

HOUSE BILL No. 5106

September 11, 1991, Introduced by Reps. Clack and Murphy and referred to the Committee on Consumers.

A bill to require certain disclosures in connection with transfers of residential property.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "seller disclosure act".

3 Sec. 2. Except as provided in section 3, this act applies
4 to any transfer by sale, exchange, installment land sale con-
5 tract, lease with an option to purchase, any other option to pur-
6 chase, or ground lease coupled with improvements, of real prop-
7 erty improved with or consisting of not less than 1 or more than
8 4 dwelling units.

9 Sec. 3. This act does not apply to any of the following:

10 (a) Transfers pursuant to court order, including, but not
11 limited to, transfers ordered by a probate court in
12 administration of an estate, transfers pursuant to a writ of

1 execution, transfers by any foreclosure sale, transfers by a
2 trustee in bankruptcy, transfers by eminent domain, and transfers
3 resulting from a decree for specific performance.

4 (b) Transfers to a mortgagee by a mortgagor or successor in
5 interest who is in default, transfers to a beneficiary of a deed
6 of trust by a trustor or successor in interest who is in default,
7 transfers by any foreclosure sale after default, in an obligation
8 secured by a mortgage, transfers by a sale under a power of sale
9 or any foreclosure sale under a decree of foreclosure after
10 default in an obligation secured by a deed of trust or secured by
11 any other instrument containing a power of sale, or transfers by
12 a mortgagee or a beneficiary under a deed of trust who has
13 acquired the real property at a sale conducted pursuant to a
14 power of sale under a mortgage or deed of trust or a sale pursu-
15 ant to a decree of foreclosure or has acquired the real property
16 by a deed in lieu of foreclosure.

17 (c) Transfers by a fiduciary in the course of the adminis-
18 tration of a decedent's estate, guardianship, conservatorship, or
19 trust.

20 (d) Transfers from 1 co-owner to 1 or more other co-owners.

21 (e) Transfers made to a spouse, or to a person or persons in
22 the lineal line of consanguinity of 1 or more of the
23 transferors.

24 (f) Transfers between spouses resulting from a divorce judg-
25 ment or a decree of legal separation or from a property settle-
26 ment agreement incidental to such a decree.

1 (g) Transfers or exchanges to or from any governmental
2 entity.

3 Sec. 4. (1) The transferor of any real property subject to
4 this act shall deliver to the prospective transferee the written
5 statement required by this act, as follows:

6 (a) In the case of a sale, as soon as practicable before
7 transfer of title.

8 (b) In the case of transfer by an installment land sales
9 contract or by a lease together with an option to purchase, or a
10 ground lease coupled with improvements, as soon as practicable
11 before execution of the contract. For the purpose of this subdi-
12 vision, "execution" means the making or acceptance of an offer.

13 (2) With respect to any transfer subject to subsection (1),
14 the transferor shall indicate compliance with this act either on
15 the receipt for deposit, the land sales contract, the lease, or
16 any addendum attached to the receipt, contract, or lease, or on a
17 separate document.

18 (3) If any disclosure, or any material amendment of any dis-
19 closure, required to be made by this act is delivered after the
20 execution of an offer to purchase, the transferee has 3 days
21 after delivery in person or 5 days after delivery by deposit in
22 the mail, to terminate his or her offer by delivery of a written
23 notice of termination to the transferor or the transferor's
24 agent.

25 Sec. 5. (1) Neither the transferor nor any listing or sell-
26 ing agent is liable for any error, inaccuracy, or omission of any
27 information delivered pursuant to this act if the error,

1 inaccuracy, or omission was not within the personal knowledge of
2 the transferor or that listing or selling agent, was based on
3 information timely provided by public agencies or by other per-
4 sons providing information as specified in subsection (3) that is
5 required to be disclosed pursuant to this act, and ordinary care
6 was exercised in obtaining and transmitting it.

7 (2) The delivery of any information required to be disclosed
8 by this act to a prospective transferee by a public agency or
9 other person providing information required to be disclosed pur-
10 suant to this act shall be considered to comply with the require-
11 ments of this act and relieves the transferor or any listing or
12 selling agent of any further duty under this act with respect to
13 that item of information.

14 (3) The delivery of a report or opinion prepared by a
15 licensed engineer, land surveyor, geologist, pest control opera-
16 tor, contractor, or other expert, dealing with matters within the
17 scope of the professional's license or expertise, shall be suffi-
18 cient compliance for application of the exemption provided by
19 subsection (1) if the information is provided to the prospective
20 transferee pursuant to a request therefor, whether written or
21 oral. In responding to such a request, an expert may indicate,
22 in writing, an understanding that the information provided will
23 be used in fulfilling the requirements of section 6 and, if so,
24 shall indicate the required disclosures, or parts thereof, to
25 which the information being furnished is applicable. Where such
26 a statement is furnished, the expert shall not be responsible for

1 any items of information, or parts thereof, other than those
2 expressly set forth in the statement.

3 Sec. 6. If information disclosed in accordance with this
4 act is subsequently rendered inaccurate as a result of any act,
5 occurrence, or agreement after the delivery of the required dis-
6 closures, the resulting inaccuracy does not constitute a viola-
7 tion of this act. If at the time the disclosures are required to
8 be made, an item of information required to be disclosed is
9 unknown or not available to the transferor, and the transferor or
10 his or her agent has made a reasonable effort to ascertain it,
11 the transferor may use an approximation of the information, pro-
12 vided the approximation is clearly identified as an approxima-
13 tion, is reasonable, is based on the best information available
14 to the transferor or his or her agent, and is not used for the
15 purpose of circumventing or evading this act.

16 Sec. 7. The disclosures required by this act pertaining to
17 the property proposed to be transferred are set forth in, and
18 shall be made on a copy of, the following disclosure form:

19 REAL ESTATE TRANSFER DISCLOSURE STATEMENT

20 THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN
21 THE CITY OF _____, COUNTY OF _____,
22 STATE OF MICHIGAN, DESCRIBED AS _____

23 _____ . THIS STATEMENT IS A
24 DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN
25 COMPLIANCE WITH THE SELLER DISCLOSURE ACT. IT IS NOT A WARRANTY
26 OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY

1 PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY
 2 INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I

COORDINATION WITH OTHER DISCLOSURE FORMS

5 This real estate transfer disclosure statement is made pursuant
 6 to the seller disclosure act. Other statutes may require disclo-
 7 sures, depending upon the details of the particular real estate
 8 transaction.

9 Substituted disclosures: The following disclosures have or will
 10 be made in connection with this real estate transfer, and are
 11 intended to satisfy the disclosure obligations on this form,
 12 where the subject matter is the same: _____

13 _____
 14 _____
 15 _____

16 (list all substituted disclosure forms
 17 to be used in connection with this transaction)

II

SELLERS INFORMATION

20 The seller discloses the following information with the knowledge
 21 that even though this is not a warranty, prospective buyers may
 22 rely on this information in deciding whether and on what terms to
 23 purchase the subject property. Seller hereby authorizes any
 24 agent(s) representing any principal(s) in this transaction to
 25 provide a copy of this statement to any person or entity in con-
 26 nection with any actual or anticipated sale of the property.

1 THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE
2 NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS
3 INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY
4 CONTRACT BETWEEN THE BUYER AND SELLER.

5 Seller ___ is ___ is not occupying the property.

6 A. The subject property has the items checked below:

- 7 - ___ Range
- 8 ___ Oven
- 9 ___ Microwave
- 10 ___ Dishwasher
- 11 ___ Trash compactor
- 12 ___ Garbage disposal
- 13 ___ Washer/dryer hookups
- 14 ___ Window screens
- 15 ___ Rain gutters
- 16 ___ Burglar alarms
- 17 ___ Smoke detector(s)
- 18 ___ Fire alarm
- 19 ___ T.V. antenna
- 20 ___ Satellite dish
- 21 ___ Intercom
- 22 ___ Central heating
- 23 ___ Central air conditioning
- 24 ___ Evaporator cooler(s)
- 25 ___ Wall/window air conditioning
- 26 ___ Sprinklers

- 1 ___Public sewer system
- 2 ___Septic tank
- 3 ___Sump pump
- 4 ___Water softener
- 5 ___Patio/decking
- 6 ___Built-in barbeque
- 7 ___Gazebo
- 8 ___Sauna
- 9 ___Pool
- 10 ___Spa
- 11 ___Hot tub
- 12 ___Security gate(s)
- 13 ___Automatic garage door opener(s)
- 14 ___Number remote controls
- 15 Garage:
- 16 ___Attached
- 17 ___Not attached
- 18 ___Carport
- 19 Pool/spa heater:
- 20 ___Gas
- 21 ___Solar
- 22 ___Electric
- 23 Water heater:
- 24 ___Gas
- 25 ___Private utility or other_____
- 26 Water supply:

1 ___City

2 ___Well

3 Gas supply:

4 ___Utility

5 ___Bottled

6 Exhaust fan(s) in _____ 220 volt wiring in _____

7 Fireplace(s) in _____

8 Gas starter___ Roof(s): Type: _____ Age: _____ (approx.)

9 Other: _____

10 Are there, to the best of your (seller's) knowledge, any of the
11 above that are not in operating condition? ___Yes ___No. If
12 yes, then describe.

13

14 (Attach additional sheets if necessary): _____

15 _____

16 _____

17 _____

18 B. Are you (seller) aware of any significant
19 defects/malfunctions in any of the following? ___Yes ___No. If
20 yes, check appropriate space(s) below.

21

22 ___Interior walls ___ceilings ___floors ___exterior walls

23 ___insulation ___roof(s) ___windows ___doors ___foundation

24 ___slab(s) ___driveways ___sidewalks ___walls/fences

25 ___electrical systems ___plumbing/sewers/septics ___other

26 Structural components (describe: _____)

1 If any of the above is checked, explain. (Attach additional
 2 sheets if necessary): _____

3 _____

4 _____

5 _____

6 C. Are you (seller) aware of any of the following:

- 7 1. Substances, materials, or products which
 8 may be an environmental hazard such as,
 9 but not limited to, asbestos, formalde-
 10 hyde, radon gas, lead-based paint, fuel
 11 or chemical storage tanks, and contami-
 12 nated soil or water on the subject
 13 property..... ☐ Yes ☐ No
- 14 2. Features of the property shared in common
 15 with adjoining landowners, such as walls,
 16 fences, and driveways, whose use or
 17 responsibility for maintenance may have
 18 an effect on the subject property..... ☐ Yes ☐ No
- 19 3. Any encroachments, easements or similar
 20 matters that may affect your interest in
 21 the subject property..... ☐ Yes ☐ No
- 22 4. Rooms additions, structural modifications,
 23 or other alterations or repairs made
 24 without necessary permits..... ☐ Yes ☐ No
- 25 5. Rooms additions, structural modifications,
 26 or other alterations or repairs not in
 27 compliance with building codes..... ☐ Yes ☐ No

- 1 6. Landfill (compacted or otherwise) on the
2 property or any portion thereof..... ☐ Yes ☐ No
- 3 7. Any settling from any cause, or slippage,
4 sliding, or other soil problems..... ☐ Yes ☐ No
- 5 8. Flooding, drainage or grading problems ☐ Yes ☐ No
- 6 9. Major damage to the property or any of the
7 structures from fire, earthquake, floods,
8 or landslides..... ☐ Yes ☐ No
- 9 10. Any zoning violations, nonconforming uses,
10 violations of "setback" requirements... ☐ Yes ☐ No
- 11 11. Neighborhood noise problems or other
12 nuisances..... ☐ Yes ☐ No
- 13 12. CC&R's or other deed restrictions or
14 obligations..... ☐ Yes ☐ No
- 15 13. Homeowners' association which has any
16 authority over the subject property.... ☐ Yes ☐ No
- 17 14. Any "common area" (facilities such as
18 pools, tennis courts, walkways, or other
19 areas co-owned in undivided interest with
20 others)..... ☐ Yes ☐ No
- 21 15. Any notices of abatement or citations
22 against the property..... ☐ Yes ☐ No
- 23 16. Any lawsuits against the seller threatening
24 to or affecting this real property..... ☐ Yes ☐ No
- 25 If the answer to any of these is yes, explain. (Attach addi-
26 tional sheets if necessary.): _____

1 _____
 2 _____
 3 Seller certifies that the information herein is true and correct
 4 to the best of the seller's knowledge as of the date signed by
 5 the seller.

6 Seller _____ Date _____

7 Seller _____ Date _____

8 III

9 AGENT'S INSPECTION DISCLOSURE

10 (To be completed only if the seller is represented by an agent in
 11 this transaction.)

12 THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS
 13 TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY
 14 COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS
 15 OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE
 16 FOLLOWING:

17 _____
 18 _____
 19 _____
 20 _____

21 Agent (real estate broker

22 representing seller) _____ By _____ Date _____

23 (please print) (real estate salesperson
 24 or broker-signature)
 25

26 IV

27 AGENTS INSPECTION DISCLOSURE

28 (To be completed only if the agent who has obtained the offer is
 29 other than the agent above.)

1 THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT
 2 VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES
 3 THE FOLLOWING:

4 _____
 5 _____
 6 _____
 7 _____

8 Agent (real estate broker

9 obtaining the offer) _____ By _____ Date _____

10 (please print) (real estate salesperson
 11 or broker-signature)
 12

13 V

14 BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE
 15 AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE
 16 PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT
 17 TO ANY ADVICE/INSPECTIONS/DEFECTS.

18

19

20 I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

21 Seller _____ Date _____ Buyer _____ Date _____

22 Seller _____ Date _____ Buyer _____ Date _____

23 Agent (real estate broker

24 representing seller) _____ By _____ Date _____

25 (real estate salesperson
 26 or broker-signature)
 27

27 Agent (real estate broker

28 obtaining the offer) _____ By _____ Date _____

29 (real estate salesperson
 30 or broker-signature)

1
2 A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF
3 YOU WANT LEGAL ADVICE, CONSULT YOUR ATTORNEY.

4 Sec. 8. (1) A city, township, or county may elect to
5 require disclosures on the form set forth in subsection (2) in
6 addition to those disclosures required by section 7. However,
7 this section does not affect or limit the authority of a city,
8 township, or county to require disclosures on a different disclo-
9 sure form in connection with transactions subject to this act
10 pursuant to an ordinance adopted before the effective date of
11 this act. Such an ordinance may be amended thereafter to revise
12 the disclosure requirements of the ordinance, in the discretion
13 of the city or township council or county board of
14 commissioners.

15 (2) Disclosures required pursuant to this section pertaining
16 to the property proposed to be transferred shall be set forth in
17 and shall be made on a copy of the following disclosure form:

18 LOCAL OPTION

19 REAL ESTATE TRANSFER DISCLOSURE STATEMENT

20 THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN
21 THE CITY OF _____, COUNTY OF _____, STATE OF
22 MICHIGAN, DESCRIBED AS _____. THIS STATEMENT IS A
23 DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN
24 COMPLIANCE WITH ORDINANCE NO. _____ OF THE _____ CITY,
25 TOWNSHIP, OR COUNTY CODE AS OF _____, 19____. IT IS NOT A
26 WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S)
27 REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A

1 SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY
2 WISH TO OBTAIN.

3 I

4 SELLERS INFORMATION

5 The seller discloses the following information with the knowledge
6 that even though this is not a warranty, prospective buyers may
7 rely on this information in deciding whether and on what terms to
8 purchase the subject property. Seller hereby authorizes any
9 agent(s) representing any principal(s) in this transaction to
10 provide a copy of this statement to any person or entity in con-
11 nection with any actual or anticipated sale of the property.

12 THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AS
13 REQUIRED BY THE CITY, TOWNSHIP, OR COUNTY OF _____ AND ARE
14 NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS
15 INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY
16 CONTRACT BETWEEN THE BUYER AND SELLER.

17 1.

18 _____

19 _____

20 _____

21 _____

22 2.

23 _____

24 _____

25 _____

26 _____

27 (Example: Adjacent land is zoned for timber production which may
28 be subject to harvest.)

1 _____
 2 Seller certifies that the information herein is true and correct
 3 to the best of the seller's knowledge as of the date signed by
 4 the seller.

5 Seller _____ Date _____

6 Seller _____ Date _____

7 II

8 BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE
 9 AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE
 10 PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT
 11 TO ANY ADVICE/INSPECTIONS/DEFECTS.

12 I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

13 Seller _____ Date _____ Buyer _____ Date _____

14 Seller _____ Date _____ Buyer _____ Date _____

15 Agent (real estate broker

16 representing seller) _____ By _____ Date _____

17 (real estate salesperson
 18 or broker-signature)

19
 20 Agent (real estate broker

21 obtaining the offer) _____ By _____ Date _____

22 (real estate salesperson
 23 or broker-signature)

24
 25 A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF

26 YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

27 (3) This section does not preclude the use of addenda to the
 28 form specified in subsection (2) to facilitate the required
 29 disclosures. This section does not preclude a city, township, or

1 county from using the disclosure form specified in subsection (2)
2 for a purpose other than that specified in this section.

3 Sec. 9. Each disclosure required by this act and each
4 action which may be performed in making the disclosure shall be
5 made in good faith. For purposes of this act, "good faith" means
6 honesty in fact in the conduct of the transaction.

7 Sec. 10. The specification of items for disclosure in this
8 act does not limit or abridge any obligation for disclosure cre-
9 ated by any other provision of law or which may exist in order to
10 avoid fraud, misrepresentation, or deceit in the transfer
11 transaction.

12 Sec. 11. Any disclosure made pursuant to this act may be
13 amended in writing by the transferor or his or her agent, but the
14 amendment shall be subject to section 4.

15 Sec. 12. Delivery of disclosures required by this act shall
16 be by personal delivery to the transferee or by mail to the pro-
17 spective transferee. For the purposes of this act, delivery to
18 the spouse of a transferee shall be considered delivery to the
19 transferee, unless provided otherwise by contract.

20 Sec. 13. Any person or entity other than a real estate
21 licensee acting in the capacity of an escrow agent for the trans-
22 fer of real property subject to this act shall not be considered
23 to be the agent of the transferor or transferee for purposes of
24 the disclosure requirements of this act, unless the person or
25 entity is empowered to so act by an express written agreement to
26 that effect. The extent of such an agency shall be governed by
27 the written agreement.

1 Sec. 14. (1) If more than 1 licensed real estate broker is
2 acting as an agent in a transaction subject to this act, the
3 broker who has obtained the offer made by the transferee shall,
4 except as otherwise provided in this act, deliver the disclosure
5 required by this article to the transferee, unless the transferor
6 has given other written instructions for delivery.

7 (2) If a licensed real estate broker responsible for deliv-
8 ering the disclosures under this section cannot obtain the dis-
9 closure document required and does not have written assurance
10 from the transferee that the disclosure has been received, the
11 broker shall advise the transferee in writing of his or her
12 rights to the disclosure. A licensed real estate broker respon-
13 sible for delivering disclosures under this section shall main-
14 tain a record of the action taken to effect compliance.

15 Sec. 15. A transfer subject to this act shall not be inval-
16 idated solely because of the failure of any person to comply with
17 any provision of this act. However, any person who willfully or
18 negligently violates or fails to perform any duty prescribed by
19 any provision of this act shall be liable in the amount of actual
20 damages suffered by a transferee.

21 Sec. 16. (1) The seller of residential real property
22 subject to this act who has actual knowledge of any former fed-
23 eral or state ordnance locations within the neighborhood area
24 shall give written notice of that knowledge as soon as practica-
25 ble before transfer of title.

26 (2) The disclosure required by this section does not limit
27 or abridge any obligation for disclosure created by any other law

1 or that may exist in order to avoid fraud, misrepresentation, or
2 deceit in the transfer transaction.

3 (3) For purposes of this section:

4 (a) "Former federal or state ordnance locations" means an
5 area identified by an agency or instrumentality of the federal or
6 state government as an area once used for military training pur-
7 poses which may contain potentially explosive munitions.

8 (b) "Neighborhood area" means within 1 mile of the residen-
9 tial real property.