

By: Leibowitz

H.B. No. 28

A BILL TO BE ENTITLED

AN ACT

relating to requiring notice by a seller of real property of potential annexation of the property by a municipality.

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

SECTION 1. Section 5.008(b), Property Code, as amended by Chapters 448 (H.B. 271), 1051 (H.B. 2118), and 1256 (H.B. 2819), Acts of the 80th Legislature, Regular Session, 2007, is reenacted and amended to read as follows:

(b) The notice must be executed and must, at a minimum, read substantially similar to the following:

SELLER'S DISCLOSURE NOTICE

CONCERNING THE PROPERTY AT \_\_\_\_\_ (Street Address and City)

THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PURCHASER MAY WISH TO OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY SELLER OR SELLER'S AGENTS.

Seller \_\_\_ is \_\_\_ is not occupying the Property.

If unoccupied, how long since Seller has occupied the Property?

\_\_\_\_\_

1. The Property has the items checked below:

Write Yes (Y), No (N), or Unknown (U).

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Range           | <input type="checkbox"/> Oven                     | <input type="checkbox"/> Microwave       |
| <input type="checkbox"/> Dishwasher      | <input type="checkbox"/> Trash Compactor          | <input type="checkbox"/> Disposal        |
| <input type="checkbox"/> Washer/Dryer    | <input type="checkbox"/> Window                   | <input type="checkbox"/> Rain Gutters    |
| <input type="checkbox"/> Hookups         | <input type="checkbox"/> Screens                  |  |
| <input type="checkbox"/> Security System | <input type="checkbox"/> Fire Detection Equipment | <input type="checkbox"/> Intercom System |

1                   \_\_\_ Smoke Detector  
 2                   \_\_\_ Smoke Detector -  
 3                   Hearing Impaired  
 4                   \_\_\_ Carbon Monoxide  
 5                   Alarm  
 6                   \_\_\_ Emergency Escape  
 7                   Ladder(s)  
 8     \_\_\_ TV Antenna             \_\_\_ Cable TV                   \_\_\_ Satellite  
 9                                     Wiring                     Dish  
 10    \_\_\_ Ceiling Fan(s)         \_\_\_ Attic Fan(s)               \_\_\_ Exhaust  
 11   Fan(s)  
 12    \_\_\_ Central A/C             \_\_\_ Central Heating             \_\_\_ Wall/Window  
 13   Air  
 14   Conditioning  
 15    \_\_\_ Plumbing System        \_\_\_ Septic System               \_\_\_ Public Sewer  
 16   System  
 17    \_\_\_ Patio/Decking           \_\_\_ Outdoor Grill               \_\_\_ Fences  
 18    \_\_\_ Pool                     \_\_\_ Sauna                       \_\_\_ Spa  
 19   Hot Tub  
 20    \_\_\_ Pool Equipment         \_\_\_ Pool Heater                 \_\_\_ Automatic Lawn  
 21   Sprinkler  
 22   System  
 23    \_\_\_ Fireplace(s) &  
 24       Chimney                     \_\_\_ Fireplace(s) &  
 25       (Woodburning)               Chimney  
 26    \_\_\_ Gas Lines               \_\_\_ Gas Fixtures  
 27       (Nat./LP)  
 28    Garage: \_\_\_ Attached         \_\_\_ Not Attached               \_\_\_ Carport  
 29    Garage Door Opener(s):     \_\_\_ Electronic                 \_\_\_ Control(s)  
 30    Water Heater:               \_\_\_ Gas                         \_\_\_ Electric  
 31    Water Supply: \_\_\_ City       \_\_\_ Well \_\_\_ MUD               \_\_\_ Co-op  
 32    Roof Type: \_\_\_\_\_     Age: \_\_\_\_\_(approx)

33 Are you (Seller) aware of any of the above items that are not in  
 34 working condition, that have known defects, or that are in need of  
 35 repair?   \_\_\_ Yes   \_\_\_ No   \_\_\_ Unknown.

36 If yes, then describe. (Attach additional sheets if necessary):  
 37 \_\_\_\_\_  
 38 \_\_\_\_\_

39 2. Does the property have working smoke detectors installed in  
 40 accordance with the smoke detector requirements of Chapter 766,  
 41 Health and Safety Code?   \_\_\_Yes   \_\_\_No   \_\_\_Unknown.

42 If the answer to the question above is no or unknown, explain.  
 43 (Attach additional sheets if necessary): \_\_\_\_\_

1 \_\_\_\_\_  
2 \_\_\_\_\_

3 3. Are you (Seller) aware of any known defects/malfunctions in any  
4 of the following?

5 Write Yes (Y) if you are aware, write No (N) if you are not aware.

- |    |  |   |   |
|----|--|---|---|
| 6  | <input type="checkbox"/> Interior Walls              | <input type="checkbox"/> Ceilings               | <input type="checkbox"/> Floors               |
| 7  | <input type="checkbox"/> Exterior Walls              | <input type="checkbox"/> Doors                  | <input type="checkbox"/> Windows              |
| 8  | <input type="checkbox"/> Roof                        | <input type="checkbox"/> Foundation/<br>Slab(s) | <input type="checkbox"/> Basement             |
| 9  |  |   |   |
| 10 | <input type="checkbox"/> Walls/Fences                | <input type="checkbox"/> Driveways              | <input type="checkbox"/> Sidewalks            |
| 11 | <input type="checkbox"/> Plumbing/Sewers/<br>Septics | <input type="checkbox"/> Electrical<br>Systems  | <input type="checkbox"/> Lighting<br>Fixtures |

13  Other Structural Components (Describe): \_\_\_\_\_  
14 \_\_\_\_\_  
15 \_\_\_\_\_

16 If the answer to any of the above is yes, explain. (Attach  
17 additional sheets if necessary): \_\_\_\_\_  
18 \_\_\_\_\_  
19 \_\_\_\_\_

20 4. Are you (Seller) aware of any of the following conditions?

21 Write Yes (Y) if you are aware, write No (N) if you are not aware.

- |    |   |  |
|----|---|--|
| 22 | <input type="checkbox"/> Active Termites<br>(includes<br>wood-destroying insects) | <input type="checkbox"/> Previous Structural<br>or Roof Repair |
| 23 |   |  |
| 24 | <input type="checkbox"/> Termite or Wood Rot Damage<br>Needing Repair             | <input type="checkbox"/> Hazardous or Toxic Waste              |
| 25 |   |  |
| 26 | <input type="checkbox"/> Previous Termite Damage                                  | <input type="checkbox"/> Asbestos Components                   |
| 27 | <input type="checkbox"/> Previous Termite<br>Treatment                            | <input type="checkbox"/> Urea formaldehyde<br>Insulation       |
| 28 |   |  |
| 29 | <input type="checkbox"/> Previous Flooding  | <input type="checkbox"/> Radon Gas                             |
| 30 | <input type="checkbox"/> Improper Drainage  | <input type="checkbox"/> Lead Based Paint                      |
| 31 | <input type="checkbox"/> Water Penetration  | <input type="checkbox"/> Aluminum Wiring                       |
| 32 | <input type="checkbox"/> Located in 100-Year<br>Floodplain                        | <input type="checkbox"/> Previous Fires                        |
| 33 |   |  |
| 34 | <input type="checkbox"/> Present Flood Insurance<br>Coverage                      | <input type="checkbox"/> Unplatted Easements                   |
| 35 |   |  |
| 36 | <input type="checkbox"/> Landfill, Settling, Soil<br>Movement, Fault Lines        | <input type="checkbox"/> Subsurface<br>Structure or Pits       |
| 37 |   |  |
| 38 |   | <input type="checkbox"/> Previous Use of<br>Premises for       |
| 39 |   |  |
| 40 |   |  |

Manufacture of  
Methamphetamine

1  
2  
3 If the answer to any of the above is yes, explain. (Attach  
4 additional sheets if necessary): \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_

7 5. Are you (Seller) aware of any item, equipment, or system in or  
8 on the property that is in need of repair? \_\_\_ Yes (if you are  
9 aware) \_\_\_ No (if you are not aware). If yes, explain (attach  
10 additional sheets as necessary). \_\_\_\_\_

11 6. Are you (Seller) aware of any of the following?  
12 Write Yes (Y) if you aware, write No (N) if you are not aware.  
13 \_\_\_ Room additions, structural modifications, or other  
14 alterations or repairs made without necessary permits or not  
15 in compliance with building codes in effect at that time.  
16 \_\_\_ Homeowners' Association or maintenance fees or assessments.  
17 \_\_\_ Any "common area" (facilities such as pools, tennis courts,  
18 walkways, or other areas) co-owned in undivided interest with  
19 others.  
20 \_\_\_ Any notices of violations of deed restrictions or  
21 governmental ordinances affecting the condition or use of the  
22 Property.  
23 \_\_\_ Any lawsuits directly or indirectly affecting the Property.  
24 \_\_\_ Any condition on the Property which materially affects the  
25 physical health or safety of an individual.

26 If the answer to any of the above is yes, explain. (Attach  
27 additional sheets if necessary): \_\_\_\_\_  
28 \_\_\_\_\_  
29 \_\_\_\_\_

30 7 [~~6~~]. If the property is located in a coastal area that is seaward  
31 of the Gulf Intracoastal Waterway or within 1,000 feet of the mean  
32 high tide bordering the Gulf of Mexico, the property may be subject  
33 to the Open Beaches Act or the Dune Protection Act (Chapter 61 or  
34 63, Natural Resources Code, respectively) and a beachfront

1 construction certificate or dune protection permit may be required  
2 for repairs or improvements. Contact the local government with  
3 ordinance authority over construction adjacent to public beaches  
4 for more information.

5 8. The seller must check which of the following options apply:

6 \_\_\_\_\_ The seller has received notice under Section 43.052, Local  
7 Government Code, from a municipality that the property is included  
8 in the municipality's annexation plan and may be subject to  
9 annexation by the municipality. A copy of the notice is attached.

10 \_\_\_\_\_ The seller has not received notice under Section 43.052,  
11 Local Government Code, from a municipality that the property is  
12 included in the municipality's annexation plan.

13 \_\_\_\_\_ The seller is not aware whether notice has been received under  
14 Section 43.052, Local Government Code, from a municipality that the  
15 property is included in the municipality's annexation plan.

16 \_\_\_\_\_  
17 Date Signature of Seller

18 The undersigned purchaser hereby acknowledges receipt of the  
19 foregoing notice and acknowledges the property complies with the  
20 smoke detector requirements of Chapter 766, Health and Safety Code,  
21 or, if the property does not comply with the smoke detector  
22 requirements of Chapter 766, the buyer waives the buyer's rights to  
23 have smoke detectors installed in compliance with Chapter 766.

24 \_\_\_\_\_  
25 Date Signature of Purchaser

26 SECTION 2. Section 5.011(d), Property Code, is amended to  
27 read as follows:

28 (d) In addition to the [~~If the~~] notice required by [~~is~~

1 ~~delivered as provided by]~~ this section, the seller is required to  
2 provide the notice required by Section 5.008 or 5.0111, as  
3 applicable [~~has no duty to provide additional information regarding~~  
4 ~~the possible annexation of the property by a municipality]~~.

5 SECTION 3. Subchapter A, Chapter 5, Property Code, is  
6 amended by adding Section 5.0111 to read as follows:

7 Sec. 5.0111. SELLER'S DISCLOSURE REGARDING ANNEXATION  
8 PLAN. (a) In addition to the notice required by Section 5.011, a  
9 seller of property that is new construction described by Section  
10 5.008(e)(10) shall give written notice to a purchaser indicating  
11 whether the seller has received notice from a municipality under  
12 Section 43.052, Local Government Code, that the property is  
13 included in the municipality's annexation plan and may be subject  
14 to annexation by the municipality. The seller must include a copy  
15 of any notice received from the municipality by the seller under  
16 Section 43.052, Local Government Code. The written notice shall  
17 read substantially similar to the following:

18 NOTICE REGARDING POSSIBLE ANNEXATION

19 A seller of certain types of property is required by Section 5.0111,  
20 Property Code, to give a purchaser a written notice indicating  
21 whether the seller has received notice from a municipality under  
22 Section 43.052, Local Government Code, that the property is  
23 included in the municipality's annexation plan and may be subject  
24 to annexation by the municipality. In addition, the seller must  
25 include a copy of any notice received.

26 The seller must check which option applies:

27 \_\_\_\_\_ The seller of the property that is the subject of this

1 contract has received notice under Section 43.052, Local Government  
2 Code, from a municipality that the property is included in the  
3 municipality's annexation plan and may be subject to annexation by  
4 the municipality. A copy of the notice is attached.

5 \_\_\_\_\_ The seller of the property that is the subject of this  
6 contract has not received notice under Section 43.052, Local  
7 Government Code, from a municipality that the property is included  
8 in the municipality's annexation plan.

9 \_\_\_\_\_ The seller of the property that is the subject of this  
10 contract is not aware whether notice has been received under  
11 Section 43.052, Local Government Code, from a municipality that the  
12 property is included in the municipality's annexation plan.

13 (b) The seller shall deliver the notice to the purchaser on  
14 or before the effective date of an executory contract binding the  
15 purchaser to purchase the property. The notice may be given  
16 separately, as part of the contract during negotiations, or as part  
17 of any other notice the seller delivers to the purchaser.

18 (c) This section does not apply to a transfer described by  
19 Section 5.008(e), other than a transfer described by Section  
20 5.008(e)(10).

21 (d) If an executory contract is entered into without the  
22 seller providing the notice required by this section, the purchaser  
23 may terminate the contract for any reason before the earlier of:

24 (1) the seventh day after the date the purchaser  
25 receives the notice; or

26 (2) the date the transfer occurs.

27 (e) Subsection (d) does not apply if the seller has not

1 received written notice from a municipality under Section 43.052,  
2 Local Government Code, that the property is included in the  
3 municipality's annexation plan.

4         SECTION 4. This Act applies only to a transfer of property  
5 that occurs on or after the effective date of this Act. A transfer  
6 of property that occurs before the effective date of this Act is  
7 governed by the law applicable to the transfer immediately before  
8 that date, and the former law is continued in effect for that  
9 purpose. For the purposes of this section, a transfer of property  
10 occurs before the effective date of this Act if the contract binding  
11 the purchaser to purchase the property is executed before that  
12 date.

13         SECTION 5. This Act takes effect September 1, 2009.