

By Senator Diaz de la Portilla

36-1174-04

1 A bill to be entitled
2 An act relating to sales disclosures; creating
3 s. 475.423, F.S.; specifying the transactions
4 that are subject to the requirements of the
5 act; providing definitions; requiring that
6 certain disclosures be made by the transferor
7 or his or her agent with respect to real
8 property located within a flood hazard area, an
9 area with severe constraints for development,
10 an area having sinkhole activity, a wellhead
11 protection area, a priority wetland zone, a
12 habitat conservation area, an airport's
13 environs, an environmental hazard site, or a
14 radon gas zone; providing that the waiver of
15 such requirements is against public policy;
16 providing certain exceptions; specifying the
17 form to be used as the Property Identification
18 Disclosure Statement; providing requirements
19 for identifying information that accompanies
20 the disclosure statement; providing
21 requirements for delivery of the required
22 disclosure statement; providing a limitation
23 with respect to liability for errors,
24 inaccuracy, or omissions; requiring a third
25 party that provides information with respect to
26 the disclosure statement to maintain a
27 specified amount of insurance protection;
28 providing that information updates are not
29 required after delivery of the required
30 disclosures; requiring that disclosures be made
31 in good faith; providing that the act does not

1 limit or abridge other disclosures required by
2 law; authorizing the amendment of a disclosure;
3 providing for delivery of disclosures;
4 providing requirements for the licensee or
5 broker acting as an agent in a transaction
6 subject to the act; specifying liability for
7 willful or negligent violation or failure to
8 perform; providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Section 475.423, Florida Statutes, is
13 created to read:

14 475.423 Property identification disclosure
15 statement.--

16 (1)(a) Except as provided in subsection (2), this
17 section applies to any transfer by sale, exchange, or
18 installment land sale contract of residential properties,
19 wherein one party agrees to convey title to real property to
20 another party upon the satisfaction of specified conditions
21 set forth in the contract and which does not require
22 conveyance of title within 1 year after the date of formation
23 of the contract, lease with an option to purchase, any other
24 option to purchase, ground lease coupled with improvements of
25 any real property described in paragraph (b), or residential
26 stock cooperative, improved with or consisting of not less
27 than one or more than four dwelling units.

28 (b) The transferor or his or her agent is required by
29 one or more of the following to disclose the property's
30 location within an applicable zone:

31

1 1. A person who is either acting as an agent for a
2 transferor of real property that is located within a special
3 flood hazard area, which is any type Zone "A" or "V" as
4 designated by the Federal Emergency Management Agency, or the
5 transferor, if he or she is acting without an agent, shall
6 disclose to any prospective transferee the fact that the
7 property is located within a special flood hazard area if:

8 a. The transferor, or the transferor's agent, has
9 actual knowledge that the property is within a special flood
10 hazard area; or

11 b. Other readily available and officially adopted
12 governmental information exists regarding the flood zone.

13 2. A person who is acting as an agent for a transferor
14 of real property that is located on soils with very severe
15 constraints for development, or the transferor, if he or she
16 is acting without an agent, shall disclose to any prospective
17 transferee the fact that the property is located on soils with
18 very severe constraints for development pursuant to maps
19 issued by the United States Department of Agriculture or other
20 readily available and officially adopted governmental maps and
21 information if:

22 a. The transferor, or the transferor's agent, has
23 actual knowledge that the property is on soils with very
24 severe constraints for development; or

25 b. Other readily available and officially adopted
26 governmental information exists regarding the soils with very
27 severe constraints for development.

28 3. A person who is acting as an agent for a transferor
29 of real property that is located in an area impacted by
30 sinkhole activity, or the transferor, if he or she is acting
31 without an agent, shall disclose to any prospective transferee

1 the fact that the property is located in an area impacted by
2 sinkhole activity pursuant to readily available and officially
3 adopted governmental maps and information if:

4 a. The transferor, or the transferor's agent, has
5 actual knowledge that the property is in an area impacted by
6 sinkhole activity; or

7 b. Other readily available and officially adopted
8 governmental information exists regarding sinkhole activity.

9 4. A person who is acting as an agent for a transferor
10 of real property that is located within a quarter of a mile of
11 a wellhead protection area, or the transferor, if he or she is
12 acting without an agent, shall disclose to any prospective
13 transferee the fact that the property is located within a
14 quarter of a mile of a wellhead protection area according to
15 maps issued by the Department of Environmental Protection or a
16 water management district or other readily available and
17 officially adopted governmental maps and information if:

18 a. The transferor, or the transferor's agent, has
19 actual knowledge that the property is located within a quarter
20 of a mile of a wellhead protection area; or

21 b. Other readily available and officially adopted
22 governmental information exists regarding a wellhead
23 protection area.

24 5. A person who is acting as an agent for a transferor
25 of real property that is located in a priority wetland zone,
26 or the transferor, if he or she is acting without an agent,
27 shall disclose to any prospective transferee the fact that the
28 property is located in a priority wetland zone pursuant to
29 maps issued by the Fish and Wildlife Conservation Commission
30 or other readily available and officially adopted governmental
31 maps and information if:

1 a. The transferor, or the transferor's agent, has
2 actual knowledge that the property is located in a priority
3 wetland zone; or

4 b. Other readily available and officially adopted
5 governmental information exists regarding a priority wetland
6 zone.

7 6. A person who is acting as an agent for a transferor
8 of real property that is located in a strategic habitat
9 conservation area, or the transferor, if he or she is acting
10 without an agent, shall disclose to any prospective transferee
11 the fact that the property is located in a strategic habitat
12 conservation area pursuant to maps issued by the Fish and
13 Wildlife Conservation Commission or other readily available
14 and officially adopted governmental maps and information if:

15 a. The transferor, or the transferor's agent, has
16 actual knowledge that the property is located in a strategic
17 habitat conservation area; or

18 b. Other readily available and officially adopted
19 governmental information exists regarding a strategic habitat
20 conservation area.

21 7. A person who is acting as an agent for a transferor
22 of real property that is located within 2 statute miles of the
23 nearest point of the nearest runway at any airport, or the
24 transferor, if he or she is acting without an agent, shall
25 disclose to any prospective transferee the fact that the
26 property is located within 2 statute miles of the nearest
27 point of the nearest runway at any airport if:

28 a. The transferor, or the transferor's agent, has
29 actual knowledge that the property is located within 2 statute
30 miles of the nearest point of the nearest runway at any
31 airport; or

1 b. The local jurisdiction has maps that identify
2 properties that are located within 2 statute miles of the
3 nearest point of the nearest runway at any airport.

4 8. A person who is acting as an agent for a transferor
5 of real property that is located within a quarter of a mile of
6 an environmental hazard site, limited to filed governmental
7 reports, or the transferor, if he or she is acting without an
8 agent, shall disclose to any prospective transferee the fact
9 that the property is located within a quarter of a mile of an
10 environmental hazard site, including leaking underground
11 storage tanks, solid waste landfills, incinerators or transfer
12 stations, national priority list sites, or CERCLIS sites under
13 review by the United States Environmental Protection Agency
14 if:

15 a. The transferor, or the transferor's agent, has
16 actual knowledge that the property is located within a quarter
17 of a mile of an environmental hazard site; or

18 b. Other readily available and officially adopted
19 governmental information exists regarding environmental hazard
20 sites.

21 9. A person who is acting as an agent for a transferor
22 of real property that is located within a mapped radon gas
23 potential zone pursuant to maps issued by the United States
24 Environmental Protection Agency or other readily available and
25 officially adopted governmental maps and information, or the
26 transferor, if he or she is acting without an agent, shall
27 disclose to any prospective transferee the fact that the
28 property is located within a mapped radon gas potential zone
29 if:

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1 a. The transferor, or the transferor's agent, has
2 actual knowledge that the property is located in a mapped
3 radon gas potential zone; or

4 b. Other readily available and officially adopted
5 governmental information exists regarding radon gas.

6 (c) Any waiver of the requirements of this section is
7 void as against public policy.

8 (2)(a) This section does not apply to the following
9 transfers:

10 1. Transfers pursuant to court order, including, but
11 not limited to, transfers ordered by a probate court in
12 administration of an estate, transfers pursuant to a writ of
13 execution, transfers by any foreclosure sale, transfers by a
14 trustee in bankruptcy, transfers by eminent domain, and
15 transfers resulting from a decree for specific performance.

16 2. Transfers to a mortgagee by a mortgagor or
17 successor in interest who is in default and transfers to a
18 beneficiary of a deed of trust by a trustor or successor in
19 interest who is in default.

20 3. Transfers by a fiduciary in the course of the
21 administration of a decedent's estate, guardianship,
22 conservatorship, or trust.

23 4. Transfers from one coowner to one or more other
24 coowners.

25 5. Transfers made to a spouse or to a person or
26 persons in the lineal line of consanguinity of one or more of
27 the transferors.

28 6. Transfers between spouses resulting from a judgment
29 of dissolution of marriage or of legal separation of the
30 parties or from a property settlement agreement incidental to
31 that judgment.

1 7. Transfers by sale, resale, exchange, or installment
2 land sales contract of any manufactured mobile home, mobile
3 home park, or residential manufactured building.

4 (b) Transfers not subject to this section may be
5 subject to other disclosure requirements. In transfers that
6 are not subject to this section, agents may make required
7 disclosures in a separate writing.

8 (3)(a) The disclosures required by this section are
9 set forth in, and shall be made on a copy of, the following
10 Property Identification Disclosure Statement:

11
12 PROPERTY IDENTIFICATION DISCLOSURE STATEMENT

13
14 This statement applies to the following property:

15
16
17 The transferor and his or her agent(s) disclose the following
18 information with the knowledge that even though this is not a
19 warranty, prospective transferees may rely on this information
20 in deciding whether and on what terms to purchase the subject
21 property.

22
23 Transferor hereby authorizes any agent(s) representing any
24 principal(s) in this action to provide a copy of this
25 statement to any person or entity in connection with any
26 actual or anticipated sale of the property.

27
28 The following are representations made by the transferor and
29 his or her agent(s) based on their knowledge and official maps
30 and information prepared by the state and federal governments.

31

1 This information is a disclosure and is not intended to be
2 part of any contract between the transferee and transferor.

3
4 THIS REAL PROPERTY LIES WITHIN THE FOLLOWING AREA(S):

5
6 (1) A SPECIAL FLOOD HAZARD AREA (Any type Zone "A" or
7 "V") designated by the Federal Emergency Management Agency.

8
9 Yes _____ No _____ Do not know and information not available
10 _____ Pending _____

11
12 (2) ON SOILS WITH VERY SEVERE CONSTRAINTS FOR
13 DEVELOPMENT pursuant to maps issued by the United States
14 Department of Agriculture or other readily available and
15 officially adopted governmental maps and information.

16
17 Yes _____ No _____ Do not know and information not available
18 _____ Pending _____

19
20 (3) AN AREA IMPACTED BY SINKHOLE ACTIVITY pursuant to
21 readily available and officially adopted governmental maps and
22 information.

23
24 Yes _____ No _____ Do not know and information not available
25 _____ Pending _____

26
27 (4) WITHIN A QUARTER OF A MILE OF A WELLHEAD
28 PROTECTION AREA pursuant to maps issued by the Department of
29 Environmental Protection or a water management district or
30 other readily available and officially adopted governmental
31 maps and information.

1
2 Yes _____ No _____ Do not know and information not available
3 _____ Pending _____

4
5 (5) A PRIORITY WETLAND ZONE pursuant to maps issued by
6 the Fish and Wildlife Conservation Commission or other readily
7 available and officially adopted governmental maps and
8 information.

9
10 Yes _____ No _____ Do not know and information not available
11 _____ Pending _____

12
13 (6) A STRATEGIC HABITAT CONSERVATION AREA pursuant to
14 maps issued by the Fish and Wildlife Conservation Commission
15 or other readily available and officially adopted governmental
16 maps and information.

17
18 Yes _____ No _____ Do not know and information not available
19 _____ Pending _____

20
21 (7) WITHIN 2 STATUTE MILES OF THE NEAREST POINT OF THE
22 NEAREST RUNWAY AT ANY AIRPORT.

23
24 Yes _____ No _____ Do not know and information not available
25 _____ Pending _____

26
27 (8) WITHIN A QUARTER OF A MILE OF AN ENVIRONMENTAL
28 HAZARD SITE, including leaking underground storage tanks,
29 solid waste landfills, incinerators or transfer stations,
30 national priority list sites, and/or CERCLIS sites under
31 review by the United States Environmental Protection Agency.

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Yes _____ No _____ Do not know and information not available
_____ Pending _____

(9) WITHIN A MAPPED RADON GAS POTENTIAL ZONE pursuant
to maps issued by the United States Environmental Protection
Agency or other readily available and officially adopted
governmental maps and information.

Yes _____ No _____ Do not know and information not available
_____ Pending _____

THESE ZONES MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL
PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER
A DISASTER.

THE MAPS AND INFORMATION ON WHICH THESE DISCLOSURES ARE BASED
ARE ESTIMATES WHERE THE APPLICABLE ZONES AND PROTECTED LANDS
EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A
PROPERTY WILL BE AFFECTED BY A NATURAL OR ENVIRONMENTAL
DISASTER. TRANSFEREE(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN
PROFESSIONAL ADVICE REGARDING THESE AND OTHER HAZARDS AND
PROTECTION ZONES THAT MAY AFFECT THE PROPERTY.

Transferor represents that the information herein is true and
correct to the best of the transferor's knowledge as of the
date signed by the transferor.

Signature of Transferor:_____ Date:_____

Signature of Transferor:_____ Date:_____

1
2 Agent represents that the information herein is true and
3 correct to the best of the agent's knowledge as of the date
4 signed by the agent.

5
6 Signature of Transferor's Agent:_____Date:_____

7
8 Signature of Transferor's Agent:_____Date:_____

9
10 Transferee represents that he or she has read and understands
11 this document.

12
13 Signature of Transferee:_____Date:_____

14
15 Signature of Transferee:_____Date:_____

16
17 (b) If a map or accompanying information is not of
18 sufficient accuracy or scale that a reasonable person can
19 determine if the subject real property is included in an
20 applicable area, the transferor or transferor's agent shall
21 mark "Yes" on the Property Identification Disclosure
22 Statement. The transferor or transferor's agent may mark "No"
23 on the Property Identification Disclosure Statement if he or
24 she attaches a report prepared pursuant to paragraph (5)(c)
25 which verifies that the property is not in the applicable
26 zone. This paragraph does not limit or abridge any existing
27 duty of the transferor or the transferor's agents to exercise
28 reasonable care in making a determination under this
29 subsection.

30 (c) If the Federal Emergency Management Agency has
31 issued a Letter of Map Revision confirming that a property is

1 no longer within a special flood hazard area, the transferor
2 or transferor's agent may mark "No" on the Property
3 Identification Disclosure Statement, even if the map has not
4 yet been updated.

5 (d) If the Federal Emergency Management Agency has
6 issued a Letter of Map Revision confirming that a property is
7 within a special flood hazard area and the location of the
8 letter has been posted, the transferor or transferor's agent
9 shall mark "Yes" on the Property Identification Disclosure
10 Statement, even if the map has not yet been updated.

11 (4)(a) The transferor of any real property subject to
12 this section shall deliver to the prospective transferee the
13 written statement required by this section, as follows:

14 1. In the case of a sale, as soon as practicable
15 before transfer of title.

16 2. In the case of transfer by a real property sales
17 contract or by a lease together with an option to purchase, or
18 a ground lease coupled with improvements, as soon as
19 practicable before execution of the contract. For the purpose
20 of this subparagraph, "execution" means the making or
21 acceptance of an offer.

22 (b) The transferor shall indicate compliance with this
23 section either on the receipt for deposit, the real property
24 sales contract, the lease, or any addendum attached thereto or
25 on a separate document.

26 (c) If any disclosure, or any material amendment of
27 any disclosure, required to be made pursuant to this section
28 is delivered after the execution of an offer to purchase, the
29 transferee shall have 3 days after delivery in person or 5
30 days after delivery by deposit in the mail to terminate his or
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1 her offer by delivery of a written notice of termination to
2 the transferor or the transferor's agent.

3 (5)(a) Neither the transferor nor any listing or
4 selling agent shall be liable for any error, inaccuracy, or
5 omission of any information delivered pursuant to this section
6 if the error, inaccuracy, or omission was caused by inaccurate
7 or incomplete information provided by public agencies to the
8 transferor, listing or selling agent, or other persons
9 specified in paragraph (c), if ordinary care was exercised in
10 obtaining and transmitting the information.

11 (b) The delivery of any information required to be
12 disclosed by this section to a prospective transferee by a
13 third party providing information required to be disclosed
14 pursuant to this section shall be deemed to comply with the
15 requirements of this section and shall relieve the transferor
16 or any listing or selling agent of any further duty under this
17 section with respect to that item of information.

18 (c) The delivery of a report or opinion prepared by a
19 licensed engineer, land surveyor, or expert in locating the
20 applicable zones on readily available and officially adopted
21 governmental maps and information concerning matters within
22 the scope of the professional's license or expertise is
23 sufficient compliance for application of the exemption
24 provided by paragraphs (a) and (b) if the information is
25 provided to the prospective transferee pursuant to a request
26 therefor, whether written or oral. In responding to that
27 request, an expert may indicate, in writing, an understanding
28 that the information provided will be used in fulfilling the
29 requirements of subsection (3) and, if so, shall indicate the
30 required disclosures, or parts thereof, to which the
31 information being furnished is applicable. If that statement

1 is furnished, the expert is not responsible for any items of
2 information, or parts thereof, other than those expressly set
3 forth in the statement.

4 (d) A third party providing the information on behalf
5 of the transferor and the transferor's agent fulfilling the
6 requirements of subsection (3) to be disclosed by this section
7 shall maintain a minimum of \$20 million of insurance
8 protection to protect the transferor and the transferor's
9 agent for any errors or omissions made by the third party.

10 (6)(a) After a transferor and his or her agent comply
11 with subsection (3), they are relieved of further duty under
12 this section with respect to those items of information. The
13 transferor and his or her agent are not required to provide
14 notice to the transferee if the information provided
15 subsequently becomes inaccurate as a result of any
16 governmental action, map revision, changed information, or
17 other act or occurrence, unless the transferor or the
18 transferor's agent has actual knowledge that the information
19 has become inaccurate.

20 (b) Neither the transferor nor any listing or selling
21 agent shall be required to update information disclosed in
22 accordance with this section subsequent to the delivery of the
23 required disclosures to the transferee.

24 (7) Each disclosure required by this section and each
25 act that may be performed in making the disclosure shall be
26 made in good faith. For purposes of this section, the term
27 "good faith" means honesty in fact in the conduct of the
28 transaction.

29 (8) The specification of items for disclosure in this
30 section does not limit or abridge any obligation for
31 disclosure created by any other provision of law or that may

1 exist in order to avoid fraud, misrepresentation, or deceit in
2 the transfer transaction. The Legislature does not intend to
3 affect the existing obligations of the parties to a real
4 estate contract, or their agents, or to disclose any fact
5 materially affecting the value and desirability of the
6 property, including, but not limited to, the physical
7 condition of the property and previously received reports of
8 physical inspection.

9 (9) Any disclosure made pursuant to this section may
10 be amended in writing by the transferor or his or her agent,
11 but the amendment shall be subject to subsection (4).

12 (10) Delivery of disclosures required by this section
13 shall be by personal delivery to the transferee or by mail to
14 the prospective transferee. For the purposes of this section,
15 delivery to the spouse of a transferee shall be deemed
16 delivery to the transferee, unless provided otherwise by
17 contract.

18 (11) Any person or entity, other than a real estate
19 licensee licensed in this state and acting in the capacity of
20 an escrow agent for the transfer of real property subject to
21 this section, shall not be deemed the agent of the transferor
22 or transferee for purposes of the disclosure requirements of
23 this section unless the person or entity is empowered to so
24 act by an express written agreement to that effect. The extent
25 of that agency shall be governed by the written agreement.

26 (12)(a) If more than one licensed real estate broker
27 is acting as an agent in a transaction subject to this
28 section, the broker who has obtained the offer made by the
29 transferee shall, except as otherwise provided in this
30 section, deliver the disclosure required by this section to
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1 the transferee, unless the transferor has given other written
2 instructions for delivery.

3 (b) If a licensed real estate broker responsible for
4 delivering the disclosure under this section cannot obtain the
5 disclosure document required and does not have written
6 assurance from the transferee that the disclosure has been
7 received, the broker shall advise the transferee in writing of
8 his or her rights to the disclosure. A licensed real estate
9 broker responsible for delivering disclosures under this
10 section shall maintain a record of the action taken to effect
11 compliance of the transaction.

12 (13) A transfer subject to this section may not be
13 invalidated solely because of the failure of any person to
14 comply with any provision of this section. However, any person
15 who willfully or negligently violates or fails to perform any
16 duty prescribed by any provision of this section shall be
17 liable in the amount of actual damages suffered by a
18 transferee.

19 (14)(a) As used in this section, the term "listing
20 agent" means an individual who has obtained a listing of
21 property of the kind in respect of which he or she is
22 authorized by law to act as an agent for compensation.

23 (b) As used in this section, the term "selling agent"
24 means an individual who acts in cooperation with a listing
25 agent and who sells, or finds and obtains a buyer for, the
26 property.

27 Section 2. This act shall take effect July 1, 2004.
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SENATE SUMMARY

Requires that a transferor of improved real property, or his or her agent, make certain disclosures with respect to the sale or transfer of that real property. Requires that property located within a flood hazard area, an area with severe constraints for development, an area having sinkhole activity, a wellhead protection area, a priority wetland zone, a habitat conservation area, an airport influence area, an environmental site, or a radon gas zone be identified by use of a Property Identification Disclosure Statement. Provides requirements for the form. Requires that third parties providing information for purposes of such disclosures maintain a minimum of \$20 million in insurance protection. (See bill for details.)