

HOUSE BILL REPORT

SHB 1420

As Passed Legislature

Title: An act relating to real estate seller disclosure.

Brief Description: Revising real estate seller disclosure requirements.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Condotta, Maxwell, Williams, Chandler, Wood, Hinkle and Kelley).

Brief History:

Committee Activity:

Commerce & Labor: 1/30/09, 2/6/09 [DPS].

Floor Activity:

Passed House: 3/3/09, 97-0.

Senate Amended.

Passed Senate: 4/15/09, 48-0.

House Refuses to Concur.

Senate Amended.

Passed Senate: 4/22/09, 49-0.

House Concurred.

Passed House: 4/24/09, 58-36.

Passed Legislature.

Brief Summary of Substitute Bill

- Modifies the definition of "unimproved residential real property" to exclude timber land.
- Modifies several questions on the seller's disclosure statements for unimproved residential real property and improved residential real property.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.
Signed by 8 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Crouse, Green, Moeller and Williams.

Staff: Alison Hellberg (786-7152)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

A seller of residential land must provide a buyer with a disclosure statement about the land unless the buyer waives the right to receive it. The disclosure requirement applies to sales of unimproved residential land and improved residential land.

The disclosure forms are specified in statute. The disclosure for unimproved residential land concerns title, water, sewer/septic systems, electrical/gas, flooding, soil stability, environmental, and homeowners' association/common interests. The disclosure for improved residential land concerns title, water, sewer/on-site sewage system, structural, systems and fixtures, homeowners' association/common interests, environmental, and manufactured and mobile homes.

The disclosure statement must be provided within five business days, or as otherwise agreed to, after mutual acceptance of a written purchase agreement between a buyer and a seller. Within three business days of receiving the disclosure statement, the buyer has the right to approve and accept the statement or rescind the agreement for purchase. If the seller fails to provide the statement, the buyer may rescind the transaction until the transfer has closed. If the disclosure statement is delivered late, the buyer's right to rescind expires three days after receipt of the statement.

Transfer to a buyer who expressly waives receipt of the disclosure statement are excluded. However, if the answer to any of the questions in the "Environmental" section would be "yes," the buyer may not waive receipt of that section.

Summary of Substitute Bill:

The definition of "unimproved residential real property" is modified to exclude timber land. A seller must amend the disclosure statement if the seller learns from a source other than the buyer of additional information or an adverse change that makes the disclosure inaccurate.

An exemption to the seller disclosure requirements is added for transfers to a buyer who intends to acquire the property primarily for agricultural, commercial, investment, subdivision, or other business purposes.

Unimproved Residential Real Property Disclosure Statement.

Several questions to the disclosure statement are modified in the title, flooding, soil stability, and environmental sections.

Title.

- The question regarding rights-of-way, easements, or access limitations is modified to ask whether they affect the buyer's use of the property rather than "may" affect the buyer's use of the property.
- The question relating to zoning violations, nonconforming uses, or any unusual restrictions on the property is modified to ask whether they affect future construction or remodeling rather than "would" affect future construction or remodeling.
- Rather than asking whether there are any covenants, conditions, or restrictions which affect the property, it asks whether there are any recorded against the title.

Flooding, Soil Stability, and Environmental.

- Questions related to flooding, standing water, or drainage problems and fill dirt, waste, or other fill material are moved to the "Environmental" section.
- The question related to transmission poles is changed to ask whether there are transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property.
- The question related to radio towers is modified to ask for information about those that cause interference with cellular telephone reception.

Improved Residential Real Property Disclosure Statement.

Several questions to the disclosure statement are modified in the title, water, structural, systems and fixtures, and environmental sections.

Title, Water, Structural, Systems and Fixtures.

- Rather than asking whether there are any covenants, conditions, or restrictions which affect the property, it asks whether there are any recorded against the title.

Water.

- A question is added about defects in the operation of the water system.

Structural.

- Rather than asking whether the roof has ever leaked, it asks whether the roof has leaked within the last five years.

Systems and Fixtures.

- A question is added about whether the property has a wood stove, fireplace insert, pellet stove, or fireplace and whether the wood stove or fireplace inserts are certified as clean burning appliances to improve air quality and public health by the United States Environmental Protection Agency.

Environmental.

- A question is modified to ask whether there is any flooding, standing water, or drainage problems on the property affecting access to the property.
- A question is modified to ask about dirt, waste, or other fill material on the property.
- Rather than asking whether there are substances or materials on the property that may be environmental concerns, it asks whether there are any present that violate any applicable environmental law.
- The question related to transmission poles is changed to ask whether there are transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property.
- The question related to radio towers is modified to ask for information about those that cause interference with cellular telephone reception.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The real estate industry has been working on this issue for several years. A few years ago the Legislature passed a bill requiring use of a seller disclosure form for unimproved residential land. The definition tends to include lots of property that is intended for commercial use and that has led to unintended consequences and increased risk. The form is really meant to be used in the residential context. It is important that “commercial real estate” be excluded from the definition. This coincides with industry, buyer, and seller expectations.

Because of realtors' positions, they have a unique eye to the difficulties of these transactions. There are several questions that sellers and buyers have identified as ambiguous. This is an opportunity to clean up the form. The issues related to the form are really between the buyer and seller – not realtors. The term “substantially adversely” from the real estate brokerage relationship has been added for clarity. Sometimes, for example, easements benefit the property. The issue for the buyer is whether there are negative issues related to any easement.

Some technical amendments may be necessary, particularly related to the questions about utility poles and related to standing water.

(In support with amendment) A clarifying amendment is requested on the wood burning appliance question to remove the word "manufactured" and just use fireplace.

(Neutral) The wood burning device question is a good addition to the form. There are some concerns with the standing water and flooding questions. Governments maps may be inaccurate at times and miss localized flooding. The question should be amended to address that.

(Opposed) None.

Persons Testifying: (In support) Bob Mitchell and Annette Fitzsimmons, Washington Realtors; and Chris Osborn, Northwest Multiple Listing Service.

(In support with amendment) Carolyn Logue, Northwest Hearth, Patio and Barbecue Association; and Gary Smith, Independent Business Association of Washington.

(Neutral) Tom Clingman, Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.