



1 A bill to be entitled
2 An act relating to sales disclosures; creating s. 475.423,
3 F.S.; specifying the transactions that are subject to the
4 requirements of the act; providing definitions; requiring
5 that certain disclosures be made by the transferor or his
6 or her agent with respect to real property located within
7 a flood hazard area, an area with severe constraints for
8 development, an area having sinkhole activity, a wellhead
9 protection area, a priority wetland zone, a habitat
10 conservation area, an airport's environs, an environmental
11 hazard site, or a radon gas zone; providing that the
12 waiver of such requirements is against public policy;
13 providing certain exceptions; specifying the form to be
14 used as the Property Identification Disclosure Statement;
15 providing requirements for identifying information that
16 accompanies the disclosure statement; providing
17 requirements for delivery of the required disclosure
18 statement; providing a limitation with respect to
19 liability for errors, inaccuracy, or omissions; requiring
20 a third party that provides information with respect to
21 the disclosure statement to maintain a specified amount of
22 insurance protection; providing that information updates
23 are not required after delivery of the required
24 disclosures; requiring that disclosures be made in good
25 faith; providing that the act does not limit or abridge
26 other disclosures required by law; authorizing the
27 amendment of a disclosure; providing for delivery of
28 disclosures; providing requirements for the licensee or



29 broker acting as an agent in a transaction subject to the
30 act; specifying liability for willful or negligent
31 violation or failure to perform; providing an effective
32 date.

33

34 Be It Enacted by the Legislature of the State of Florida:

35

36 Section 1. Section 475.423, Florida Statutes, is created
37 to read:

38 475.423 Property identification disclosure statement.--

39 (1)(a) Except as provided in subsection (2), this section
40 applies to any transfer by sale, exchange, or installment land
41 sale contract of residential properties, wherein one party
42 agrees to convey title to real property to another party upon
43 the satisfaction of specified conditions set forth in the
44 contract and which does not require conveyance of title within 1
45 year after the date of formation of the contract, lease with an
46 option to purchase, any other option to purchase, ground lease
47 coupled with improvements of any real property described in
48 paragraph (b), or residential stock cooperative, improved with
49 or consisting of not less than one or more than four dwelling
50 units.

51 (b) The transferor or his or her agent is required by one
52 or more of the following to disclose the property's location
53 within an applicable zone:

54 1. A person who is either acting as an agent for a
55 transferor of real property that is located within a special
56 flood hazard area, which is any type Zone "A" or "V" as



57 designated by the Federal Emergency Management Agency, or the
58 transferor, if he or she is acting without an agent, shall
59 disclose to any prospective transferee the fact that the
60 property is located within a special flood hazard area if:

61 a. The transferor, or the transferor's agent, has actual
62 knowledge that the property is within a special flood hazard
63 area; or

64 b. Other readily available and officially adopted
65 governmental information exists regarding the flood zone.

66 2. A person who is acting as an agent for a transferor of
67 real property that is located on soils with very severe
68 constraints for development, or the transferor, if he or she is
69 acting without an agent, shall disclose to any prospective
70 transferee the fact that the property is located on soils with
71 very severe constraints for development pursuant to maps issued
72 by the United States Department of Agriculture or other readily
73 available and officially adopted governmental maps and
74 information if:

75 a. The transferor, or the transferor's agent, has actual
76 knowledge that the property is on soils with very severe
77 constraints for development; or

78 b. Other readily available and officially adopted
79 governmental information exists regarding the soils with very
80 severe constraints for development.

81 3. A person who is acting as an agent for a transferor of
82 real property that is located in an area impacted by sinkhole
83 activity, or the transferor, if he or she is acting without an
84 agent, shall disclose to any prospective transferee the fact



85 that the property is located in an area impacted by sinkhole
86 activity pursuant to readily available and officially adopted
87 governmental maps and information if:

88 a. The transferor, or the transferor's agent, has actual
89 knowledge that the property is in an area impacted by sinkhole
90 activity; or

91 b. Other readily available and officially adopted
92 governmental information exists regarding sinkhole activity.

93 4. A person who is acting as an agent for a transferor of
94 real property that is located within a quarter of a mile of a
95 wellhead protection area, or the transferor, if he or she is
96 acting without an agent, shall disclose to any prospective
97 transferee the fact that the property is located within a
98 quarter of a mile of a wellhead protection area according to
99 maps issued by the Department of Environmental Protection or a
100 water management district or other readily available and
101 officially adopted governmental maps and information if:

102 a. The transferor, or the transferor's agent, has actual
103 knowledge that the property is located within a quarter of a
104 mile of a wellhead protection area; or

105 b. Other readily available and officially adopted
106 governmental information exists regarding a wellhead protection
107 area.

108 5. A person who is acting as an agent for a transferor of
109 real property that is located in a priority wetland zone, or the
110 transferor, if he or she is acting without an agent, shall
111 disclose to any prospective transferee the fact that the
112 property is located in a priority wetland zone pursuant to maps



113 issued by the Fish and Wildlife Conservation Commission or other
114 readily available and officially adopted governmental maps and
115 information if:

116 a. The transferor, or the transferor's agent, has actual
117 knowledge that the property is located in a priority wetland
118 zone; or

119 b. Other readily available and officially adopted
120 governmental information exists regarding a priority wetland
121 zone.

122 6. A person who is acting as an agent for a transferor of
123 real property that is located in a strategic habitat
124 conservation area, or the transferor, if he or she is acting
125 without an agent, shall disclose to any prospective transferee
126 the fact that the property is located in a strategic habitat
127 conservation area pursuant to maps issued by the Fish and
128 Wildlife Conservation Commission or other readily available and
129 officially adopted governmental maps and information if:

130 a. The transferor, or the transferor's agent, has actual
131 knowledge that the property is located in a strategic habitat
132 conservation area; or

133 b. Other readily available and officially adopted
134 governmental information exists regarding a strategic habitat
135 conservation area.

136 7. A person who is acting as an agent for a transferor of
137 real property that is located within 2 statute miles of the
138 nearest point of the nearest runway at any airport, or the
139 transferor, if he or she is acting without an agent, shall
140 disclose to any prospective transferee the fact that the



141 property is located within 2 statute miles of the nearest point
142 of the nearest runway at any airport if:

143 a. The transferor, or the transferor's agent, has actual
144 knowledge that the property is located within 2 statute miles of
145 the nearest point of the nearest runway at any airport; or

146 b. The local jurisdiction has maps that identify
147 properties that are located within 2 statute miles of the
148 nearest point of the nearest runway at any airport.

149 8. A person who is acting as an agent for a transferor of
150 real property that is located within a quarter of a mile of an
151 environmental hazard site, limited to filed governmental
152 reports, or the transferor, if he or she is acting without an
153 agent, shall disclose to any prospective transferee the fact
154 that the property is located within a quarter of a mile of an
155 environmental hazard site, including leaking underground storage
156 tanks, solid waste landfills, incinerators or transfer stations,
157 national priority list sites, or CERCLIS sites under review by
158 the United States Environmental Protection Agency if:

159 a. The transferor, or the transferor's agent, has actual
160 knowledge that the property is located within a quarter of a
161 mile of an environmental hazard site; or

162 b. Other readily available and officially adopted
163 governmental information exists regarding environmental hazard
164 sites.

165 9. A person who is acting as an agent for a transferor of
166 real property that is located within a mapped radon gas
167 potential zone pursuant to maps issued by the United States
168 Environmental Protection Agency or other readily available and



169 officially adopted governmental maps and information, or the
170 transferor, if he or she is acting without an agent, shall
171 disclose to any prospective transferee the fact that the
172 property is located within a mapped radon gas potential zone if:

173 a. The transferor, or the transferor's agent, has actual
174 knowledge that the property is located in a mapped radon gas
175 potential zone; or

176 b. Other readily available and officially adopted
177 governmental information exists regarding radon gas.

178 (c) Any waiver of the requirements of this section is void
179 as against public policy.

180 (2)(a) This section does not apply to the following
181 transfers:

182 1. Transfers pursuant to court order, including, but not
183 limited to, transfers ordered by a probate court in
184 administration of an estate, transfers pursuant to a writ of
185 execution, transfers by any foreclosure sale, transfers by a
186 trustee in bankruptcy, transfers by eminent domain, and
187 transfers resulting from a decree for specific performance.

188 2. Transfers to a mortgagee by a mortgagor or successor in
189 interest who is in default and transfers to a beneficiary of a
190 deed of trust by a trustor or successor in interest who is in
191 default.

192 3. Transfers by a fiduciary in the course of the
193 administration of a decedent's estate, guardianship,
194 conservatorship, or trust.

195 4. Transfers from one coowner to one or more other
196 coowners.



197 5. Transfers made to a spouse or to a person or persons in
 198 the lineal line of consanguinity of one or more of the
 199 transferors.

200 6. Transfers between spouses resulting from a judgment of
 201 dissolution of marriage or of legal separation of the parties or
 202 from a property settlement agreement incidental to that
 203 judgment.

204 7. Transfers by sale, resale, exchange, or installment
 205 land sales contract of any manufactured mobile home, mobile home
 206 park, or residential manufactured building.

207 (b) Transfers not subject to this section may be subject
 208 to other disclosure requirements. In transfers that are not
 209 subject to this section, agents may make required disclosures in
 210 a separate writing.

211 (3)(a) The disclosures required by this section are set
 212 forth in, and shall be made on a copy of, the following Property
 213 Identification Disclosure Statement:

214
 215 PROPERTY IDENTIFICATION DISCLOSURE STATEMENT

216
 217 This statement applies to the following property:

218 _____

219
 220 The transferor and his or her agent(s) disclose the following
 221 information with the knowledge that even though this is not a
 222 warranty, prospective transferees may rely on this information
 223 in deciding whether and on what terms to purchase the subject
 224 property.



225
 226 Transferor hereby authorizes any agent(s) representing any
 227 principal(s) in this action to provide a copy of this statement
 228 to any person or entity in connection with any actual or
 229 anticipated sale of the property.

230
 231 The following are representations made by the transferor and his
 232 or her agent(s) based on their knowledge and official maps and
 233 information prepared by the state and federal governments. This
 234 information is a disclosure and is not intended to be part of
 235 any contract between the transferee and transferor.

236
 237 THIS REAL PROPERTY LIES WITHIN THE FOLLOWING AREA(S):

238
 239 (1) A SPECIAL FLOOD HAZARD AREA (Any type Zone "A" or "V")
 240 designated by the Federal Emergency Management Agency.

241
 242 Yes _____ No _____ Do not know and information not available
 243 _____ Pending _____

244
 245 (2) ON SOILS WITH VERY SEVERE CONSTRAINTS FOR DEVELOPMENT
 246 pursuant to maps issued by the United States Department of
 247 Agriculture or other readily available and officially adopted
 248 governmental maps and information.

249
 250 Yes _____ No _____ Do not know and information not available
 251 _____ Pending _____

252



253 (3) AN AREA IMPACTED BY SINKHOLE ACTIVITY pursuant to
 254 readily available and officially adopted governmental maps and
 255 information.

256
 257 Yes _____ No _____ Do not know and information not available
 258 _____ Pending _____

260 (4) WITHIN A QUARTER OF A MILE OF A WELLHEAD PROTECTION
 261 AREA pursuant to maps issued by the Department of Environmental
 262 Protection or a water management district or other readily
 263 available and officially adopted governmental maps and
 264 information.

265
 266 Yes _____ No _____ Do not know and information not available
 267 _____ Pending _____

269 (5) A PRIORITY WETLAND ZONE pursuant to maps issued by the
 270 Fish and Wildlife Conservation Commission or other readily
 271 available and officially adopted governmental maps and
 272 information.

273
 274 Yes _____ No _____ Do not know and information not available
 275 _____ Pending _____

277 (6) A STRATEGIC HABITAT CONSERVATION AREA pursuant to maps
 278 issued by the Fish and Wildlife Conservation Commission or other
 279 readily available and officially adopted governmental maps and
 280 information.



281
 282 Yes _____ No _____ Do not know and information not available
 283 _____ Pending _____

284
 285 (7) WITHIN 2 STATUTE MILES OF THE NEAREST POINT OF THE
 286 NEAREST RUNWAY AT ANY AIRPORT.

287
 288 Yes _____ No _____ Do not know and information not available
 289 _____ Pending _____

290
 291 (8) WITHIN A QUARTER OF A MILE OF AN ENVIRONMENTAL HAZARD
 292 SITE, including leaking underground storage tanks, solid waste
 293 landfills, incinerators or transfer stations, national priority
 294 list sites, and/or CERCLIS sites under review by the United
 295 States Environmental Protection Agency.

296
 297 Yes _____ No _____ Do not know and information not available
 298 _____ Pending _____

299
 300 (9) WITHIN A MAPPED RADON GAS POTENTIAL ZONE pursuant to
 301 maps issued by the United States Environmental Protection Agency
 302 or other readily available and officially adopted governmental
 303 maps and information.

304
 305 Yes _____ No _____ Do not know and information not available
 306 _____ Pending _____

307



308 THESE ZONES MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY,
 309 TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER.

310
 311 THE MAPS AND INFORMATION ON WHICH THESE DISCLOSURES ARE BASED
 312 ARE ESTIMATES WHERE THE APPLICABLE ZONES AND PROTECTED LANDS
 313 EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A
 314 PROPERTY WILL BE AFFECTED BY A NATURAL OR ENVIRONMENTAL
 315 DISASTER. TRANSFEREE(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN
 316 PROFESSIONAL ADVICE REGARDING THESE AND OTHER HAZARDS AND
 317 PROTECTION ZONES THAT MAY AFFECT THE PROPERTY.

318
 319 Transferor represents that the information herein is true and
 320 correct to the best of the transferor's knowledge as of the date
 321 signed by the transferor.

322
 323 Signature of Transferor: _____ Date: _____

324
 325 Signature of Transferor: _____ Date: _____

326
 327 Agent represents that the information herein is true and correct
 328 to the best of the agent's knowledge as of the date signed by
 329 the agent.

330
 331 Signature of Transferor's Agent: _____ Date: _____

332
 333 Signature of Transferor's Agent: _____ Date: _____

334



335 Transferee represents that he or she has read and understands
 336 this document.

337
 338 Signature of Transferee: _____ Date: _____

339
 340 Signature of Transferee: _____ Date: _____

341
 342 (b) If a map or accompanying information is not of
 343 sufficient accuracy or scale that a reasonable person can
 344 determine if the subject real property is included in an
 345 applicable area, the transferor or transferor's agent shall mark
 346 "Yes" on the Property Identification Disclosure Statement. The
 347 transferor or transferor's agent may mark "No" on the Property
 348 Identification Disclosure Statement if he or she attaches a
 349 report prepared pursuant to paragraph (5)(c) which verifies that
 350 the property is not in the applicable zone. This paragraph does
 351 not limit or abridge any existing duty of the transferor or the
 352 transferor's agents to exercise reasonable care in making a
 353 determination under this subsection.

354 (c) If the Federal Emergency Management Agency has issued
 355 a Letter of Map Revision confirming that a property is no longer
 356 within a special flood hazard area, the transferor or
 357 transferor's agent may mark "No" on the Property Identification
 358 Disclosure Statement, even if the map has not yet been updated.

359 (d) If the Federal Emergency Management Agency has issued
 360 a Letter of Map Revision confirming that a property is within a
 361 special flood hazard area and the location of the letter has
 362 been posted, the transferor or transferor's agent shall mark



363 "Yes" on the Property Identification Disclosure Statement, even
364 if the map has not yet been updated.

365 (4)(a) The transferor of any real property subject to this
366 section shall deliver to the prospective transferee the written
367 statement required by this section, as follows:

368 1. In the case of a sale, as soon as practicable before
369 transfer of title.

370 2. In the case of transfer by a real property sales
371 contract or by a lease together with an option to purchase, or a
372 ground lease coupled with improvements, as soon as practicable
373 before execution of the contract. For the purpose of this
374 subparagraph, "execution" means the making or acceptance of an
375 offer.

376 (b) The transferor shall indicate compliance with this
377 section either on the receipt for deposit, the real property
378 sales contract, the lease, or any addendum attached thereto or
379 on a separate document.

380 (c) If any disclosure, or any material amendment of any
381 disclosure, required to be made pursuant to this section is
382 delivered after the execution of an offer to purchase, the
383 transferee shall have 3 days after delivery in person or 5 days
384 after delivery by deposit in the mail to terminate his or her
385 offer by delivery of a written notice of termination to the
386 transferor or the transferor's agent.

387 (5)(a) Neither the transferor nor any listing or selling
388 agent shall be liable for any error, inaccuracy, or omission of
389 any information delivered pursuant to this section if the error,
390 inaccuracy, or omission was caused by inaccurate or incomplete



391 information provided by public agencies to the transferor,
392 listing or selling agent, or other persons specified in
393 paragraph (c), if ordinary care was exercised in obtaining and
394 transmitting the information.

395 (b) The delivery of any information required to be
396 disclosed by this section to a prospective transferee by a third
397 party providing information required to be disclosed pursuant to
398 this section shall be deemed to comply with the requirements of
399 this section and shall relieve the transferor or any listing or
400 selling agent of any further duty under this section with
401 respect to that item of information.

402 (c) The delivery of a report or opinion prepared by a
403 licensed engineer, land surveyor, or expert in locating the
404 applicable zones on readily available and officially adopted
405 governmental maps and information concerning matters within the
406 scope of the professional's license or expertise is sufficient
407 compliance for application of the exemption provided by
408 paragraphs (a) and (b) if the information is provided to the
409 prospective transferee pursuant to a request therefor, whether
410 written or oral. In responding to that request, an expert may
411 indicate, in writing, an understanding that the information
412 provided will be used in fulfilling the requirements of
413 subsection (3) and, if so, shall indicate the required
414 disclosures, or parts thereof, to which the information being
415 furnished is applicable. If that statement is furnished, the
416 expert is not responsible for any items of information, or parts
417 thereof, other than those expressly set forth in the statement.



418 (d) A third party providing the information on behalf of
419 the transferor and the transferor's agent fulfilling the
420 requirements of subsection (3) to be disclosed by this section
421 shall maintain a minimum of \$20 million of insurance protection
422 to protect the transferor and the transferor's agent for any
423 errors or omissions made by the third party.

424 (6)(a) After a transferor and his or her agent comply with
425 subsection (3), they are relieved of further duty under this
426 section with respect to those items of information. The
427 transferor and his or her agent are not required to provide
428 notice to the transferee if the information provided
429 subsequently becomes inaccurate as a result of any governmental
430 action, map revision, changed information, or other act or
431 occurrence, unless the transferor or the transferor's agent has
432 actual knowledge that the information has become inaccurate.

433 (b) Neither the transferor nor any listing or selling
434 agent shall be required to update information disclosed in
435 accordance with this section subsequent to the delivery of the
436 required disclosures to the transferee.

437 (7) Each disclosure required by this section and each act
438 that may be performed in making the disclosure shall be made in
439 good faith. For purposes of this section, "good faith" means
440 honesty in fact in the conduct of the transaction.

441 (8) The specification of items for disclosure in this
442 section does not limit or abridge any obligation for disclosure
443 created by any other provision of law or that may exist in order
444 to avoid fraud, misrepresentation, or deceit in the transfer
445 transaction. The Legislature does not intend to affect the



446 existing obligations of the parties to a real estate contract,
447 or their agents, or to disclose any fact materially affecting
448 the value and desirability of the property, including, but not
449 limited to, the physical condition of the property and
450 previously received reports of physical inspection.

451 (9) Any disclosure made pursuant to this section may be
452 amended in writing by the transferor or his or her agent, but
453 the amendment shall be subject to subsection (4).

454 (10) Delivery of disclosures required by this section
455 shall be by personal delivery to the transferee or by mail to
456 the prospective transferee. For the purposes of this section,
457 delivery to the spouse of a transferee shall be deemed delivery
458 to the transferee, unless provided otherwise by contract.

459 (11) Any person or entity, other than a real estate
460 licensee licensed in this state and acting in the capacity of an
461 escrow agent for the transfer of real property subject to this
462 section, shall not be deemed the agent of the transferor or
463 transferee for purposes of the disclosure requirements of this
464 section unless the person or entity is empowered to so act by an
465 express written agreement to that effect. The extent of that
466 agency shall be governed by the written agreement.

467 (12)(a) If more than one licensed real estate broker is
468 acting as an agent in a transaction subject to this section, the
469 broker who has obtained the offer made by the transferee shall,
470 except as otherwise provided in this section, deliver the
471 disclosure required by this section to the transferee, unless
472 the transferor has given other written instructions for
473 delivery.



474 (b) If a licensed real estate broker responsible for
475 delivering the disclosure under this section cannot obtain the
476 disclosure document required and does not have written assurance
477 from the transferee that the disclosure has been received, the
478 broker shall advise the transferee in writing of his or her
479 rights to the disclosure. A licensed real estate broker
480 responsible for delivering disclosures under this section shall
481 maintain a record of the action taken to effect compliance of
482 the transaction.

483 (13) A transfer subject to this section may not be
484 invalidated solely because of the failure of any person to
485 comply with any provision of this section. However, any person
486 who willfully or negligently violates or fails to perform any
487 duty prescribed by any provision of this section shall be liable
488 in the amount of actual damages suffered by a transferee.

489 (14)(a) As used in this section, the term "listing agent"
490 means an individual who has obtained a listing of property of
491 the kind in respect of which he or she is authorized by law to
492 act as an agent for compensation.

493 (b) As used in this section, the term "selling agent"
494 means an individual who acts in cooperation with a listing agent
495 and who sells, or finds and obtains a buyer for, the property.

496 Section 2. This act shall take effect July 1, 2003.