

REAL ESTATE DISCLOSURES

Advisory committee on issues relating to electronic filing, recording, and indexing of instruments affecting real property and electronic use of real property disclosures; report filed January 2001; recommendations for county "PIN" system, survey of existing system, and pilot project; 2000 Acts, ch 1189, §27

558A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Broker"* means a real estate broker licensed pursuant to chapter 543B.
2. *"Commission"* means the real estate commission created pursuant to section 543B.8.
3. *"Salesperson"* means a salesperson licensed pursuant to chapter 543B.
4. *"Transfer"* means the transfer or conveyance by sale, exchange, real estate contract, or any other method by which real estate and improvements are purchased, if the property includes at least one but not more than four dwelling units. However, a transfer does not include any of the following:
 - a. A transfer made pursuant to a court order, including but not limited to a transfer under chapter 633, the execution of a judgment, the foreclosure of a real estate mortgage pursuant to chapter 654, the forfeiture of a real estate contract under chapter 656, a transfer by a trustee in bankruptcy, a transfer by eminent domain, or a transfer resulting from a decree for specific performance.
 - b. A transfer to a mortgagee by a mortgagor or successor in interest who is in default, or a transfer by a mortgagee who has acquired real property at a sale conducted pursuant to chapter 654, a transfer back to a mortgagor exercising a right of first refusal pursuant to section 654.16A, a nonjudicial voluntary foreclosure procedure under section 654.18 or chapter 655A, or a deed in lieu of foreclosure under section 654.19.
 - c. A transfer by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.
 - d. A transfer between joint tenants or tenants in common.
 - e. A transfer made to a spouse, or to a person in the lineal line of consanguinity of a person making the transfer.
 - f. A transfer between spouses resulting from a decree of dissolution of marriage, a decree of legal separation, or a property settlement agreement which is incidental to the decree, including a decree ordered pursuant to chapter 598.
 - g. A transfer to or from the state, a political subdivision of the state, another state, or the United States.
 - h. A transfer by quitclaim deed.
5. *"Transferee"* means a person who is acquiring real property as provided in an instrument containing the power to transfer real estate, including an instrument described in section 558.1.

6. "Transferor" means a person who is transferring real property as provided in an instrument containing the power to transfer real estate, including an instrument described in section 558.1.

93 Acts, ch 30, §3

558A.2 Procedures.

1. A person interested in transferring real property, or a broker or salesperson acting on behalf of the person, shall deliver a written disclosure statement to a person interested in being transferred the real property. The disclosure statement must be delivered prior to either the transferor making a written offer for the transfer of the real property, or accepting a written offer for the transfer of the real property.

2. The disclosure statement shall be made by personal delivery or by certified or registered mail to the transferee. The delivery may be made to the spouse of the transferee, unless otherwise provided by the parties. If the disclosure statement is not timely delivered, the transferee may withdraw the offer or revoke the acceptance without liability, within three days following personal delivery of the statement or five days following delivery by mail.

3. The disclosure statement may be filed with the county recorder with instruments affecting the transfer of real estate. However, the failure to file the statement shall not cause a defect in the title to the property.

93 Acts, ch 30, §4

558A.3 Good faith and amendments.

1. All information required by this section and rules adopted by the commission shall be disclosed in good faith. If at the time the disclosure is required to be made, information required to be disclosed is not known or available to the transferor, and a reasonable effort has been made to ascertain the information, an approximation of the information may be used. The information shall be identified as an approximation. The approximation shall be based on the best information available at the time.

2. A disclosure statement shall be amended, if information disclosed in the statement is or becomes inaccurate or misleading, or is supplemented. The amended statement shall be subject to the same procedures as the original disclosure statement as provided in this chapter. However, the statement is not required to be amended if either of the following applies:

a. The information disclosed in conformance with this chapter is subsequently rendered inaccurate as a result of an act, occurrence, or agreement subsequent to the delivery of the disclosure statement.

b. The information is based on information of a public agency, including the state, a political subdivision of the state, or the United States. The information shall be deemed to be accurate and complete, unless the transferor or the broker or salesperson has actual knowledge of an error, inaccuracy, or omission, or fails to exercise ordinary care in obtaining the information.

93 Acts, ch 30, §5

558A.4 Required information.

1. The disclosure statement shall include information relating to the condition and important characteristics of the property and structures located on the property, including significant defects in the structural integrity of the structure, as provided in rules which shall be adopted by the real estate commission pursuant to section 543B.9. The disclosure statement shall also include whether the property is located in a real estate improvement district and the amount of any special assessment against the property under chapter 358C. The

rules may require the disclosure to include information relating to the property's zoning classification; the condition of plumbing, heating, or electrical systems; or the presence of pests.

2. The disclosure statement may include a report or written opinion prepared by a person qualified to make judgment based on education or experience, as provided by rules adopted by the commission, including but not limited to a land surveyor licensed pursuant to chapter 542B, a geologist, a structural pest control operator licensed pursuant to section 206.6, or a building contractor. The report or opinion on a matter within the scope of the person's practice, profession, or expertise shall satisfy the requirements of this section or rules adopted by the commission regarding that matter required to be disclosed. If the report or opinion is in response to a request made for purposes of satisfying the disclosure statement, the report or opinion shall indicate which part of the disclosure statement the report or opinion satisfies.

3. A transferor subject to the requirements of section 558.70 shall recommend in writing that the transferee obtain an independent home inspection report to provide full and complete information as required to be disclosed under this section and under rules adopted by the real estate commission pursuant to section 543B.9.

A transferor subject to section 558.70 shall provide the real estate disclosure statement required by this chapter at least seven days before the real estate installment sales contract is executed by all parties to the contract.

93 Acts, ch 30, §6; 96 Acts, ch 1204, § 11; 2002 Acts, ch 1136, §4, 6

For applicability provisions pertaining to subsection 3, see 2002 Acts, ch 1136, §6

558A.5 Agency.

1. A person other than a broker or salesperson acting in the capacity of an agent in the transfer of real property shall not be deemed to be an agent of the transferor or transferee for purposes of this chapter, unless the person is granted powers of attorney or is empowered as an agent, as expressly provided in writing, and is subject to any other applicable requirements as provided by law.

2. A broker or salesperson representing the transferor shall deliver the disclosure statement to the transferee as required in section 558A.2, unless the transferor or transferee has instructed the broker or salesperson otherwise in writing.

93 Acts, ch 30, §7

558A.6 Liability under the chapter.

A person who violates this chapter shall be liable to a transferee for the amount of actual damages suffered by the transferee, but subject to the following limitations:

1. The transferor, or a broker or salesperson, shall not be liable under this chapter for the error, inaccuracy, or omission in information required in a disclosure statement, unless that person has actual knowledge of the inaccuracy, or fails to exercise ordinary care in obtaining the information.

2. The person submitting a report or opinion within the scope of the person's practice, profession, or expertise, as provided in section 558A.4, for purposes of satisfying the disclosure statement, shall not be liable under this chapter for any matter other than a matter within the person's practice, profession, or expertise, and which is required by the disclosure statement, unless the person failed to use care ordinary in the person's profession, practice, or area of expertise in preparing the information.

93 Acts, ch 30, §8

558A.7 Chapter is not limiting.

The duties imposed upon persons under this chapter or under rules adopted by the real estate commission shall not limit or abridge any duty, requirement, obligation, or liability for disclosure created by another provision of law, or under a contract between parties.

93 Acts, ch 30, §9

558A.8 Validity of a transfer.

A transfer under this chapter shall not be invalidated solely because of a failure of a person to comply with a provision of this chapter.

93 Acts, ch 30, §10