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S.P. 863

In Senate, December 13, 2023

An Act Regarding Disclosure of Flood Risk by Sellers of Real Estate

Submitted by the Department of Agriculture, Conservation and Forestry pursuant to Joint Rule 203.

Received by the Secretary of the Senate on December 11, 2023. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator BRENNER of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 33 MRSA §173, sub-§5**, as amended by PL 2017, c. 181, §2, is further
3 amended to read:

4 **5. Known defects.** Any known defects; ~~and~~

5 **Sec. 2. 33 MRSA §173, sub-§6, ¶B**, as enacted by PL 2017, c. 181, §3, is amended
6 to read:

7 B. Any means other than a public way, in which case the seller shall disclose
8 information about who is responsible for maintenance of the means of access, including
9 any responsible road association, if known by the seller; ~~and~~

10 **Sec. 3. 33 MRSA §173, sub-§7** is enacted to read:

11 **7. Flood hazard.** Information regarding potential flood risks, including:

12 A. Whether, at the time the seller provides the information to the purchaser, the
13 property is located wholly or partly within an area of special flood hazard mapped on
14 a flood insurance rate map issued by the Federal Emergency Management Agency on
15 or after March 4, 2002; the federally designated flood zone for the property indicated
16 on that flood insurance rate map; and a copy of the relevant panel of that flood
17 insurance rate map. For the purposes of this paragraph, "area of special flood hazard"
18 has the same meaning as in Title 38, section 436-A, subsection 1-C;

19 B. Whether there is an active flood insurance policy for a structure on the property and,
20 if there is an active flood insurance policy, the annual cost of flood insurance premiums
21 for the structure; and

22 C. Whether, during the time that the prospective seller has owned the property:

23 (1) Any flood events affected the property or a structure on the property;

24 (2) Any flood-related damage to a structure occurred on the property;

25 (3) Any flood insurance claims were filed for a structure on the property and, if so,
26 the date and amount of each claim; and

27 (4) Any past disaster-related aid was provided related to the property or a structure
28 on the property from federal, state or local sources for the purposes of flood
29 recovery and, if so, the date and amount of each payment.

30 **Sec. 4. 33 MRSA §193, sub-§3, ¶B**, as enacted by PL 2019, c. 142, §2, is amended
31 to read:

32 B. Any means other than a public way, in which case the seller shall disclose
33 information about who is responsible for maintenance of the means of access, including
34 any responsible road association, if known by the seller; ~~and~~

35 **Sec. 5. 33 MRSA §193, sub-§4** is enacted to read:

36 **4. Flood hazard.** Information regarding potential flood risks, including:

37 A. Whether, at the time the seller provides the information to the purchaser, the
38 property is located wholly or partly within an area of special flood hazard mapped on
39 a flood insurance rate map issued by the Federal Emergency Management Agency on
40 or after March 4, 2002; the federally designated flood zone for the property indicated

1 on that flood insurance rate map; and a copy of the relevant panel of that flood
2 insurance rate map. For the purposes of this paragraph, "area of special flood hazard"
3 has the same meaning as in Title 38, section 436-A, subsection 1-C;

4 B. Whether there is an active flood insurance policy for a structure on the property and,
5 if there is an active flood insurance policy, the annual cost of flood insurance premiums
6 for the structure; and

7 C. Whether, during the time that the prospective seller has owned the property:

8 (1) Any flood events affected the property or a structure on the property;

9 (2) Any flood-related damage to a structure occurred on the property;

10 (3) Any flood insurance claims were filed for a structure on the property and, if so,
11 the date and amount of each claim; and

12 (4) Any past disaster-related aid was provided related to the property or a structure
13 on the property from federal, state or local sources for the purposes of flood
14 recovery and, if so, the date and amount of each payment.

15 **Sec. 6. 33 MRSA §194** is enacted to read:

16 **§194. Delivery and time of disclosure; cancellation of contract**

17 **1. Definition.** As used in this section, "flood risk disclosure statement" means a
18 statement containing, at minimum, the information required by section 193, subsection 4.

19 **2. Delivery and time of disclosure.** The seller of nonresidential real property under
20 this subchapter shall deliver or cause to be delivered a flood risk disclosure statement to
21 the purchaser no later than the time the purchaser makes an offer to purchase, exchange or
22 option the property or exercises an option to purchase the property pursuant to a lease with
23 an option to purchase.

24 **3. Terminate contract.** If the seller does not deliver or cause to be delivered a flood
25 risk disclosure statement to the purchaser before the purchaser makes an offer or exercises
26 an option in accordance with subsection 2, the purchaser may terminate any resulting real
27 estate contract or withdraw the offer within 72 hours after receipt of the flood risk
28 disclosure statement.

29 **4. Withdrawal without penalty.** If the purchaser terminates a real estate contract or
30 withdraws an offer pursuant to this section, the termination or withdrawal is without
31 penalty to the purchaser and the seller shall promptly return to the purchaser any deposits
32 made by the purchaser.

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

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

SUMMARY

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This bill requires sellers of residential and nonresidential real property to notify prospective buyers in writing of whether the property is in an area of special flood hazard mapped on a flood insurance rate map issued by the Federal Emergency Management Agency, the presence and cost of any active flood insurance policy for the property, any previous flood damage incurred, any flood insurance claims filed and any flood-related disaster aid received while the prospective seller owned the property. The bill includes provisions for nonresidential real property regarding the delivery and timing of the flood risk disclosure and provisions regarding contract termination; these provisions are similar to current law concerning residential real property disclosures.