

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 1621

By: Bryant (John), Roach and
Satterfield of the House

and

Williams (Don) of the
Senate

(Professions and occupations - Residential Property
Condition Disclosure Act - codification -
effective date)

AUTHORS: Add the following Senate Coauthors: Hooper, Leftwich,
Price, Mickle and Helton

AUTHOR: Add the following House Coauthor: Holt

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
entire bill and insert

An Act relating to property; providing short title;
defining terms; requiring seller of residential
real property to deliver disclaimer or disclosure
statement to purchaser; specifying contents of
statements; requiring disclosure statement include
certain notices; specifying time period for
completing statements; requiring Oklahoma Real
Estate Commission develop and amend forms by rule
and make forms available to certain persons;
requiring statements be delivered prior to
acceptance of offer; requiring certain actions if
statements are provided or defects become known
after offer is accepted; requiring certain written
acknowledgment; providing immunity from liability

for stated defects and inaccurate information under certain conditions; allowing certain information to satisfy requirements of disclosure; stating duties of real estate licensee; providing for disciplinary action against certain real estate licensees; limiting recovery in civil action to certain events; limiting remedy; stating statute of limitation; providing for certain costs and fees; limiting effect of noncompliance; stating application of act and exempting certain transfers; construing act; stating standard for notices and acknowledgments; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 831 of Title 60, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Residential Property Condition Disclosure Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 832 of Title 60, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Offer to purchase" means an offer to purchase property made by a purchaser pursuant to a written contract;

2. "Seller" means one or more persons who are attempting to transfer a possessory interest in property and who are either:

a. represented by a real estate licensee; or

b. not represented by a real estate licensee but receive a written request from the purchaser to deliver or cause to be delivered a disclaimer statement or disclosure statement as such terms are defined in paragraphs 11 and 12 of this section;

3. "Purchaser" means one or more persons who are attempting to acquire a possessory interest in property;

4. "Real estate licensee" means a person licensed under the Oklahoma Real Estate License Code;

5. "Transfer" means a sale or conveyance, exchange or option to purchase by written instrument of a possessory interest in property for consideration;

6. "Person" means an individual, corporation, limited liability company, partnership, association, trust or other legal entity or any combination thereof;

7. "Contract" means a real estate purchase contract for the sale, conveyance or exchange of property, option to purchase property, or a lease with an option to purchase property;

8. "Property" means residential real property improved with not less than one nor more than two dwelling units;

9. "Defect" means a condition, malfunction or problem that would have a materially adverse effect on the monetary value of the property, or that would impair the health or safety of future occupants of the property;

10. "Disclosure" means a written declaration required by this act based on actual knowledge of the seller regarding certain physical conditions of the property. A disclosure for purposes of this act is not a warranty, implied or express, of any kind;

11. "Disclaimer statement" means the statement described in paragraph 1 of subsection A of Section 3 of this act; and

12. "Disclosure statement" means the statement described in paragraph 2 of subsection A of Section 3 of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 833 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A seller of property located in this state shall deliver, or cause to be delivered, to the purchaser of such property one of the following:

1. A written property disclaimer statement on a form established by rule by the Oklahoma Real Estate Commission which states that the seller:

- a. has never occupied the property and makes no disclosures concerning the condition of the property, and
- b. has no actual knowledge of any defect; or

2. A written property condition disclosure statement on a form established by rule by the Oklahoma Real Estate Commission which shall include the information set forth in subsection B of this section.

B. 1. The disclosure statement shall include an identification of items and improvements which are included in the sale of the property and whether such items or improvements are in normal working order. The disclosures required shall also include a statement of whether the seller has actual knowledge of defects or information in relation to the following:

- a. water and sewer systems, including the source of household water, water treatment systems, sprinkler systems, occurrence of water in the heating and air conditioning ducts, water seepage or leakage, drainage or grading problems and flood zone status,
- b. structural systems, including the roof, walls, floors, foundation and any basement,
- c. plumbing, electrical, heating and air conditioning systems,

- d. infestation or damage of wood-destroying organisms,
- e. major fire or tornado damage,
- f. land use matters,
- g. existence of hazardous or regulated materials and other conditions having an environmental impact,
- h. any other defects known to the seller, and
- i. other matters the Oklahoma Real Estate Commission deems appropriate.

2. The disclosure statement shall include the following notices to the purchaser in bold and conspicuous type:

- a. "The information and statements contained in this disclosure statement are declarations and representations of the seller and are not the representations of the real estate licensee.",
- b. "The information contained in this disclosure statement is not intended to be a part of any contract between the purchaser and the seller.", and
- c. "The declarations and information contained in this disclosure statement are not warranties, express or implied of any kind, and are not a substitute for any inspections or warranties the purchaser may wish to obtain."

C. Either the disclaimer statement or the disclosure statement required by this section must be completed, signed and dated by the seller. The date of completion on either statement may not be more than one hundred eighty (180) days prior to the date of receipt of the statement by the purchaser.

D. The Oklahoma Real Estate Commission shall develop by rule the forms for the residential property condition disclaimer and the residential property condition disclosure statement. After development of the initial forms, the Oklahoma Real Estate

Commission may amend by rule the forms as is necessary and appropriate.

Such forms shall be made available upon request irrespective of whether the person requesting a disclaimer or disclosure form is represented by a real estate licensee.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 834 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A seller should deliver either the disclaimer statement or disclosure statement to the purchaser as soon as practicable, but in any event it shall be delivered before acceptance of an offer to purchase.

B. If the disclaimer statement or disclosure statement is delivered to the purchaser after an offer to purchase has been made, the offer to purchase shall be accepted only after the purchaser has acknowledged receipt of the disclaimer statement or disclosure statement and confirmed the offer to purchase.

C. If the seller becomes aware of a defect after delivery to the purchaser of either a disclaimer statement or a disclosure statement, then the seller shall promptly deliver to the purchaser either a disclosure statement or an amended disclosure statement which discloses the newly discovered defect. The disclosure statement or any amendment shall be in writing and shall be signed and dated by the seller. However, if the required document is delivered to the purchaser after an offer to purchase has been made, the offer to purchase shall be accepted only after the purchaser has acknowledged receipt of the required document and confirmed the offer to purchase.

D. The purchaser shall acknowledge in writing receipt of the disclaimer statement or the disclosure statement and any amendment to the disclosure statement. The purchaser shall sign and date any acknowledgment. Such acknowledgment should accompany the offer to

purchase the property. If the purchaser confirms the offer to purchase, such confirmation shall be in writing, shall be signed and dated by the purchaser and shall be promptly delivered to the seller.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 835 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The seller shall not be liable for a defect or other condition in the property if the existence of the defect or other condition in the property was disclosed in the disclosure statement or any amendment delivered to the purchaser before acceptance of the offer to purchase.

B. The seller shall not be liable for any erroneous, inaccurate or omitted information supplied to the purchaser as a disclosure required by this act if:

1. The error, inaccuracy or omission results from an approximation of information by the seller, provided:

- a. accurate information was unknown to the seller at the time the disclosure was made,
- b. the approximation was clearly identified as such and was reasonable and based on the best information available to the seller, and
- c. the approximation was not used to circumvent the disclosure requirements of this act;

2. The error, inaccuracy or omission was not within the actual knowledge of the seller; or

3. The disclosure was based on information provided by public agencies and the seller reasonably believed the information to be correct.

C. The delivery by a public agency of any information required to be disclosed by the seller of the property shall satisfy the

requirements of this act as to the disclosures to which the information being furnished is applicable.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 836 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A real estate licensee representing a seller has the duty to obtain from the seller a disclaimer statement or a disclosure statement and any amendment required by this act and to make such statement available to potential purchasers prior to acceptance of an offer to purchase.

B. A real estate licensee representing or assisting a purchaser has the duty to obtain and make available to the purchaser a disclaimer statement or a disclosure statement and any amendment required by this act prior to the acceptance of an offer to purchase.

C. A real estate licensee has the duty to disclose to the purchaser any defects in the property actually known to the licensee which are not included in the disclosure statement or any amendment.

D. A real estate licensee who has complied with the requirements of subsections A, B and C of this section, as applicable, shall have no further duties to the seller or the purchaser regarding any disclosures required under this act.

A real estate licensee who has not complied with the requirements of subsections A, B and C of this section shall be subject to disciplinary action by the Oklahoma Real Estate Commission as set forth in paragraph 6 of Section 858-208 of Title 59 of the Oklahoma Statutes.

E. A real estate licensee has no duty to the seller or the purchaser to conduct an independent inspection of the property and has no duty to independently verify the accuracy or completeness of any statement made by the seller in the disclaimer statement or the disclosure statement and any amendment.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 837 of Title 60, unless there is created a duplication in numbering, reads as follows:

The purchaser may recover in a civil action only in the event of any of the following:

1. The failure of the seller to provide to the purchaser a disclaimer statement or a disclosure statement and any amendment prior to acceptance of an offer to purchase;

2. The failure of the seller to disclose in the disclosure statement or any amendment provided to the purchaser a defect which was actually known to the seller prior to acceptance of an offer to purchase; or

3. The failure of the real estate licensee to disclose to the purchaser any defects in the property actually known to the real estate licensee prior to acceptance of an offer to purchase and which were not included in the disclosure statement or any amendment provided to the purchaser.

B. The sole and exclusive civil remedy for a failure under subsection A of this section by the seller or the real estate licensee shall be an action for actual damages, including the cost of repairing the defect, suffered by the purchaser as a result of a defect existing in the property as of the date of acceptance by the seller of an offer to purchase and shall not include the remedy of exemplary damages.

C. Any action brought under this act shall be commenced within two (2) years after the date of transfer of real property subject to this act.

D. In any civil action brought under this act, the prevailing party shall be allowed court costs and a reasonable attorney fee to be set by the court and to be collected as costs.

E. A transfer of a possessory interest in property subject to this act may not be invalidated solely because of the failure of any person to comply with this act.

F. This act applies to, regulates and determines rights, duties, obligations and remedies of the seller, the real estate licensee and the purchaser with respect to disclosure of defects in property.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 838 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. This act does not apply to:

1. Transfers pursuant to court order, including, but not limited to, transfers pursuant to a writ of execution, transfers by eminent domain and transfers pursuant to an order for partition;

2. Transfers to a mortgagee by a mortgagor or successor in interest who is in default, transfers by any foreclosure sale after default in an obligation secured by a mortgage, transfers by a mortgagee's sale under a power of sale after default in an obligation secured by any instrument containing a power of sale, or transfers by a mortgagee who has acquired the real property at a sale conducted pursuant to a power of sale or a sale pursuant to a decree of foreclosure or has acquired the real property by deed in lieu of foreclosure;

3. Transfers by a fiduciary who is not an owner occupant of the subject property in the course of the administration of a decedent's estate, guardianship, conservatorship or trust;

4. Transfers from one co-owner to one or more other co-owners;

5. Transfers made to a spouse, or to the person or persons in the lineal line of consanguinity of one or more of the owners;

6. Transfers between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to such a decree;

7. Transfers made pursuant to mergers and from a subsidiary to a parent or the reverse;

8. Transfers or exchanges to or from any governmental entity;
or

9. Transfers of a newly constructed, previously unoccupied dwelling.

B. Nothing in this act shall be construed to alter or change the requirements of Section 858-513 of Title 59 of the Oklahoma Statutes, regarding psychologically impacted real estate.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 839 of Title 60, unless there is created a duplication in numbering, reads as follows:

Any notices or acknowledgments required under this act need not be sworn to, verified or acknowledged.

SECTION 10. This act shall become effective July 1, 1995."

Passed the Senate the 13th day of April, 1994.

President of the Senate

Passed the House of Representatives the ____ day of

_____, 1994.

Speaker of the House of Representatives