

# HOUSE BILL REPORT

## SHB 1420

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### As Amended by the Senate

**Title:** An act relating to real estate seller disclosure.

**Brief Description:** Revising real estate seller disclosure requirements.

**Sponsors:** House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Condotta, Maxwell, Williams, Chandler, Wood, Hinkle and Kelley).

### Brief History:

#### Committee Activity:

Commerce & Labor: 1/30/09, 2/6/09 [DPS].

#### Floor Activity

Passed House: 3/3/09, 97-0.

Senate Amended.

Passed Senate: 4/15/09, 48-0.

Senate Amended.

Passed Senate: 4/22/09, 49-0.

### Brief Summary of Substitute Bill

- Modifies the definition of "unimproved residential real property" to mean unimproved property with a maximum permitted development, without further subdivision of the property, of one to four residential units or structures and does not include commercial real estate or timber land.
- Adds an exemption from the seller disclosure requirements for transfers to a buyer who intends to acquire property primarily for agricultural, commercial, investment, subdivision, or other business purposes.
- Modifies several questions on the seller's disclosure statements for unimproved residential real property and improved residential real property.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Staff:** Alison Hellberg (786-7152)

### Background:

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

### Required Seller Disclosures for Transfers of Residential Real Property.

A seller of residential land must provide a buyer with a disclosure statement about the land unless the buyer waives the right to receive it. The disclosure requirement applies to sales of unimproved residential land and improved residential land. "Unimproved residential real property" is defined as property zoned for residential use that is not improved by residential dwelling units, a residential condominium, a residential timeshare, or a mobile or manufactured home.

The disclosure forms are specified in statute. The disclosure for unimproved residential land concerns title, water, sewer/septic systems, electrical/gas, flooding, soil stability, environmental, and homeowners' association/common interests. The disclosure for improved residential land concerns title, water, sewer/on-site sewage system, structural, systems and fixtures, homeowners' association/common interests, environmental, and manufactured and mobile homes.

The disclosure statement must be provided within five business days, or as otherwise agreed to, after mutual acceptance of a written purchase agreement between a buyer and a seller. Within three business days of receiving the disclosure statement, the buyer has the right to approve and accept the statement or rescind the agreement for purchase. If the seller fails to provide the statement, the buyer may rescind the transaction until the transfer has closed. If the disclosure statement is delivered late, the buyer's right to rescind expires three days after receipt of the statement.

Certain transfers of residential real property are excluded from these requirements, including a:

- foreclosure or deed-in-lieu of foreclosure;
- gift or other transfer to a parent, spouse, domestic partner, or child of a transferor or child of any parent, spouse, or domestic partner of a transferor;
- transfer between spouses or between domestic partners in connection with a marital dissolution or dissolution of a state registered domestic partnership;
- transfer where a buyer had an ownership interest in the property within two years of the date of the transfer including, but not limited to, an ownership interest as a partner in a partnership, a limited partner in a limited partnership, a shareholder in a corporation, a leasehold interest, or transfers to and from a facilitator pursuant to a tax deferred exchange;
- transfer of an interest that is less than fee simple, except that the transfer of a vendee's interest under a real estate contract is subject to the requirements of this chapter;
- transfer made by the personal representative of the estate of the decedent or by a trustee in bankruptcy; and
- transfer in which the buyer has expressly waived the receipt of the seller disclosure statement. However, if the answer to any of the questions in the section entitled "Environmental" would be "yes," the buyer may not waive the receipt of the "Environmental" section of the seller disclosure statement.

The seller and any licensed real estate salesperson or broker is not liable for error, inaccuracy, or omission in the disclosure statement if the seller or real estate salesperson or broker had no actual knowledge of the error, inaccuracy, or omission. The Consumer

Protection Act does not apply to violations, but a right of action is preserved against the seller or against any agent acting for the seller under common law, statute, or contract.

### **Summary of Substitute Bill:**

The definition of "unimproved residential real property" is modified to mean unimproved property for which the maximum permitted development, without further subdivision of the property, is one to four residential units or structures under the county or city ordinances or comprehensive plans applicable to that real estate and does not include commercial real estate or timber land.

An exemption to the seller disclosure requirements is added for transfers to a buyer who intends to acquire the property primarily for agricultural, commercial, investment, subdivision, or other business purposes.

### Unimproved Residential Real Property Disclosure Statement.

In addition to technical edits and clarifications, several questions to the disclosure statement are modified in the sections that concern title, flooding, soil stability, environmental, and full disclosure by sellers.

#### *Title.*

- The question regarding rights-of-way, easements, or access limitations is modified to ask whether they affect the buyer's use of the property rather than "may" affect the buyer's use of the property.
- The question relating to zoning violations, nonconforming uses, or any unusual restrictions on the property is modified to ask whether they affect future construction or remodeling rather than "would" affect future construction or remodeling.
- Rather than asking whether there are any covenants, conditions, or restrictions which affect the property, it asks whether there are any recorded against the title.

#### *Flooding, Soil Stability, and Environmental.*

- The question asking whether there are any flooding, standing water, or drainage problems on the property or affecting access to the property is moved to the "Environmental" section.
- The question asking whether any part of the property contains fill dirt, waste, or other fill material is moved to the "Environmental" Section.
- Rather than asking whether there are substances or materials on the property that may be environmental concerns, it asks whether there are any present that violate any applicable environmental law.
- The question related to transmission poles is changed to ask whether there are transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property.
- The question related to radio towers is modified to ask for information about those that cause interference with cellular telephone reception.

### Improved Residential Real Property Disclosure Statement.

In addition to technical edits and clarifications, several questions to the disclosure statement are modified in the sections that concern title, water, structural, systems and fixtures, environmental, and full disclosure by sellers.

*Title.*

- The question regarding rights-of-way, easements, or access limitations is modified to ask whether they affect the buyer's use of the property rather than "may" affect the buyer's use of the property.
- The question relating to zoning violations, nonconforming uses, or any unusual restrictions on the property is modified to ask whether they affect future construction or remodeling rather than "would" affect future construction or remodeling.
- Rather than asking whether there are any covenants, conditions, or restrictions which affect the property, it asks whether there are any recorded against the title.

*Water.*

- On the question related to water right permits, certificates, or claims, a question is added regarding whether the water withdrawn from the water source is less than 5,000 gallons a day.
- A question is added about defects in the operation of the water system.

*Structural.*

- Rather than asking whether the roof has ever leaked, it asks whether the roof leaks.

*Systems and Fixtures.*

- A question is added about whether the property has a wood stove, fireplace insert, pellet stove, or fireplace and whether the wood stove or fireplace inserts are certified as clean burning appliances to improve air quality and public health by the United States Environmental Protection Agency.

*Environmental.*

- A question is modified to ask whether there is any flooding, standing water, or drainage problems on the property affecting access to the property.
- A question is modified to ask about dirt, waste, or other fill material on the property.
- Rather than asking whether there are substances or materials on the property that may be environmental concerns, it asks whether there are any present that violate any applicable environmental law.
- The question related to transmission poles is changed to ask whether there are transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property.
- The question related to radio towers is modified to ask for information about those that cause interference with cellular telephone reception.

**EFFECT OF SENATE AMENDMENT(S):**

Changes to the definition of "unimproved residential real property" are removed, except that timber land is not considered unimproved residential real property.

The exemption from disclosure for transfers to a buyer who intends to acquire the property primarily for agricultural, commercial, investment, subdivision, or other business purposes is eliminated.

The environmental disclosures in the unimproved residential real property form are modified. The question related to flooding asks has there been rather than is there any flooding, standing water, or drainage problems on the property that affect the property or access to the property. The requirement that the seller only disclose information about certain substances, materials, or products if the presence of which violates any environmental law is removed. The seller must disclose the presence of any substances, materials, or products in or on the property that may be environmental concerns. The requirement that a seller disclose information about any soil or groundwater contamination is restored.

The disclosure form for the transfer of improved residential real property is also modified. On the question related to water right permits, certificates, or claims, the question is removed regarding whether the water withdrawn from the water source is less than 5,000 gallons a day. A seller is required to disclose a roof leaking within the last five years rather than if the roof leaks.

The requirement that the seller only disclose information about certain substances, materials, or products if the presence of which violates any environmental law is removed. The seller must disclose the presence of any substances, materials, or products in or on the property that may be environmental concerns. The requirement that a seller disclose information about any soil or groundwater contamination is restored.

The provisions of the bill only apply to sales of property that arise on or after the effective date.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The real estate industry has been working on this issue for several years. A few years ago the Legislature passed a bill requiring use of a seller disclosure form for unimproved residential land. The definition tends to include lots of property that is intended for commercial use and that has led to unintended consequences and increased risk. The form is really meant to be used in the residential context. It is important that “commercial real estate” be excluded from the definition. This coincides with industry, buyer, and seller expectations.

Because of realtors' positions, they have a unique eye to the difficulties of these transactions. There are several questions that sellers and buyers have identified as ambiguous. This is an opportunity to clean up the form. The issues related to the form are really between the buyer

and seller – not realtors. The term “substantially adversely” from the real estate brokerage relationship has been added for clarity. Sometimes, for example, easements benefit the property. The issue for the buyer is whether there are negative issues related to any easement.

Some technical amendments may be necessary, particularly related to the questions about utility poles and related to standing water.

(In support with amendment) A clarifying amendment is requested on the wood burning appliance question to remove the word "manufactured" and just use fireplace.

(Neutral) The wood burning device question is a good addition to the form. There are some concerns with the standing water and flooding questions. Governments maps may be inaccurate at times and miss localized flooding. The question should be amended to address that.

(Opposed) None.

**Persons Testifying:** (In support) Bob Mitchell and Annette Fitzsimmons, Washington Realtors; and Chris Osborn, Northwest Multiple Listing Service.

(In support with amendment) Carolyn Logue, Northwest Hearth, Patio and Barbecue Association; and Gary Smith, Independent Business Association of Washington.

(Neutral) Tom Clingman, Department of Ecology.

**Persons Signed In To Testify But Not Testifying:** None.