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**Commerce & Labor Committee**

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**HB 1420**

**Brief Description:** Revising real estate seller disclosure requirements.

**Sponsors:** Representatives Conway, Condotta, Maxwell, Williams, Chandler, Wood, Hinkle and Kelley.

**Brief Summary of Bill**

- Modifies the definition of "unimproved residential real property" to mean unimproved property with a maximum permitted development of one to four residential units or structures and does not include commercial real estate or timber land.
- Adds an exemption from the seller disclosure requirements for transfers to a buyer who intends to acquire property primarily for agricultural, commercial, investment, development, or other business purposes.
- Modifies several questions on the seller's disclosure statements for unimproved residential real property and improved residential real property.

**Hearing Date:** 1/30/09

**Staff:** Alison Hellberg (786-7152)

**Background:**

***Required Seller Disclosures for Transfers of Residential Real Property***

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. "Unimproved residential real property" is defined as property zoned for residential use that is not improved by residential dwelling units, a residential condominium, a residential timeshare, or a mobile or manufactured home.

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*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.*

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.

Certain transfers of residential real property are excluded from these requirements, including a:

- foreclosure or deed-in-lieu of foreclosure;
- gift or other transfer to a parent, spouse, domestic partner, or child of a transferor or child of any parent, spouse, or domestic partner of a transferor;
- transfer between spouses or between domestic partners in connection with a marital dissolution or dissolution of a state registered domestic partnership;
- transfer where a buyer had an ownership interest in the property within two years of the date of the transfer including, but not limited to, an ownership interest as a partner in a partnership, a limited partner in a limited partnership, a shareholder in a corporation, a leasehold interest, or transfers to and from a facilitator pursuant to a tax deferred exchange;
- transfer of an interest that is less than fee simple, except that the transfer of a vendee's interest under a real estate contract is subject to the requirements of this chapter;
- transfer made by the personal representative of the estate of the decedent or by a trustee in bankruptcy; and
- transfer in which the buyer has expressly waived the receipt of the seller disclosure statement. However, if the answer to any of the questions in the section entitled "Environmental" would be "yes," the buyer may not waive the receipt of the "Environmental" section of the seller disclosure statement.

The seller and any licensed real estate salesperson or broker is not liable for error, inaccuracy, or omission in the disclosure statement if the seller or real estate salesperson or broker had no actual knowledge of the error, inaccuracy, or omission. The Consumer Protection Act does not apply to violations, but a right of action is preserved against the seller or against any agent acting for the seller under common law, statute, or contract.

### ***Real Estate Brokerage Relationships***

A real estate licensee has a duty to disclose all existing material facts known by the licensee and not apparent or readily ascertainable to all parties to whom the licensee renders real estate brokerage services. "Material fact" means information that substantially adversely affects the value of the property or a party's ability to perform its obligations in a real estate transaction, or operates to materially impair or defeat the purpose of the transaction.

## **Summary of Bill:**

The definition of "unimproved residential real property" is modified to mean unimproved property for which the maximum permitted development is one to four residential units or structures under the county or city ordinances or comprehensive plans applicable to that real estate and does not include commercial real estate or timber land.

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, development, or other business purposes.

### ***Unimproved Residential Real Property Disclosure Statement***

In addition to technical edits and clarifications, several questions to the disclosure statement are modified in the sections that concern title, flooding, soil stability, environmental, and full disclosure by sellers.

#### Title

- The question regarding rights-of-way, easements, or access limitations is modified to ask whether they "substantially adversely" 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 "substantially adversely" 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

- The question asking whether there are any flooding, standing water, or drainage problems on the property or affecting access to the property is moved to the Environmental section and the question is modified to problems "substantially adversely" affecting access to the property.
- The question asking whether any part of the property contains fill dirt, waste, or other fill material is moved to the Environmental Section.
- 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 radio towers is modified to ask for information about those that cause interference with cellular telephone reception.

#### Full Disclosure by Sellers

- Rather than asking whether there any other material defects "affecting" the property that a prospective buyer should know about, it asks whether the defects "substantially adversely" affect the property.

### ***Improved Residential Real Property Disclosure Statement***

In addition to technical edits and clarifications, several questions to the disclosure statement are modified in the sections that concern title, water, structural, systems and fixtures, environmental, and full disclosure by sellers.

#### Title

- The question regarding rights-of-way, easements, or access limitations is modified to ask whether they "substantially adversely" 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 "substantially adversely" 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.

#### Water

- On the question related to water right permits, certificates, or claims, a question is added regarding whether the water withdrawn from the water source is less than 5,000 gallons a day.
- 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 leaks.

#### Systems and Fixtures

- A question is added about whether the property has a wood stove, fireplace insert, pellet stove, or manufactured fireplace and whether the wood burning appliances are certified 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 or "substantially adversely" 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.

#### Full Disclosure by Sellers

- Rather than asking whether there are any other material defects "affecting" the property that a prospective buyer should know about, it asks whether the defects "substantially adversely" affect the property.

**Rules Authority:** The bill does not address the rule-making powers of an agency.

**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.