) The seller shall deliver or cause to be delivered the completed and signed property disclosure document to the purchaser no later than the time the purchaser makes an offer to purchase, exchange, or option the property or exercises the option to purchase the property pursuant to a lease with an option to purchase.

(3)(a) If the property disclosure document is delivered to the purchaser after the purchaser makes an offer, the purchaser may terminate any resulting real estate contract or withdraw the offer no later than seventy-two hours, excluding federal and state holidays and weekends, after receipt of the property disclosure document. Notwithstanding any other agreement between the purchaser and seller, if the purchaser terminates a real estate contract or withdraws an offer in accordance with this Chapter, the termination or withdrawal of offer is without penalty to the purchaser and any deposit or earnest money shall be promptly returned to the purchaser.

(b) Any rights of the purchaser to terminate the real estate contract provided by this Chapter are waived if not exercised prior to transfer of title or occupancy, whichever is earlier, by the purchaser in the case of a sale or exchange, or prior to the transfer of title in the case of a purchase pursuant to a lease with option to purchase.

(c) A transfer subject to this Chapter is not invalidated solely due to the failure of any person to comply with this Chapter.

(d) The provisions of this Chapter shall not affect any other rights of a purchaser to terminate a real estate contract for reasons other than those set forth in this Chapter.

C. If information disclosed in accordance with this Chapter becomes inaccurate as a result of any action, occurrence, or agreement after delivery of the property disclosure document, the resulting inaccuracy does not constitute a violation of this Chapter.

D.(1) A property disclosure document shall not be considered as a warranty by the seller. The information contained within the property disclosure document is for disclosure purposes only and is not intended to be a part of any contract between the purchaser and seller.

(2) The property disclosure document may not be used as a substitute for any inspections or warranties that the purchaser or seller may obtain. Nothing in this Chapter precludes the rights or duties of a purchaser to inspect the physical condition of the property.

E. A seller shall not be liable for any error, inaccuracy, or omission of any information required to be delivered to the purchaser in a property disclosure document if either of the following conditions exists:

(1) The error, inaccuracy, or omission was not a willful misrepresentation according to the best of the seller's information, knowledge, and belief.

(2) The error, inaccuracy, or omission was based on information provided by a public body or by another person with a professional license or special knowledge who provided a written or oral report or opinion that the seller reasonably believed to be correct and which was transmitted by the seller to the purchaser.

§3198. Duty of real estate licensees; liability

A. A real estate licensee representing a seller of residential real property shall inform the seller of the duties and rights under this Chapter. A real estate licensee representing a buyer of residential real property shall inform the buyer of the duties and rights under this Chapter.

B. A person representing a seller in the transaction is not liable under this Chapter for any error, inaccuracy, or omission in a property disclosure document, unless the person has actual knowledge of the error, inaccuracy, or omission by the seller.

§3199. Other statutory disclosure obligations

This Chapter shall not limit or modify any obligation between buyers and sellers created by any other statute or that may exist in law.

Section 2. R.S. 37:1455(A)(33) is hereby enacted to read as follows:

§1455. Causes for censure, suspension, or revocation of license, registration, or certification

A. The commission may censure a licensee, registrant, or certificate holder or conditionally or unconditionally suspend or revoke any license, registration, or certificate issued under this Chapter, levy

finer or impose civil penalties not to exceed five thousand dollars, or impose continuing education requirements on licensees, registrants, or certificate holders if, in the opinion of the commission, a licensee, registrant, or certificate holder is performing or attempting to perform or has performed or has attempted to perform any of the following acts:

\* \* \*

(33) Failure by a licensee to provide a buyer or seller with a written property disclosure form for sales and certain leases involving residential real property pursuant to R.S. 9:3195 et seq.

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Section 3. This Act shall become effective upon signature of the governor or, if not signed by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_