

1 ENGROSSED HOUSE
2 BILL NO. 2977

By: Olsen of the House

and

Allen of the Senate

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7 An Act relating to property; enacting the Oklahoma
8 Road Maintenance Duty Disclosure and Release Act;
9 defining terms; requiring seller of real property to
10 deliver disclosure of duty to maintain roads
11 statement to purchaser in certain circumstances;
12 specifying content of disclosure of duty to maintain
13 roads statement; specifying time period for
14 completing disclosure of duty to maintain roads
15 statement; requiring disclosure of duty to maintain
16 roads statement be delivered and a release of
17 liability form to be completed prior to acceptance of
18 offer; requiring Oklahoma Real Estate Commission to
19 develop and amend forms and make forms available to
20 certain persons; requiring certain written
21 acknowledgment and release to accept offer to
22 purchase; providing immunity from liability for
23 stated duty of road maintenance and inaccurate
24 information under certain conditions; allowing
certain information to satisfy requirements of
disclosure; 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 disclosures and
acknowledgments; providing for codification; and
providing an effective date.

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

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1110 of Title 60, unless there
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Oklahoma Road
5 Maintenance Duty Disclosure and Release Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1111 of Title 60, unless there
8 is created a duplication in numbering, reads as follows:

9 As used in this act:

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

13 2. "Disclosure" means a written declaration, based on actual
14 knowledge of the seller, regarding a duty held by the property owner
15 to maintain roads. A disclosure for purposes of this act is not a
16 warranty, implied or expressed, of any kind;

17 3. "Disclosure of duty to maintain roads statement" means the
18 statement described in subsection A of Section 3 of this act;

19 4. "Offer to purchase" means an offer to purchase real property
20 made by a purchaser pursuant to a written contract;

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

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1 6. "Property" means any type of real property, whether it is
2 agricultural, commercial or residential;

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

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

7 9. "Release of liability form" means the form described in
8 subsection B of Section 3 of this act;

9 10. "Seller" means one or more persons who are attempting to
10 transfer a possessory interest in real property and who may or may
11 not be represented by a real estate licensee; and

12 11. "Transfer" means a sale, conveyance, exchange or option to
13 purchase a possessory interest in real property by written
14 instrument in exchange for consideration.

15 SECTION 3. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1112 of Title 60, unless there
17 is created a duplication in numbering, reads as follows:

18 A. A seller of property located in this state shall deliver, or
19 cause to be delivered, to the purchaser of such property a
20 disclosure of duty to maintain roads statement if, and only if, the
21 property being sold borders public roads that are not maintained by
22 a municipality, county, county commissioner, or the state but is
23 instead the duty of the property owner to maintain. A disclosure of
24 duty to maintain roads statement shall be in writing and shall give

1 the street name as well as a description of the location and
2 boundaries of the portion of the roads that the property owner must
3 maintain.

4 The disclosure of duty to maintain roads statement required by
5 this section must be completed, signed and dated by the seller. The
6 date of completion on the disclosure of duty to maintain roads
7 statement may not be more than one hundred eighty (180) days prior
8 to the date of receipt of the disclosure of duty to maintain roads
9 statement by the purchaser.

10 B. After receiving a disclosure of duty to maintain roads
11 statement, a purchaser may, if they wish to continue with the
12 purchase of the real property, complete a release of liability form
13 by signing, dating and returning the form to the seller. By
14 completing and returning a release of liability form, the purchaser
15 acknowledges and accepts the duty of maintaining the roads for the
16 property as disclosed by the disclosure of duty to maintain roads
17 statement, waiving any rights to hold the seller liable for any road
18 maintenance or repair.

19 C. The Oklahoma Real Estate Commission shall develop by rule
20 the forms for the disclosure of duty to maintain roads statement and
21 release of liability form. After development of the initial forms,
22 the Oklahoma Real Estate Commission may amend the forms as is
23 necessary and appropriate.

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1 Such forms shall be made available upon request irrespective of
2 whether the person requesting a disclosure of duty to maintain roads
3 statement or release of liability form is represented by a real
4 estate licensee.

5 SECTION 4. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1113 of Title 60, unless there
7 is created a duplication in numbering, reads as follows:

8 A. A seller, when required by this act, should deliver the
9 disclosure of duty to maintain roads statement and a release of
10 liability form to the purchaser as soon as practicable, but in any
11 event it shall be delivered before acceptance of an offer to
12 purchase.

13 B. If the disclosure of duty to maintain roads statement is
14 delivered to the purchaser after an offer to purchase has been made,
15 the offer to purchase shall be accepted only after the purchaser has
16 acknowledged receipt of the disclosure of duty to maintain roads
17 statement and confirmed the offer to purchase by returning to the
18 seller the release of liability form.

19 C. The purchaser shall acknowledge in writing receipt of the
20 disclosure of duty to maintain roads statement and any amendments to
21 the disclosure of duty to maintain roads statement. The purchaser
22 shall sign and date any acknowledgment and subsequent release of
23 liability form. Such acknowledgment and release of liability form
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1 should accompany the offer to purchase the property and shall be
2 promptly delivered to the seller.

3 SECTION 5. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1114 of Title 60, unless there
5 is created a duplication in numbering, reads as follows:

6 A. The seller shall not be liable for needed road maintenance
7 if the existence of the duty to maintain the roads was disclosed in
8 the disclosure of duty to maintain roads statement delivered to the
9 purchaser before acceptance of the offer to purchase.

10 B. The seller shall not be liable for any erroneous, inaccurate
11 or omitted information supplied to the purchaser in the disclosure
12 of duty to maintain roads statement, as required by this act, if:

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

15 a. accurate information was unknown to the seller at the
16 time the disclosure was made,

17 b. the approximation was clearly identified as such and
18 was reasonable and based on the best information
19 available to the seller, and

20 c. the approximation was not used to circumvent the
21 disclosure requirements of this act;

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

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

4 C. The delivery by a public agency of information concerning
5 the duty of road maintenance as required to be disclosed by the
6 seller of the property shall satisfy the requirements of this act.

7 SECTION 6. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1115 of Title 60, unless there
9 is created a duplication in numbering, reads as follows:

10 A. The purchaser may recover in a civil action only in the
11 event of the seller failing to provide the purchaser with a
12 disclosure of duty to maintain roads statement prior to acceptance
13 of an offer to purchase if, and only if, the seller was required to
14 do so by this act and the duty to maintain the roads was actually
15 known to the seller prior to the acceptance of an offer to purchase.

16 B. The sole and exclusive civil remedy at common law or
17 otherwise for a failure under subsection A of this section by the
18 seller or the real estate licensee shall be actual damages,
19 including the cost of repairing or maintaining the roads, suffered
20 by the purchaser as a result of needed road maintenance existing as
21 of the date of acceptance by the seller of an offer to purchase and
22 shall not include the remedy of exemplary damages.

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

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

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

10 F. This act applies to, regulates and determines rights,
11 duties, obligations and remedies at common law or otherwise of the
12 seller, the real estate licensee and the purchaser with respect to
13 disclosure of duty of road maintenance and supplants and abrogates
14 all common law liability, rights, duties, obligations and remedies
15 therefor.

16 SECTION 7. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1116 of Title 60, unless there
18 is created a duplication in numbering, reads as follows:

19 This act does not apply to:

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

23 2. Transfers to a mortgagee by a mortgagor or successor in
24 interest who is in default, transfers by any foreclosure sale after

1 default in an obligation secured by a mortgage, transfers by a
2 mortgagee's sale under a power of sale after default in an
3 obligation secured by any instrument containing a power of sale, or
4 transfers by a mortgagee who has acquired the real property at a
5 sale conducted pursuant to a power of sale or a sale pursuant to a
6 decree of foreclosure or has acquired the real property by deed in
7 lieu of foreclosure;

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

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

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

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

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

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

20 SECTION 8. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1117 of Title 60, unless there
22 is created a duplication in numbering, reads as follows:

23 Disclosures required under this act need not be sworn to,
24 verified or acknowledged.

