

SENATE AMENDMENTS

2nd Printing

By: Pickett, Solomons, Orr, Deshotel

H.B. No. 3502

A BILL TO BE ENTITLED

1 AN ACT

2 relating to waiver of certain statutory rights in connection with a
3 purchase of or loan secured by real property.

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

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

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

11 SELLER'S DISCLOSURE NOTICE

12 CONCERNING THE PROPERTY AT _____
13 (Street Address and City)

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

20 Seller ___ is ___ is not occupying the Property.

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

22 _____

23 1. The Property has the items checked below:

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

25 ___ Range	___ Oven	___ Microwave
26 ___ Dishwasher	___ Trash Compactor	___ Disposal
27 ___ Washer/Dryer	___ Window	___ Rain Gutters
28 ___ Hookups	___ Screens	
29 ___ Security	___ Fire Detection	___ Intercom
30 ___ System	___ Equipment	___ System

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/
9 Slab(s) | <input type="checkbox"/> Basement |
| 10 | <input type="checkbox"/> Walls/Fences | <input type="checkbox"/> Driveways | <input type="checkbox"/> Sidewalks |
| 11 | <input type="checkbox"/> Plumbing/Sewers/
12 Septics | <input type="checkbox"/> Electrical
Systems | <input type="checkbox"/> Lighting
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 | <input type="checkbox"/> Previous Structural
23 (includes or Roof Repair |
| 24 | wood-destroying insects) | |
| 25 | <input type="checkbox"/> Termite or Wood Rot Damage | <input type="checkbox"/> Hazardous or Toxic Waste |
| 26 | Needing Repair | |
| 27 | <input type="checkbox"/> Previous Termite Damage | <input type="checkbox"/> Asbestos Components |
| 28 | <input type="checkbox"/> Previous Termite | <input type="checkbox"/> Urea formaldehyde |
| 29 | Treatment | <input type="checkbox"/> Insulation |
| 30 | <input type="checkbox"/> Previous Flooding | <input type="checkbox"/> Radon Gas |
| 31 | <input type="checkbox"/> Improper Drainage | <input type="checkbox"/> Lead Based Paint |
| 32 | <input type="checkbox"/> Water Penetration | <input type="checkbox"/> Aluminum Wiring |
| 33 | <input type="checkbox"/> Located in 100-Year | <input type="checkbox"/> Previous Fires |
| 34 | Floodplain | |
| 35 | <input type="checkbox"/> Present Flood Insurance | <input type="checkbox"/> Unplatted Easements |
| 36 | Coverage | |
| 37 | <input type="checkbox"/> Landfill, Settling, Soil | <input type="checkbox"/> Subsurface |
| 38 | Movement, Fault Lines | <input type="checkbox"/> Structure or Pits |
| 39 | | <input type="checkbox"/> Previous Use of |
| 40 | | <input type="checkbox"/> Premises for |

Manufacture of
Methamphetamine

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If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

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

6. Are you (Seller) aware of any of the following?

- Write Yes (Y) if you aware, write No (N) if you are not aware.
- Room additions, structural modifications, or other alterations or repairs made without necessary permits or not in compliance with building codes in effect at that time.
- Homeowners' Association or maintenance fees or assessments.
- Any "common area" (facilities such as pools, tennis courts, walkways, or other areas) co-owned in undivided interest with others.
- Any notices of violations of deed restrictions or governmental ordinances affecting the condition or use of the Property.
- Any lawsuits directly or indirectly affecting the Property.
- Any condition on the Property which materially affects the physical health or safety of an individual.

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

7 [6]. If the property is located in a coastal area that is seaward of the Gulf Intracoastal Waterway or within 1,000 feet of the mean high tide bordering the Gulf of Mexico, the property may be subject to the Open Beaches Act or the Dune Protection Act (Chapter 61 or 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 _____
6 Date Signature of Seller

7 The undersigned purchaser hereby acknowledges receipt of the
8 foregoing notice [~~and acknowledges the property complies with the
9 smoke detector requirements of Chapter 766, Health and Safety Code,
10 or, if the property does not comply with the smoke detector
11 requirements of Chapter 766, the buyer waives the buyer's rights to
12 have smoke detectors installed in compliance with Chapter 766~~].

13 _____
14 Date Signature of Purchaser

15 SECTION 2. Chapter 51, Property Code, is amended by adding
16 Section 51.0051 to read as follows:

17 Sec. 51.0051. CERTAIN WAIVERS PROHIBITED. A person's right
18 to bring an action for a determination of a property's fair market
19 value under Section 51.003, 51.004, or 51.005 may not be waived by
20 contract. A contract provision that violates this section is void.

21 SECTION 3. The change in law made by this Act to Section
22 5.008, Property Code, applies only to a notice executed on or after
23 the effective date of this Act. A notice executed before the
24 effective date of this Act is governed by the law in effect
25 immediately before that date, and that law is continued in effect
26 for that purpose.

27 SECTION 4. Section 51.0051, Property Code, as added by this
28 Act, applies only to a contract entered into on or after the

1 effective date of this Act. A contract entered into before the
2 effective date of this Act is governed by the law in effect
3 immediately before the effective date of this Act, and that law is
4 continued in effect for that purpose.

5 SECTION 5. This Act takes effect January 1, 2010.

ADOPTED

MAY 26 2009

Atty Gen
Secretary of the Senate

By: Pickett/Fraser

H.B. No. 3502

Substitute the following for ___B. No. _____:

By: [Signature]

C.S. H.B. No. 3502

A BILL TO BE ENTITLED

AN ACT

relating to acknowledgements required of a purchaser of residential real property in connection with the receipt of a seller's disclosure notice regarding the property.

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 | |

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

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

38 If yes, then describe. (Attach additional sheets if necessary):

39 _____
40 _____

41 2. Does the property have working smoke detectors installed in
42 accordance with the smoke detector requirements of Chapter 766,
43 Health and Safety Code?* Yes No Unknown.

44 If the answer to the question above is no or unknown, explain.

1 (Attach additional sheets if necessary): _____
2 _____
3 _____

4 *Chapter 766 of the Health and Safety Code requires
5 one-family or two-family dwellings to have working smoke detectors
6 installed in accordance with the requirements of the building code
7 in effect in the area in which the dwelling is located, including
8 performance, location, and power source requirements. If you do
9 not know the building code requirements in effect in your area, you
10 may check unknown above or contact your local building official for
11 more information. A buyer may require a seller to install smoke
12 detectors for the hearing impaired if: (1) the buyer or a member of
13 the buyer's family who will reside in the dwelling is hearing
14 impaired; (2) the buyer gives the seller written evidence of the
15 hearing impairment from a licensed physician; and (3) within 10
16 days after the effective date, the buyer makes a written request for
17 the seller to install smoke detectors for the hearing impaired and
18 specifies the locations for installation. The parties may agree who
19 will bear the cost of installing the smoke detectors and which brand
20 of smoke detectors to install.

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

23 Write Yes (Y) if you are aware, write No (N) if you are not aware.
24 Interior Walls Ceilings Floors
25 Exterior Walls Doors Windows
26 Roof Foundation/
27 Slab(s) Basement
28 Walls/Fences Driveways Sidewalks
29 Plumbing/Sewers/
30 Septics Electrical Lighting
 Systems Fixtures

1 Other Structural Components (Describe): _____
2 _____
3 _____

4 If the answer to any of the above is yes, explain. (Attach
5 additional sheets if necessary): _____
6 _____
7 _____

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

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

- | | |
|--|---|
| 10 <input type="checkbox"/> Active Termites | <input type="checkbox"/> Previous Structural |
| 11 <input type="checkbox"/> (includes | <input type="checkbox"/> or Roof Repair |
| 12 <input type="checkbox"/> wood-destroying insects) | |
| 13 <input type="checkbox"/> Termite or Wood Rot Damage | <input type="checkbox"/> Hazardous or Toxic Waste |
| 14 <input type="checkbox"/> Needing Repair | |
| 15 <input type="checkbox"/> Previous Termite Damage | <input type="checkbox"/> Asbestos Components |
| 16 <input type="checkbox"/> Previous Termite | <input type="checkbox"/> Urea formaldehyde |
| 17 <input type="checkbox"/> Treatment | <input type="checkbox"/> Insulation |
| 18 <input type="checkbox"/> Previous Flooding | <input type="checkbox"/> Radon Gas |
| 19 <input type="checkbox"/> Improper Drainage | <input type="checkbox"/> Lead Based Paint |
| 20 <input type="checkbox"/> Water Penetration | <input type="checkbox"/> Aluminum Wiring |
| 21 <input type="checkbox"/> Located in 100-Year | <input type="checkbox"/> Previous Fires |
| 22 <input type="checkbox"/> Floodplain | |
| 23 <input type="checkbox"/> Present Flood Insurance | <input type="checkbox"/> Unplatted Easements |
| 24 <input type="checkbox"/> Coverage | |
| 25 <input type="checkbox"/> Landfill, Settling, Soil | <input type="checkbox"/> Subsurface |
| 26 <input type="checkbox"/> Movement, Fault Lines | <input type="checkbox"/> Structure or Pits |
| 27 | <input type="checkbox"/> Previous Use of |
| 28 | <input type="checkbox"/> Premises for |
| 29 | <input type="checkbox"/> Manufacture of |
| 30 | <input type="checkbox"/> Methamphetamine |

31 If the answer to any of the above is yes, explain. (Attach
32 additional sheets if necessary): _____
33 _____
34 _____

35 5. Are you (Seller) aware of any item, equipment, or system in or
36 on the property that is in need of repair? Yes (if you are
37 aware) No (if you are not aware). If yes, explain (attach

1 additional sheets as necessary). _____

2 6. Are you (Seller) aware of any of the following?

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

4 Room additions, structural modifications, or other
5 alterations or repairs made without necessary permits or not
6 in compliance with building codes in effect at that time.

7 Homeowners' Association or maintenance fees or assessments.

8 Any "common area" (facilities such as pools, tennis courts,
9 walkways, or other areas) co-owned in undivided interest with
10 others.

11 Any notices of violations of deed restrictions or
12 governmental ordinances affecting the condition or use of the
13 Property.

14 Any lawsuits directly or indirectly affecting the Property.

15 Any condition on the Property which materially affects the
16 physical health or safety of an individual.

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

19 _____

20 _____

21 7 [6]. If the property is located in a coastal area that is seaward
22 of the Gulf Intracoastal Waterway or within 1,000 feet of the mean
23 high tide bordering the Gulf of Mexico, the property may be subject
24 to the Open Beaches Act or the Dune Protection Act (Chapter 61 or
25 63, Natural Resources Code, respectively) and a beachfront
26 construction certificate or dune protection permit may be required
27 for repairs or improvements. Contact the local government with
28 ordinance authority over construction adjacent to public beaches
29 for more information.

30 _____
31 Date

Signature of Seller

32 The undersigned purchaser hereby acknowledges receipt of the
33 foregoing notice [~~and acknowledges the property complies with the~~
34 ~~smoke detector requirements of Chapter 766, Health and Safety Code,~~

1 ~~or, if the property does not comply with the smoke detector~~
2 ~~requirements of Chapter 766, the buyer waives the buyer's rights to~~
3 ~~have smoke detectors installed in compliance with Chapter 766].~~

4 _____
5 Date Signature of Purchaser

6 SECTION 2. The change in law made by this Act to Section
7 5.008, Property Code, applies only to a notice executed on or after
8 the effective date of this Act. A notice executed before the
9 effective date of this Act is governed by the law in effect
10 immediately before that date, and that law is continued in effect
11 for that purpose.

12 SECTION 3. This Act takes effect January 1, 2010.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 27, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3502 by Pickett (Relating to acknowledgements required of a purchaser of residential real property in connection with the receipt of a seller's disclosure notice regarding the property.),
As Passed 2nd House

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 329 Real Estate Commission

LBB Staff: JOB, SD, JRO, NV

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 18, 2009

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3502 by Pickett (Relating to acknowledgements required of a purchaser of residential real property in connection with the receipt of a seller's disclosure notice regarding the property.),
Committee Report 2nd House, Substituted

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 329 Real Estate Commission

LBB Staff: JOB, JRO, NV

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 13, 2009

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3502 by Pickett (Relating to waiver of certain statutory rights in connection with a purchase of or loan secured by real property.), **As Engrossed**

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 329 Real Estate Commission

LBB Staff: JOB, JRO, NV

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 20, 2009

TO: Honorable Joe Deshotel, Chair, House Committee on Business & Industry

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3502 by Pickett (Relating to acknowledgements required of a purchaser of residential real property in connection with the receipt of a seller's disclosure notice regarding the property.),
Committee Report 1st House, Substituted

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 329 Real Estate Commission

LBB Staff: JOB, JRO, NV

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 6, 2009

TO: Honorable Joe Deshotel, Chair, House Committee on Business & Industry

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3502 by Pickett (Relating to certain information on a seller's disclosure notice.), **As Introduced**

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 329 Real Estate Commission

LBB Staff: JOB, JRO, NV

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