

HB 0947

2004

1 A bill to be entitled

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

HB 0947

2004

30 act; specifying liability for willful or negligent  
 31 violation or failure to perform; providing an effective  
 32 date.

33  
 34 Be It Enacted by the Legislature of the State of Florida:

35  
 36 Section 1. Section 475.423, Florida Statutes, is created  
 37 to read:

38 475.423 Property identification disclosure statement.--

39 (1)(a) Except as provided in subsection (2), this section  
 40 applies to any transfer by sale, exchange, or installment land  
 41 sale contract of residential properties, wherein one party  
 42 agrees to convey title to real property to another party upon  
 43 the satisfaction of specified conditions set forth in the  
 44 contract and which does not require conveyance of title within 1  
 45 year after the date of formation of the contract, lease with an  
 46 option to purchase, any other option to purchase, ground lease  
 47 coupled with improvements of any real property described in  
 48 paragraph (b), or residential stock cooperative, improved with  
 49 or consisting of not less than one or more than four dwelling  
 50 units.

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

54 1. A person who is either acting as an agent for a  
 55 transferor of real property that is located within a special  
 56 flood hazard area, which is any type Zone "A" or Zone "V" as  
 57 designated by the Federal Emergency Management Agency, or the  
 58 transferor, if he or she is acting without an agent, shall

HB 0947

2004

59 disclose to any prospective transferee the fact that the  
 60 property is located within a special flood hazard area if:

61 a. The transferor, or the transferor's agent, has actual  
 62 knowledge that the property is within a special flood hazard  
 63 area; or

64 b. Other readily available and officially adopted  
 65 governmental information exists regarding flood hazards which  
 66 includes the property.

67 2. A person who is acting as an agent for a transferor of  
 68 real property that is located on soils with very severe  
 69 constraints for development, or the transferor, if he or she is  
 70 acting without an agent, shall disclose to any prospective  
 71 transferee the fact that the property is located on soils with  
 72 very severe constraints for development pursuant to maps issued  
 73 by the United States Department of Agriculture or other readily  
 74 available and officially adopted governmental maps and  
 75 information if:

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

79 b. Other readily available and officially adopted  
 80 governmental information exists regarding soils with very severe  
 81 constraints for development which includes the property.

82 3. A person who is acting as an agent for a transferor of  
 83 real property that is located in an area impacted by sinkhole  
 84 activity, or the transferor, if he or she is acting without an  
 85 agent, shall disclose to any prospective transferee the fact  
 86 that the property is located in an area impacted by sinkhole  
 87 activity pursuant to readily available and officially adopted

HB 0947

2004

88 governmental maps and information if:

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

92 b. Other readily available and officially adopted  
 93 governmental information exists regarding sinkhole activity  
 94 which includes the property.

95 4. A person who is acting as an agent for a transferor of  
 96 real property that is located within a quarter of a mile of a  
 97 wellhead protection area, or the transferor, if he or she is  
 98 acting without an agent, shall disclose to any prospective  
 99 transferee the fact that the property is located within a  
 100 quarter of a mile of a wellhead protection area pursuant to maps  
 101 issued by the Department of Environmental Protection or a water  
 102 management district or other readily available and officially  
 103 adopted governmental maps and information if:

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

107 b. Other readily available and officially adopted  
 108 governmental information exists regarding wellhead protection  
 109 areas which includes the property.

110 5. A person who is acting as an agent for a transferor of  
 111 real property that is located in a priority wetland zone, or the  
 112 transferor, if he or she is acting without an agent, shall  
 113 disclose to any prospective transferee the fact that the  
 114 property is located in a priority wetland zone pursuant to maps  
 115 issued by the Fish and Wildlife Conservation Commission or other  
 116 readily available and officially adopted governmental maps and

HB 0947

2004

117 information if:

118 a. The transferor, or the transferor's agent, has actual  
 119 knowledge that the property is located in a priority wetland  
 120 zone; or

121 b. Other readily available and officially adopted  
 122 governmental information exists regarding priority wetland zones  
 123 which includes the property.

124 6. A person who is acting as an agent for a transferor of  
 125 real property that is located in a strategic habitat  
 126 conservation area, or the transferor, if he or she is acting  
 127 without an agent, shall disclose to any prospective transferee  
 128 the fact that the property is located in a strategic habitat  
 129 conservation area pursuant to maps issued by the Fish and  
 130 Wildlife Conservation Commission or other readily available and  
 131 officially adopted governmental maps and information if:

132 a. The transferor, or the transferor's agent, has actual  
 133 knowledge that the property is located in a strategic habitat  
 134 conservation area; or

135 b. Other readily available and officially adopted  
 136 governmental information exists regarding strategic habitat  
 137 conservation areas which includes the property.

138 7. A person who is acting as an agent for a transferor of  
 139 real property that is located within 2 statute miles of the  
 140 nearest point of the nearest runway at any airport, or the  
 141 transferor, if he or she is acting without an agent, shall  
 142 disclose to any prospective transferee the fact that the  
 143 property is located within 2 statute miles of the nearest point  
 144 of the nearest runway at any airport if:

145 a. The transferor, or the transferor's agent, has actual

HB 0947

2004

146 knowledge that the property is located within 2 statute miles of  
 147 the nearest point of the nearest runway at any airport; or

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

151 8. A person who is acting as an agent for a transferor of  
 152 real property that is located within a quarter of a mile of an  
 153 environmental hazard site, limited to filed governmental  
 154 reports, or the transferor, if he or she is acting without an  
 155 agent, shall disclose to any prospective transferee the fact  
 156 that the property is located within a quarter of a mile of an  
 157 environmental hazard site, including leaking underground storage  
 158 tanks, solid waste landfills, incinerators or transfer stations,  
 159 national priority list sites, or CERCLIS sites under review by  
 160 the United States Environmental Protection Agency, if:

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

164 b. Other readily available and officially adopted  
 165 governmental information exists regarding environmental hazard  
 166 sites which includes the property.

167 9. A person who is acting as an agent for a transferor of  
 168 real property that is located within a mapped radon gas  
 169 potential zone, or the transferor, if he or she is acting  
 170 without an agent, shall disclose to any prospective transferee  
 171 the fact that the property is located within a mapped radon gas  
 172 potential zone pursuant to maps issued by the United States  
 173 Environmental Protection Agency or other readily available and  
 174 officially adopted governmental maps and information if:

HB 0947

2004

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

178 b. Other readily available and officially adopted  
179 governmental information exists regarding potential radon gas  
180 which includes the property.

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

183 (2)(a) This section does not apply to the following  
184 transfers:

185 1. Transfers pursuant to court order, including, but not  
186 limited to, transfers ordered by a probate court in  
187 administration of an estate, transfers pursuant to a writ of  
188 execution, transfers by any foreclosure sale, transfers by a  
189 trustee in bankruptcy, transfers by eminent domain, and  
190 transfers resulting from a decree for specific performance.

191 2. Transfers to a mortgagee by a mortgagor or successor in  
192 interest who is in default and transfers to a beneficiary of a  
193 deed of trust by a trustor or successor in interest who is in  
194 default.

195 3. Transfers by a fiduciary in the course of the  
196 administration of a decedent's estate, guardianship,  
197 conservatorship, or trust.

198 4. Transfers from one coowner to one or more other  
199 coowners.

200 5. Transfers made to a spouse or to a person or persons in  
201 the lineal line of consanguinity of one or more of the  
202 transferors.

203 6. Transfers between spouses resulting from a judgment of

HB 0947

2004

204 dissolution of marriage or of legal separation of the parties or  
 205 from a property settlement agreement incidental to that  
 206 judgment.

207 7. Transfers by sale, resale, exchange, or installment  
 208 land sales contract of any manufactured mobile home, mobile home  
 209 park, or residential manufactured building.

210 (b) Transfers not subject to this section may be subject  
 211 to other disclosure requirements. In transfers that are not  
 212 subject to this section, agents may make required disclosures in  
 213 a separate writing.

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

217  
 218 PROPERTY IDENTIFICATION DISCLOSURE STATEMENT

219  
 220 This statement applies to the following property:

221 \_\_\_\_\_

222  
 223 The transferor and his or her agent(s) disclose the following  
 224 information with the knowledge that even though this is not a  
 225 warranty, prospective transferees may rely on this information  
 226 in deciding whether and on what terms to purchase the subject  
 227 property.

228  
 229 Transferor hereby authorizes any agent(s) representing any  
 230 principal(s) in this action to provide a copy of this statement  
 231 to any person or entity in connection with any actual or  
 232 anticipated sale of the property.



HB 0947

2004

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The following are representations made by the transferor and his or her agent(s) based on their knowledge and official maps and information prepared by the state and federal governments. This information is a disclosure and is not intended to be part of any contract between the transferee and transferor.

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

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

Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available \_\_\_\_\_ Pending \_\_\_\_\_

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

Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available \_\_\_\_\_ Pending \_\_\_\_\_

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

Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available \_\_\_\_\_ Pending \_\_\_\_\_

HB 0947

2004

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

Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available  
\_\_\_\_\_ Pending \_\_\_\_\_

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

Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available  
\_\_\_\_\_ Pending \_\_\_\_\_

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

Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available  
\_\_\_\_\_ Pending \_\_\_\_\_

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

HB 0947

2004

291 Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available

292 \_\_\_\_\_ Pending \_\_\_\_\_

293

294 (8) WITHIN A QUARTER OF A MILE OF AN ENVIRONMENTAL HAZARD  
 295 SITE, including leaking underground storage tanks, solid waste  
 296 landfills, incinerators or transfer stations, national priority  
 297 list sites, and/or CERCLIS sites under review by the United  
 298 States Environmental Protection Agency.

299

300 Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available

301 \_\_\_\_\_ Pending \_\_\_\_\_

302

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

307

308 Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available

309 \_\_\_\_\_ Pending \_\_\_\_\_

310

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

313

314 THE MAPS AND INFORMATION ON WHICH THESE DISCLOSURES ARE BASED  
 315 ARE ESTIMATES WHERE THE APPLICABLE ZONES AND PROTECTED LANDS  
 316 EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER A PROPERTY  
 317 WILL BE AFFECTED BY A NATURAL OR ENVIRONMENTAL DISASTER.

318 TRANSFeree(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN PROFESSIONAL  
 319 ADVICE REGARDING THESE AND OTHER HAZARDS AND PROTECTION ZONES

HB 0947

2004

320 THAT MAY AFFECT THE PROPERTY.

321  
322 Transferor represents that the information herein is true and  
323 correct to the best of the transferor's knowledge as of the date  
324 signed by the transferor.

325  
326 Signature of Transferor: \_\_\_\_\_ Date: \_\_\_\_\_

327  
328 Signature of Transferor: \_\_\_\_\_ Date: \_\_\_\_\_

329  
330 Agent represents that the information herein is true and correct  
331 to the best of the agent's knowledge as of the date signed by  
332 the agent.

333  
334 Signature of Transferor's Agent: \_\_\_\_\_ Date: \_\_\_\_\_

335  
336 Signature of Transferor's Agent: \_\_\_\_\_ Date: \_\_\_\_\_

337  
338 Transferee represents that he or she has read and understands  
339 this document.

340  
341 Signature of Transferee: \_\_\_\_\_ Date: \_\_\_\_\_

342  
343 Signature of Transferee: \_\_\_\_\_ Date: \_\_\_\_\_

344  
345 (b) If a map or accompanying information is not of  
346 sufficient accuracy or scale that a reasonable person can  
347 determine whether the subject real property is included in an  
348 applicable area, the transferor or transferor's agent shall mark

HB 0947

2004

349 "Yes" on the Property Identification Disclosure Statement. The  
 350 transferor or transferor's agent may mark "No" on the Property  
 351 Identification Disclosure Statement if he or she attaches a  
 352 report prepared pursuant to paragraph (5)(c) which verifies that  
 353 the property is not in the applicable zone. This paragraph does  
 354 not limit or abridge any existing duty of the transferor or the  
 355 transferor's agents to exercise reasonable care in making a  
 356 determination under this subsection.

357 (c) If the Federal Emergency Management Agency has issued  
 358 a Letter of Map Revision confirming that a property is no longer  
 359 within a special flood hazard area, the transferor or  
 360 transferor's agent may mark "No" on the Property Identification  
 361 Disclosure Statement regardless of whether the map has been  
 362 updated.

363 (d) If the Federal Emergency Management Agency has issued  
 364 a Letter of Map Revision confirming that a property is within a  
 365 special flood hazard area and the location of the letter has  
 366 been posted, the transferor or transferor's agent shall mark  
 367 "Yes" on the Property Identification Disclosure Statement  
 368 regardless of whether the map has been updated.

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

372 1. In the case of a sale, as soon as practicable before  
 373 transfer of title.

374 2. In the case of transfer by a real property sales  
 375 contract or by a lease together with an option to purchase, or a  
 376 ground lease coupled with improvements, as soon as practicable  
 377 before execution of the contract. For the purpose of this

HB 0947

2004

378 subparagraph, "execution" means the making or acceptance of an  
379 offer.

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

384 (c) If any disclosure, or any material amendment of any  
385 disclosure, required to be made pursuant to this section is  
386 delivered after the execution of an offer to purchase, the  
387 prospective transferee shall have 3 days after delivery in  
388 person or 5 days after delivery by deposit in the mail to  
389 terminate his or her offer by delivery of a written notice of  
390 termination to the transferor or the transferor's agent.

391 (5)(a) Neither the transferor nor any listing or selling  
392 agent shall be liable for any error, inaccuracy, or omission of  
393 any information delivered pursuant to this section if the error,  
394 inaccuracy, or omission was caused by inaccurate or incomplete  
395 information provided by public agencies to the transferor,  
396 listing or selling agent, or other persons specified in  
397 paragraph (c) and if ordinary care was exercised in obtaining  
398 and transmitting the information.

399 (b) The delivery of any information required to be  
400 disclosed by this section to a prospective transferee by a third  
401 party providing information required to be disclosed pursuant to  
402 this section shall be deemed to comply with the requirements of  
403 this section and shall relieve the transferor or any listing or  
404 selling agent of any further duty under this section with  
405 respect to that item of information.

406 (c) The delivery of a report or opinion prepared by a

HB 0947

2004

407 licensed engineer, land surveyor, or expert in locating the  
408 applicable zones on readily available and officially adopted  
409 governmental maps and information concerning matters within the  
410 scope of the professional's license or expertise is sufficient  
411 compliance for application of the exemption provided by  
412 paragraphs (a) and (b) if the information is provided to the  
413 prospective transferee pursuant to a request therefor, whether  
414 written or oral. In responding to that request, an expert may  
415 indicate, in writing, an understanding that the information  
416 provided will be used in fulfilling the requirements of  
417 subsection (3) and, if so, shall indicate the required  
418 disclosures, or parts thereof, to which the information being  
419 furnished is applicable. If that statement is furnished, the  
420 expert is not responsible for any items of information, or parts  
421 thereof, other than those expressly set forth in the statement.

422 (d) A third party providing the information on behalf of  
423 the transferor and the transferor's agent fulfilling the  
424 requirements of subsection (3) to be disclosed by this section  
425 shall maintain a minimum of \$20 million of insurance protection  
426 to protect the transferor and the transferor's agent for any  
427 errors or omissions made by the third party.

428 (6)(a) After a transferor and his or her agent comply with  
429 subsection (3), they are relieved of further duty under this  
430 section with respect to those items of information. The  
431 transferor and his or her agent are not required to provide  
432 notice to the prospective transferee if the information provided  
433 subsequently becomes inaccurate as a result of any governmental  
434 action, map revision, changed information, or other act or  
435 occurrence unless the transferor or the transferor's agent has

HB 0947

2004

436 actual knowledge that the information has become inaccurate.

437 (b) Neither the transferor nor any listing or selling  
 438 agent shall be required to update information disclosed in  
 439 accordance with this section subsequent to the delivery of the  
 440 required disclosures to the prospective transferee.

441 (7) Each disclosure required by this section and each act  
 442 that may be performed in making the disclosure shall be made in  
 443 good faith. For purposes of this section, "good faith" means  
 444 honesty in fact in the conduct of the transaction.

445 (8) The specification of items for disclosure in this  
 446 section does not limit or abridge any obligation for disclosure  
 447 created by any other provision of law or that may exist in order  
 448 to avoid fraud, misrepresentation, or deceit in the transfer  
 449 transaction. The Legislature does not intend to affect the  
 450 existing obligations of the parties to a real estate contract,  
 451 or their agents, or to disclose any fact materially affecting  
 452 the value and desirability of the property, including, but not  
 453 limited to, the physical condition of the property and  
 454 previously received reports of physical inspection.

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

458 (10) Delivery of disclosures required by this section  
 459 shall be by personal delivery or mail to the prospective  
 460 transferee. For the purposes of this section, delivery to the  
 461 spouse of a prospective transferee shall be deemed delivery to  
 462 the prospective transferee, unless provided otherwise by  
 463 contract.

464 (11) No person or entity, other than a real estate



HB 0947

2004

465 licensee licensed in this state and acting in the capacity of an  
 466 escrow agent for the transfer of real property subject to this  
 467 section, shall be deemed the agent of the transferor or  
 468 prospective transferee for purposes of the disclosure  
 469 requirements of this section unless the person or entity is  
 470 empowered to so act by an express written agreement to that  
 471 effect. The extent of that agency shall be governed by the  
 472 written agreement.

473 (12)(a) If more than one licensed real estate broker is  
 474 acting as an agent in a transaction subject to this section, the  
 475 broker who has obtained the offer made by the prospective  
 476 transferee shall, except as otherwise provided in this section,  
 477 deliver the disclosure required by this section to the  
 478 prospective transferee unless the transferor has given other  
 479 written instructions for delivery.

480 (b) If a licensed real estate broker responsible for  
 481 delivering the disclosure under this section cannot obtain the  
 482 disclosure document required and does not have written assurance  
 483 from the prospective transferee that the disclosure has been  
 484 received, the broker shall advise the prospective transferee in  
 485 writing of his or her rights to the disclosure. A licensed real  
 486 estate broker responsible for delivering disclosures under this  
 487 section shall maintain a record of the action taken to effect  
 488 compliance of the transaction.

489 (13) A transfer subject to this section may not be  
 490 invalidated solely because of the failure of any person to  
 491 comply with any provision of this section. However, any person  
 492 who willfully or negligently violates or fails to perform any  
 493 duty prescribed by any provision of this section shall be liable

HB 0947

2004

494 in the amount of actual damages suffered by a transferee.

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

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

502 Section 2. This act shall take effect July 1, 2004.