

HOUSE BILL NO. 296

INTRODUCED BY K. SEEKINS-CROWE, E. BUTTREY, R. FITZGERALD, C. KNUDSEN, M. BERTOGLIO, J.

KARLEN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO SALES OF RESIDENTIAL REAL PROPERTY; REQUIRING SELLERS OF RESIDENTIAL REAL PROPERTY TO PROVIDE A WRITTEN DISCLOSURE STATEMENT; PROVIDING REQUIREMENTS FOR THE DISCLOSURE STATEMENT; PROVIDING EXEMPTIONS; PROVIDING FOR A BUYER'S RIGHT TO RESCIND; REVISING DEFINITIONS; AND AMENDING SECTION 37-51-102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** Unless the context requires otherwise, in [sections 1 through 5] the following definitions apply:

(1) "Adverse material fact" means a condition, malfunction, or problem that would have a materially adverse effect on the monetary value of real property, that affects the structural integrity of any improvements located on the real property, or that presents a documented health risk to occupants of the real property or would impair the health or safety of future occupants of the real property.

(2) "Buyer" means one or more persons who are attempting to acquire an ownership interest in real property.

(3) "Contract" means a real estate purchase contract between a buyer and a seller for the sale, conveyance, or exchange of real property, the option to purchase real property, or a lease with an option to purchase real property.

(4) "Disclosure statement" means the statement described in [section 2(1)].

(5) "Offer to purchase" means an offer to transfer real property made by a buyer pursuant to a written contract.

(6) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other legal entity or any combination of these.

1 (7) "Residential real property" means real property that is improved by a building or other structure
2 designed or intended for occupancy as a residence and that has one to four dwelling units or an individually
3 owned unit in a structure of any size and includes:

4 (a) real property that has a combined residential and commercial use;

5 (b) a manufactured home that has been declared an improvement to real property under 15-1-116;

6 and

7 (c) a condominium as defined in 70-23-102(7).

8 (8) "Seller" means one or more persons who are attempting to transfer an ownership interest in
9 real property.

10 (9) "Transfer" means a sale or conveyance of, exchange of, or option to purchase by written
11 instrument an ownership interest in real property for consideration.

12

13 NEW SECTION. Section 2. Seller disclosure -- statement. (1) In any transfer of residential real
14 property in the state, the seller shall provide a disclosure statement to a buyer disclosing any adverse material
15 facts that concern the residential real property and of which the seller has actual knowledge. The disclosure
16 statement must be provided by the seller prior to or contemporaneously with the execution of a contract, either
17 directly or via the real estate agent or other authorized representative of the seller, and must be provided to the
18 buyer or the real estate agent or other authorized representative of the buyer. The disclosure statement must
19 contain, at a minimum, any of the following information of which the seller has actual knowledge:

20 (a) matters affecting legal ownership or title to the residential real property or the seller's ability to
21 transfer the residential real property;

22 (b) matters affecting water service to the residential real property or the water source serving the
23 residential real property;

24 (c) matters affecting the system for wastewater treatment that serves the residential real property;

25 (d) information concerning utility connections for the residential real property;

26 (e) matters affecting the buildings or other structures designed or intended for occupancy as a
27 residence, including water intrusion, and problems or other issues related to any structural system or
28 improvement, including any well, septic system, roof, foundation, plumbing, electrical system, heating system,

1 windows, doors, or appliances;

2 (f) whether any substantial additions or alterations have been made to the residential real property
3 without a building permit;

4 (g) whether there are any hazardous materials or pest infestations located on the residential real
5 property or in the immediate area;

6 (h) whether there are any problems with settling, soil, standing water, or drainage on the
7 residential real property or in the immediate area;

8 (i) whether any portion of the residential real property has been tested or treated for asbestos,
9 radon gas, lead-based paint, mold, methamphetamine, fuel or chemical storage tanks, or contaminated soil or
10 water; and

11 (j) any other adverse material fact, including environmental issues, structural system issues,
12 mechanical issues, legal issues, physical issues, or others not listed above of which the seller has actual
13 knowledge concerning the residential real property.

14 (2) The disclosure statement must also include statements substantially similar to the following:

15 (a) that the disclosure statement constitutes a statement of the conditions of the residential real
16 property and information concerning the residential real property actually known by the seller;

17 (b) that the seller or the real estate agent or other authorized representative of the seller is not
18 obligated to investigate the residential real property in preparing the disclosure statement and that unless the
19 buyer is otherwise advised in writing, the seller, other than having lived at or owning the property, possesses no
20 greater knowledge than that which could be obtained by a careful inspection of the property by the buyer;

21 (c) that unless the buyer and seller have otherwise agreed in writing, any contract is not effective
22 until 3 days after the buyer has received the disclosure statement, and during that delay the prospective buyer
23 may withdraw or rescind any contract to purchase the residential real property without penalty;

24 (d) that the disclosure statement is not a warranty of any kind by the seller or the real estate agent
25 or other authorized representative of the seller in the transaction involving the transfer of the residential real
26 property; and

27 (e) that the disclosure statement is not a substitute for any inspections conducted by or for the
28 buyer and that the buyer is encouraged to consult independent inspectors to aid in the buyer's due diligence

1 process prior to the purchase of the residential real property.

2

3 **NEW SECTION. Section 3. Exempt transactions.** The written disclosure statement set forth in
4 [section 2(1)] is not required for the following transfers of residential real property:

5 (1) transfers pursuant to a court order, including but not limited to a transfer ordered by a probate
6 court during the administration of a decedent's estate, a transfer pursuant to a writ of execution, a transfer by a
7 trustee in bankruptcy, a transfer as a result of the exercise of the power of eminent domain, or a transfer that
8 results from an order for specific performance of a contract or other agreement between persons;

9 (2) transfers between spouses resulting from a decree of dissolution of marriage or a decree of
10 legal separation or from a property settlement agreement incidental to this decree;

11 (3) transfers to a mortgagee by a mortgagor or successor in interest who is in default, sales to a
12 beneficiary of a deed of trust by a trustor or successor in interest who is in default, any foreclosure sale after
13 default, any foreclosure sale after default in an obligation secured by a mortgage, a sale under a power of sale
14 or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a deed of trust or
15 secured by any other instrument containing a power of sale, sales by a mortgagee or a beneficiary under a
16 deed of trust who has acquired the residential real property at a sale conducted pursuant to a power of sale
17 under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the residential
18 real property by a deed in lieu of foreclosure, sales to the legal owner or lienholder of a manufactured home or
19 mobile home by a registered owner or successor in interest who is in default, or sales by reason of any
20 foreclosure of a security interest in a manufactured home or mobile home;

21 (4) transfers from one co-owner to one or more other co-owners;

22 (5) transfers to a person who is a spouse, child by blood or adoption, or parent of the seller or any
23 other owner of the residential real property; and

24 (6) transfers when in the contract the buyer has waived the right to receive a disclosure statement
25 at the time of submitting the offer to purchase to the seller.

26

27 **NEW SECTION. Section 4. Buyer's right to rescind.** (1) Unless otherwise agreed to by the buyer
28 and the seller in writing, if a disclosure statement is provided by a seller to a buyer after the execution of a

1 contract, the buyer shall have 3 days from the day the seller or the real estate agent or other authorized
2 representative of the seller delivers the disclosure statement to rescind the contract by delivering a separately
3 signed written statement of rescission to the seller or the real estate agent or other authorized representative of
4 the seller.

5 (2) The buyer may waive the right to rescind in any offer to purchase.

6
7 **NEW SECTION. Section 5. Purpose of disclosure statement.** (1) A disclosure statement as
8 provided in [section 2] does not constitute a warranty of any kind by the seller or the real estate agent or other
9 authorized representative of the seller.

10 (2) The disclosure statement must be considered a disclosure by the seller only and not the real
11 estate agent or other authorized representative of the seller.

12 (3) The seller may not be responsible for misstatements or errors in a disclosure statement that
13 are based on information a seller obtained from a reliable third-party, including a local governing agency.

14
15 **Section 6.** Section 37-51-102, MCA, is amended to read:

16 **"37-51-102. Definitions.** Unless the context requires otherwise, in this chapter the following
17 definitions apply:

18 (1) (a) ~~"Adverse material fact" means a fact that should be recognized by a broker or salesperson~~
19 ~~as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real~~
20 ~~property and may be a fact that:~~

21 ~~(i) materially affects the value, affects structural integrity, or presents a documented health risk to~~
22 ~~occupants of the property; or~~

23 ~~(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or~~
24 ~~existing contract~~ has the same meaning as provided in [section 1]. MEANS A FACT THAT SHOULD BE RECOGNIZED BY

25 A BROKER OR SALESPERSON AS BEING SIGNIFICANT ENOUGH TO AFFECT A PERSON'S DECISION TO ENTER INTO A
26 CONTRACT TO BUY OR SELL REAL PROPERTY AND MAY BE A FACT THAT:

27 (i) MATERIALLY AFFECTS THE VALUE, AFFECTS THE STRUCTURAL INTEGRITY, OR PRESENTS A
28 DOCUMENTED HEALTH RISK TO OCCUPANTS OF THE PROPERTY; OR

1 (ii) MATERIALLY AFFECTS THE BUYER'S ABILITY OR INTENT TO PERFORM THE BUYER'S OBLIGATIONS UNDER
2 A PROPOSED OR EXISTING CONTRACT.

3 (b) The term does not include the fact that an occupant of the property has or has had a
4 communicable disease or that the property was the site of a suicide or felony.

5 (2) "Asset management" means management, oversight, or direct actions taken to maintain or
6 transfer any real property before a foreclosure sale or in preparation for liquidation of real property owned by
7 the client pursuant to a foreclosure sale. This includes any action taken to preserve, restore, or improve the
8 value and to lessen the risk of damage to the property in preparation for liquidation of real property pursuant to
9 a foreclosure sale.

10 (3) "Board" means the board of realty regulation provided for in 2-15-1757.

11 (4) "Broker" includes an individual who:

12 (a) for another or for valuable consideration or who with the intent or expectation of receiving
13 valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease
14 of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

15 (b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing,
16 subleasing, or other disposition of real estate for consideration;

17 (c) engages in the business of charging an advance fee or contracting for collection of a fee in
18 connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other
19 disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for
20 referral of information concerning real estate to brokers;

21 (d) makes the advertising, sale, lease, or other real estate information available by public display to
22 potential buyers;

23 (e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for
24 purchase or lease;

25 (f) receives a fee, commission, or other compensation for referring to a licensed broker or
26 salesperson the name of a prospective buyer or seller of real property;

27 (g) performs asset management services for real property in conjunction with the marketing or
28 transfer of the property; or

1 (h) advertises or represents to the public that the individual is engaged in any of the activities
2 referred to in this subsection (4).

3 (5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or
4 who has entered into an agreement to acquire an interest in real property. The term includes tenants or
5 potential tenants with respect to leases or rental agreements of real property.

6 (6) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker
7 agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and
8 an in-house buyer agent designate.

9 (7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a
10 broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

11 (8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency,
12 acts as the agent of a buyer.

13 (9) "Department" means the department of labor and industry provided for in Title 2, chapter 15,
14 part 17.

15 (10) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or
16 buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with
17 written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be
18 considered a dual agent.

19 (11) "Franchise agreement" means a contract or agreement by which:

20 (a) a franchisee is granted the right to engage in business under a marketing plan prescribed in
21 substantial part by the franchisor;

22 (b) the operation of the franchisee's business is substantially associated with the franchisor's
23 trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

24 (c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the
25 agreement.

26 (12) "In-house buyer agent designate" means a broker or salesperson employed by or associated
27 as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for
28 a designated transaction and who may not be considered to be acting for other than the buyer with respect to

1 the designated transaction.

2 (13) "In-house seller agent designate" means a broker or salesperson employed by or associated
3 as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for
4 a designated transaction and who may not be considered to be acting for other than the seller with respect to
5 the designated transaction.

6 (14) "Listing agreement" means a written agreement between a seller and broker for the sale of real
7 estate, with the terms and conditions set out in the agreement.

8 (15) "Negotiations" includes:

- 9 (a) efforts to act as an intermediary between parties to a real estate transaction;
- 10 (b) facilitating and participating in contract discussions;
- 11 (c) completing forms for offers, counteroffers, addendums, and other writings; and
- 12 (d) presenting offers and counteroffers.

13 (16) "Person" includes individuals, partnerships, associations, and corporations, foreign and
14 domestic, except that when referring to a person licensed under this chapter, it means an individual.

15 (17) "Property manager" means an individual who for a salary, commission, or compensation of any
16 kind or with the intent or expectation of receiving valuable consideration engages in the business of leasing,
17 renting, subleasing, or other transfer of possession of real estate located in this state and belonging to others
18 without transfer of the title to the property. The term includes but is not limited to an individual who:

- 19 (a) is employed by or on behalf of the owner, lessor, or potential lessee of real estate to promote or
20 conduct the leasing, subleasing, or other disposition or acquisition of real estate without transfer of the title to
21 the property;
- 22 (b) negotiates or attempts to negotiate the lease of any real estate located in this state or of the
23 improvements on any real estate located in this state;
- 24 (c) engages in the business of promoting the lease, rental, exchange, or other disposition of real
25 estate located in this state without transfer of the title to the property through the listing of the real estate in a
26 publication issued primarily for this purpose;
- 27 (d) assists in creating or completing real estate lease contracts;
- 28 (e) procures tenants for owners of real estate located in this state;

- 1 (f) aids or offers to aid, for a fee, any person in locating or obtaining any real estate for lease in
2 this state;
- 3 (g) makes the advertising of real property for lease available by public display to potential tenants;
- 4 (h) shows rental or lease properties to potential tenants;
- 5 (i) in conjunction with property management responsibilities, acts as a liaison between the owners
6 of real estate and a tenant or potential tenant;
- 7 (j) in conjunction with property management responsibilities, generally oversees the inspection,
8 maintenance, and upkeep of leased real estate belonging to others;
- 9 (k) in conjunction with property management responsibilities, collects rents or attempts to collect
10 rents for any real estate located in this state;
- 11 (l) pays a fee, commission, or other compensation to a licensed broker, salesperson, or property
12 manager for referral of the name of a prospective lessor or lessee of real property;
- 13 (m) receives a fee, commission, or other compensation from a licensed broker, salesperson, or
14 property manager for referring the name of a prospective buyer, seller, lessor, or lessee of real estate; or
- 15 (n) advertises or represents to the public that the individual is engaged in any of the activities
16 referred to in this subsection (17).
- 17 (18) "Real estate" includes leaseholds as well as any other interest or estate in land, whether
18 corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or
19 elsewhere.
- 20 (19) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale,
21 exchange, or lease of an interest in real estate and includes all communication, interposition, advisement,
22 negotiation, and contract development and closing.
- 23 (20) "Salesperson" includes an individual who for a salary, commission, or compensation of any
24 kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell,
25 purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.
- 26 (21) "Seller" means a person who has entered into a listing agreement to sell real estate and
27 includes landlords who have an interest in or are a party to a lease or rental agreement.
- 28 (22) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts

1 as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

2 (23) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency,
3 acts as the agent of a seller.

4 (24) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real
5 estate transaction without acting as an agent or representative of any party to the real estate transaction.

6 (b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or
7 salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has
8 disclosed, as required in this chapter, a relationship other than that of a statutory broker.

9 (25) "Supervising broker" means a licensed broker with whom a licensed salesperson is associated,
10 directly, indirectly, regularly, or occasionally, to sell, purchase, or negotiate for the sale, purchase, exchange, or
11 renting of real estate.

12 (26) "Supervising broker endorsement" means an endorsement to a broker's license that is required
13 of any licensed broker who supervises licensed salespersons performing real estate activity."
14

15 NEW SECTION. Section 7. Codification instruction. [Sections 1 through 5] are intended to be
16 codified as an integral part of Title 70, chapter 1, and the provisions of Title 70, chapter 1, apply to [sections 1
17 through 5].

18 - END -