

**TITLE 33
PROPERTY**

**CHAPTER 7
CONVEYANCE OF REAL ESTATE**

**SUBCHAPTER 1-A
RESIDENTIAL PROPERTY DISCLOSURES**

§171. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Known defect. "Known defect" means a condition, known by the seller, that has a significant adverse effect on the value of property, significantly impairs the health or safety of future occupants of the property or, if not repaired, removed or replaced, significantly shortens the expected normal life of the premises.

2. Seller. "Seller" means the owner of the residential real property that is for sale, exchange, sale under an installment contract or lease with an option to buy.

3. Property disclosure statement. "Property disclosure statement" means a written disclosure form prepared by a seller pursuant to section 173.

4. Purchaser. "Purchaser" means a transferee in any of the types of transactions described in section 172.

5. Real estate contract. "Real estate contract" means a contract for the transfer of ownership of residential real property by any of the ways described in section 172.

6. Residential real property. "Residential real property" means real estate consisting of one or not more than 4 residential dwelling units.

§172. Applicability; exemptions

This subchapter applies to the transfer of any interest in residential real property, whether by sale, exchange, installment land contract, lease with an option to purchase or any other option to purchase. If a person licensed to practice real estate brokerage is involved in the transaction, the licensee is subject to the requirements of licensure in Title 32, chapter 114. The following transfers are exempt from this subchapter:

1. Court order. Transfers pursuant to court order, including, but not limited to, transfers ordered by a court in the administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain and transfers resulting from a decree for specific performance;

2. Default. Transfers to a mortgagee by a mortgagor or successor in interest who is in default or transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default;

3. Power of sale. Transfers 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 mortgage or deed of trust or secured by any other instrument containing a power of sale, or transfers by a mortgagee or a beneficiary under a deed of trust who has acquired the residential 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 residential real property by a deed in lieu of foreclosure;

4. Fiduciary. Transfers by a fiduciary in the course of administration of a decedent's estate, guardianship, conservatorship or trust;

5. Coowner. Transfers from one or more coowners solely to one or more other coowners;

6. Testate; intestate succession. Transfers pursuant to testate or intestate succession;

7. Consanguinity. Transfers made to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the owners;

8. Divorce. Transfers between spouses resulting from a judgment of divorce or a judgment of separate maintenance or from a property settlement agreement incidental to such a judgment;

9. Government. Transfers or exchanges to or from any governmental entity;

10. Relocation. Transfers from an entity that has taken title to a residential real property to assist the prior owner in relocating, as long as the entity makes available to the purchaser a copy of the property disclosure statement furnished to the entity by the prior owner;

11. Living trust. Transfers to a living trust; and

12. Corrective deed. Transfers that, without additional consideration and without changing ownership or ownership interest, confirm, correct, modify or supplement a deed previously recorded.

§173. Required disclosures

Unless the transaction is exempt under section 172, the seller of residential real property shall provide to the purchaser a property disclosure statement containing the following information:

1. Water supply system. The type of system used to supply water to the property. If the property has a private water supply, the seller shall disclose:

- A. The type of system;
- B. The location of the system;
- C. Any malfunctions of the system;
- D. The date of the most recent water test, if any; and
- E. Whether the seller has experienced a problem such as an unsatisfactory water test or a water test with notations;

2. Insulation.

2-A. Heating system or heating source. Detailed information on the system or source used to supply heat to the property, including:

- A. The type of heating system or source;
- B. The age of the heating system or source;
- C. The name of the company that services the heating system or source;
- D. The date of the most recent service call on the heating system or source;
- E. The annual fuel consumption per heating system or source;
- F. Any malfunctions per heating system or source within the past 2 years; and

G. The date of the most recent inspection of the chimneys and vents for the heating system or source;

3. Waste disposal system. The type of waste disposal system used on the property. If the property has a private waste disposal system, the seller shall disclose:

- A. The type of system;
- B. The size and type of the tank;
- C. The location of the tank;
- D. Any malfunctions of the tank;
- E. The date of installation of the tank;
- F. The location of the leach field;
- G. Any malfunctions of the leach field;
- H. The date of installation of the leach field;
- I. The date of the most recent servicing of the system;
- J. The name of the contractor who services the system; and
- K. For systems within shoreland zones, disclosures on septic systems required by Title 30-A, section 4216;

4. Hazardous materials. The presence or prior removal of hazardous materials or elements on the residential real property, including, but not limited to:

- A. Asbestos;
- B. Lead-based paint for pre-1978 homes in accordance with federal regulations;
- C. Radon;
- D. Underground oil storage tanks as required under Title 38, section 563, subsection 6; and
- E. Methamphetamine;
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5. Known defects. Any known defects; and

6. Access to the property. Information describing the means of accessing the property by:

- A. A public way, as defined in Title 29-A, section 101, subsection 59; and
- B. Any means other than a public way, in which case the seller shall disclose information about who is responsible for maintenance of the means of access, including any responsible road association, if known by the seller.

§173-A. Information provided

Beginning January 1, 2004, unless the transaction is exempt under section 172, the seller of residential real property shall provide to the purchaser information developed by the Director of the Bureau of Health within the Department of Health and Human Services regarding what homeowners should know about arsenic in private water supplies and arsenic in treated wood. Copies of this information must be provided to sellers at cost.

Sec. 1.
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§173, sub-§4

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§174. Delivery and time of disclosure; cancellation of contract

1. Delivery and time of disclosure. The seller of residential real property under this subchapter shall deliver or cause to be delivered the property disclosure statement to the purchaser no later than the time the purchaser makes an offer to purchase, exchange or option the property or exercises the option to purchase the property pursuant to a lease with an option to purchase.

2. Terminate contract. If the property disclosure statement is delivered to the purchaser after the purchaser makes an offer, the purchaser may terminate any resulting real estate contract or withdraw the offer no later than 72 hours after receipt of the property disclosure statement.

3. Withdrawal without penalty. If the purchaser terminates a real estate contract or withdraws an offer in compliance with this section, the termination or withdrawal of offer is without penalty to the purchaser and any deposit must be promptly returned to the purchaser.

4. Rights waived. Any rights of the purchaser to terminate the real estate contract provided by this section are waived conclusively if not exercised prior to settlement or occupancy, whichever is earlier, by the purchaser in the case of a sale or exchange, or prior to settlement in the case of a purchase pursuant to a lease with option to purchase. Any rights of the purchaser to terminate the real estate contract for reasons other than those set forth in this section are not affected by this section.

5. Invalidated. A transfer subject to this subchapter is not invalidated solely because of the failure of any person to comply with this subchapter.

§175. Change in circumstances

1. Inaccurate information. If information disclosed in accordance with this subchapter becomes inaccurate as a result of any action, occurrence or agreement after the delivery of the property disclosure statement, the resulting inaccuracy does not constitute a violation of this subchapter.

2. Supplemental disclosure. If prior to settlement or occupancy a seller has actual knowledge of an error, inaccuracy or omission in the disclosure after delivery of the property disclosure statement to purchaser, the seller shall supplement the property disclosure statement with a written supplemental disclosure.

§176. Rights and duties of seller and purchaser

1. Seller's rights and duties. A property disclosure statement and any supplement to a property disclosure statement are not a warranty by the seller. The information in the disclosure statement is for disclosure only and is not intended to be a part of any contract between the purchaser and the seller.

If, at the time the disclosures are required to be made, an item of information required to be disclosed under this subchapter is unknown or unavailable to the seller, the seller may comply with this subchapter by advising the purchaser of the fact that the information is unknown.

The information provided to the purchaser is based upon the best information available to the seller. The seller is not obligated under this subchapter to make any specific investigation or inquiry in an effort to complete the property disclosure statement.

2. Purchaser's rights and duties. The property disclosure statement and any supplement to the property disclosure statement may not be used as substitutes for any inspections or

warranties that the purchaser or seller may obtain. Nothing in this subchapter precludes the obligation of a purchaser to inspect the physical condition of the property.

§177. Liability

A seller is not liable for any error, inaccuracy or omission of any information required to be delivered to the purchaser under this subchapter if:

1. Without actual knowledge. The error, inaccuracy or omission was not within the actual knowledge of the seller or was based on information provided by a public agency or by another person with a professional license or special knowledge who provided a written or oral report or opinion that the seller reasonably believed to be correct; and

2. Without negligence. The seller was not negligent in obtaining information from a 3rd party and transmitting that information to the purchaser.

§178. Effect on other statutes or common law

This subchapter is not intended to limit or modify any obligation to disclose created by any other statute or that may exist in common law in order to avoid fraud, misrepresentation or deceit in the transaction.

§179. Effective date

This subchapter takes effect January 1, 2000.