

SENATE BILL No. 172

February 11, 2003, Introduced by Senator THOMAS and referred to the Committee on Economic Development, Small Business and Regulatory Reform.

A bill to require certain disclosures by sellers of real property.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "toxic mold disclosure act".

3 Sec. 2. The seller disclosure requirements of sections 4 to
4 13 apply to the transfer of any interest in real estate, whether
5 by sale, exchange, installment land contract, lease with an
6 option to purchase, any other option to purchase, or ground lease
7 coupled with proposed improvements by the purchaser or tenant, or
8 a transfer of stock or an interest in a residential cooperative.

9 Sec. 3. The seller disclosure requirements of sections 4 to
10 13 do not apply to any of the following:

11 (a) Transfers pursuant to court order, including, but not
12 limited to, transfers ordered by a probate court in

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1 administration of an estate, transfers pursuant to a writ of
2 execution, transfers by any foreclosure sale, transfers by a
3 trustee in bankruptcy, transfers by eminent domain, and transfers
4 resulting from a decree for specific performance.

5 (b) Transfers to a mortgagee by a mortgagor or successor in
6 interest who is in default, or transfers to a beneficiary of a
7 deed of trust by a trustor or successor in interest who is in
8 default.

9 (c) Transfers by a sale under a power of sale or any
10 foreclosure sale under a decree of foreclosure after default in
11 an obligation secured by a mortgage or secured by any other
12 instrument containing a power of sale, or transfers by a
13 mortgagee who has acquired the real property at a sale conducted
14 pursuant to a power of sale under a mortgage or a sale pursuant
15 to a decree of foreclosure or has acquired the real property by a
16 deed in lieu of foreclosure.

17 (d) Transfers by a nonoccupant fiduciary in the course of the
18 administration of a decedent's estate, guardianship,
19 conservatorship, or trust.

20 (e) Transfers from 1 co-tenant to 1 or more other
21 co-tenants.

22 (f) Transfers made to a spouse, parent, grandparent, child,
23 or grandchild.

24 (g) Transfers between spouses resulting from a judgment of
25 divorce or a judgment of separate maintenance or from a property
26 settlement agreement incidental to such a judgment.

27 (h) Transfers or exchanges to or from any governmental

1 entity, unless the real estate being transferred contains 1 or
2 more buildings that will be inhabited or occupied by persons
3 after the transfer.

4 (i) Transfers made by a person licensed under article 24 of
5 the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412, of
6 newly constructed residential property that has not been
7 inhabited.

8 Sec. 4. (1) The transferor of any real property described
9 in section 2 shall deliver to the transferor's agent or to the
10 prospective transferee or the transferee's agent the written
11 statement required by this act. If the written statement is
12 delivered to the transferor's agent, the transferor's agent shall
13 provide a copy to the prospective transferee or his or her
14 agent. A written disclosure statement provided to a transferee's
15 agent shall be considered to have been provided to the
16 transferee. The written statement shall be delivered to the
17 prospective transferee within the following time limits:

18 (a) In the case of a sale, before the transferor executes a
19 binding purchase agreement with the prospective transferee.

20 (b) In the case of transfer by an installment sales contract
21 where a binding purchase agreement has not been executed, or in
22 the case of a lease together with an option to purchase or a
23 ground lease coupled with improvements by the tenant, before the
24 transferor executes the installment sales contract with the
25 prospective transferee.

26 (2) With respect to any transfer subject to subsection (1),
27 the transferor shall indicate compliance with this act either on

1 the purchase agreement, the installment sales contract, the
2 lease, or any addendum attached to the purchase agreement,
3 contract, or lease, or on a separate document.

4 (3) Except as provided in subsection (4), if any disclosure
5 or amendment of any disclosure required to be made by this act is
6 delivered after the transferor executes a binding purchase
7 agreement, the prospective transferee may terminate the purchase
8 agreement by delivering written notice of termination to the
9 transferor or the transferor's agent within the following time
10 limits:

11 (a) Not later than 72 hours after delivery of the disclosure
12 statement to the prospective transferee, if the disclosure
13 statement was delivered to the prospective transferee in person.

14 (b) Not later than 120 hours after delivery of the disclosure
15 statement to the prospective transferee, if the disclosure
16 statement was delivered to the prospective transferee by
17 registered mail.

18 (4) A transferee's right to terminate the purchase agreement
19 expires upon the transfer of the subject property by deed or
20 installment sales contract.

21 Sec. 5. (1) The transferor or his or her agent is not
22 liable for any error, inaccuracy, or omission in any information
23 delivered pursuant to this act if the error, inaccuracy, or
24 omission was not within the personal knowledge of the transferor,
25 or was based entirely on information provided by public agencies
26 or provided by other persons specified in subsection (3), and
27 ordinary care was exercised in transmitting the information. It

1 is not a violation of this act if the transferor fails to
2 disclose information that could be obtained only through
3 inspection or observation of inaccessible portions of real estate
4 or could be discovered only by a person with expertise in a
5 science or trade beyond the knowledge of the transferor.

6 (2) The delivery of any information required by this act to
7 be disclosed to a prospective transferee by a public agency or
8 other person specified in subsection (3) shall be considered to
9 comply with the requirements of this act and relieves the
10 transferor of any further duty under this act with respect to
11 that item of information, unless the transferor has knowledge of
12 a known defect or condition that contradicts the information
13 provided by the public agency or the person specified in
14 subsection (3).

15 (3) The delivery of a report or opinion prepared by a
16 licensed professional engineer, industrial hygenist, contractor,
17 or other expert, dealing with matters within the scope of the
18 professional's license or expertise, is sufficient compliance for
19 application of the exemption provided by subsection (1) if the
20 information is provided upon the request of the prospective
21 transferee, unless the transferor has knowledge of a known defect
22 or condition that contradicts the information contained in the
23 report or opinion. In responding to a request by a prospective
24 transferee, an expert may indicate, in writing, an understanding
25 that the information provided will be used in fulfilling the
26 requirements of section 7 and, if so, shall indicate the required
27 disclosures, or parts of disclosures, to which the information

1 being furnished applies. In furnishing the statement, the expert
2 is not responsible for any items of information other than those
3 expressly set forth in the statement.

4 Sec. 6. If information disclosed in accordance with this
5 act becomes inaccurate as a result of any action, occurrence, or
6 agreement after the delivery of the required disclosures, the
7 resulting inaccuracy does not constitute a violation of this
8 act. If at the time the disclosures are required to be made, an
9 item of information required to be disclosed under this act is
10 unknown or unavailable to the transferor, the transferor may
11 comply with this act by advising a prospective purchaser of the
12 fact that the information is unknown. The information provided
13 to a prospective purchaser pursuant to this act shall be based
14 upon the best information available and known to the transferor.

15 Sec. 7. (1) The disclosures required by this act shall be
16 made on the following form:

17 TOXIC MOLD DISCLOSURE STATEMENT

18 **Property Address:** _____
19 Street
20 _____ Michigan
21 City, Village, or Township

22 **Purpose of Statement:** This statement is a disclosure of the
23 presence of toxic mold on the property in compliance with the
24 toxic mold disclosure act to the extent known by the seller.
25 Unless otherwise advised, the seller does not possess any
26 expertise in construction, engineering, toxic mold detection or

1 abatement, or any other specific area related to the presence of
2 toxic mold on the property or the land. Also, unless otherwise
3 advised, the seller has not conducted any inspection of generally
4 inaccessible areas such as the foundation or roof. This
5 statement is not a warranty of any kind by the seller or by any
6 agent representing the seller in this transaction, and is not a
7 substitute for any inspections or warranties the buyer may wish
8 to obtain.

9 **Seller's Disclosure:** The seller discloses the following
10 information with the knowledge that even though this is not a
11 warranty, the seller specifically makes the following
12 representations based on the seller's knowledge at the signing of
13 this document. Upon receiving this statement from the seller,
14 the seller's agent is required to provide a copy to the buyer or
15 the agent of the buyer. The seller authorizes its agent(s) to
16 provide a copy of this statement to any prospective buyer in
17 connection with any actual or anticipated sale of property. The
18 following are representations made solely by the seller and are
19 not the representations of the seller's agent(s), if any. **This**
20 **information is a disclosure only and is not intended to be a part**
21 **of any contract between buyer and seller.**

22 **Instructions to the Seller:** (1) Answer ALL questions. (2) Report
23 known conditions affecting the property. (3) Attach additional
24 pages with your signature if additional space is required. (4)
25 Complete this form yourself. (5) If some items do not apply to
26 your property, check NOT AVAILABLE. If you do not know the
27 facts, check UNKNOWN. FAILURE TO PROVIDE A PURCHASER WITH A

1 SIGNED DISCLOSURE STATEMENT WILL ENABLE A PURCHASER TO TERMINATE
2 AN OTHERWISE BINDING PURCHASE AGREEMENT.

3 1. Are you aware of mold of any kind on or in the property?

4 yes ___ no ___

5 2. If the answer to questions number 1 is "yes", answer the
6 following questions:

7 (a) Did you take any actions to determine whether the mold
8 was toxic mold, and, if so, what was determined?

9 _____
10 _____
11 _____
12 _____
13 _____

14 (b) Did you do anything or arrange for anything to be done to
15 contain or remove the mold, and, if so, what was done?

16 _____
17 _____
18 _____
19 _____
20 _____

21 The seller has lived in the residence on the property from
22 _____ (date) to _____ (date). The seller has owned
23 the property since _____ (date). The seller has indicated
24 above the presence of any molds on the property based on
25 information known to the seller. If any changes occur in the
26 condition of this property with respect to the presence of mold
27 from the date of this form to the date of closing, seller will

1 immediately disclose the changes to buyer. The parties shall not
2 hold the broker liable for any representations not directly made
3 by the broker or broker's agent.

4 Seller certifies that the information in this statement is true
5 and correct to the best of seller's knowledge as of the date of
6 seller's signature.

7 BUYER SHOULD OBTAIN PROFESSIONAL
8 ADVICE AND INSPECTIONS OF THE
9 PROPERTY TO MORE FULLY DETERMINE THE
10 CONDITION OF THE PROPERTY.

11 Seller _____ Date _____

12 Seller _____ Date _____

13 Buyer has read and acknowledges receipt of this statement.

14 Buyer _____ Date _____ Time: _____

15 Buyer _____ Date _____ Time: _____

16 Sec. 8. Copies of the form prescribed in section 7 shall be
17 made available to the public by all real estate brokers and real
18 estate salespersons.

19 Sec. 9. A city, township, or county may require disclosures
20 in addition to those disclosures required by section 7, and may
21 require disclosures on a different disclosure form in connection
22 with transactions subject to this act.

1 Sec. 10. Each disclosure required by this act shall be made
2 in good faith. For purposes of this act, "good faith" means
3 honesty in fact in the conduct of the transaction.

4 Sec. 11. The specification of items for disclosure in this
5 act does not limit or abridge any obligation for disclosure
6 created by any other provision of law regarding fraud,
7 misrepresentation, or deceit in transfer transactions.

8 Sec. 12. Any disclosure made pursuant to this act may be
9 amended in writing by the transferor, but the amendment is
10 subject to section 4.

11 Sec. 13. Delivery of a disclosure statement required by
12 this act shall be by personal delivery, facsimile delivery, or by
13 registered mail to the prospective purchaser. Execution of a
14 facsimile counterpart of the disclosure statement shall be
15 considered to be execution of the original.

16 Sec. 14. A transfer subject to this act is not invalidated
17 solely because of the failure of any person to comply with a
18 provision of this act.

19 Sec. 15. An agent of a transferor is not liable for any
20 violation of this act by a transferor unless any agent knowingly
21 acts in concert with a transferor to violate this act.