

No. 2000-114

AN ACT

SB 1032

Amending Title 68 (Real and Personal Property) of the Pennsylvania Consolidated Statutes, relating to residential real estate transfers; providing for disclosures by sellers of residential real estate and for home inspections; and making a repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 68 of the Pennsylvania Consolidated Statutes is amended by adding a part to read:

PART III
RESIDENTIAL REAL PROPERTY

Chapter

- 71. General Provisions
- 73. Seller Disclosures
- 75. Home Inspections

CHAPTER 71
GENERAL PROVISIONS

Sec.

- 7101. Short title of part.
- 7102. Definitions.
- 7103. Application of part.

§ 7101. Short title of part.

This part shall be known and may be cited as the Residential Real Estate Transfers Law.

§ 7102. Definitions.

Subject to additional definitions contained in subsequent provisions of this part which are applicable to specific provisions of this part, the following words and phrases when used in this part shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Agent.” Any broker, associate broker or salesperson, as defined in the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act.

“Agreement of transfer.” A contract between a buyer and seller setting forth the terms of a residential real estate transfer.

“Buyer.” Any person receiving any estate or interest in real property in a transfer subject to this part.

“Commission.” The State Real Estate Commission.

“Final settlement.” The time at which the buyer and seller have signed and delivered all papers and consideration necessary to convey title to the estate or interest in real property being conveyed.

“Material defect.” A problem with a residential real property or any portion of it that would have a significant adverse impact on the value of the property or that involves an unreasonable risk to people on the property. The fact that a structural element, system or subsystem is near, at or beyond the end of the normal useful life of such a structural element, system or subsystem is not by itself a material defect.

“Seller.” Any person transferring any estate or interest in residential real property in a transfer subject to this part.

§ 7103. Application of part.

(a) General rule.—This part shall apply to and the term “residential real estate transfer” when used in this part shall mean a transfer of any interest in real property located within this Commonwealth, other than a transfer described in subsection (b), that consists of not less than one nor more than four residential dwelling units, whether by sale, exchange, installment sales contract, lease with an option to purchase, grant or transfer of unit in a residential condominium or cooperative.

(b) Exceptions.—This part shall not apply to a transfer:

(1) Pursuant to court order, including, but not limited to, transfers ordered by a probate court in the administration of an estate, transfers pursuant to a writ of execution, transfers by a trustee in bankruptcy, transfers by eminent domain and condemnation and transfers resulting from a decree for specific performance.

(2) To a mortgagee by a mortgagor or successor in interest who is in default; to a beneficiary of a deed of trust by a trustee or successor in interest who is in default; by any foreclosure sale after default in an obligation secured by a mortgage; by a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale; or by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or who has acquired the real property by a deed in lieu of foreclosure.

(3) From one co-owner to one or more other co-owners.

(4) Made to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors.

(5) Between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to the decree.

(6) By a corporation, partnership or other association to its shareholders, partners or other equity owners in connection with the liquidation of the corporation, partnership or other association.

(7) Of a property to be converted by the buyer into a use other than residential use or to be demolished.

(8) Of unimproved real property.

CHAPTER 73 SELLER DISCLOSURES

Sec.

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§ 7301. Short title of chapter.

This chapter shall be known and may be cited as the Real Estate Seller Disclosure Law.

§ 7302. Application of chapter.

(a) General rule.—This chapter shall apply to all residential real estate transfers except the following:

(1) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship or trust.

(2) Transfers of new residential construction that has not been previously occupied when:

(i) the buyer has received a one-year or longer written warranty covering such construction;

(ii) the dwelling has been inspected for compliance with the applicable building code or, if there is no applicable code, for compliance with a nationally recognized model building code; and

(iii) a certificate of occupancy or a certificate of code compliance has been issued for the dwelling.

(b) Limitations in the case of condominiums or cooperatives.—Any seller of a unit in a condominium created under Subpart B of Part II (relating to condominiums) or a similar provision of prior law or a cooperative as defined in section 4103 (relating to definitions) shall be obligated to make disclosures under this chapter only with respect to the

seller's own unit and shall not be obligated by this chapter to make any disclosure with respect to any common elements or common facilities of the condominium or cooperative. The provisions of section 3407 (relating to resales of units) shall control disclosures a seller is required to make concerning common elements in a condominium, and section 4409 (relating to resales of cooperative interests) shall control disclosures a seller is required to make concerning common elements in a cooperative.

§ 7303. Disclosure of material defects.

Any seller who intends to transfer any interest in real property shall disclose to the buyer any material defects with the property known to the seller by completing all applicable items in a property disclosure statement which satisfies the requirements of section 7304 (relating to disclosure form). A signed and dated copy of the property disclosure statement shall be delivered to the buyer in accordance with section 7305 (relating to delivery of disclosure form) prior to the signing of an agreement of transfer by the seller and buyer with respect to the property.

§ 7304. Disclosure form.

(a) General rule.—A form of property disclosure statement that satisfies the requirements of this chapter shall be promulgated by the State Real Estate Commission. Nothing in this chapter shall preclude a seller from using a form of property disclosure statement that contains additional provisions that require greater specificity or that call for the disclosure of the condition or existence of other features of the property.

(b) Contents of property disclosure statement.—The form of property disclosure statement promulgated by the State Real Estate Commission shall call for disclosures with respect to all of the following subjects:

- (1) Seller's expertise in contracting, engineering, architecture or other areas related to the construction and conditions of the property and its improvements.
- (2) When the property was last occupied by the seller.
- (3) Roof.
- (4) Basements and crawl spaces.
- (5) Termites/wood destroying insects, dry rot and pests.
- (6) Structural problems.
- (7) Additions, remodeling and structural changes to the property.
- (8) Water and sewage systems or service.
- (9) Plumbing system.
- (10) Heating and air conditioning.
- (11) Electrical system.
- (12) Other equipment and appliances included in the sale.
- (13) Soils, drainage and boundaries.
- (14) Presence of hazardous substances.
- (15) Condominiums and other homeowners associations.
- (16) Legal issues affecting title or that would interfere with use and enjoyment of the property.

(c) Transitional rule.—Until a form of property disclosure statement has been promulgated by the commission, the form prescribed under the act of July 2, 1996 (P.L.500, No.84), known as the Real Estate Seller Disclosure Act, shall be deemed to be the form contemplated under subsection (b).

§ 7305. Delivery of disclosure form.

(a) Method of delivery.—The seller shall deliver the property disclosure statement to the buyer by personal delivery; first class mail; certified mail, return receipt requested; or facsimile transmission to the buyer or the buyer's agent.

(b) Parties to whom delivered.—For purposes of this chapter, delivery to one prospective buyer or buyer's agent is deemed delivery to all persons intending to take title as co-tenants, joint tenants or as a tenant by the entireties with the buyer. Receipt may be acknowledged on the statement, in an agreement of transfer for the residential real property or shown in any other verifiable manner.

§ 7306. Information unavailable to seller.

If at the time the disclosures are required to be made, an item of information required to be disclosed is unknown or not available to the seller, the seller may make a disclosure based on the best information available to the seller.

§ 7307. Information subsequently rendered inaccurate.

If information disclosed in accordance with this chapter is subsequently rendered inaccurate prior to final settlement as a result of any act, occurrence or agreement subsequent to the delivery of the required disclosures, the seller shall notify the buyer of the inaccuracy.

§ 7308. Affirmative duty of seller.

The seller is not obligated by this chapter to make any specific investigation or inquiry in an effort to complete the property disclosure statement. In completing the property disclosure statement, the seller shall not make any representations that the seller or the agent for the seller knows or has reason to know are false, deceptive or misleading and shall not fail to disclose a known material defect.

§ 7309. Nonliability of seller.

(a) General rule.—A seller shall not be liable for any error, inaccuracy or omission of any information delivered pursuant to this chapter if:

- (1) the seller had no knowledge of the error, inaccuracy or omission;
- (2) the error, inaccuracy or omission was based on a reasonable belief that a material defect or other matter not disclosed had been corrected; or
- (3) the error, inaccuracy or omission was based on information provided by a public agency, home inspector, contractor or person registered or licensed under an act referred to in section 7503(a) (relating to relationship to other laws) about matters within the scope of the agency's jurisdiction or such other person's occupation and the seller had no knowledge of the error, inaccuracy or omission.

(b) Delivery of information by public agency.—The delivery of any information required to be disclosed by this chapter to a prospective buyer by a public agency or other person providing information required to be disclosed under this chapter shall be deemed to comply with the requirements of this chapter and shall relieve the seller or the agent of the seller from any further duty under this chapter with respect to that item of information.

(c) Report by expert.—The delivery of a report or opinion prepared by a home inspector, contractor or person registered or licensed under an act referred to in section 7503(a) dealing with matters within the scope of the person's registration, license or expertise shall be sufficient compliance for application of the exemption provided under subsection (a)(3) if the information is provided to the prospective buyer in writing.

§ 7310. Nonliability of agent.

An agent of a seller or a buyer shall not be liable for any violation of this chapter unless the agent had actual knowledge of a material defect that was not disclosed to the buyer or of a misrepresentation relating to a material defect.

§ 7311. Failure to comply.

(a) General rule.—A residential real estate transfer subject to this chapter shall not be invalidated solely because of the failure of any person to comply with any provision of this chapter. However, any person who willfully or negligently violates or fails to perform any duty prescribed by any provision of this chapter shall be liable in the amount of actual damages suffered by the buyer as a result of a violation of this chapter. This subsection shall not be construed so as to restrict or expand the authority of a court to impose punitive damages or apply other remedies applicable under any other provision of law.

(b) Statute of limitations.—An action for damages as a result of a violation of this chapter must be commenced within two years after the date of final settlement.

§ 7312. Amendment of disclosure.

Any disclosure made pursuant to this chapter may be amended in writing by the seller prior to the signing of an agreement of transfer by the seller and buyer.

§ 7313. Specification of items for disclosure no limitation on other disclosure obligations.

(a) General rule.—The specification of items for disclosure in this chapter or in any form of property disclosure statement promulgated by the State Real Estate Commission does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation or deceit in the transaction.

(b) Responsibility of licensee.—Nothing in this chapter shall abrogate or diminish the responsibility of a licensee under the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act.

(c) Duty to provide form.—An agent representing a seller must advise a seller of the seller's responsibilities under this chapter and must provide the seller with a copy of the form of property disclosure statement.

§ 7314. Cause of action.

A buyer shall not have a cause of action under this chapter against the seller or the agent for either or both of the seller or the buyer for:

(1) material defects to the property disclosed to the buyer prior to the signing of an agreement of transfer by the seller and buyer;

(2) material defects that develop after the signing of the agreement of transfer by the seller and buyer; or

(3) material defects that occur after final settlement.

§ 7315. Preemption of local requirements.

(a) General rule.—Except as provided in subsection (b), a municipality or local authority shall not have the power to mandate that:

(1) a seller or an agent of either or both the seller and the buyer make any particular disclosures to the buyer in connection with a residential real estate transfer; or

(2) provisions on any particular subject be included in an agreement of transfer.

(b) Exception.—Subsection (a) shall not apply to an ordinance or regulation adopted by a municipality or local authority before the effective date of this section, and such an ordinance or regulation shall continue in full force and effect, except that the municipality or local authority shall not have the power after that date to amend the ordinance or regulation in a manner that:

(1) imposes new or expanded disclosure requirements;

(2) increases the scope of any provision that must be included in an agreement of transfer; or

(3) imposes new requirements on any agent, buyer or seller involved in a residential real estate transfer.

CHAPTER 75 HOME INSPECTIONS

Sec.

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7503. Relationship to other laws.

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§ 7501. Short title of chapter.

This chapter shall be known and may be cited as the Home Inspection Law.

§ 7502. Definitions and index of definitions.

(a) Definitions.—The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Home inspection.” A noninvasive visual examination of some combination of the mechanical, electrical or plumbing systems or the structural and essential components of a residential dwelling designed to identify material defects in those systems and components and performed for a fee in connection with or preparation for a proposed or possible residential real estate transfer. The term also includes any consultation regarding the property that is represented to be a home inspection or that is described by any confusingly similar term. The term does not include an examination of a single system or component of a residential dwelling such as, for example, its electrical or plumbing system or its roof. The term also does not include an examination that is limited to inspection for or of one or more of the following: wood destroying insects, underground tanks and wells, septic systems, swimming pools and spas, alarm systems, air and water quality, tennis courts and playground equipment, pollutants, toxic chemicals and environmental hazards.

“Home inspection report.” A written report on the results of a home inspection.

“Home inspector.” An individual who performs a home inspection.

“National home inspectors association.” Any national association of home inspectors that:

(1) Is operated on a not-for-profit basis and is not operated as a franchise.

(2) Has members in more than ten states.

(3) Requires that a person may not become a full member unless the person has performed or participated in more than 100 home inspections and has passed a recognized or accredited examination testing knowledge of the proper procedures for conducting a home inspection.

(4) Requires that its members comply with a code of conduct and attend continuing professional education classes as an ongoing condition of membership.

(b) Index of other definitions.—The following is a nonexclusive list of other definitions applying to this chapter and the sections in which they appear:

“Agent.” Section 7102 (relating to definitions).

“Agreement of transfer.” Section 7102 (relating to definitions).

“Buyer.” Section 7102 (relating to definitions).

“Material defect.” Section 7102 (relating to definitions).

“Residential real estate transfer.” Section 7103 (relating to application of part).

“Seller.” Section 7102 (relating to definitions).

§ 7503. Relationship to other laws.

(a) General rule.—Nothing in this chapter shall be construed to allow a home inspector who is not registered or licensed under one or more of the following laws to perform any activity that would constitute the practice of the profession regulated by that law:

(1) The act of May 23, 1945 (P.L.913, No.367), known as the Engineer, Land Surveyor and Geologist Registration Law.

(2) The act of January 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act.

(3) The act of March 1, 1974 (P.L.90, No.24), known as the Pennsylvania Pesticide Control Act of 1973.

(4) The act of December 14, 1982 (P.L.1227, No.281), known as the Architects Licensure Law.

(5) The act of July 9, 1987 (P.L.238, No.43), known as the Radon Certification Act.

(6) The act of July 10, 1990 (P.L.404, No.98), known as the Real Estate Appraisers Certification Act.

(b) Exclusions.—This chapter shall not:

(1) Apply to a person registered or licensed under an act referred to in subsection (a) when acting pursuant to his registration or license.

(2) Apply to an officer or employee of a municipality or local authority when acting in his official capacity.

(3) Affect the obligations or immunities of a person licensed under the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, that are imposed or provided by that act or Chapter 73 (relating to seller disclosures) when the person is acting pursuant to his license.

(4) Affect the obligations or immunities of a person certified under the Real Estate Appraisers Certification Act when the person is acting pursuant to the person's license.

§ 7504. Duty of care of home inspectors.

(a) General rule.—It is the duty of a home inspector to conduct a home inspection with the degree of care that a reasonably prudent home inspector would exercise.

(b) Standard.—In ascertaining the degree of care that would be exercised by a reasonably prudent home inspector, the court shall consider the standards of practice and codes of ethics of national home inspector associations.

§ 7505. Consumer remedies.

(a) General rule.—The performance of a home inspection is a service that is subject to the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

(b) Prohibited acts.—Any of the following acts engaged in by a home inspector, an employer of a home inspector or another business or person that controls or has a financial interest in the employer of a home inspector shall be deemed to be an unfair or deceptive act or practice as defined by section 2(4)(i) through (xxi) of the Unfair Trade Practices and Consumer Protection Law:

(1) Performing or offering to perform for an additional fee any repairs to a structure with respect to which the home inspector, the employer of the home inspector or such other business or person has prepared a home inspection report within the preceding 12 months, except that this paragraph shall not apply to remediation for radon or wood destroying insects.

(2) Inspecting for a fee any property in which the home inspector, the employer of the home inspector or such other business or person has any financial interest or any interest in the transfer of the property, including without limitation receipt of a commission as an agent, unless the financial interest or interest in the transfer of the property is disclosed in writing to the buyer before the home inspection is performed and the buyer signs an acknowledgment of receipt of the disclosure.

(3) Offering or delivering any commission, referral fee or kickback to the seller of the inspected property or to an agent for either or both of the seller and the buyer for the referral of any business to the home inspector, the employer of the home inspector or such other business or person.

(4) Accepting an engagement to perform a home inspection or to prepare a home inspection report in which the employment itself or the fee payable for the inspection is contingent upon the conclusions in the report, preestablished or prescribed findings or the closing of the transaction.

(c) Exception.—A home warranty company that is affiliated with or retains the home inspector does not violate subsection (b) if the home warranty company performs repairs pursuant to claims made under a home warranty contract.

(d) Remedies.—In addition to any other remedies available under the Unfair Trade Practices and Consumer Protection Law or other applicable provision of law, the owner of a property on which repairs are performed in violation of subsection (b)(1) shall be entitled to a full refund of any moneys paid for those repairs, and any promissory note or other obligation to pay given to the person performing those repairs shall be void.

§ 7506. Required contractual provision regarding home inspections.

A provision of an agreement of transfer regarding the right of the buyer to obtain a home inspection report and providing for the consequences, if any, shall provide that the home inspection be performed by a full member in good standing of a national home inspection association in accordance with the ethical standards and code of conduct or practice of that association. A home inspection performed by a person who has not attained full membership in a national home inspection association satisfies the requirements of this section if the person is supervised by a full member in good standing of a national home inspection association who agrees to be responsible for the home inspection report by signing the report.

§ 7507. Contracts with home inspectors.

(a) Prohibited provisions.—The following types of provisions in a contract with a home inspector for the performance of a home inspection are contrary to public policy and shall be void:

(1) a limitation on the liability of the home inspector for gross negligence or willful misconduct;

(2) a waiver or modification of any provision of this chapter.

(b) Scope of inspection.—The scope of a home inspection, the services to be performed and the systems and conditions to be inspected or excluded from inspection may be defined by a contract between the home inspector and the client.

§ 7508. Home inspection reports.

(a) Required contents.—A home inspection report must be in writing and shall include:

(1) A description of the scope of the inspection, including without limitation an identification of the structural elements, systems and subsystems covered by the report.

(2) A description of any material defects noted during the inspection, along with any recommendation that certain experts be retained to determine the extent of the defects and any corrective action that should be taken. A “material defect” as defined in section 7102 (relating to definitions) that poses an unreasonable risk to people on the property shall be conspicuously identified as such.

(3) The following statements, set forth conspicuously:

“A home inspection is intended to assist in evaluation of the overall condition of the dwelling. The inspection is based on observation of the visible and apparent condition of the structure and its components on the date of inspection.”

“The results of this home inspection are not intended to make any representation regarding the presence or absence of latent or concealed defects that are not reasonably ascertainable in a competently performed home inspection. No warranty or guaranty is expressed or implied.”

“If the person conducting your home inspection is not a licensed structural engineer or other professional whose license authorizes the

rendering of an opinion as to the structural integrity of a building or its other component parts, you may be advised to seek a professional opinion as to any defects or concerns mentioned in the report.”

“This home inspection report is not to be construed as an appraisal and may not be used as such for any purpose.”

(b) Confidentiality.—Except as otherwise required by law, a home inspector shall not deliver a home inspection report to any person other than the client of the home inspector without the client’s consent. The seller shall have the right, upon request, to receive without charge a copy of a home inspection report from the person for whom it was prepared.

(c) Repair estimates prohibited.—A home inspector shall not express either orally or in writing an estimate of the cost to repair any defect found during a home inspection, except that such an estimate may be included in a home inspection report if:

- (1) the report identifies the source of the estimate;
- (2) the estimate is stated as a range of costs; and
- (3) the report states that the parties should consider obtaining an estimate from a contractor who performs the type of repair involved.

§ 7509. Liability insurance.

(a) Required insurance.—A home inspector shall maintain insurance against errors and omissions in the performance of a home inspection and general liability, with coverages of not less than \$100,000 per occurrence and \$500,000 in the aggregate and with deductibles of not more than \$2,500.

(b) Term.—

(1) Except as set forth in paragraph (2), a home inspector shall maintain insurance under subsection (a) for at least one year after the latest home inspection report the home inspector delivers.

(2) Paragraph (1) shall not apply to a home inspection report that was delivered prior to the effective date of this section.

§ 7510. Reliance by buyer.

A buyer shall be entitled to rely in good faith, without independent investigation, on a written representation by a home inspector that the home inspector is a full member in good standing of a national home inspection association.

§ 7511. Penalties.

(a) Criminal penalty.—A person who violates section 7509 (relating to liability insurance) or who provides a false representation under section 7510 (relating to reliance by buyer) commits a summary offense and, upon conviction thereof for a first offense, shall be sentenced to pay a fine not exceeding \$500 or to imprisonment for not more than three months, or both, and for a second or subsequent offense commits a misdemeanor of the third degree and, upon conviction thereof, shall be sentenced to pay a fine of not less than \$2,000 but not more than \$5,000 or to imprisonment for not less than one year but not more than two years, or both.

(b) Fine.—A person who violates any provision of section 7508 (relating to home inspection reports) shall, upon conviction in a summary proceeding before a district justice, be sentenced to pay a fine not exceeding \$500.

§ 7512. Statute of limitations.

An action to recover damages arising from a home inspection report must be commenced within one year after the date the report is delivered.

Section 2. The act of July 2, 1996 (P.L.500, No.84), known as the Real Estate Seller Disclosure Act, is repealed.

Section 3. This act shall take effect in one year.

APPROVED—The 20th day of December, A.D. 2000.

THOMAS J. RIDGE