

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1621

By: Bryant (John) and Roach

COMMITTEE SUBSTITUTE

An Act relating to professions and occupations; enacting the Residential Property Condition Disclosure Act; providing short title; defining terms; requiring and specifying certain disclosure concerning real estate purchase contracts; requiring certain notices; requiring acknowledgment of certain disclosure; authorizing certain amendments to the property disclosure statement; requiring certain acknowledgments and confirmation to be in writing; prohibiting certain liability under certain circumstances; authorizing certain actions, remedies and costs associated with such actions and remedies; specifying certain duties of real estate licensees; providing certain exemptions; providing for nonuse of sworn statements, verification and acknowledgment; 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 858-735 of Title 59, 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 858-736 of Title 59, unless there is created a duplication in numbering, reads as follows:

1. "Owner" means one or more persons who are attempting to transfer a possessory interest in property;
2. "Purchaser" means one or more persons who acquire, attempt to acquire, or are solicited to acquire a possessory interest in property;
3. "Real estate licensee" means a person licensed under the Oklahoma Real Estate License Code;

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

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

6. "Real estate purchase contract" means a contract for the sale or exchange of property, option to purchase property, or a lease with an option to purchase property;

7. "Property" means improved residential real property consisting of not less than one nor more than four dwelling units;

8. "Property disclosure statement" means a written statement or form completed, signed and dated by the owner and which complies with paragraph 2 of Section 3 of this act;

9. "Defect" means a condition, malfunction or problem that would materially affect the value of the property;

10. "Disclosure" means a declaration based on actual knowledge by the owner regarding the condition of the property. A disclosure for purposes of this act is not a warranty, implied or express, of any kind; and

11. "Expert" means a person who provides a report or opinion as set forth in subsection C of Section 5 of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-737 of Title 59, unless there is created a duplication in numbering, reads as follows:

As soon as practicable, but in any event, no later than before an offer to purchase made pursuant to a real estate purchase contract is accepted by the owner, the owner of the property shall deliver, or cause to be delivered, to the purchaser of such property one of the following:

1. A written disclaimer that the owner:
 - a. has never occupied the property and makes no declarations or representations concerning the condition of the property, and
 - b. has no actual knowledge of any defect; or
2. A property disclosure statement which shall include:

- a. a statement whether the owner has ever occupied the property,
- b. identification of items and improvements contained in or on the property which are included in the sale, whether and when such items or improvements have been altered, repaired or replaced, and whether such items or improvements are in normal working order or an explanation of any defects in such items or improvements. The enumerated items and improvements shall include, but not be limited to the following:
 - (1) appliances: dishwasher, disposal, kitchen stove, range, oven, hood, warming oven, refrigerator, icemaker, trash compactor,
 - (2) water systems: public water supply, well, sewer, septic system, sprinkler system, water heater (type), sump pump, instant hot water tap, swimming pool and equipment (type), hot tub, spa, whirlpool tub, plumbing (type), water softener,
 - (3) electrical systems: ceiling fans, electric air purifier, garage door opener, garage door control, intercom, central vacuum, security system, smoke alarm,
 - (4) heat and air systems: fireplace (type), heating (type), humidifier, electronic air filter, air conditioning (type), attic fan, and
 - (5) other: doors, storm doors, shower enclosures or shower pan, windows (type), window screens, insulation (type), exterior walls, interior walls, ceilings, roof (age and type), basement or storm cellar, slabs, foundation slab, floors, driveways, sidewalks, walls/fences, detached garages, gas supply (type), gas grill, gas line, TV antennas, satellite systems,

- c. a statement by the owner explaining any and all other known defects,
- d. a statement whether the owner is aware of the following conditions applicable to the property, and an attendant explanation, if necessary: flood zone status, treatment by a wood-destroying organism control company, major fire/tornado damage, asbestos, radon gas, lead-based paint, underground storage tanks, landfill, legal proceedings pending, commonly shared features whose use or responsibility may have an effect on the property such as fences, walls, driveways and roads, structural alterations made without necessary permits, existence of substances, material or products which may be an environmental hazard, water in the heat and air ducts, water seepage, leakage, moisture, or dampness in any of the improvements on the property, drainage or grading problems, non-conforming uses, and whether any governmental agency or other person has issued or threatened to issue a notice concerning any of the foregoing conditions,
- e. a statement whether the owner is aware of:
 - (1) any encroachments by any improvements on the property onto easements, right-of-ways, common areas shared by others or "set-back" requirements,
 - (2) any encroachments onto the property from improvements located on adjacent land,
 - (3) any violation of zoning ordinances from the current use of the property,
 - (4) any violations of recorded restrictive covenants from the current use of the property, and
 - (5) any claims by third parties or notices from any governmental agency asserting any of the matters described in divisions (1) through (4) of this subparagraph,

- f. the following notices to the purchaser in bold and conspicuous type:
- (1) "Prior to acceptance of an offer to purchase improved residential real property pursuant to a real estate purchase contract, owner shall have provided purchaser with this written disclosure of defects of which owner has actual knowledge. The following are declarations and representations of the owner and are not the representations of the real estate licensee, if any",
 - (2) "This information is for disclosure only and is not intended to be a part of any contract between the purchaser and the owner", and
 - (3) "The disclosures contained herein are not warranties, implied or express, of any kind, and are not a substitute for any inspections or any special warranties the purchaser may wish to obtain",
- g. a statement signed and concurrently dated by the owner, which date shall be less than one hundred eighty (180) days prior to any offer to purchase the property, as follows: "The owner acknowledges that the information contained herein is true and accurate for those items and improvements on the property listed as of the date signed below. These disclosures are made pursuant to and in fulfillment of the requirements of the Oklahoma Residential Property Condition Disclosure Act",
- h. a statement signed and dated by the real estate licensee, if any, as follows: "As required by the Oklahoma Residential Property Condition Disclosure Act, the following information, if any, is a list of defects actually known by the undersigned real estate licensee regarding the physical condition of

the property which has not been disclosed herein by the owner", and

- i. if at the time the disclosures are required to be made, an item of information required to be disclosed is unknown or not available to the owner, the owner may state that the information is unknown or may use an approximation of the information, provided the approximation is clearly identified as such, is reasonable, is based on the best information available to the owner, and is not used for the purpose of circumventing or evading this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-738 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. If the property disclosure statement is delivered to the purchaser after an offer to purchase has been made pursuant to a real estate purchase contract, the property disclosure statement shall be delivered to the purchaser as soon as practical and the offer to purchase shall be accepted only after the purchaser has acknowledged receipt of the property disclosure statement and confirmed the offer to purchase.

B. If, before the acceptance of an offer to purchase made pursuant to a real estate purchase contract, the owner actually knows of a defect which is not disclosed on the property disclosure statement, then the owner shall promptly amend the property disclosure statement. Any such amendment shall be in writing, and shall be signed and dated by the owner. The required amendments shall be delivered to the purchaser as soon as practical and receipt thereof shall be acknowledged by the purchaser. However, if the required amendments are delivered after an offer to purchase pursuant to a real estate purchase contract has been made, the offer to purchase shall be accepted only after the purchaser has acknowledged receipt of the required amendments and confirmed the offer to purchase.

C. Any acknowledgment and any confirmation required by this section shall be in writing, signed and dated by the purchaser and shall be delivered to the owner as soon as practicable.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-739 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The owner 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 was not within the actual knowledge of the owner;

2. The disclosure was based on information provided by public agencies and the owner reasonably believed the information to be correct; or

3. The disclosure was based on information provided by other persons as described in subsections B and C of this section and the owner reasonably believed the information to be correct.

B. The delivery by a public agency of any information required to be disclosed by the owner of the property shall satisfy the requirements of this act as to the disclosures which the information being furnished is applicable.

C. The delivery by the owner of a report or opinion prepared by a licensed engineer, architect, land surveyor, geologist, wood-destroying organism control expert, contractor, environmental engineer or expert or other home inspection expert, dealing with matters within the scope of the professional's license or expertise, shall satisfy the requirements of subsection A of this section if the information is provided in response to an owner's request. In responding to such a request, an expert may indicate, in writing, an understanding that the information provided will be used to fulfill the requirements of this act and will be relied upon by the purchaser and, if so, shall indicate the required disclosures, or portions thereof, to which the information being furnished is applicable. Where such a statement is furnished, the expert shall not be responsible for any items of information, or

portions thereof, other than those expressly set forth in the statement.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-740 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A civil action may be filed under this act by the purchaser only in the event of any of the following:

1. The failure of the owner to provide to the purchaser a disclaimer or a property disclosure statement;

2. The failure of the owner to disclose in the property disclosure statement or amendments thereto provided to the purchaser a defect which was actually known to the owner on the date of acceptance of an offer to purchase pursuant to a real estate purchase contract;

3. The failure of the real estate licensee to disclose in the property disclosure statement or amendments thereto provided to the purchaser a defect which was actually known to the real estate licensee on the date of acceptance of an offer to purchase pursuant to a real estate purchase contract; or

4. The failure of the expert to disclose a defect which was actually known to the expert on the date of the report or opinion relied upon by the purchaser.

B. The sole and exclusive civil remedy for a failure under subsection A of this section by the owner, the real estate licensee or the expert shall be an action for actual damages suffered by the purchaser as a result of a defect existing in the property as of the date of acceptance by the owner of an offer to purchase pursuant to a real estate purchase contract for any failure under paragraphs 1, 2 and 3 of subsection A of this section, and on the date of signing the report or opinion for any failure under paragraph 4 of subsection A of this section 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 taxed and 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.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-741 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A real estate licensee representing an owner has the duty to obtain from the owner the property disclosure statement required by this act and to make such statement available to potential purchasers.

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

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

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

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-742 of Title 59, unless there is created a duplication in numbering, reads as follows:

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 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.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-743 of Title 59, 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, 1994.

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