

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6749

Chapter 64, Laws of 2010

61st Legislature
2010 Regular Session

COMMERCIAL REAL ESTATE--SELLERS--DISCLOSURE

EFFECTIVE DATE: 06/10/10

Passed by the Senate February 16, 2010
YEAS 48 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House February 28, 2010
YEAS 96 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved March 15, 2010, 3:01 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6749** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

March 15, 2010

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6749

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Fraser and Honeyford)

READ FIRST TIME 02/04/10.

1 AN ACT Relating to the transfer of commercial real estate; amending
2 RCW 64.06.005, 64.06.010, 64.06.022, 64.06.050, and 64.06.070;
3 reenacting and amending RCW 64.06.040; and adding a new section to
4 chapter 64.06 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 64.06.005 and 2009 c 505 s 1 are each amended to read
7 as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

10 (1) "Commercial real estate" has the same meaning as in RCW
11 60.42.005.

12 (2) "Improved residential real property" means:

13 (a) Real property consisting of, or improved by, one to four
14 residential dwelling units;

15 (b) A residential condominium as defined in RCW 64.34.020(9),
16 unless the sale is subject to the public offering statement requirement
17 in the Washington condominium act, chapter 64.34 RCW;

18 (c) A residential timeshare, as defined in RCW 64.36.010(11),

1 unless subject to written disclosure under the Washington timeshare
2 act, chapter 64.36 RCW; or

3 (d) A mobile or manufactured home, as defined in RCW 43.22.335 or
4 46.04.302, that is personal property.

5 ~~((+2))~~ (3) "Residential real property" means both improved and
6 unimproved residential real property.

7 ~~((+3))~~ (4) "Seller disclosure statement" means the form to be
8 completed by the seller of residential real property as prescribed by
9 this chapter.

10 ~~((+4))~~ (5) "Unimproved residential real property" means property
11 zoned for residential use that is not improved by one_or_more
12 residential dwelling units, a residential condominium, a residential
13 timeshare, or a mobile or manufactured home. It does not include
14 commercial real estate or property defined as "timber land" under RCW
15 84.34.020.

16 **Sec. 2.** RCW 64.06.010 and 2008 c 6 s 632 are each amended to read
17 as follows:

18 This chapter does not apply to the following transfers of
19 ~~((residential))~~ real property:

- 20 (1) A foreclosure or deed-in-lieu of foreclosure;
- 21 (2) A gift or other transfer to a parent, spouse, domestic partner,
22 or child of a transferor or child of any parent, spouse, or domestic
23 partner of a transferor;
- 24 (3) A transfer between spouses or between domestic partners in
25 connection with a marital dissolution or dissolution of a state
26 registered domestic partnership;
- 27 (4) A transfer where a buyer had an ownership interest in the
28 property within two years of the date of the transfer including, but
29 not limited to, an ownership interest as a partner in a partnership, a
30 limited partner in a limited partnership, a shareholder in a
31 corporation, a leasehold interest, or transfers to and from a
32 facilitator pursuant to a tax deferred exchange;
- 33 (5) A transfer of an interest that is less than fee simple, except
34 that the transfer of a vendee's interest under a real estate contract
35 is subject to the requirements of this chapter;
- 36 (6) A transfer made by the personal representative of the estate of
37 the decedent or by a trustee in bankruptcy; and

1 (7) A transfer in which the buyer has expressly waived the receipt
2 of the seller disclosure statement. However, if the answer to any of
3 the questions in the section entitled "Environmental" would be "yes,"
4 the buyer may not waive the receipt of the "Environmental" section of
5 the seller disclosure statement.

6 NEW SECTION. **Sec. 3.** A new section is added to chapter 64.06 RCW
7 to read as follows:

8 (1) In a transaction for the sale of commercial real estate, the
9 seller shall, unless the buyer has expressly waived the right to
10 receive the disclosure statement under RCW 64.06.010, or unless the
11 transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer
12 a completed seller disclosure statement in the following format and
13 that contains, at a minimum, the following information:

14 INSTRUCTIONS TO THE SELLER

15 Please complete the following form. Do not leave any spaces blank. If
16 the question clearly does not apply to the property write "NA." If the
17 answer is "yes" to any * items, please explain on attached sheets.
18 Please refer to the line number(s) of the question(s) when you provide
19 your explanation(s). For your protection you must date and sign each
20 page of this disclosure statement and each attachment. Delivery of the
21 disclosure statement must occur not later than five business days,
22 unless otherwise agreed, after mutual acceptance of a written contract
23 to purchase between a buyer and a seller.

24 NOTICE TO THE BUYER

25 THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE
26 PROPERTY LOCATED AT

27 ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

28 SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR
29 MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE
30 PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT.
31 UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE
32 BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS
33 DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A
34 SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S
35 AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE

1 STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER
2 THE TIME YOU ENTER INTO A SALE AGREEMENT.

3 THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE
4 REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS
5 INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF
6 ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

7 FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS
8 PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF
9 QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT
10 LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS,
11 ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER
12 TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE
13 BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS
14 OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT
15 BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR
16 WARRANTIES.

17 Seller is/ is not occupying the property.

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I. SELLER'S DISCLOSURES:

If you answer "Yes" to a question with an asterisk (), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

I. TITLE AND LEGAL

- Yes No Don't know A. Do you have legal authority to sell the property? If no, please explain.
- Yes No Don't know *B. Is title to the property subject to any of the following?
 - (1) First right of refusal
 - (2) Option
 - (3) Lease or rental agreement
 - (4) Life estate?
- Yes No Don't know *C. Are there any encroachments, boundary agreements, or boundary disputes?
- Yes No Don't know *D. Is there any leased parking?
- Yes No Don't know *E. Is there a private road or easement agreement for access to the property?
- Yes No Don't know *F. Are there any rights-of-way, easements, shared use agreements, or access limitations?

1

2 Yes No Don't know

3 * Are there any defects in the following

4 Yes No Don't know (1) Electrical system

5 Yes No Don't know (2) Plumbing system

6 Yes No Don't know (3) Heating and cooling systems

7 Yes No Don't know (4) Fire and security system

8

9 Yes No Don't know

10 **6. ENVIRONMENTAL**

11 *A. Have there been any flooding,

12 standing water, or drainage problems on

13 the property that affect the property or

14 access to the property?

15 Yes No Don't know

16 *B. Is there any material damage to the

17 property from fire, wind, floods, beach

18 movements, earthquake, expansive

19 soils, or landslides?

20 Yes No Don't know

21 *C. Are there any shorelines, wetlands,

22 floodplains, or critical areas on the

23 property?

24 Yes No Don't know

25 *D. Are there any substances,

26 materials, or products in or on the

27 property that may be environmental

28 concerns, such as asbestos,

29 formaldehyde, radon gas, lead-based

30 paint, fuel or chemical storage tanks, or

31 contaminated soil or water?

32 Yes No Don't know

33 *E. Is there any soil or groundwater

34 contamination?

35 Yes No Don't know

36 *F. Has the property been used as a

37 legal or illegal dumping site?

38 Yes No Don't know

39 *G. Has the property been used as an

illegal drug manufacturing site?

7. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

Yes No Don't know

*Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:

1 The foregoing answers and attached
2 explanations (if any) are complete and
3 correct to the best of my/our knowledge
4 and I/we have received a copy hereof.
5 I/we authorize all of my/our real estate
6 licensees, if any, to deliver a copy of
7 this disclosure statement to other real
8 estate licensees and all prospective
9 buyers of the property.

10 DATE SELLER SELLER

11 NOTICE TO BUYER

12 INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE
13 OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE
14 IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS
15 INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF
16 REGISTERED SEX OFFENDERS.

17 **II. BUYER'S ACKNOWLEDGMENT**

- 18 A. Buyer hereby acknowledges that: Buyer has a duty to pay
19 diligent attention to any material defects that are known to
20 Buyer or can be known to Buyer by utilizing diligent
21 attention and observation.
- 22 B. The disclosures set forth in this statement and in any
23 amendments to this statement are made only by the Seller
24 and not by any real estate licensee or other party.
- 25 C. Buyer acknowledges that, pursuant to RCW 64.06.050(2),
26 real estate licensees are not liable for inaccurate information
27 provided by Seller, except to the extent that real estate
28 licensees know of such inaccurate information.
- 29 D. This information is for disclosure only and is not intended to
30 be a part of the written agreement between the Buyer and
31 Seller.
- 32 E. Buyer (which term includes all persons signing the "Buyer's
33 acceptance" portion of this disclosure statement below) has
34 received a copy of this Disclosure Statement (including
35 attachments, if any) bearing Seller's signature.

36 DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY
37 SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME
38 SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER
39 OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM
40 THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO
41 RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN
42 STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE

1 RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE
2 AGREEMENT.
3 BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE
4 STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE
5 OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.
6 DATE BUYER BUYER

7 (2) The seller disclosure statement shall be for disclosure only,
8 and shall not be considered part of any written agreement between the
9 buyer and seller of residential property. The seller disclosure
10 statement shall be only a disclosure made by the seller, and not any
11 real estate licensee involved in the transaction, and shall not be
12 construed as a warranty of any kind by the seller or any real estate
13 licensee involved in the transaction.

14 **Sec. 4.** RCW 64.06.022 and 2006 c 77 s 1 are each amended to read
15 as follows:

16 A seller of residential real property shall make available to the
17 buyer the following statement: "This notice is to inform you that the
18 real property you are considering for purchase may lie in close
19 proximity to a farm. The operation of a farm involves usual and
20 customary agricultural practices, which are protected under RCW
21 7.48.305, the Washington right to farm act."

22 **Sec. 5.** RCW 64.06.040 and 2009 c 505 s 4 and 2009 c 130 s 3 are
23 each reenacted and amended to read as follows:

24 (1) If, after the date that a seller of (~~residential~~) real
25 property completes a real property transfer disclosure statement, the
26 seller learns from a source other than the buyer or others acting on
27 the buyer's behalf such as an inspector of additional information or an
28 adverse change which makes any of the disclosures made inaccurate, the
29 seller shall amend the real property transfer disclosure statement, and
30 deliver the amendment to the buyer. No amendment shall be required,
31 however, if the seller takes whatever corrective action is necessary so
32 that the accuracy of the disclosure is restored, or the adverse change
33 is corrected, at least three business days prior to the closing date.
34 Unless the corrective action is completed by the seller prior to the
35 closing date, the buyer shall have the right to exercise one of the
36 following two options: (a) Approving and accepting the amendment, or

1 (b) rescinding the agreement of purchase and sale of the property
2 within three business days after receiving the amended real property
3 transfer disclosure statement. Acceptance or recision shall be subject
4 to the same procedures described in RCW 64.06.030. If the closing date
5 provided in the purchase and sale agreement is scheduled to occur
6 within the three-business-day rescission period provided for in this
7 section, the closing date shall be extended until the expiration of the
8 three-business-day rescission period. The buyer shall have no right of
9 rescission if the seller takes whatever action is necessary so that the
10 accuracy of the disclosure is restored at least three business days
11 prior to the closing date.

12 (2) In the event any act, occurrence, or agreement arising or
13 becoming known after the closing of a (~~residential~~) real property
14 transfer causes a real property transfer disclosure statement to be
15 inaccurate in any way, the seller of such property shall have no
16 obligation to amend the disclosure statement, and the buyer shall not
17 have the right to rescind the transaction under this chapter.

18 (3) If the seller in a (~~residential~~) real property transfer fails
19 or refuses to provide to the prospective buyer a real property transfer
20 disclosure statement as required under this chapter, the prospective
21 buyer's right of rescission under this section shall apply until the
22 earlier of three business days after receipt of the real property
23 transfer disclosure statement or the date the transfer has closed,
24 unless the buyer has otherwise waived the right of rescission in
25 writing. Closing is deemed to occur when the buyer has paid the
26 purchase price, or down payment, and the conveyance document, including
27 a deed or real estate contract, from the seller has been delivered and
28 recorded. After closing, the seller's obligation to deliver the real
29 property transfer disclosure statement and the buyer's rights and
30 remedies under this chapter shall terminate.

31 (4) Failure of a homeowners' association or its officers,
32 directors, employees, or authorized agents to provide requested
33 information in part 8 of the disclosure statement form in RCW 64.06.015
34 or part 6 of the disclosure statement form in RCW 64.06.020 does not
35 constitute a seller's failure or refusal to provide a real property
36 transfer disclosure statement under subsection (3) of this section.

1 **Sec. 6.** RCW 64.06.050 and 1996 c 301 s 5 are each amended to read
2 as follows:

3 (1) The seller (~~((of residential real property))~~) shall not be liable
4 for any error, inaccuracy, or omission in the real property transfer
5 disclosure statement if the seller had no actual knowledge of the
6 error, inaccuracy, or omission. Unless the seller (~~((of residential
7 real property))~~) has actual knowledge of an error, inaccuracy, or
8 omission in a real property transfer disclosure statement, the seller
9 shall not be liable for such error, inaccuracy, or omission if the
10 disclosure was based on information provided by public agencies, or by
11 other persons providing information within the scope of their
12 professional license or expertise, including, but not limited to, a
13 report or opinion delivered by a land surveyor, title company, title
14 insurance company, structural inspector, pest inspector, licensed
15 engineer, or contractor.

16 (2) Any (~~((licensed))~~) real estate (~~((salesperson or broker))~~) licensee
17 involved in a (~~((residential))~~) real property transaction is not liable
18 for any error, inaccuracy, or omission in the real property transfer
19 disclosure statement if the licensee had no actual knowledge of the
20 error, inaccuracy, or omission. Unless the (~~((salesperson or broker))~~)
21 licensee has actual knowledge of an error, inaccuracy, or omission in
22 a real property transfer disclosure statement, the (~~((salesperson or
23 broker))~~) licensee shall not be liable for such error, inaccuracy, or
24 omission if the disclosure was based on information provided by public
25 agencies, or by other persons providing information within the scope of
26 their professional license or expertise, including, but not limited to,
27 a report or opinion delivered by a land surveyor, title company, title
28 insurance company, structural inspector, pest inspector, licensed
29 engineer, or contractor.

30 **Sec. 7.** RCW 64.06.070 and 1996 c 301 s 6 are each amended to read
31 as follows:

32 Except as provided in RCW 64.06.050, nothing in this chapter shall
33 extinguish or impair any rights or remedies of a buyer of real estate
34 against the seller or against any agent acting for the seller otherwise
35 existing pursuant to common law, statute, or contract; nor shall
36 anything in this chapter create any new right or remedy for a buyer of

1 (~~residential~~) real property other than the right of reversion
2 exercised on the basis and within the time limits provided in this
3 chapter.

Passed by the Senate February 16, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 15, 2010.

Filed in Office of Secretary of State March 15, 2010.