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*4-6-93 Senate - Comm. on  
4-7-93 Do Pass*

MAR 24 1993

HOUSE FILE 636  
BY COMMITTEE ON STATE GOVERNMENT

Place On Calendar

(SUCCESSOR TO HSB 258)

Passed House, <sup>(P.1059)</sup> Date 4-6-93 Passed Senate, <sup>(P.1113)</sup> Date 4-12-93  
Vote: Ayes 95 Nays 4 Vote: Ayes 46 Nays 0  
Approved April 20, 1993

**A BILL FOR**

1 An Act providing for a duty to disclose information prior to the  
2 transfer of certain real estate and providing effective dates.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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**HF 636**

1 Section 1. Section 543B.9, Code 1993, is amended to read  
2 as follows:

3 543B.9 RULES.

4 The real estate commission ~~is-empowered-to-promulgate~~ may  
5 adopt rules to carry out and administer the provisions of this  
6 chapter ~~consistent-therewith~~. Said The commission may carry  
7 on a program of education of real estate practices and matters  
8 relating ~~thereto~~ to real estate. The commission shall adopt  
9 rules necessary to carry out the provisions of chapter 558A  
10 relating to the disclosure of information before the transfer  
11 of real estate.

12 Sec. 2. NEW SECTION. 558A.1 DEFINITIONS.

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

15 1. "Broker" means a real estate broker licensed pursuant  
16 to chapter 543B.

17 2. "Commission" means the real estate commission created  
18 pursuant to section 543B.8.

19 3. "Salesperson" means a salesperson licensed pursuant to  
20 chapter 543B.

21 4. "Transfer" means the transfer or conveyance by sale,  
22 exchange, real estate contract, lease with option to purchase,  
23 or any other option to purchase or lease real property and  
24 improvements consisting of at least one but not more than four  
25 dwelling units. However, a transfer does not include any of  
26 the following:

27 a. A transfer made pursuant to a court order, including  
28 but not limited to a transfer under chapter 633, the execution  
29 of a judgment, the foreclosure of a real estate mortgage  
30 pursuant to chapter 654, the forfeiture of a real estate  
31 contract under chapter 656, a transfer by a trustee in  
32 bankruptcy, a transfer by eminent domain, or a transfer  
33 resulting from a decree for specific performance.

34 b. A transfer to a mortgagee by a mortgagor or successor  
35 in interest who is in default, or a transfer by a mortgagee

1 who has acquired real property at a sale conducted pursuant to  
2 chapter 654, a transfer back to a mortgagor exercising a right  
3 of first refusal pursuant to section 654.16A, a nonjudicial  
4 voluntary foreclosure procedure under section 654.18 or  
5 chapter 655A, or a deed in lieu of foreclosure under section  
6 654.19.

7 c. A transfer by a fiduciary in the course of the  
8 administration of a decedent's estate, guardianship,  
9 conservatorship, or trust.

10 d. A transfer between joint tenants or tenants in common.

11 e. A transfer made to a spouse, or to a person in the  
12 lineal line of consanguinity of a person making the transfer.

13 f. A transfer between spouses resulting from a decree of  
14 dissolution of marriage, a decree of legal separation, or a  
15 property settlement agreement which is incidental to the  
16 decree, including a decree ordered pursuant to chapter 598.

17 g. A transfer to or from the state, a political  
18 subdivision of the state, another state, or the United States.

19 5. "Transferee" means a person who is acquiring real  
20 property as provided in an instrument containing the power to  
21 transfer real estate, including an instrument described in  
22 section 558.1.

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

27 Sec. 3. NEW SECTION. 558A.2 PROCEDURES.

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

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

9 3. The transferor and the transferee shall acknowledge  
10 delivery and receipt of the disclosure statement, either on  
11 the receipt for earnest money, the instrument containing the  
12 power to transfer real estate, including an instrument  
13 described in section 558.1, or an addendum attached to the  
14 instrument.

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

19 Sec. 4. NEW SECTION. 558A.3 GOOD FAITH AND AMENDMENTS.

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

29 2. A disclosure statement shall be amended, if information  
30 disclosed in the statement is or becomes inaccurate or  
31 misleading, or is supplemented. The amended statement shall  
32 be considered a new statement and subject to the same  
33 procedures as the original disclosure statement as provided in  
34 this chapter. However, the statement is not required to be  
35 amended if either of the following applies:

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

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

12 Sec. 5. NEW SECTION. 558A.4 REQUIRED INFORMATION.

13 1. The disclosure statement shall include information  
14 relating to the condition and important characteristics of the  
15 property and structures located on the property, including  
16 significant defects in the structural integrity of the  
17 structure, as provided in rules which shall be adopted by the  
18 real estate commission pursuant to section 543B.9. The rules  
19 may require the disclosure to include information relating to  
20 the property's zoning classification; the condition of  
21 plumbing, heating, or electrical systems; or the presence of  
22 pests.

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

1 opinion shall indicate which part of the disclosure statement  
2 the report or opinion satisfies.

3 Sec. 6. NEW SECTION. 558A.5 AGENCY.

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

11 2. A broker or salesperson other than the broker or  
12 salesperson who has obtained the offer from the transferee  
13 shall not deliver the disclosure statement required in section  
14 558A.2 to a transferee, unless the transferor has otherwise  
15 provided in writing.

16 3. A broker or salesperson responsible under this section  
17 for delivering a disclosure statement must do one of the  
18 following:

19 a. Deliver a disclosure statement to the transferee.

20 b. Obtain a written acknowledgment from the transferee  
21 that the transferee has received the disclosure statement.

22 c. Deliver a written statement to the transferee,  
23 informing the transferee of the transferee's right under this  
24 chapter to receive the disclosure statement.

25 The broker shall maintain a record of the action required  
26 under this subsection.

27 Sec. 7. NEW SECTION. 558A.6 LIABILITY UNDER THE CHAPTER.

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

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

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

10 Sec. 8. NEW SECTION. 558A.7 CHAPTER IS NOT LIMITING.

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

16 Sec. 9. NEW SECTION. 558A.8 VALIDITY OF A TRANSFER.

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

20 Sec. 10. EFFECTIVE DATE -- DIRECTION TO CODE EDITOR -- IM-  
21 PLEMENTATION.

22 1. Except as provided in this section, this Act shall  
23 become effective on January 1, 1994.

24 2. The Code editor is directed to codify this Act in the  
25 1993 Code Supplement and provide necessary footnotes.

26 3. The real estate commission is directed to begin the  
27 adoption of rules necessary to implement this Act, upon  
28 enactment.

29 4. This section is effective upon enactment.

30 EXPLANATION

31 This bill creates a new chapter providing for the  
32 disclosure of information to persons being transferred real  
33 estate. A transfer is subject to the disclosure requirements  
34 if it involves the conveyance by sale, exchange, real estate  
35 contract, lease with option to purchase, or any other option

1 to purchase real property and improvements consisting of at  
2 least one but not more than four dwelling units. However, the  
3 bill exempts a number of transactions which would ordinarily  
4 be considered transfers of real estate.

5 The bill provides for the delivery and acceptance of the  
6 disclosure statement prior to an offer or acceptance being  
7 made to complete the transaction. The bill provides for the  
8 accuracy of information in the statement, and provides for  
9 amending the statement. The disclosure statement must include  
10 information relating to the condition and important  
11 characteristics of the property and structures located on the  
12 property, including significant defects in the structural  
13 integrity of the structure, as provided in rules adopted by  
14 the real estate commission. The disclosure statement may  
15 include a report or written opinion prepared by a person  
16 qualified to make judgment based on education or experience,  
17 as provided by rules adopted by the commission.

18 The bill provides for the duties and liabilities of persons  
19 involved in the transfer, including the transferor, real  
20 estate brokers, salespersons, and persons submitting a report  
21 or opinion within the scope of the person's practice,  
22 profession, or expertise. The duties imposed upon persons  
23 under this bill do not limit or abridge any duty, requirement,  
24 obligation, or liability for disclosure created by another  
25 provision of law, or under a contract between parties. A  
26 transfer cannot be invalidated solely because of a failure of  
27 a person to comply with a provision of the bill.

28 The bill becomes effective on January 1, 1994.

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HOUSE FILE 636

H-3595

Amend House File 636 as follows:

1. Page 1, by striking lines 22 through 24 and inserting the following: "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".
2. Page 2, by inserting after line 18 the following:  
"\_\_\_\_\_. A transfer by quitclaim deed."
3. Page 2, line 34, by striking the word "order" and inserting the following: "offer".
4. Page 3, by striking lines 9 through 14.
5. Page 3, line 32, by striking the words "considered a new statement and".
6. Page 5, by striking lines 11 through 26, and inserting the following:  
"\_\_\_\_\_. 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."
7. Page 6, line 23, by striking the word "January" and inserting the following: "July".
8. By renumbering as necessary.

*Adopted 4-5-93 (P.1057)* By DINKLA of Guthrie  
LUNDBY of Linn  
H-3595 FILED MARCH 31, 1993

HOUSE FILE 636

H-3707

- Amend the amendment, H-3490, to House File 636, as follows:
1. Page 1, by striking lines 2 through 5 and inserting the following:  
"\_\_\_\_\_. Page 1, by inserting after line 11, the following:  
"Sec. 100. Section 543B.55, Code 1993, is amended to read as follows:  
543B.55 DISCLOSURE OF RELATIONSHIP.  
The real estate commission shall adopt rules requiring that each real estate broker or salesperson in a real estate transaction disclose in writing the broker's or salesperson's agency relationship with the buyer or seller in the transaction. The disclosure required by this section shall be made when the broker or salesperson first provides substantial assistance to a person who is not represented by the broker or salesperson."
  - Page 6, by inserting after line 29, the following:  
"\_\_\_\_\_. Section 100 of this Act is effective July 1, 1993."
  - By renumbering as necessary."

By HALVORSON of Webster

H-3707 FILED APRIL 5, 1993  
LOST

HOUSE FILE 636

H-3490

1 Amend House File 636 as follows:

2 1. Page 4, line 20, by striking the words "the  
3 property's zoning classification;"

4 2. Page 4, line 21, by striking the word  
5 "systems;" and inserting the following: "systems".

By HALVORSON of Webster

H-3490 FILED MARCH 25, 1993

WITHDRAWN  
4-6-93 (P.1059)

HOUSE CLIP SHEET

MARCH 29, 1993

Page 6

HOUSE FILE 636

H-3521

1 Amend House File 636 as follows:

2 1. Page 1, by inserting after line 11, the  
3 following:

4 "Sec. \_\_\_\_ . Section 543B.46, subsection 6, Code  
5 1993, is amended to read as follows:

6 6. The commission ~~will~~ shall verify on a test  
7 basis, a random sampling of the brokers, corporations,  
8 and partnerships for their trust account compliance as  
9 a condition of licensure renewal. Each broker,  
10 corporation, and partnership shall submit a special  
11 report ~~or-audit~~ of their trust account to the  
12 commission when required.

13 The special report ~~or-audit~~ shall be submitted with  
14 the filed renewal application or at such other time as  
15 the commission may direct. In addition, the  
16 commission may upon reasonable cause request or order  
17 ~~an-audit-or~~ a special report. ~~All-audits-and-special~~  
18 ~~reports-addressed-in-this-section-shall-be-conducted~~  
19 ~~at-the-expense-of-the-broker-by-a-certified-public~~  
20 ~~accountant."~~

21 2. Title page, line 1, by inserting after the  
22 word "Act" the following: "relating to information  
23 regarding real estate, by providing for the filing of  
24 reports, and".

By HALVORSON of Clayton  
LUNDBY of Linn

H-3521 FILED MARCH 26, 1993

Adopted  
4-5-93  
(P.1057)

HOUSE FILE 636  
BY COMMITTEE ON STATE GOVERNMENT

(SUCCESSOR TO HSB 258)

(As Amended and Passed by the House April 5, 1993)

Passed House <sup>(P.1059)</sup> Date 4/6/93 Passed Senate <sup>(P.1113)</sup> Date 4/12/93  
Vote: Ayes 95 Nays 4 Vote: Ayes 46 Nays 0  
Approved April 20, 1993

A BILL FOR

1 An Act relating to information regarding real estate, by  
2 providing for the filing of reports, and transfer of certain  
3 real estate and providing effective dates.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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8  
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House Amendments \_\_\_\_\_  
Deleted Language \*

HOUSE FILE 636

S-3476

1 Amend House File 636 as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. Page 2, line 15, by inserting after the word  
4 "property" the following: "pursuant to any method  
5 referenced in this paragraph or".

By MICHAEL E. GRONSTAL

S-3476 FILED APRIL 12, 1993  
WITHDRAWN

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1 Section 1. Section 543B.9, Code 1993, is amended to read  
2 as follows:

3 543B.9 RULES.

4 The real estate commission ~~is-empowered-to-promulgate~~ may  
5 adopt rules to carry out and administer the provisions of this  
6 chapter ~~consistent-therewith~~. ~~Said~~ The commission may carry  
7 on a program of education of real estate practices and matters  
8 relating ~~thereto~~ to real estate. The commission shall adopt  
9 rules necessary to carry out the provisions of chapter 558A  
10 relating to the disclosure of information before the transfer  
11 of real estate.

12 Sec. 2. Section 543B.46, subsection 6, Code 1993, is  
13 amended to read as follows:

14 6. The commission ~~will~~ shall verify on a test basis, a  
15 random sampling of the brokers, corporations, and partnerships  
16 for their trust account compliance as a condition of licensure  
17 renewal. Each broker, corporation, and partnership shall  
18 submit a special report ~~or-audit~~ of their trust account to the  
19 commission when required.

20 The special report ~~or-audit~~ shall be submitted with the  
21 filed renewal application or at such other time as the  
22 commission may direct. In addition, the commission may upon  
23 reasonable cause request or order ~~an-audit-or~~ a special  
24 report. ~~All-audits-and-special-reports-addressed-in-this~~  
25 ~~section-shall-be-conducted-at-the-expense-of-the-broker-by-a~~  
26 ~~certified-public-accountant~~

27 Sec. 3. NEW SECTION. 558A.1 DEFINITIONS.

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

30 1. "Broker" means a real estate broker licensed pursuant  
31 to chapter 543B.

32 2. "Commission" means the real estate commission created  
33 pursuant to section 543B.8.

34 3. "Salesperson" means a salesperson licensed pursuant to  
35 chapter 543B.

1 4. "Transfer" means the transfer or conveyance by sale,  
2 exchange, real estate contract, or any other method by which  
3 real estate and improvements are purchased, if the property  
4 includes at least one but not more than four dwelling units.

5 However, a transfer does not include any of the following:

6 a. A transfer made pursuant to a court order, including  
7 but not limited to a transfer under chapter 633, the execution  
8 of a judgment, the foreclosure of a real estate mortgage  
9 pursuant to chapter 654, the forfeiture of a real estate  
10 contract under chapter 656, a transfer by a trustee in  
11 bankruptcy, a transfer by eminent domain, or a transfer  
12 resulting from a decree for specific performance.

13 b. A transfer to a mortgagee by a mortgagor or successor  
14 in interest who is in default, or a transfer by a mortgagee  
15 who has acquired real property at a sale conducted pursuant to  
16 chapter 654, a transfer back to a mortgagor exercising a right  
17 of first refusal pursuant to section 654.16A, a nonjudicial  
18 voluntary foreclosure procedure under section 654.18 or  
19 chapter 655A, or a deed in lieu of foreclosure under section  
20 654.19.

21 c. A transfer by a fiduciary in the course of the  
22 administration of a decedent's estate, guardianship,  
23 conservatorship, or trust.

24 d. A transfer between joint tenants or tenants in common.

25 e. A transfer made to a spouse, or to a person in the  
26 lineal line of consanguinity of a person making the transfer.

27 f. A transfer between spouses resulting from a decree of  
28 dissolution of marriage, a decree of legal separation, or a  
29 property settlement agreement which is incidental to the  
30 decree, including a decree ordered pursuant to chapter 598.

31 g. A transfer to or from the state, a political  
32 subdivision of the state, another state, or the United States.

33 h. A transfer by quitclaim deed.

34 5. "Transferee" means a person who is acquiring real  
35 property as provided in an instrument containing the power to

1 transfer real estate, including an instrument described in  
2 section 558.1.

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

7 Sec. 4. NEW SECTION. 558A.2 PROCEDURES.

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15 property.

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

\* 24 3. The disclosure statement may be filed with the county  
25 recorder with instruments affecting the transfer of real  
26 estate. However, the failure to file the statement shall not  
27 cause a defect in the title to the property.

28 Sec. 5. NEW SECTION. 558A.3 GOOD FAITH AND AMENDMENTS.

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

1 approximation. The approximation shall be based on the best  
2 information available at the time.

3 2. A disclosure statement shall be amended, if information  
4 disclosed in the statement is or becomes inaccurate or  
5 misleading, or is supplemented. The amended statement shall  
\* 6 be subject to the same procedures as the original disclosure  
7 statement as provided in this chapter. However, the statement  
8 is not required to be amended if either of the following  
9 applies:

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

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

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22 1. The disclosure statement shall include information  
23 relating to the condition and important characteristics of the  
24 property and structures located on the property, including  
25 significant defects in the structural integrity of the  
26 structure, as provided in rules which shall be adopted by the  
27 real estate commission pursuant to section 543B.9. The rules  
28 may require the disclosure to include information relating to  
29 the property's zoning classification; the condition of  
30 plumbing, heating, or electrical systems; or the presence of  
31 pests.

32 2. The disclosure statement may include a report or  
33 written opinion prepared by a person qualified to make  
34 judgment based on education or experience, as provided by  
35 rules adopted by the commission, including but not limited to

1 a land surveyor licensed pursuant to chapter 542B, a  
2 geologist, a structural pest control operator licensed  
3 pursuant to section 206.6, or a building contractor. The  
4 report or opinion on a matter within the scope of the person's  
5 practice, profession, or expertise shall satisfy the  
6 requirements of this section or rules adopted by the  
7 commission regarding that matter required to be disclosed. If  
8 the report or opinion is in response to a request made for  
9 purposes of satisfying the disclosure statement, the report or  
10 opinion shall indicate which part of the disclosure statement  
11 the report or opinion satisfies.

12 Sec. 7. NEW SECTION. 558A.5 AGENCY.

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

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

25 Sec. 8. NEW SECTION. 558A.6 LIABILITY UNDER THE CHAPTER.

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

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

34 2. The person submitting a report or opinion within the  
35 scope of the person's practice, profession, or expertise, as



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

8 Sec. 9. NEW SECTION. 558A.7 CHAPTER IS NOT LIMITING.

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

14 Sec. 10. NEW SECTION. 558A.8 VALIDITY OF A TRANSFER.

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

18 Sec. 11. EFFECTIVE DATE -- DIRECTION TO CODE EDITOR -- IM-  
19 PLEMENTATION.

20 1. Except as provided in this section, this Act shall  
21 become effective on July 1, 1994.

22 2. The Code editor is directed to codify this Act in the  
23 1993 Code Supplement and provide necessary footnotes.

24 3. The real estate commission is directed to begin the  
25 adoption of rules necessary to implement this Act, upon  
26 enactment.

27 4. This section is effective upon enactment.

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HSB 258

STATE GOVERNMENT

Lundby, Chair  
Halvorson  
Spencer

HOUSE FILE 636  
BY (PROPOSED COMMITTEE ON  
STATE GOVERNMENT BILL  
BY CHAIRPERSON CARPENTER)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act providing for a duty to disclose information prior to the  
2 transfer of certain real estate and providing an effective  
3 date.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 543B.9, Code 1993, is amended to read  
2 as follows:

3 543B.9 RULES.

4 The real estate commission ~~is-empowered-to-promulgate~~ may  
5 adopt rules to carry out and administer the provisions of this  
6 chapter ~~consistent-therewith~~. ~~Said~~ The commission may carry  
7 on a program of education of real estate practices and matters  
8 relating thereto to real estate. The commission shall adopt  
9 rules necessary to carry out the provisions of chapter 558A  
10 relating to the disclosure of information before the transfer  
11 of real estate.

12 Sec. 2. NEW SECTION. 558A.1 DEFINITIONS.

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

15 1. "Broker" means a real estate broker licensed pursuant  
16 to chapter 543B.

17 2. "Commission" means the real estate commission created  
18 pursuant to section 543B.8.

19 3. "Salesperson" means a salesperson licensed pursuant to  
20 chapter 543B.

21 4. "Transfer" means the transfer or conveyance by sale,  
22 exchange, real estate contract, lease with option to purchase,  
23 or any other option to purchase or lease real property and  
24 improvements consisting of at least one but not more than four  
25 dwelling units. However, a transfer does not include any of  
26 the following:

27 a. A transfer made pursuant to a court order, including  
28 but not limited to a transfer under chapter 633, the execution  
29 of a judgment, the foreclosure of a real estate mortgage  
30 pursuant to chapter 654, the forfeiture of a real estate  
31 contract under chapter 656, a transfer by a trustee in  
32 bankruptcy, a transfer by eminent domain, or a transfer  
33 resulting from a decree for specific performance.

34 b. A transfer to a mortgagee by a mortgagor or successor  
35 in interest who is in default, or a transfer by a mortgagee

1 who has acquired real property at a sale conducted pursuant to  
2 chapter 654, a transfer back to a mortgagor exercising a right  
3 of first refusal pursuant to section 654.16A, a nonjudicial  
4 voluntary foreclosure procedure under section 654.18 or  
5 chapter 655A, or a deed in lieu of foreclosure under section  
6 654.19.

7 c. A transfer by a fiduciary in the course of the  
8 administration of a decedent's estate, guardianship,  
9 conservatorship, or trust.

10 d. A transfer between joint tenants or tenants in common.

11 e. A transfer made to a spouse, or to a person in the  
12 lineal line of consanguinity of a person making the transfer.

13 f. A transfer between spouses resulting from a decree of  
14 dissolution of marriage, a decree of legal separation, or a  
15 property settlement agreement which is incidental to the  
16 decree, including a decree ordered pursuant to chapter 598.

17 g. A transfer to or from the state, a political  
18 subdivision of the state, another state, or the United States.

19 5. "Transferee" means a person who is acquiring real  
20 property as provided in an instrument containing the power to  
21 transfer real estate, including an instrument described in  
22 section 558.1.

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

27 Sec. 3. NEW SECTION. 558A.2 PROCEDURES.

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

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

9        3. The transferor and the transferee shall acknowledge  
10 delivery and receipt of the disclosure statement, either on  
11 the receipt for earnest money, the instrument containing the  
12 power to transfer real estate, including an instrument  
13 described in section 558.1, or an addendum attached to the  
14 instrument.

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

19       Sec. 4. NEW SECTION. 558A.3 GOOD FAITH AND AMENDMENTS.

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

29       2. A disclosure statement shall be amended, if information  
30 disclosed in the statement is or becomes inaccurate or  
31 misleading, or is supplemented. The amended statement shall  
32 be considered a new statement and subject to the same  
33 procedures as the original disclosure statement as provided in  
34 this chapter. However, the statement is not required to be  
35 amended if either of the following applies:

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

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

12 Sec. 5. NEW SECTION. 558A.4 REQUIRED INFORMATION.

13 1. The disclosure statement shall include information  
14 relating to the condition and important characteristics of the  
15 property and structures located on the property, including  
16 significant defects in the structural integrity of the  
17 structure, as provided in rules which shall be adopted by the  
18 real estate commission pursuant to section 543B.9. The rules  
19 may require the disclosure to include information relating to  
20 the legal boundaries of the property; the property's zoning  
21 classification; defects in the property's title; the condition  
22 of plumbing, heating, or electrical systems; or the presence  
23 of pests.

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

1 purposes of satisfying the disclosure statement, the report or  
2 opinion shall indicate which part of the disclosure statement  
3 the report or opinion satisfies.

4 Sec. 6. NEW SECTION. 558A.5 AGENCY.

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

12 2. A broker or salesperson other than the broker or  
13 salesperson who has obtained the offer from the transferee  
14 shall not deliver the disclosure statement required in section  
15 558A.2 to a transferee, unless the transferor has otherwise  
16 provided in writing.

17 3. A broker or salesperson responsible under this section  
18 for delivering a disclosure statement must do one of the  
19 following:

20 a. Deliver a disclosure statement to the transferee.

21 b. Obtain a written acknowledgment from the transferee  
22 that the transferee has received the disclosure statement.

23 c. Deliver a written statement to the transferee,  
24 informing the transferee of the transferee's right under this  
25 chapter to receive the disclosure statement.

26 The broker shall maintain a record of the action required  
27 under this subsection.

28 Sec. 7. NEW SECTION. 558A.6 LIABILITY UNDER THE CHAPTER.

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

32 1. The transferor, or a broker or salesperson, shall not  
33 be liable under this chapter for the error, inaccuracy, or  
34 omission in information required in a disclosure statement,  
35 unless that person has actual knowledge of the inaccuracy, or

1 fails to exercise ordinary care in obtaining the information.

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

11 Sec. 8. NEW SECTION. 558A.7 CHAPTER IS NOT LIMITING.

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

17 Sec. 9. NEW SECTION. 558A.8 VALIDITY OF A TRANSFER.

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

21 Sec. 10. EFFECTIVE DATE -- DIRECTION TO CODE EDITOR -- IM-  
22 PLEMENTATION.

23 1. Except as provided in this section, this Act shall  
24 become effective on January 1, 1994.

25 2. The Code editor is directed to codify this Act in the  
26 1993 Code Supplement and provide necessary footnotes.

27 3. The real estate commission is directed to begin the  
28 adoption of rules necessary to implement this Act, upon  
29 enactment.

30 4. This section is effective upon enactment.

31 EXPLANATION

32 This bill creates a new chapter providing for the  
33 disclosure of information to persons being transferred real  
34 estate. A transfer is subject to the disclosure requirements  
35 if it involves the conveyance by sale, exchange, real estate



1 contract, lease with option to purchase, or any other option  
2 to purchase real property and improvements consisting of at  
3 least one but not more than four dwelling units. However, the  
4 bill exempts a number of transactions which would ordinarily  
5 be considered transfers of real estate.

6 The bill provides for the delivery and acceptance of the  
7 disclosure statement prior to an offer or acceptance being  
8 made to complete the transaction. The bill provides for the  
9 accuracy of information in the statement, and provides for  
10 amending the statement. The disclosure statement must include  
11 information relating to the condition and important  
12 characteristics of the property and structures located on the  
13 property, including significant defects in the structural  
14 integrity of the structure, as provided in rules adopted by  
15 the real estate commission. The disclosure statement may  
16 include a report or written opinion prepared by a person  
17 qualified to make judgment based on education or experience,  
18 as provided by rules adopted by the commission.

19 The bill provides for the duties and liabilities of persons  
20 involved in the transfer, including the transferor, real  
21 estate brokers, salespersons, and persons submitting a report  
22 or opinion within the scope of the person's practice,  
23 profession, or expertise. The duties imposed upon persons  
24 under this bill do not limit or abridge any duty, requirement,  
25 obligation, or liability for disclosure created by another  
26 provision of law, or under a contract between parties. A  
27 transfer cannot be invalidated solely because of a failure of  
28 a person to comply with a provision of the bill.

29 The bill becomes effective on January 1, 1994.

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HOUSE FILE 636

AN ACT

RELATING TO INFORMATION REGARDING REAL ESTATE, BY PROVIDING FOR THE FILING OF REPORTS, AND TRANSFER OF CERTAIN REAL ESTATE AND PROVIDING EFFECTIVE DATES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 543B.9, Code 1993, is amended to read as follows:

543B.9 RULES.

The real estate commission ~~is empowered to promulgate~~ may adopt rules to carry out and administer the provisions of this chapter consistent therewith. ~~Said The~~ The commission may carry on a program of education of real estate practices and matters relating thereto to real estate. The commission shall adopt rules necessary to carry out the provisions of chapter 558A relating to the disclosure of information before the transfer of real estate.

Sec. 2. Section 543B.46, subsection 6, Code 1993, is amended to read as follows:

6. The commission ~~will~~ shall verify on a test basis, a random sampling of the brokers, corporations, and partnerships for their trust account compliance as a condition of licensure renewal. Each broker, corporation, and partnership shall submit a special report ~~er-audit~~ of their trust account to the commission when required.

~~The special report or audit shall be submitted with the filed renewal application or at such other time as the commission may direct. In addition, the commission may upon reasonable cause request or order an audit or a special report. All audits and special reports addressed in this section shall be conducted at the expense of the broker by a certified public accountant.~~

Sec. 3. NEW SECTION. 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.

Sec. 4. NEW SECTION. 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.

Sec. 5. NEW SECTION. 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.

Sec. 6. NEW SECTION. 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 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.

Sec. 7. NEW SECTION. 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.

Sec. 8. NEW SECTION. 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.

Sec. 9. NEW SECTION. 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.

Sec. 10. NEW SECTION. 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.

Sec. 11. EFFECTIVE DATE -- DIRECTION TO CODE EDITOR -- IMPLEMENTATION.

1. Except as provided in this section, this Act shall become effective on July 1, 1994.

2. The Code editor is directed to codify this Act in the 1993 Code Supplement and provide necessary footnotes.

3. The real estate commission is directed to begin the adoption of rules necessary to implement this Act, upon enactment.

4. This section is effective upon enactment.

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HAROLD VAN MAANEN  
Speaker of the House

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LEONARD L. BOSWELL  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 636, Seventy-fifth General Assembly.

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ELIZABETH ISAACSON  
Chief Clerk of the House

Approved April 20, 1993

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TERRY E. BRANSTAD  
Governor