

HOUSE BILL REPORT

HB 1951

As Reported by House Committee On:
Consumer Protection & Business

Title: An act relating to seller disclosure statements.

Brief Description: Concerning seller disclosure statements.

Sponsors: Representatives Morgan, Fitzgibbon, Orwall, McEntire, Ryu, Ormsby, Kloba and Harris-Talley.

Brief History:

Committee Activity:

Consumer Protection & Business: 1/27/22, 2/2/22 [DPS].

Brief Summary of Substitute Bill

- Modifies the required seller disclosure statement in transactions for commercial real estate and improved or unimproved residential real property to require disclosure of damage from animals.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Kirby, Chair; Walen, Vice Chair; Ryu and Santos.

Minority Report: Do not pass. Signed by 3 members: Representatives Vick, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Corry.

Staff: Michelle Rusk (786-7153).

Background:

Required Seller Disclosures for Transfers of Commercial and Residential Property.

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

In real estate transactions for the sale of commercial real estate and improved or unimproved residential real property, absent an express waiver or exemption, sellers must provide buyers with a completed seller disclosure statement form within five business days after mutual acceptance of a written purchase agreement.

The disclosure statement requires a seller to answer "yes," "no," or "don't know" to a list of questions concerning the property, including: title; water; sewage; structure; systems and fixtures; homeowners' association; the environment; electrical/gas; flooding; soil stability; and other conditions or defects. A seller must complete the disclosure statement based on the seller's actual knowledge of the property at the time the seller completes the disclosure statement.

Within three business days of a buyer's receipt of the seller disclosure statement, the buyer may approve and accept the disclosure statement or rescind the purchase agreement. If the disclosure statement is delivered late or not delivered, the buyer's right to rescind expires the earlier of three days after receipt of the disclosure statement or the date the transfer closes.

Errors, Inaccuracies, or Omissions in a Seller Disclosure Statement.

A seller is not liable for any error, inaccuracy, or omission in the disclosure statement if the seller had no actual knowledge of the error, inaccuracy, or omission. This includes situations where information provided by public agencies, or other professionals, is relied on.

The Consumer Protection Act does not apply to violations. The statute preserves a buyer's right of action against a seller or against any agent acting for a seller under common law, statute, or contract.

Summary of Substitute Bill:

A new section is added to the seller disclosure statement for commercial and residential real estate transactions, which requires the disclosure of any damage from animals, including urine, feces, or other waste, chewing on wires or siding of main structure, or digging. This new section is modified for unimproved residential real property by only requiring disclosure of any damage to the property from animals, including digging or urine, feces, or other waste.

Substitute Bill Compared to Original Bill:

The substitute bill removes modifications that:

- eliminate a seller's option to select "don't know";
- eliminate the actual knowledge standard for a seller completing the disclosure;
- direct sellers to provide any relevant information for each category of the disclosure

- and corresponding space for that information; and
- make a seller liable for any error, accuracy, or omission in the disclosure.

The substitute bill restores existing law which:

- provides sellers with an option to select "don't know";
- states that disclosures made by sellers are based on their "actual knowledge"; and
- states that sellers are not liable for any error, inaccuracy, or omission in the disclosure statement.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) House Bill 1951 allows buyers to be on the same playing field as sellers, gives home buyers full power when purchasing a home, and makes a fair and just sale process. Owning a home creates a pathway to economic prosperity, and has the potential to create generational wealth in communities of color. Not disclosing damage from animals can create thousands of dollars in surprise costs for purchasers. It's understandable that sellers may want to select "don't know" when completing the disclosure, but House Bill 1951 provides ample space for owners to provide information about experiences, or lack of experiences, to give sellers a chance to explain. The only other option is to file a civil suit against a seller, and the legal system is inequitable. Most people don't know where or how to file a suit, and courts don't consider plaintiff's employment or childcare schedules.

(Opposed) The elimination of the actual knowledge standard leaves open the question of what the standard is for sellers when they complete the disclosure. Many questions have been added to the disclosure over time, with the understanding that some of these conditions or situations are things a seller simply would not know about, so they are based on a seller's actual knowledge. Removing the "don't know" option also leaves open the question of what is an appropriate response when a seller simply doesn't know an answer. The fairly broad language directing a seller to provide "relevant information" makes the form less clear for sellers.

If House Bill 1951 became law, buyers would not have greater protections, they would have less protection and less information, because sellers would simply stop filling out and delivering the disclosure form at all. The response from industry has been robust and there is truly unanimous consent that if House Bill 1951 becomes law, every real estate lawyer advising sellers would advise the seller not to complete the form at all, and instead advise a

seller to either force a buyer to waive their rescission right under the statute, or bear the risk that a buyer could rescind the transaction prior to closing. There are questions a seller simply has no way to get a meaningful yes or no answer on, and House Bill 1951 creates no limitation on the liability for a seller based on the seller's actual knowledge.

(Other) House Bill 1951 is a laudable attempt to even the playing field between buyers and sellers, but the existence of case law in Washington would create the immediate effect of the appellate courts finding the statute does not override existing cases. Washington courts have concluded that a buyer has the full duty to discover what defects may exist in a property if there is something suggesting to the buyer that there is a defect, so the full burden is on a buyer to discover matters relevant to a property. The "don't know" option should not be removed, but other changes to the bill could help restore other causes of action for buyers, including negligent misrepresentation and innocent misrepresentation as alternative claims for buyers.

Persons Testifying: (In support) Representative Melanie Morgan, prime sponsor.

(Opposed) Annie Fitzsimmons; and Bill Clarke, Washington REALTORS

(Other) Catherine Clark.

Persons Signed In To Testify But Not Testifying: None.