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CHAPTER 36. HOME CONSTRUCTION AND IMPROVEMENT PROTECTION

Subchapter II. Home Owner's Protection Act

§ 3651. Definitions.

As used in this subchapter:

(1) "Construction" includes construction, erection, building, alteration, repair, reconstruction and destruction of improvements to real property.

(2) "Improvement" includes buildings, roads, streets, entrances and walkways of any type constructed thereon, and other structures affixed to and on land, as well as any changes to the land itself.

(3) "Residential real property" means any estate in real property improved by a dwelling for use as a residence. (70 Del. Laws, c. 419, § 4.)

§ 3652. Economic loss relating to improvements to residential real property.

No action based in tort to recover damages resulting from negligence in the construction or manner of construction of an improvement to residential real property and/or in the designing, planning, supervision and/or observation of any such construction or manner of construction shall be barred solely on the ground that the only losses suffered are economic in nature. (70 Del. Laws, c. 419, § 4.)

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TITLE 6

Commerce and Trade

SUBTITLE II

Other Laws Relating to Commerce and Trade

CHAPTER 25. PROHIBITED TRADE PRACTICES

Subchapter VII. Buyer Property Protection Act

§ 2570. Short title.

This subchapter may be cited as the "Buyer Property Protection Act." (69 Del. Laws, c. 86, § 2.)

§ 2571. Definitions.

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

(1) "Agent" means any individual, partnership, corporation or trustee defined as a broker in § 2901 of Title 24, acting on behalf of a seller or buyer of residential real property.

(2) "Buyer" means any individual, partnership, corporation or trustee purchasing any estate or interest in real property.

(3) "Final settlement" means the time at which the parties have signed and delivered all papers and consideration to convey title to the estate or interest in residential real property being conveyed.

(4) "Residential real property" means any estate or interest in a manufactured housing lot or real property, improved by dwelling units for 1-4 families.

(5) "Seller" means any individual, partnership, corporation or trustee transferring residential real property.

(6) "Subagent" means any individual, partnership, corporation or trustee defined as a broker or sales person in § 2901 of Title 24 acting on behalf of an agent. (69 Del. Laws, c. 86, § 2.)

§ 2572. Disclosure of material defects.

(a) Except as excluded by § 2577 of this title hereof, a seller transferring residential real property shall disclose, in writing, to the buyer, agent and subagent, as applicable, all material defects of that property that are known at the time the property is offered for sale or that are known prior to the time of final settlement.

(b) This disclosure shall be made in writing before the seller signs the listing agreement and shall be updated as necessary for any material changes occurring in the property before final settlement. (69 Del. Laws, c. 86, § 2.)

§ 2572A. Radon testing and disclosure.

(a) Except as excluded by § 2577 of this title, every purchaser of any interest in residential real property on which a residential dwelling exists shall be notified that said property may present the potential for exposure to radon.

(b) Except as excluded by § 2577 of this title, the seller of any interest in residential real property on which a residential dwelling exists is required to provide the buyer with any information on radon from tests or inspections in the seller's possession, and notify the buyer of any known radon hazards.

(c) The Department of Health and Social Services shall develop the content of written information that the selling broker shall provide to the buyer of any interest in residential real property on which a residential dwelling exists. The information shall describe potential hazards of exposure to radon, testing for radon and radon remediation.

(d) The Delaware Real Estate Commission shall develop a form that will document that subsections (a), (b) and (c) of this section have occurred. The form shall be utilized for every transfer of residential real property as described in this section and shall include:

(1) The property address;

(2) The seller's disclosure of the presence of radon hazards, if known;

(3) The buyer's acknowledgement that information about radon was received;

(4) The buyer's acknowledgement of that buyer's option to test for radon;

(5) The seller's acknowledgement that the seller has been informed of the seller's obligation and is aware of that seller's responsibility to ensure compliance with this section; and

(6) Signatures of the buyer and seller attesting to the above and the date so signed. (75 Del. Laws, c. 360, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2573. Property condition report.

The agent, subagent or seller, as applicable, shall give a copy of the Seller's Disclosure of Real Property Condition Report to all prospective buyers or prospective buyer's agent prior to the time the buyer makes an offer to purchase. This written disclosure form, signed by buyer and seller, shall become a part of the purchase agreement. (69 Del. Laws, c. 86, § 2.)

§ 2574. Other inspections or warranties.

The seller's completed disclosure form is a good faith effort by the seller to make the disclosures required by this subchapter, and is not a warranty of any kind by the seller or any agents or subagents representing seller or buyer in the transfer and is not a substitute for any inspections or warranties that the seller or buyer may wish to obtain. (69 Del. Laws, c. 86, § 2.)

§ 2575. Cause of action.

The buyer shall not have a cause of action against the seller, agent and/or subagent for:

(1) Material defects in condition of the residential real property disclosed to the buyer prior to the buyer making an offer to purchase;

(2) Material defects developed after the offer was made but disclosed prior to final settlement, provided seller has complied with the agreement of sale; or

(3) Material defects which occur after final settlement. (69 Del. Laws, c. 86, § 2.)

§ 2576. Applicability.

This subchapter shall apply to transfers by sale, exchange, installment land sale contract, lease with an option to purchase or ground lease of a manufactured housing lot, or residential real property, improved with dwelling units for 1-4 families. (69 Del. Laws, c. 86, § 2.)

§ 2577. Exemptions.

This subchapter shall not apply to the following transfers of residential real property:

(1) Transfers governed by the Delaware Out-of-State Land Sales and Promotions Act [repealed] where the property disclosure report required by that law is provided to a prospective purchaser.

(2) Transfers pursuant to court order such as transfers ordered by the Court of Chancery in the administration of an estate, trust or guardianship or pursuant to a Writ of Execution, by a trustee in bankruptcy or a receiver, by eminent domain, and transfers resulting from a decree for specific performance.

(3) Transfers to a mortgagee by a mortgagor in default by a deed in lieu of foreclosure.

(4) Transfers by any sheriff's sale for default on an obligation secured by a mortgage, judgment, tax or other lien.

(5) Transfers by a fiduciary in the course of the administration of the decedent's estate, guardianship or trust.

(6) Transfers from one co-owner to one or more other co-owners.

(7) Transfers made to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors.

(8) Transfers between spouses resulting from a property settlement incident to a

divorce.

(9) Transfers to or from any government entity. (69 Del. Laws, c. 86, § 2.)

§ 2578. Property condition report form.

The Delaware Real Estate Commission shall develop a standard form or forms to be used as the Seller's Disclosure of Real Property Condition Report, for the disclosure of the condition of residential real property. This form or forms for different circumstances shall be promulgated and amended from time to time by the Real Estate Commission, including such additional relevant content as the Commission deems appropriate.

Each form shall also include the following:

"The cost of repairing and repaving the streets adjacent to the property is paid for by (check one):

_____ The property owner(s), estimated fees: \$_____ .

_____ Delaware Department of Transportation or the State.

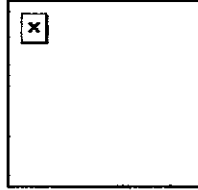
_____ Unknown.

Note to Buyer: Repairing and repaving of the streets can be very costly."

Each form shall also include the results of the radon test or tests required to be disclosed by § 2572A of this title. (69 Del. Laws, c. 86, § 2; 72 Del. Laws, c. 426, § 1; 75 Del. Laws, c. 360, § 2.)

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SPONSOR: Sen. Sorenson & Rep. Ulbrich
Sen. Blevins, Cloutier; Rep. Hall-Long

DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1

FOR

SENATE BILL NO. 198

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO RADON.

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

Section 1. Amend Chapter 25, Title 6, Delaware Code by inserting a new section therein as follows:

“§2572A Radon Testing and Disclosure

(a) Except as excluded by §2577 of this subchapter, every purchaser of any interest in residential real property on which a residential dwelling exists shall be notified that said property may present the potential for exposure to radon.

(b) Except as excluded by §2577 of this subchapter, the seller of any interest in residential real property on which a residential dwelling exists is required to provide the buyer with any information on radon from tests or inspections in the seller’s possession, and notify the buyer of any known radon hazards.

(c) The Department of Health and Social Services shall develop the content of written information that the buyer’s agent shall provide to the buyer of any interest in residential real property on which a residential dwelling exists. The information shall describe potential hazards of exposure to radon, testing for radon, radon remediation, and the buyer’s rights during a property transaction.

(d) The Delaware Real Estate Commission with consultation from The Department of Health and Social Services shall develop a form that will document that subsections (a), (b) and (c) of this section have occurred. The form shall be utilized for every transfer of residential real property as described in this section and shall include:

- (i) The property address;
- (ii) The seller’s disclosure of the presence of radon hazards, if known;
- (iii) The buyer’s acknowledgement that information about radon was received;
- (iv) The buyer’s acknowledgement of his/her option to test for radon;
- (v) The agent’s acknowledgement that the seller has been informed of the seller’s obligation and is aware of

his/her responsibility to ensure compliance with this section; and

(vi) Signatures of the buyer, seller, and agent attesting to the above and the date so signed.”

Section 2. Amend §2578, Title 6, Delaware Code by adding at the end thereof the following: “Each form shall also include the results of the radon test or tests required to be disclosed by §2572A of this subchapter.”

Section 3. This Act shall become effective upon enactment into law but shall not be enforced until the development of the written information and form required by subsections (c) and (d) of the new code section created by Section 1 of this Act, or until one year after enactment into law, whichever shall first occur.

SYNOPSIS

This Act requires potential buyers of residential property to be informed of radon hazards and their option to have the property tested for radon.

AUTHOR: Sen. Sorenson