Disclosure of Information in Real Estate Transactions



Legislative Counsel Bureau

> Bulletin No. 95-5

September 1994

DISCLOSURE IN REAL ESTATE TRANSACTIONS

BULLETIN NO. 95-5

SEPTEMBER 1994

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SUMMARY OF RECOMMENDATIONS

EDUCATIONAL AND LICENSING REQUIREMENTS FOR REAL ESTATE PROFESSIONALS

 Require the Real Estate Division to include in its regulations concerning courses of real estate instruction for an original real estate salesman's license the requirement that such courses contain a section concerning disclosure of information in real estate transactions, including where information subject to disclosure may be found.

ADDITIONS OR CHANGES TO EXISTING DISCLOSURE REQUIREMENTS

- 2. Amend *Nevada Revised Statutes* (NRS) 40.565 to specify that, in any sale of real property:
 - a. The fact that the property is or has been the site of any death, not only homicide and suicide, is not material to the transaction; and
 - b. The agent of the buyer is not liable to the buyer for failure to disclose any fact described in that section.
- 3. Require the landlord of a mobile home park to provide to a prospective tenant, at the time of application for residency or, if no application is made, before the tenant signs an initial rental agreement, a separate written document that provides, for the lot which is proposed to be rented, a history of rental increases and the total rental charges for the past 5 years, or from the date the lot was available for rental, whichever is less.
- 4. a. Amend NRS 113.070 to include among that information that certain sellers are required to disclose to purchasers:
 - (1) The contents of the master plan for the area in which the residence is located; and
 - (2) Notice of any services, utilities, roads, or improvements affecting the residence that are to remain privately owned and

maintained. This notice must indicate whether the purchaser, a homeowners' association, or other entity will be responsible for that ownership or maintenance; and

b. Require the Real Estate Division to establish, by regulation, what information contained in a master plan must be disclosed pursuant to this recommendation.

MANDATORY REAL PROPERTY CONDITION DISCLOSURE

- 5. Require the completion of a real property condition disclosure form by the seller of real property containing at least one but not more than four dwelling units. Further require the seller or his agent to serve* the buyer or his agent with the form before the close of escrow or other transfer of the residence.
- 6. If a previously unknown defect** or worsening of a defect is discovered before the close of escrow or other transfer of the residence, and after service of the real property condition disclosure form, require the seller or his agent to inform the buyer or his agent of the defect, orally or in writing, as soon as practicable after discovery of the defect, or before the close of escrow or other transfer of the residence, whichever is sooner.

Exemptions

- 7. Provide that the following are exempt from the real property disclosure requirement:
 - Sales by entities referred to in paragraph (a) of subsection 2 of NRS 645.240;
 - b. Transfers pursuant to court orders (for example, divorce cases, foreclosure sales, and bankruptcies);
 - c. First sale of a residence that has never been occupied, if the residence is constructed by a licensed contractor;
 - d. Transfers between co-owners, spouses, or persons related within the third degree of consanguinity; and

e. Transfers by a person who takes temporary possession or control of or title to real property solely to facilitate the sale of the property by a seller who relocates to another county, state, or country.

Development of the Disclosure Form

- 8. Require the Real Estate Division to develop, by regulation, the real property condition disclosure form. Stipulate that the form must:
 - a. Evaluate, at a minimum, conditions related to electrical, heating and cooling, plumbing, and sewer systems;
 - b. Allow the seller to indicate, for each condition described on the form, whether the condition is defective,** not defective, or unknown; and
 - c. Include, among other provisions, statements to the effect that:
 - (1) The disclosures set forth on the form are made by the seller and not by any agent; and
 - (2) The seller, the seller's agent, and the agent of a buyer or potential buyer are authorized to disclose the form and its contents to a buyer or potential buyer.

Limitations on Liability

- 9. Provide that the seller is not liable for failure to identify, and thus disclose, defects** of which he is unaware.
- 10. a. Provide that the real property condition disclosure form is not an express or implied warranty, but rather a good faith disclosure of the condition of the real property. Further stipulate that the seller is not responsible for an error or omission in the disclosure form if the error or omission was based upon information provided by the state or its political subdivisions or by a licensed engineer, contractor, land surveyor, or pesticide applicator, other than the seller; and
 - b. Provide that the form must include a statement setting forth the limitations in section a. of this recommendation.

Rights of the Buyer

- 11. Provide that the buyer may waive, in writing, his right to receive a real property condition disclosure form or other disclosure.
- 12. a. Provide that a buyer who is not served* with the real property condition disclosure form before the close of escrow or other transfer of the residence has the right to rescind the sales contract prior to the close of escrow or other transfer of the residence. A waiver of the right of recision, if the buyer chooses to waive, must be exercised in writing; and
 - b. (1) Provide that the buyer has the right of recision of the sales contract if, before the close of escrow or other transfer of the residence, he is informed by the seller or his agent of a defect** that was not revealed in the sales contract; and
 - (2) Stipulate that the right of recision must be exercised in writing and served* to the seller, or in the case of an escrow, to escrow no later than 3 working days, not counting the day of service, after the buyer or his authorized representative has been informed of the defect; and

c. Provide that if:

- A buyer is served* with a real property condition disclosure form before close of escrow or other transfer of the residence, and
- (2) A defect** is indicated on the form that was not revealed in the sales contract,

then the buyer may maintain an action at law against the seller for actual damages for the repair or replacement of the defect; and

d. (1) Stipulate that if:

(a.) Escrow closes or the residence is otherwise transferred without the buyer's having been informed of all defects** of which the seller is aware; and

(b.) There is a defect of which the seller is aware that has not been revealed in the sales contract or otherwise disclosed.

then the buyer may maintain an action at law against the seller for treble damages in addition to attorney fees and court costs; and

- (2) Further provide that the buyer must commence the right of action no later than 1 year from the date of discovery of the defect, but the cause of action shall be deemed to accrue no later than 1 year after the close of escrow or transfer of the residence.
- * For the purposes of these recommendations, "service" is complete upon personal delivery of the form to the buyer or his authorized agent or 3 days after mailing the form to the buyer or his agent, to the last known address of either, postage prepaid.
- ** For the purposes of these recommendations, "defect" means a condition that materially affects the value or use of the residence in an adverse manner.

REPORT TO THE 68TH SESSION OF THE NEVADA LEGISLATURE BY THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY THE DISCLOSURE OF INFORMATION IN REAL ESTATE TRANSACTIONS

I. INTRODUCTION

The 67th Session of the Nevada Legislature adopted Assembly Concurrent Resolution No. 75 (File No. 178, Statutes of Nevada 1993, pages 3122-3123), which directed the Legislative Commission to conduct an interim study of the disclosure of information in real estate transactions. The study was to include a review of current laws relating to disclosure of information and an evaluation of the effectiveness of those laws in requiring that proposed routes of streets or highways be disclosed to a purchaser of real estate.

The Legislative Commission appointed a subcommittee to conduct the study and compile recommendations. The following legislators were members of the subcommittee:

Assemblyman William A. Petrak, Chairman Senator Bill R. O' Donnell Senator Raymond C. Shaffer Assemblyman John C. Carpenter Assemblyman Michael A. Schneider Assemblywoman Gene Wines Segerblom

Legislative Counsel Bureau staff services for the subcommittee were provided by Denice L. Miller of the Research Division (principal staff), Steven J. Coburn of the Legal Division (legal counsel), and Ricka Benum of the Research Division (secretary to the subcommittee).

Testimony during the study's four meetings included the concerns and recommendations of real estate professionals, state and local agencies involved with real estate transactions, and the public. Only that information bearing directly upon the scope of the study or the subcommittee's recommendations is included in this report. All other supporting documents, including the minutes of

¹ See Appendix A.

meetings and written testimony submitted to the subcommittee, are on file in the Research Library of the Legislative Counsel Bureau.

The subcommittee adopted 12 recommendations, addressing modifications to existing disclosure law, real estate professional licensing, and mandatory property condition disclosure.

II. ORIGIN OF THE A.C.R. 75 STUDY

Assembly Concurrent Resolution No. 75 originated with a 1991 interim study of transportation issues. During that study, subcommittees were formed to focus on regional concerns. Among the issues considered by the Clark County subcommittee was the proposed route of the southern portion of the Las Vegas Beltway.

The subcommittee found that the project had generated considerable controversy. One of the principal problems mentioned by opponents was that many homes in surrounding areas were constructed or sold after the project was planned. Testimony indicated that the majority of people who purchased or built those homes were unaware that the residences would be located near a major freeway.

The subcommittee concluded that similar controversies could be mitigated by strengthening laws regarding the disclosures that sellers of real property must make to prospective buyers. Thus, members recommended that an interim study of real estate disclosure be conducted.

III. STATE LAW CONCERNING REAL ESTATE DISCLOSURE

At the subcommittee's first meeting, legal staff provided an overview of existing law and administrative code related to the disclosure of information in real estate transactions. The focus of the study, as identified by its origin and stated in the resolution, was disclosure involving home sales. Accordingly, the subcommittee identified the most pertinent statutes to be the following:

 Nevada Revised Statutes 40.565, which provides that a seller of real property is not liable for failure to disclose certain facts concerning the property;

- Nevada Revised Statutes 113.070, which requires certain vendors to disclose zoning designations for adjoining parcels;
- Nevada Revised Statutes 278.353, which requires that, if any property contained in a subdivision is offered for sale before the final map is recorded, the seller must apprise prospective buyers of that fact; and
- Nevada Revised Statutes 645.633, which provides that disciplinary action may be taken against real estate professionals who fail to make certain disclosures.

Other statutes related to various kinds of disclosure are found in the following chapters of the Nevada Revised Statutes:

- Chapter 116 (the Uniform Common-Interest Ownership Act);
- Chapter 119 (Sale of Undivided Land: Licensing and Regulation);
- Chapter 119A (Time Shares); and
- Chapter 119B (Memberships in Campgrounds).

While the subcommittee reviewed briefly these related disclosure laws, members focused their attention on issues involving property condition and zoning disclosure.

IV. DISCUSSION OF RECOMMENDATIONS

The subcommittee adopted 12 recommendations. The first four address various topics; all others concern the mandatory disclosure of property condition.

Education and Professional Licensing

The subcommittee considered several recommendations to add or modify educational and licensing requirements for real estate professionals. Testimony indicated, however, that the potential benefit from most of the proposed changes would be relatively small in comparison to the additional burden they would impose. Further, witnesses stated that certain of these proposals were already incorporated in existing practice, though not statutorily required.

Accordingly, legislators limited action related to education and licensing to approval of a single proposal. While recognizing that current law and associated regulations do provide for general standards,² the subcommittee recommended that courses of instruction in real estate emphasize the importance of disclosure of information. Members found the potential for additional consumer protection resulting from a specific requirement to outweigh any possible burden to real estate professionals. Thus, the subcommittee voted to:

Require the Real Estate Division to include in its regulations concerning courses of real estate instruction for an original real estate salesman's license the requirement that such courses contain a section concerning disclosure of information in real estate transactions, including where information subject to disclosure may be found.

Information Not Material to a Transaction

In their review of existing disclosure laws, legislators evaluated the clarity and efficacy of specific statutes. One of these, NRS 40.565, provides that certain facts concerning a real property are not material to a sale of the property. Those facts include that the property is or has been the site of a homicide or suicide.

Not addressed in the statute, however, is disclosure that the property is or has been the site of a death by natural causes. Witnesses testified that the omission of "natural death" in the statute leaves the impression that such a death may be material to the transaction.

In addition, NRS 40.565 establishes that a seller or any agent of the seller is not liable to the buyer for failure to disclose the facts enumerated in the statute. Members of the real estate industry suggested that, for clarity and consistency, the agent of the buyer should be included among those persons not liable to the buyer for failure to disclose those facts defined as immaterial to the transaction. Accordingly, the subcommittee voted to:

Amend Nevada Revised Statutes (NRS) 40.565 to specify that, in any sale of real property:

Nevada Revised Statutes 645.343 and 645.345 address educational requirements and courses of instruction for real estate professionals.

- a. The fact that the property is or has been the site of any death, not only homicide and suicide, is not material to the transaction; and
- b. The agent of the buyer is not liable to the buyer for failure to disclose any fact described in that section.

Subdivisions

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Changes to another statute, NRS 113.070, were also recommended to enhance the state's disclosure requirements. Currently, NRS 113.070 requires certain sellers to provide, before a purchaser signs a sales agreement, a separate document disclosing the zoning designations for adjoining parcels of land. The law applies to sellers of land that is or will be divided into 10 or more lots or parcels.

A representative of the City of Reno testified that the statute does not require that the contents of the master plan for an area be disclosed. The representative cited examples of buyers who purchased property in what appeared to be a small residential community and learned later that a shopping center had been planned for that area. Disclosure of the information included in a master plan was suggested to alleviate such problems.

The City of Reno also recommended mandatory disclosure of the responsibility for certain services such as utilities, roads, and improvements. Witnesses testified that some buyers in private subdivisions are unaware that they, not the local government, are responsible for maintenance of street lights or roads, for example. Agreeing that such information would provide consumer protection, legislators voted to:

- a. Amend NRS 113.070 to include among that information that certain sellers are required to disclose to purchasers:
 - (1) The contents of the master plan for the area in which the residence is located; and
 - (2) Notice of any services, utilities, roads, or improvements affecting the residence that are to remain privately owned and maintained. This notice must indicate whether the purchaser, a homeowners' association, or other entity will be

responsible for that ownership or maintenance; and

b. Require the Real Estate Division to establish, by regulation, what information contained in a master plan must be disclosed pursuant to this recommendation.

Rental Histories for Mobile Home Parks

During discussion of the adequacy of current disclosure laws, subcommittee members evaluated the level of consumer protection afforded to mobile home park tenants by similar laws. For example, NRS 118B.065 requires a landlord to provide a prospective tenant with a written document disclosing the zoning designations for each parcel of land adjoining a mobile home park.

In addition, NRS 118B.150 stipulates that, prior to a rent increase, the landlord must furnish tenants with written notice at least 90 days in advance of the increase. Before commencement of their tenancy, prospective tenants must also be advised in writing of any impending increase.

Legislators determined that NRS 118B.150 does not offer sufficient protection to prospective tenants concerning the *history* of rent increases in the mobile home park. Thus, the subcommittee approved a recommendation to:

Require the landlord of a mobile home park to provide to a prospective tenant, at the time of application for residency or, if no application is made, before the tenant signs an initial rental agreement, a separate written document that provides, for the lot which is proposed to be rented, a history of rental increases and the total rental charges for the past 5 years, or from the date the lot was available for rental, whichever is less.

Mandatory Real Property Condition Disclosure

Throughout the course of the study, various witnesses testified concerning the merits of the mandatory disclosure of real property condition. Representatives of the real estate industry, including the Nevada Association of REALTORS®, and several members of the public promoted the idea.

Overview of Mandatory Disclosure

Several states have enacted some form of mandatory disclosure. (See Appendix B.) In general, mandatory disclosure law requires the seller of a real property to complete a form that assesses the condition of various aspects of the property and to provide the form to a prospective buyer prior to closure of the sale. Aspects of the property that may be assessed for defects are plumbing, electrical systems, and structural design.

Representatives of the Nevada Association of REALTORS®, which represents approximately 65 percent of the real estate licensees in the state, testified at the subcommittee's January meeting that the association strongly encouraged the use of a "Real Estate Seller's Information Statement" in all transactions. (See Appendix C.) At a subsequent meeting, legislators were apprised that the association's 6,000 members would support a recommendation to make property condition disclosure *mandatory* in Nevada. Such a recommendation would apply to all sellers, however, not only to those employing the services of a real estate agent.

Testimony indicated that, in addition to providing consumer protection, mandatory disclosure is expected to reduce the amount of litigation associated with real estate transactions, to the benefit of buyers, sellers, and real estate professionals.

Thus, the subcommittee approved a recommendation to:

Require the completion of a real property condition disclosure form by the seller of real property containing at least one but not more than four dwelling units. Further require the seller or his agent to serve³ the buyer or his agent with the form before the close of escrow or other transfer of the residence.

To address situations in which a defect is found after disclosure but before the close of escrow, lawmakers recommended:

For the purposes of these recommendations, "service" is complete upon personal delivery of the form to the buyer or his authorized agent or 3 days after mailing the form to the buyer or his agent, to the last known address of either, postage prepaid.

If a previously unknown defect⁴ or worsening of a defect is discovered before the close of escrow or other transfer of the residence, and after service of the real property condition disclosure form, require the seller or his agent to inform the buyer or his agent of the defect, orally or in writing, as soon as practicable after discovery of the defect, or before the close of escrow or other transfer of the residence, whichever is sooner.

Exemptions

The concept of mandatory property condition disclosure received widespread support from several individuals and entities. Thus, the subcommittee was presented with various interpretations of mandatory disclosure. After approving the basic recommendation, legislators evaluated the optional provisions.

One such proposal recommended certain exemptions to the disclosure requirement. Testimony indicated that the suggested exemptions addressed situations in which mandatory disclosure was either unnecessary (such as first sale of a never-occupied residence), impractical (transfers pursuant to court order), or both (transfers between family members).

Accordingly, legislators approved the following recommendation:

Provide that the following are exempt from the real property disclosure requirement:

- a. Sales by entities referred to in paragraph (a) of subsection 2 of NRS 645.240;
- b. Transfers pursuant to court order (for example, divorce cases, foreclosure sales, and bankruptcies);
- c. First sale of a residence that has never been occupied, if the residence is constructed by a licensed contractor;
- d. Transfers between co-owners, spouses, or persons related within the third degree of consanguinity; and

⁴ For the purposes of these recommendations, "defect" means a condition that materially affects the value or use of the residence in an adverse manner.

e. Transfers by a person who takes temporary possession or control of or title to real property solely to facilitate the sale of the property by a seller who relocates to another county, state, or country.

Development of the Disclosure Form

The subcommittee considered various proposals concerning the development of the property condition disclosure form to be used by sellers. In general, the discussion centered upon whether to establish in statute a specific form or to allow the Real Estate Division to establish by regulation the form to be used.

Legislators considered the merits of each approach and adopted a recommendation combining elements of both: allowing development by regulation, but mandating in statute that certain topics of particular importance be included in the form. Thus, the subcommittee determined that the flexibility of the "by regulation" approach would be complemented by the specificity of protection in the "by statute" proposal.

Accordingly, lawmakers approved a recommendation to:

Require the Real Estate Division to develop, by regulation, the real property condition disclosure form. Stipulate that the form must:

- a. Evaluate, at a minimum, conditions related to electrical, heating and cooling, plumbing, and sewer systems;
- b. Allow the seller to indicate, for each condition described on the form, whether the condition is defective, not defective, or unknown; and
- c. Include, among other provisions, statements to the effect that:
 - (1) The disclosures set forth on the form are made by the seller and not by any agent; and
 - (2) The seller, the seller's agent, and the agent of a buyer or potential buyer are authorized to disclose the form and its contents to a buyer or potential buyer.

During their deliberations concerning this recommendation, lawmakers suggested that the Real Estate Division develop a prototype form to be submitted at hearings on the related bill during the 1995 Legislative Session. Thus, Chairman Petrak directed a letter to the division requesting that a sample form be developed. (See Appendix D.)

Limitations on Liability

Mandatory property condition disclosure is generally considered a protection for the *buyer* of a real property. Nevertheless, witnesses noted that certain express limitations on liability would ensure a decrease in litigation and also protect the *seller*. For example, one proposal recognized that a seller may not be aware of certain property conditions and thus should not be held liable for failing to disclose them. Accordingly, subcommittee members voted to:

Provide that the seller is not liable for failure to identify, and thus disclose, defects of which he is unaware.

In addition, lawmakers adopted a proposal limiting the liability of the seller for certain errors or omissions by other parties:

- a. Provide that the real property condition disclosure form is not an express or implied warranty, but rather a good faith disclosure of the condition of the real property. Further stipulate that the seller is not responsible for an error or omission in the disclosure form if the error or omission was based upon information provided by the state or its political subdivisions or by a licensed engineer, contractor, land surveyor, or pesticide applicator, other than the seller; and
- b. Provide that the form must include a statement setting forth the limitations in section "a." of this recommendation.

Rights of the Buyer

The subcommittee considered a number of proposals setting forth the rights of the buyer. One of these addressed situations in which a buyer is aware of the condition of a property and chooses to waive his right to receive a disclosure statement. Testimony indicated that, for the protection of both parties, the waiver should be in writing. Thus, the subcommittee approved the following recommendation:

Provide that the buyer may waive, in writing, his right to receive a real property condition disclosure form or other disclosure.

The subcommittee's final recommendation addresses the buyer's rights and remedies associated with real property condition disclosure. The recommendation is based upon a proposal submitted by the Nevada Association of REALTORS®, although the specific language and certain elements of the proposal were modified by the subcommittee.

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First, the recommendation provides that a buyer who is not served with the disclosure form has the right to rescind the sales contract prior to the close of escrow:

a. Provide that a buyer who is not served with the real property condition disclosure form before the close of escrow or other transfer of the residence has the right to rescind the sales contract prior to the close of escrow or other transfer of the residence. A waiver of the right of recision, if the buyer chooses to waive, must be exercised in writing; and

Second, the proposal offers a right of recision, prior to the close of escrow, following disclosure of a defect that was not previously revealed in the sales contract:

- b. (1) Provide that the buyer has the right of recision of the sales contract if, before the close of escrow or other transfer of the residence, he is informed by the seller or his agent of a defect that was not revealed in the sales contract; and
 - (2) Stipulate that the right of recision must be exercised in writing and served to the seller, or in the case of an escrow, to escrow no later than 3 working days, not counting the day of service, after the buyer or his authorized representative has been informed of the defect; and

If the buyer does not choose to exercise the right of recision of the sales contract, he may maintain an action at law for actual damages for the repair or replacement of the defect:

c. Provide that if:

- (1) A buyer is served with a real property condition disclosure form before close of escrow or other transfer of the residence, and
- (2) A defect is indicated on the form that was not revealed in the sales contract,

then the buyer may maintain an action at law against the seller for actual damages for the repair or replacement of the defect; and

The final element of the recommendation sets forth a right of action for the buyer if escrow closes and the seller has not disclosed a defect of which the seller is aware:

d. (1) Stipulate that if:

- (a.) Escrow closes or the residence is otherwise transferred without the buyer's having been informed of all defects of which the seller is aware; and
- (b.) There is a defect of which the seller is aware that has not been revealed in the sales contract or otherwise disclosed.

then the buyer may maintain an action at law against the seller for treble damages in addition to attorney fees and court costs: and

(2) Further provide that the buyer must commence the right of action no later than 1 year from the date of discovery of the defect, but the cause of action shall be deemed to accrue no later than 1 year after the close of escrow or transfer of the residence.

V. CONCLUSION

Nevada is one of the fastest growing states in the nation. With new homes being built every day, and many more homes being resold, laws concerning disclosure of property condition and adjacent zoning are essential. The A.C.R. 75 Subcommittee is of the opinion that the proposals recommended during the study will offer protection to both buyer and seller and, thus, promote healthy and responsible growth in residential sales.

The subcommittee is grateful to the state and local agencies, members of the public, and representatives of the real estate industry who contributed their time, expertise, and ideas to the study.

VI. APPENDICES

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APPENDIX A

Assembly Concurrent Resolution No. 75 (File No. 178, Statutes of Nevada 1993)

Assembly Concurrent Resolution No. 75—Committee on Elections and Procedures

FILE NUMBER 178

ASSEMBLY CONCURRENT RESOLUTION—Directing the Legislative Commission to conduct an interim study of the laws relating to the disclosure of information in real estate transactions.

WHEREAS. There is general public concern regarding the disclosure of information in real estate transactions, particularly with regard to planning and zoning matters and future transportation routes; now, therefore, be it

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, THE SENATE CON-CURRING, That the Legislative Commission is hereby directed to conduct an interim study of the laws relating to the disclosure of information in real estate transactions; and be it further

RESOLVED, That the committee appointed by the Legislative Commission to conduct the study shall:

1. Review and evaluate the current laws of this state concerning the disclosure of information in real estate transactions;

2. Review and evaluate the implementation of any laws concerning the disclosure of information in real estate transactions passed by the 67th session of the Legislature; and

3. Analyze the effectiveness of those laws in requiring that information concerning the planned or proposed routes of streets and highways be disclosed to a purchaser of real estate; and be it further

RESOLVED, That the Legislative Commission report the results of the study and recommended legislation to the 68th session of the Nevada Legislature.



APPENDIX B

"Summary of State Activity on Property Condition Disclosure," dated September 24, 1993, prepared by the Political and State Affairs Division, National Association of REALTORS®

SUMMARY OF STATE ACTIVITY ON PROPERTY CONDITION DISCLOSURE

Prepared by the Political and State Affairs Division September 24, 1993

States with mandated property condition disclosure requirements (19):

Alaska (law enacted 1992), California (law enacted 1985), Delaware (law enacted 1993), Illinois (law enacted in 1993), Indiana (law enacted 1993), Iowa (law enacted in 1993), Kentucky (law enacted 1992), Maine (regulation promulgated 1988), Maryland (law enacted in 1993), Michigan (law enacted 1993); Mississippi (law enacted 1993), New Humpshire (regulation promulgated 1992), Ohio (law enacted 1992), Oregon (enacted legislation in 1993), Rhode Island (law enacted 1992), South Dakota (enacted legislation 1993), Taxas (legislation enacted in 1993), Virginia (law enacted 1992) and Wisconsia (law enacted 1992).

States that anticipated legislation/regulation in 1993 to mandate written property condition disclosure (21):

Arizona, Arkansas, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Indiana, Iowa, Maryland, Michigan, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Oklahoma, South Carolina, Vermont and West Virginia.

States seeking clarifications to their mandstery property condition disclosure invalvegulations (1):

New Hampshire.

States still reviewing the concept of mandatory property condition disclosure (4)

Kansas, Pennsylvania, Utah and Wyoming.

States with voluntary property condition disclosure programs (28):

Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Louisiana, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, Utah, Vermont, Washington, West Virginia and Wyoming.

Other states may require environmentally-related disclosures which are not reflected in this summary. For more information, please contact your stem or local association of REALTORS.

PROPERTY CONDITION DISCLOSURE MATRIX

PREPARED BY THE POLITICAL AND STATE AFFAIRS DIVISION September 24, 1993

STATE	STATE MANDATED	Voluntary Program	INCRECTED LINGUISLATIVE ACTION	CURRENT ACTIVITY
AL	NO	NO	Ю	The Alabama Association of REALTORS® will not pursue any type of property condition disclosure in 1993. A law was recently passed that upholds the cavent emptor doctrine.
AK	YES	N/A	NA	In 1992, Alaska became the seventh state to exact a mandatory property condition disclosure law. The law became effective January 1, 1993.
AZ	NO	YES	YES	The Arizona Association of REALTORS® will pursue mandatory property condition disclosure as a legislative issue in 1994.
AR	NO	YES	YES	The Arkanese Association of REALTORS® is studying the issue of mandatory property condition disclosure and may seek legislation in 1995, when the legislature reconvenes.
CA	YES	N/A	NA	In 1965, legislation was passed, sponsored by the California Association of REALTORS®, mandating the use of a "Real Estate Transfer Disclosure Statement" in all transactions involving residential properties of 1-4 dwelling units.
со	NO 7	YES	NO	The Colorado Association of REALTORS® did not seek legislation in the 1993 session to mandate the use of property condition disciosure forms. A regulation adopted in 1967 specified contents o a voluntary property condition disciosure form. If a licensee choose to use the form, the specified form must be utilized. The Colorado Association will consider legislative actions in 1994 for mandatory disciosures.
СТ	NO	YES	YES	The Connecticut Association of REALTORS® endorsed the concept of mandatory property condition disclosure and worked with the state Consumer Protection Commission on legislation to mandate seller disclosure. Legislation has been considered by the Judiciary Committee. Presently, disclosures are negotiated between buyers an sellers.

STATE	STATE MANDATED	Voluntary Program	EXPRCTED LEGISLATIVE ACTION	CURRENT ACTIVITY
DR	YES	N/A ·	YES	The Delaware Association of REALTORS® supported a mandatory property disclosure bill in 1992, and re-introduced it in 1993. The Delaware legislature enacted their new law in May, 1993 and it will become effective January 1, 1994. The Real Butte Commission will promulgate a disclosure form by October, 1993 to become effective in 1994. DAR will propose the content of that form. Until the law takes effect, all local Boards of REALTORS® in Delaware practice voluntary property condition disclosure.
DC	NO	YES	NO	The Washington DC Association of REALTORS® was going to seek legislation to mandate property condition disclosure in 1993. Subsequently, the Association is working with the DC Licensing Commission to draft legislation that the Licensing Commission will then propose to the City Council in 1994.
FL.	NO	NO	NO	The Florida Association of REALTORS® did not pursue mandatory property condition disclosure in 1993 as a bill was introduced and later withdrawn. The Association is considering a mandatory disclosure form and, upon approval by the Association's Board of Directors during its October, 1993 meeting, will seek legislation to mandate property condition disclosure and the content of the form in 1994.
GA.	NO	YES	NO	The Georgia Association of REALTORS® will not pursue property condition disclosure legislation in 1993. OAR adopted a voluntary property condition disclosure form to "educate rather than legislate" a "wise business practice" for members. According to GAR, Georgia courts have maintained a caveat emptor philosophy in decisions regarding disclosure. No major changes or court actions are anticipated.
GU				

STATE	State Mandated	VOIJINTARY PROGRAM	EXPECTED LEGISLATIVE ACTION	CURRENT ACTIVITY
HI	NO ·	YES	YES	In response to a Hawaii Legislature resolution in April 1992, the Hawaii Real Breate Research and Education Ceater studied and produced a favorable report on the feasibility of enacting a mandatory seller disclosure law. As a result, five bills which would mandate seller disclosure have been introduced, however none have been enacted. A voluntary property condition disclosure program exists with the Hawaii Association of REALTORS. The Association's Deposit Receipt Offer and Acceptance Statement includes the disclosure of material facts about a property.
D	NO	YES	МО	The Idaho Association of REALTORS® will not pursue mandatory property condition disclosure tegislation in 1993. The Association will encourage voluntary disclosure and recvaluate mandatory disclosure at a later date.
n.	YES	N/A	N/A	On May 24, 1993, Illinois' Governor signed into law the Illinois Residential Real Property Disclosure Act making it the 14th state to seller disclosure law. The law becomes effective on October 1, 1994. The Illinois Association of REALTORS® actively sought logistation to mandate property condition disclosure in 1993.
DY .	YES	N/A	N/A	On April 30, 1993, the Governor signed S.R.572 making Indiana the 13th state to enact mandatory property condition disclosure. The new law becomes effective January, 1994. Key disclosure form provisions, which are outlined in the law, include a notice that the representations on the form are those of the owner and not the agent, if any. The Indiana Association of REALTORS® actively sought to mandate property condition disclosure in 1993.
	YES	N/A	N/A	On April 20, 1993, the Governor signed mandatory property condition disclosure legislation making lows the 12th state to enact PCD law. The law becomes effective January, 1994. A disclosure form is to be adopted by the Real Estate Commission.
KS	NO	PENDING	UNDER REVIEW	The Kanna Americation of REALTORS® is creating a property condition disclosure form that will be offered to local board for use on a voluntary basis. The Association will discuss the issue in 1993.

STATE	STATE MANDATED	VOLUNTARY PROGRAM	EXPECTED LEGISLATIVE ACTION	CURRENT ACTIVITY
KY	YES	N/A ;	N/A	On March 30, 1992, Kentucky became the fifth state to require mandatory property condition disclosure to the seller. The law requires sellers of residential real property who work with a real estate licensee to complete a property condition disclosure form which must be presented to all prospective purchasers. The law does not require PSBOs to complete a disclosure form. Legislation setting forth the contents of the form was is pending in May, 1993.
IA.	NO	YES	NO	The Louisiana Association of REALTORS® has surveyed its boards and determined that they are all adhering to the Association's voluntary program. LAR was going to wage an aggressive education campaign and consider legislative action in 1994.
MB	YPS	N/A	N/A	Effective February 1, 1988, all real estate licensees must ask for information on certain following issues and disclose same to prospective buyers. Disclosure must cover the following areas: private water supply, insulation, waste disposal system, and known hazardous materials (including, but not limited to, subcatos, lead base paint, radon, and underground storage tanks).
MD	YES	N/A	N/A	Maryland's Governor signed property condition disclosure legislation into law on May 27, 1993 anaking Maryland the 15th state to exact a PCD law. The law becomes effective January 1, 1993. The law directs the Real Estate Commission to promulgate a disclosure form, for which guidelines are established. Duties for real estate licensees representing vendors, punchasers, and owners are also contained within the law. Mandatory property condition disclosure was the priority legislative issue on the Maryland Association's agenda for 1993.
MA	МО	YES	NO	The Massachusetts Association of REALTORS® was not going to pursue mandatory property condition disclosure legislation in 1993.
M	YES	N/A	YES	The Michigan Association of REALTORS' supported legislation that was enacted and signed into law in June, 1993, making the state the 16th to mandate property condition disclosure. The new law becomes effective January 1, 1994.
MN	NO	YES	NO	The Minacota Association of REALTORS® has developed a voluntary disclosuse form for use by its members. The Association does not intend to mandate the use of the form through legislation.

STATE,	STATE MANDATED	VOLUNTARY PROGRAM	EXPECTED LEGISLATIVE ACTION	CURRENT ACTIVITY
MS	YES	N/A	N/A	On March 17, 1993, the Governor of Mississippi signed into law H.B. 143, making Mississippi the 10th state to exact mandatory property condition disclosure. The law, which contains the language for the property condition disclosure form, provides that listing and sales agents shall not be held liable for errors, innocuracies or omissions which were not within his/her personal knowledge. The law became effective after July 1, 1993.
МО	NO	YES	YES	The Missouri Association of REALTORS® has supported legislation for mandatory property condition disclosure, though no law has passed.
MT	NO	YES	NO	The Mordana Association of REALTORS® did not pursue mandatory property condition disclosure legislation in 1993.
NE	NO	YES	YES	The Nebraka Real Estate Commission held a public hearing on their seller's property condition disclosure regulations on October 11, 1992. The Nebraska REALTORS® Association supports the commission's action and will seek legislation in 1993 to extend the disclosure requirements to all sesidential sales, not just those involving a real estate licensee.
NV	NO	YES	NO	The Subcururation on Property Condition Disclosure at the Newada Association of REALTORS® has decided (1) that the forms be kept voluntary; (2) that NVAR adopt a program encouraging voluntary use of the forms by local boards and individual firms; and (3) that if the full committee chooses to go forward with manufatory disclosure the requirement should be placed in statute so that it applies to all transfers of real property including property sold by owners, developers and banking institutions. If a seller is aware of an facts about a property that might reduce its value, those facts must be disclosed on general property description statements used by REALTORS® in Nevada. Nevada courts have ruled that any information an individual knows, or believes, could affect the value of a property should be disclosed.

STATE	STATE MANDALED	VOLUNTARY PROGRAM	EXPECTED LEGISLATIVE ACTION	CURRENT ACTIVITY
NII	YES	N/A	YES	The New Hampshire legislature approved a bill in 1992 requiring sellers of all improved property to provide a property condition report to prospective purchasers. The legislation went farther than existing regulations at that time which only required disclosure in residential real estate sales transactions involving a liceasee. The new requirements became effective January I, 1993. NHAR planned to seek legislation in 1993 to make the law and regulations consistent.
NJ	NO	NO	NO	The New Jersey Association of REALTORS® is not pursuing property condition disclosure logislation.
NM	МО	NO	YES	The New Mexico Association of REALTORS® may seek legislation to mandate property condition disclosure when the legislature reconvenes in 1995.
NY	NO	YES	YES	The New York Association of REALTORS® has sought and will continue to seek mandatory property condition disclosure. Property condition disclosure is one of the top logislative priorities for NYAR. The Association desires to combine a property condition disclosure form with an environmental hazards statement so that physical defects and potential hazards are disclosed at the same time
NC	No	YES	YES	The North Carolian Association of REALTORS® encourages members to make voluntary property condition disclosures about material facts regarding a property. Legislation proposed by NCAR was referred to a legislative subcommittee during the 1993 session and then deferred to a Consumer Protection Commission formed and funded by the legislatuse for a report to be returned in 1994 or 1995. The Commission is composed mostly of legislators and it will study property disclosuse issues among other issues. Legislation proposed by NCAR had also received the support of the North Carolina Real Estate Commission.
ND	NO	YES	NO	The North Dakota Association of REALTORS® is encouraging the voluntary use of property condition disclosure forms.

STA	NTE	STATE MANDATED	VOLUNTARY PROGRAM	EXPECTED LEGISLATIVE ACTION	CURRENT ACTIVITY			
0	ЭН	YES	N/A	N/A	The Ohio Association of REALTORS® helped draft mandatory property condition disclosure legislation that was signed into law in December, 1992. The law states that the form be developed by the Commerce Department and states that the information contained within the disclosure is the representation of the seller and not the seller's agent or subagont. The legislation became effective July 1, 1993.			
	DK	NO	YES	YES	The Oklahoma Association of REALTORS® supports the concept of mandatory selier disclosure, has sought legislative exactment and will continue to seek a new law.			
	OR	YES	NA	YES	The Oregon Association of REALTORS® participated in a committee comprised of mortgage bankers, homebuilders and others which made extensive recommendations to the legislature. A bill mandating property condition disclosure was signed into law by the Governor July 31, 1993.			
	PA.	PA NO YES		UNDER REVIEW	The Pennsylvania Association of REALTORS® developed a model voluntary disclosure form that it planned on distributing in 1993.			
	PR							
	RJ	YES	N/A	N/A	Rhode Island enacted legislation requiring a seller of residential, property to provide prospective purchasers with a statement of the property's condition in 1992. The seller discloruse law became effective June 1, 1993.			
	8C	МО	YES	YES	The South Carolina Association of REALTORS® might seek a mandatory property condition disclosure bill in the future. SCAR conducts a voluntary property condition disclosure program.			
	810	YES	NA	NIA	The Governor of South Dakota signed legislation on March 19, 1993 making South Dakota the 11th state to exact mandatory property condition disclosure.			
	TN	NO	PENDING	NO	The Tennessee Association of REALTORS® introduced an initial bill this year. A more comprehensive bill will be introduced in 199 after a good deal of member education has been conducted.			

STATE	STATE MANDATED	VOLUNTARY PROGRAM	EXPECTED LEGISLATIVE ACTION	CURPENT ACTIVITY
TX	YES	YES	YES	A new law, enacted in 1993, prescribes a disclusure form virtually identical to the existing voluntary form created by the Texas Association of REALTORS®. The new law becomes effective January 1, 1994. The Texas Association of REALTORS® has supported mandatory disclosure bills during previous logislative sessions.
UT	МО	YES	UNDER REVIEW	Mandatory property condition disclosure was under consideration by the Utah Association of REALTORS® Risk Reduction and Legislative Committees in 1993.
VT	NO	YES	YES	Voluntary property condition disclosure forms have been in place since June, 1992. The Vermont Association of REALTORS®, after conducting a membership survey to decide a legislative course, introduced legislation in 1993. That legislation is being redrafted for reintroduction to the 1994 legislature. Property condition disclosure is a priority issue for VAR in 1994.
VA	YES	N/A	N/A	The Virginia General Assembly manimously appeared a Virginia Association of REALTORS appeared "Residential Real Estate Disclosure" bill in March, 1992. The disclosure requirements became effective July 1, 1993. The bill was signed into law April 4, 1992.
VI				1992 and all all all all all all all all all al
WA	МО	YES	NO	The Washington Association of REALTORS® did not seek mandatory property condition disclosure legislation in 1993. A special group has developed a new disclosure form, which has recently been approved.
w	No	YES	YES	Legislative action has been proposed and was going to be reviewed in 1993.
AN	YES	N/A	NA	On March 10, 1992, the Wisconsin General Assembly approved a property condition disclosure law that was originally introduced in May, 1991. The Wisconsin REALTORS® Association was the primary proposent of the legislation.

STATE	STATE MANDATED	VOLUNTARY PROGRAM	EXPECTED LEGISLATIVE ACTION	CURRENT ACTIVITY
₩Y	NO	YES	UNDER REVIEW	The Wyoming Association of REALTORS ⁹ has not taken a formal position on randstory property condition disclosure but is actively considering the issue.

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APPENDIX C

Written testimony submitted by Patsy Redmond, Executive Vice President, Nevada Association of REALTORS®, dated January 18, 1994

Nevada Association of REALTORS®

LEGISLATIVE INTERIM STUDY COMMITTEE DISCLOSURE IN REAL ESTATE TRANSACTIONS

January 18, 1994

TESTIMONY

Mr. Chairman, members of the committee, my name is Patsy Redmond, Executive Vice President of the Nevada Association of REALTORS®.

Several years ago the National Association of REALTORS® recommended to its state associations that they educate their members on the importance of the use of Sellers Real Property Information statements and encourage their REALTOR® members to request sellers fill out these forms.

The Nevada Association of REALTORS®, in response to the recommendation, voted to recommend that all members use real property information forms when involved in a real estate transaction. I've included samples of the forms currently in use by our members.

Most large firms require their sales associates to use these forms in every transaction. As a result of NVAR's recommendation, indications are that over 90% of our members urge sellers to fill out a property condition report.

However, the Nevada Association of REALTORS® represents only 65% of the licensees in the state with additional transactions occurring between non-licensees (for sale by owner). Therefore, what our members consider good consumer protection is only happening in a portion of residential transactions in the state. That is why we are considering supporting a law which would require a real property information statement on every sale.

In every transaction there are two consumers: the individual who is selling and the individual who is purchasing. The real estate licensee, whether representing the buyer or the seller is only a conduit between the two consumers. The agent provides professional assistance and is required to deal fairly and honestly with both parties. Proper disclosures provide the information needed so a fair and honest transaction may be completed.

The Nevada Association of REALTORS® believes in disclosure and is currently in the process of defining their specific position on this issue. A working group has been meeting and has forwarded recommendations to the Board of Directors who is scheduled to meet in late January. After receiving approval of the Directors our committees will iron out details of the proposal which will be presented to this committee on March 17th.

Thank you for inviting the Association to present testimony. I appreciate the opportunity.





restrictions noted. Included: Remarks:	Buyers' Inspection	Included:	Remarks:	Buyen Inspectio
☐ Range		[] Attic (so/s)		•
Oven				
[] self-cleaning	_		r (type)	
[] oven timer		Sewer system .		
() clock		🗆 city		
[] Hood				
Dishwasher				
∃ Hot water dispenser				
7 Disposal				
1 Mirtowave				
1 Compactor				
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☐ insert (certified/inspected ☐ Yes ☐ No) _		C Pool		
[] related equipment		☐ heated (how))	1
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) Oil tank			lar 🛘 fire	
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Air purifier				
Other:				

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Pro	peri	ty Address:		Date:	
B.		e you (Sellers) aware of any problems, defects o	or malfunctions with any of the following?		
	_	es, please check the appropriate box below and	explain in the space provided.		
	000	interior walls ceilings floors ex-	terior walls □ insulation □ roofts) □ window rays □ sidewalks □ fences/walls □ gates □ I plumbing systems □ water systems □ sev	3 electrical s	ystems
		plain here (attach additional sheets if necessary)			
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				··········	
C.			e aware of any of the following which may affect the		erty.
	1.	ashestos, formaldehyde, radon gas, lead based	be an environmental hazard such as, but not limited to d paint, fuel or chemical storage tanks, and contaming	sted	□ No
	2.	Features of the property shared in common wi	th adjoining landowners, such as walls, fences, and intenance may have an affect on the subject property		
	3		tters that may affect your interest in the subject prope	rty . 🖸 Yes	□ No
		Room additions, structural modifications, or of necessary permits		D Yes	□ No
	5.	Landfill (compacted or otherwise) on the prope	erty or any portion thereof	🖸 Yes	□ No
		Any settling from any cause, or slippage, slidin	ng, or other soil problems	U Yes	Li No
	7.	Flooding, drainage or grading problems	uctures from fire, earthquake, floods, or landslides .	⊔ res	
	8. 9.	Any ratios violation, non-conforming uses, vir	olations of "setback" requirements	🖸 Yes	D No
•	9. 10.	Neighborhood noise problems or other nuisan	ces	🖸 Yes	□ No
	11.	CC&Rs or other deed restrictions or obligations	s	D Yes	O No
1	12.		ority over the subject property		
	-	undivided interest with others	ennis courts, walkways, or other areas co-owned in		
			he property		
1	15.	Any lawsuits, probate or liens against the selle	r threatening or affecting this real property	D Yes	□ No
1	16.	Bonds or assessments affecting the subject pro	operty	[] Yes	□ No
1	17.	Post, insect or rodent infestation affecting the s	subject property	LI Yes	⊔ No
if th	e ar	nswers to any of these is yes, please explain here	e (attach additional sheets if necessary):		
_					
·					
The exis	aho I wi	ove information is true and correct to the best of th respect to the property as of the date set forth	of my knowledge and, except as set forth herein, no h above.	material pro	biems
(List	ıng	Office)	is he Nevada Association of REALTORS* and to any pros	ereby author	ized to
furn or th	ish ieir	the foregoing information to any member of the agent. This information is provided by the seller	e nevada Association di NEXCIONS and to any pro-	pociiva parc	*102013
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this		day of 19 We find that	at all of the "included items" checked above are in	proper ope	erating
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Any agre			er inspection should be agreed upon by the parties	through se	parate
Виу		Date:	Buyer:	Date:	
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ogli(;T;	Date:		Page 2 of 2	
			_	-	
	1-41	 Tel: Times Dimension to the Control of the Cont	PENR DIC SERI RECATE CA SESSO (\$700 700 200 FAX (\$199.47) 7000	PROFESS PUBLISHI	



SELLER'S REAL PROPERTY INFORMATION STATEMENT

Property Address					0	4		•	
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consult your attorney. The As independent vertilization of the	e statements cor	tained h	orain and furthe	rromes and i r, The Americ	usroens cannot represent the ana Group will not be liable to	et this Inform	etion in tr	ve, urges t	he Buye
IF ITEMS BELOW ARE NOT A	PPLICABLE WRI	TE TWA"	N THE RIGHT O	OLUMN					•
				•••••		YES	NO		
1. LAND/FOURDATION (a) is properly located on:	Sent or orners					163	, AU	UNKNOW	N M.
(b) Are you sware of:									
1. Siding, setting, mo on property or in the	vernerit, upheaval I immediate neicht	or earth:	alability problems	s that have occ	turned				
2. Entroactment or un	vecorded easeme	ints?							
Defects or problems Chairings or fooding	orchiem?								_
(c) Are the boundaries of p (d) Hime you ever had a se	PODENTY marked in	-	,						
(e) is flood insurance requi	red on your prope	uty?	,					==	=
2. SEWAGE/WATER SUPPLY									
(a) is the property connects	ed to a public sew	er system	7						
(b) is there a septic tent, sy (c) Water supply is:		•							
(d) Are you aware of:	C Private Water	er System	☐ Pivale We	d () Comm.	mily Well				
1. Problems relating to	The sewer or septi	c lank sys	tiern?						
2. Need/requirement to 3. Problems affecting so	connect to a public	C BETWEE O	r water evalues if	not already co	nnecled?	_			
4. If a community well, i	s there a written w	rell somer	ment?					==	_
5. If a community well, is	4 There a proper o	ommunity	well parmit?			_	_		
1. ROOF/STRUCTURE									=
(a) Has the roof been replace (b) Are you aware of:	ced or repaired will	hin the las	st two years?						
(b) Are you givers of: 1. Problems with the roo	n								
Structural condition th Additions/changes to	77 6 6 6 6 6 6 6 6 6 6 6 6 6 6 6 6 6 6	56 7							
(C) Were at nacessary cares			als obtained for a	dditions or cha	inges?				
(d) Will you place copies of p		apecione	into escrow for	new buyer?					
4. HOUSE SYSTEMS Are all components of the following the f									
(Check box if applicable)			property?						
(a) 🗆 Range/Oven	YES	NO	UNKNOWN	NA		YES	MO (ANCHOWN	H'A
☐ Ges ☐ Electric	_				☐ Range Hood				
☼ Microwave ☼ Garbage Disposal					☐ Oshwasher				
☐ Refrigerator					☐ Trash Compactor ☐ Hot Water Heater				
C) Gerage Door Opener					C) Gas (2) Electric				
(b) Water Softener	D Owned				Smoke Detector				
(c) Liren Sprintiera	C Automatic		C Rented Manual						
(d) Alarm System (considered (e) D Pool D Sps.	FRENTED unless [] Pool/Spa	Seller pro	ovides Buyer web Solar H	papers docum	nening otherwise)				
(f) Are you sware of any prob	Anna effecting:		Caus				<u> </u>	:	
The electrical sisting? The plumbing?									
The heating/air condition	ringlooding syste	m? DC	Ges Cl Electric						
(g) Are there any plumbing tea									
C) Sinks	YES	NO	UNIONOWN	N/A		YES	NO U	NKNOWN	NA
□ Sahtubs					☐ Tollets ☐ Pool/Spe Equipment				
C) Showers									
8. HOMEOWNER'S ASSOCIATION									
(a) is the property subject to ru (b) Are you aware of:		ol a home	sowner's associa	illion?					
Problems relating to any Any condition which may	CONSTRUCT Breat?								
J. My special essentiments	B7							=	
4. Liigellan, demende, llen	s, or thes relating	to the ess	ocusion?		•		:		_
B. MISCELLANEOUS									
(a) Are you aware of: 1. Ureaformeldshyde or ast	onstos materiale e	r lead nei	nt used in consts	uction?					
2. Any problem with radion of 3. Any existence or Province	9007		_						_
4. Problems with driveways. 5. Are other bate, constitute	THE PERSON AND ADDRESS.	- delete	property? I walls or party w	els?			_ =		
under our description of the o	e & Cachimiration	d mach is	AND SECT AND AND	ue, beneficiel			-		
(b) Do you know of any violation	of local state or	federal ter	ws or regulations	relating to this	property?				
(c) Have there been any terrote (d) Has your property been liste	rpest control repor d for sale or webs	ns preper rawn from	wd on this proper	Ty in the last &	ve years?			= =	
7. REMARKS				- >== =× *10					
Are of the above that marries a	acasin nomena	refer to r	white and letter	r and genlam	in a senerale above				
The above information is true and con- forth above. The Americana Group, Re	ect to the best of a	my knowle	edge and except	as set forth he	rien, no malenel problems exist:	milit respect to 8	w property :	as of the date	
Veges Association of REALTORS					ran in wumer sid intelligible sitter	mation to any m	embar of the	- Greater La	-
/We acknowledge receipt of a copy	of the Real Propi	erty State	ment and have	no questions	reporting the contents contai	ned therein.			
Seller	_ (Dete		Buyer					
									
Seller		Date		Buyer		-			• • •

APPENDIX D

Letter of direction from Chairman William A. Petrak to the Administrator of the Real Estate Division, dated June 8, 1994

STATE OF NEVADA LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

Fax No.: (702) 687-5962

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INTERIM FINANCE COMMITTEE (702) 687-6821

WILLIAM J. RAGGIO, Senator, Chairman
Daniel G. Miles, Fiscal Analyst
Mark W. Stevens, Fiscal Analyst

Wm. GARY CREWS, Legislative Auditor (702) 687-6815 ROBERT E. ERICKSON, Research Director (702) 687-6825 BRENDA J. ERDOES, Legislative Counsel (702) 687-6830

June 8, 1994

Joan Buchanan, Administrator Real Estate Division Department of Business and Industry 2501 E. Sahara Avenue Las Vegas, NV 89158

Dear Ms. Buchanan:

As chairman of the Legislative Commission's Subcommittee to Study Disclosure of Information in Real Estate Transactions (A.C.R. 75), I am requesting that the Real Estate Division develop a real property condition disclosure form to be submitted to the appropriate committees of the 1995 Nevada Legislature.

At its work session of May 17, 1994, the subcommittee approved a recommendation to mandate the completion of a real property condition disclosure form for certain sales of real property. In addition, members adopted the following recommendation concerning development of the form:

Require the Real Estate Division to develop, by regulation, the real property condition disclosure form. Stipulate that the form must:

- a. Evaluate, at a minimum, conditions related to electrical, heating and cooling, plumbing, and sewer systems;
- Allow the seller to indicate, for each condition described on the form, whether the condition is defective,* not defective, or unknown; and

- c. Include, among other provisions, statements to the effect that:
 - (1) The disclosures set forth on the form are made by the seller and not by any agent; and
 - (2) The seller, the seller's agent, and the agent of a buyer or potential buyer are authorized to disclose the form and its contents to a buyer or potential buyer.
 - * For the purposes of this recommendation, "defect" means a condition that materially affects the value or use of the residence in an adverse manner.

While it was the subcommittee's preference that the actual form not be specified in statute, the members requested that the division provide a *sample* to the appropriate legislative committees when the bill is heard during the 1995 Session. It is our understanding that, should the bill become law, the division would hold public hearings later to discuss the form and related regulations.

Sincerely,

Assemblyman William A. Petrak Chairman, A.C.R. 75 Subcommittee

APPENDIX E

SUGGESTED LEGISLATION

Bill Draft Requests	<u>3</u>	<u>Page</u>
3-259	Revises provisions governing liability for failure in sale of real property to disclose certain facts concerning property	45
10-260	Requires landlord of mobile home park to disclose history of rental charges for lot to be rented	47
10-261	Requires seller of certain residential property to disclose information regarding master plan and private services, utilities, roads, and improvements affecting property	49
10-262	Requires seller of certain residential property to disclose condition of property	53
54-258	Requires instruction for original real estate salesman's license to include subject of disclosure of information in real estate transactions	59

SUMMARY--Revises provisions governing liability for failure in sale of real property to disclose certain facts concerning property. (BDR 3-259)

FISCAL NOTE: Effect on Loca

Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to sales of real property; providing that any death that previously occurred on the property is not material to the transaction; excluding the agent of a buyer from liability for failure to disclose certain facts concerning the property; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 40.565 is hereby amended to read as follows:

- 40.565 1. In any sale of real property, the fact that the property is or has been:
- (a) The site of a homicide, suicide or death by any other cause, or any crime punishable as a felony; or
- (b) Occupied by a person exposed to the human immunodeficiency virus or suffering from acquired immune deficiency syndrome or any other disease that is not known to be transmitted through occupancy of the property, is not material to the transaction.

2. A seller or any agent of the seller *or buyer* is not liable to the buyer in any action at law or in equity because of the failure to disclose any fact described in subsection 1.

SUMMARY--Requires landlord of mobile home park to disclose history of rental charges for lot to be rented. (BDR 10-260)

FISCAL NOTE:

Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to mobile home parks; requiring a landlord to disclose the history of rental charges for a lot to be rented; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 118B of NRS is hereby amended by adding thereto a new section to read as follows:

A landlord shall:

- 1. When a prospective tenant applies for the tenancy of a mobile home lot; or
- 2. If no application for tenancy is made, before a prospective tenant signs an initial rental agreement for a mobile home lot,

disclose to the prospective tenant, by separate written document, a history of rental increases and the total amount of rent charged for the lot during the preceding 5 years or since the lot originally became available for rental, whichever period is shorter.

Sec. 2. NRS 118B.210 is hereby amended to read as follows:

- 118B.210 1. The landlord shall not terminate a tenancy, refuse to renew a tenancy, increase rent or decrease services he normally supplies [,] or bring or threaten to bring an action for possession of a mobile home lot as retaliation upon the tenant because:
- (a) He has complained in good faith about a violation of a building, safety or health code or regulation pertaining to a mobile home park to the governmental agency responsible for enforcing the code or regulation.
- (b) He has complained to the landlord concerning the maintenance, condition or operation of the park or a violation of any provision of NRS 118B.040 to 118B.220, inclusive, and section 1 of this act, and NRS 118B.240.
- (c) He has organized or become a member of a tenants' league or similar organization.
 - (d) He has requested the reduction in rent required by:
 - (1) NRS 118.165 as a result of a reduction in property taxes.
- (2) NRS 118B.153 when a service, utility or amenity is decreased or eliminated by the landlord.
- (e) A citation has been issued to the landlord as the result of a complaint of the tenant.
- (f) In a judicial proceeding or arbitration between the landlord and the tenant, an issue has been determined adversely to the landlord.
 - 2. A landlord shall not willfully harass a tenant.
- 3. As used in this section, "harass" means to threaten or intimidate, through words or conduct, with the intent to affect the terms or conditions of a tenancy or the tenant's exercise of his rights pursuant to this chapter.

SUMMARY--Requires seller of certain residential property to disclose information regarding master plan and private services, utilities, roads and improvements affecting property. (BDR 10-261)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to sales of real property; requiring a seller of certain residential property to disclose information regarding the master plan and any private services, utilities, roads or improvements affecting the property; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 113.070 is hereby amended to read as follows:

113.070 1. Before the initial purchaser of a residence signs a sales agreement, the seller shall, by separate written document, disclose to him [the]

(a) The zoning designations and information regarding the contents of the master plan, adopted pursuant to chapter 278 of NRS for the adjoining parcels of land. If the residence is located within a subdivision, the disclosure must be made regarding all parcels of land adjoining the unit of the subdivision in which the residence is located. If the residence is located on land divided by a

parcel map and not located within a subdivision, the disclosure must be made regarding all parcels of land adjoining the parcel map. Such a disclosure must be made regardless of whether the adjoining parcels are owned by the seller.

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(b) Any services, utilities, roads or improvements affecting the residence which are to be privately owned or maintained, and the identity of any such owner or person responsible for that maintenance.

The seller shall retain a copy of the disclosure document which has been signed by the purchaser acknowledging the date of receipt by the purchaser of the original document.

- 2. The [zoning] real estate division of the department of business and industry shall adopt regulations specifying the information regarding the contents of a master plan which must be disclosed pursuant to subsection 1.
- 3. The information contained in the document regarding zoning designations and the master plan must:
- (a) Be updated no less than once every 6 months, if the information is available from the local government;
- (b) Advise the purchaser that the master plan and zoning ordinances and regulations adopted pursuant to the master plan are subject to change; and
- (c) Provide the purchaser with instructions on how to obtain more current information.
- [3.] 4. As used in this section, "seller" means a person who sells or attempts to sell any land or tract of land in this state which is divided or proposed to be divided over any period into 10 or more lots, parcels, units or interests, including, but not limited to, undivided interests, which are offered, known,

designated or advertised as a common unit by a common name or as a part of a common promotional plan of advertising and sale.

SUMMARY--Requires seller of certain residential property to disclose condition of property.

(BDR 10-262)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to sales of real property; requiring a seller of certain residential property to disclose the condition of the property; requiring the development of a form for disclosure; establishing remedies for a seller's delayed disclosure or nondisclosure of defects; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- **Section 1.** Chapter 113 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.
- **Sec. 2.** As used in sections 2 to 7, inclusive, of this act, unless the context otherwise requires:
- 1. "Defect" means a condition that materially affects the value or use of residential property in an adverse manner.
- 2. "Disclosure form" means a form that complies with the regulations adopted pursuant to section 3 of this act.
- 3. "Dwelling unit" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one

person who maintains a household or by two or more persons who maintain a common household.

- 4. "Residential property" means any land in this state to which is affixed not less than one nor more than four dwelling units.
- 5. "Seller" means a person who sells or intends to sell any residential property.
- Sec. 3. The real estate division of the department of business and industry shall adopt regulations prescribing the format and contents of a form for disclosing the condition of residential property offered for sale. The regulations must ensure that the form:
- 1. Provides for an evaluation of the condition of any electrical, heating, cooling, plumbing and sewer systems on the property, and of the condition of any other aspects of the property which the real estate division deems appropriate, and allows the seller of the property to indicate whether or not each of those systems and other aspects of the property has a defect of which the seller is aware.

2. Provides notice:

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- (a) Of the provisions of section 5 and subsection 5 of section 6 of this act.
- (b) That the disclosures set forth in the form are made by the seller and not by his agent.
- (c) That the seller and his agent, and the agent of the purchaser or potential purchaser of the residential property, may reveal the completed form and its contents to any purchaser or potential purchaser of the residential property.

Sec. 4. 1. Except as otherwise provided in subsections 2 and 3:

(a) Before residential property is conveyed to a purchaser:

- (1) The seller shall complete a disclosure form regarding the residential property; and
- (2) The seller or his agent shall serve the purchaser or his agent with the completed disclosure form.
- (b) If, after service of the completed disclosure form but before conveyance of the property to the purchaser, a seller or his agent discovers a defect in the residential property that was not identified on the completed disclosure form or discovers that a defect identified on the completed disclosure form has become worse than was indicated on the form, the seller or his agent shall inform the purchaser or his agent of that fact, either orally or in writing, as soon as practicable after the discovery of that fact but in no event later than the conveyance of the property to the purchaser.
- 2. Subsection 1 does not apply to a sale or intended sale of residential property:
 - (a) By a government or governmental agency.
 - (b) Pursuant to a court order or by foreclosure or deed in lieu of foreclosure.
- (c) Between any co-owners of the property, spouses or persons related within the third degree of consanguinity.
- (d) Which is the first sale of a residence that was constructed by a licensed contractor and never before occupied.
- (e) By any bank, thrift company, credit union, trust company, savings and loan association or mortgage or farm loan association, licensed as such under the laws of this state or of the United States, if it has acquired the property for

development, for the convenient transaction of its business, or as a result of foreclosure of the property encumbered in good faith as security for a loan or other obligation it has originated or holds.

- (f) By a person who takes temporary possession or control of or title to the property solely to facilitate the sale of the property on behalf of a person who relocates to another county, state or country before title to the property is transferred to a purchaser.
- 3. A purchaser of residential property may waive any of the requirements of subsection 1. Any such waiver is effective only if it is made in a written document that is signed by the purchaser and notarized.
- Sec. 5. 1. Section 4 of this act does not require a seller to disclose a defect in residential property of which he is not aware.
- 2. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property.
- Sec. 6. 1. If a seller or his agent fails to serve a completed disclosure form in accordance with the requirements of section 4 of this act, the purchaser may, at any time before the conveyance of the property to the purchaser, rescind the agreement to purchase the property without any penalties.
- 2. If, before the conveyance of the property to the purchaser, a seller or his agent informs the purchaser or his agent, through the disclosure form or otherwise, of a defect in the property that was not identified in the agreement to purchase the property, the purchaser may:
- (a) Rescind the agreement to purchase the property at any time before the conveyance of the property to the purchaser; or

- (b) Recover from the seller the actual amount necessary to repair or replace the defective part of the property.
- 3. Rescission of an agreement pursuant to subsection 2 is effective only if made in writing, notarized and served not later than 4 working days after the date on which the purchaser is informed of the defect:
 - (a) On the holder of any escrow opened for the conveyance; or

- (b) If an escrow has not been opened for the conveyance, on the seller or his agent.
- 4. Except as otherwise provided in subsection 5, if a seller or his agent conveys residential property to a purchaser without complying with the requirements of section 4 of this act and there is a defect in the property, of which the seller or his agent was aware before the property was conveyed to the purchaser and which was not identified in the agreement to purchase the property, the purchaser is entitled to recover from the seller treble the amount necessary to repair or replace the defective part of the property, together with court costs and reasonable attorney's fees. An action to enforce the provisions of this subsection must be commenced not later than 1 year after the purchaser discovers the defect or 2 years after the conveyance of the property to the purchaser, whichever occurs earlier.
- 5. A purchaser may not recover damages from a seller or his agent pursuant to subsection 4 on the basis of an error or omission in the disclosure form that was caused by the seller's reliance upon information provided to the seller by:
- (a) An officer or employee of this state or any political subdivision of this state in the ordinary course of his duties; or

- (b) A contractor, engineer, land surveyor or pesticide applicator, who was authorized to practice that profession in this state at the time the information was provided.
- 6. A purchaser of residential property may waive any of his rights under this section. Any such waiver is effective only if it is made in a written document that is signed by the purchaser and notarized.
 - Sec. 7. For the purposes of sections 2 to 7, inclusive, of this act:
 - 1. A conveyance of property occurs:

- (a) Upon the closure of any escrow opened for the conveyance; or
- (b) If an escrow has not been opened for the conveyance, when the purchaser of the property receives the deed of conveyance.
 - 2. Service of a document is complete:
 - (a) Upon personal delivery of the document to the person being served; or
- (b) Three days after the document is mailed, postage prepaid, to the person being served at his last known address.
- Sec. 8. The real estate division of the department of business and industry shall adopt the regulations required by section 3 of this act on or before October 1, 1995.
- Sec. 9. This act becomes effective upon passage and approval for the purpose of adopting the regulations required by section 3 of this act and on October 1, 1995, for all other purposes.

SUMMARY--Requires instruction for original real estate salesman's license to include subject of disclosure of information in real estate transactions. (BDR 54-258)

FISCAL NOTE:

Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to real estate; requiring a course of instruction for an original real estate salesman's license to include the subject of the disclosure of information in real estate transactions; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 645.343 is hereby amended to read as follows:

645.343 1. In addition to the other requirements contained in this chapter, an applicant for an original real estate salesman's license must furnish proof satisfactory to the real estate division that he has successfully completed a course of instruction in the principles, practices, procedures, law and ethics of real estate, which course may be an extension or correspondence course offered by the University and Community College System of Nevada, any other accredited college or university or by any other college or school approved by the commission. The course of instruction must include the subject of disclosure of required information in real estate transactions, including instruction on methods of obtaining the required information.

2. An applicant for an original real estate broker's or broker-salesman's license must furnish proof satisfactory to the real estate division that he has successfully completed 45 semester units or the equivalent in quarter units of college level courses which include:

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- (a) Three semester units or an equivalent number of quarter units in real estate law, including at least 15 classroom hours of the real estate law of Nevada and another course of equal length in the principles of real estate;
- (b) Nine semester units or the equivalent in quarter units of college level courses in real estate appraisal and business or economics; and
- (c) Nine semester units or the equivalent in quarter units of college level courses in real estate, business or economics.
- 3. On and after January 1, 1986, in addition to other requirements contained in this chapter, an applicant for an original real estate broker's or broker-salesman's license must furnish proof satisfactory to the real estate division that he has completed 64 semester units or the equivalent in quarter units of college level courses. This educational requirement includes and is not in addition to the requirements listed in subsection 2.
- 4. For the purposes of this section, each person holding a valid real estate salesman's license under the provisions of this chapter is entitled to receive credit for the equivalent of 16 semester units of college level courses for each two years of active experience he has as a licensed real estate salesman. This credit may not be applied against the requirement in subsection 2 for 15 classroom hours of the real estate law of Nevada.

- 5. The educational requirements of this section may be waived partially or completely by the commission if the applicant for an original real estate broker's or broker-salesman's license furnishes proof satisfactory to the commission that he resides in a rural county where educational resources are not available and where excess travel would work a hardship on the applicant in meeting the requirements.
- 6. An applicant for a broker's license pursuant to NRS 645.350 must meet the educational prerequisites applicable on the date his application is received by the real estate division.
- 7. For the purposes of this section, "college level courses" are courses offered by any accredited college or university or by any other institution which meet the standards of education established by the commission. The commission may adopt regulations setting forth standards of education which are equivalent to the college level courses outlined in this subsection. The regulations may take into account the standard of instructors, the scope and content of the instruction, hours of instruction and such other criteria as the commission requires.