

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1966

H.P. 1368

House of Representatives, March 23, 1999

An Act to Require Disclosures in Connection with Transfers of Residential Property.

Reference to the Committee on Business and Economic Development suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative CAMERON of Rumford.
Cosponsored by Senator DAGGETT of Kennebec and
Representatives: CAMPBELL of Holden, NASS of Acton, SAXL of Portland, Senators:
HARRIMAN of Cumberland, MacKINNON of York, RAND of Cumberland.

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

4 Sec. 1. 33 MRSA c. 7, sub-c. I-A is enacted to read:

6 **SUBCHAPTER I-A**

8 **RESIDENTIAL PROPERTY DISCLOSURES**

10 **§171. Definitions**

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

14 1. **Material defect.** "Material defect" means a condition 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 or adversely affects the expected normal life of the premises.

20 2. **Owner.** "Owner" 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.

24 3. **Property disclosure statement.** "Property disclosure statement" means a written disclosure form prepared by an owner pursuant to section 173.

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

32 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.

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

40 **§172. Applicability; exemptions**

42 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, whether or not the transaction is with the assistance of a person licensed to practice real estate brokerage. The following transfers are exempt from this subchapter:

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

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

12 3. Power of sale. Transfers by a sale under a power of
14 sale or any foreclosure sale under a decree of foreclosure after
default in an obligation secured by a mortgage or deed of trust
16 or secured by any other instrument containing a power of sale, or
transfers by a mortgagee or a beneficiary under a deed of trust
18 who has acquired the residential real property at a sale
conducted pursuant to a power of sale under a mortgage or deed of
20 trust or a sale pursuant to a decree of foreclosure or who has
acquired the residential real property by a deed in lieu of
22 foreclosure;

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

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

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

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

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

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

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

50 11. Living trust. Transfers to a living trust.

2 **§173. Required disclosures**

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

8 **1. Disclosure.** Disclosure by the owner of the following
10 information:

12 A. The type of system used to supply water to the
14 property. If the property has a private water supply, the
14 owner shall disclose:

16 (1) The type of system;

18 (2) The location of the system;

20 (3) Any malfunctions of the system;

22 (4) The date of the most recent water test; and

24 (5) Whether the owner has experienced a problem such
26 as an unsatisfactory water test or a water test with
26 notations;

28 B. The type and location of insulation used on the property;

30 C. The type of waste disposal system used on the property.
32 If the property has a private waste disposal system, the
32 owner shall disclose:

34 (1) The type of system;

36 (2) The size and type of the tank;

38 (3) The location of the tank;

40 (4) Any malfunctions of the tank;

42 (5) The date of installation of the tank;

44 (6) The location of the leach field;

46 (7) Any malfunctions of the leach field;

48 (8) The date of installation of the leach field;

50 (9) The date of the most recent servicing of the
50 system; and

2 (10) The name of the contractor who services the
3 system;

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

8 (1) Asbestos;

10 (2) Lead-based paint;

12 (3) Radon; and

14 (4) Underground oil storage tanks; and

16 E. Any material defects;

18
19 2. Notice. A notice to the purchaser containing the
20 following language: "The purchaser and the owner may obtain
21 professional advice or inspections of the property and provide
22 for appropriate provisions in a contract between them concerning
23 any advice, inspections, defects or warranties obtained on the
24 property"; and

26 3. Representations of owner. A notice to the purchaser
27 containing the following language: "The representations in this
28 property disclosure statement are the representations of the
29 owner and are not the representations of the agent. This
30 information is for disclosure only and is not intended to be a
31 part of any contract between the purchaser and the owner."

32
33 If at the time the disclosures are required to be made, an
34 item of information required to be disclosed under this
35 subchapter is unknown or unavailable to the owner, the owner may
36 comply with this subchapter by advising the purchaser of the fact
37 that the information is unknown.

38
39 The information provided to the purchaser is based upon the
40 best information available to the owner. The owner is not
41 obligated under this subchapter to make any specific
42 investigation or inquiry in an effort to complete the property
43 disclosure statement.

44
45 The purchaser shall acknowledge in writing receipt of the
46 property disclosure statement.

48 **§174. Time of disclosure; cancellation of contract**

49
50 1. Time of disclosure. The owner of residential real
51 property under this subchapter shall deliver the property

2 disclosure statement to the purchaser no later than the time the
3 purchaser makes an offer to purchase, exchange or option the
4 property or exercises the option to purchase the property
5 pursuant to a lease with an option to purchase.

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

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

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

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

32 **§175. Change in circumstances**

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

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

46 **§176. Disclosure statement not warranty**

48 A property disclosure statement and any supplement to a
49 property disclosure statement are not a warranty by the owner or
50 the owner's agent. The property disclosure statement and any

2 supplement to the property disclosure statement may not be used
3 as substitutes for any inspections or warranties that the
4 purchaser or owner may obtain.

6 **§177. Liability**

8 1. Owner not liable. An owner is not liable for any error,
9 inaccuracy or omission of any information required to be
10 delivered to the purchaser under this subchapter if:

12 A. The error, inaccuracy or omission was not within the
13 actual knowledge of the owner or was based on information
14 provided by a public agency or by another person with a
15 professional license or special knowledge who provided a
16 written or oral report or opinion that the owner reasonably
17 believed to be correct; and

18 B. The owner was not negligent in obtaining information
19 from a 3rd party and transmitting that information to the
20 purchaser.

22 2. Agent not liable. An agent of an owner is not liable
23 for any violation of this subchapter by an owner unless the agent
24 knowingly acts in concert with the owner to violate this
25 subchapter.

26 **§178. Delivery of property disclosure statement**

28 Delivery of the property disclosure statement must be by:

30 1. Personal; facsimile. Personal or facsimile delivery to
32 the purchaser;

34 2. First class mail. First class mail, postage prepaid,
35 addressed to the purchaser at the address provided by the
36 purchaser; or

38 3. Overnight delivery. Overnight delivery services,
39 charges prepaid, addressed to the purchaser at the address
40 provided by the purchaser.

42 In a transaction with multiple purchasers, delivery to one
43 purchaser constitutes delivery to all purchasers. Delivery to an
44 authorized individual acting on behalf of one or more purchasers
45 constitutes delivery to all purchasers.

46 **§179. Effect on other statutes or common law**

