86R87 NC-D

By:  Bettencourt, et al. S.B. No. 1220

A BILL TO BE ENTITLED

AN ACT

relating to requiring notices of property located in floodplains, flood pools, or reservoirs to be provided by sellers of real property and on subdivision plats.

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

SECTION 1.  Section 212.004, Local Government Code, is amended by amending Subsection (b) and adding Subsection (f) to read as follows:

(b)  To be recorded, the plat must:

(1)  describe the subdivision by metes and bounds;

(2)  locate the subdivision with respect to a corner of the survey or tract or an original corner of the original survey of which it is a part; [~~and~~]

(3)  state the dimensions of the subdivision and of each street, alley, square, park, or other part of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, square, park, or other part; and

(4)  include a certification by a surveyor or engineer registered to practice in this state describing any area of the subdivision that is in a 100-year floodplain, 500-year floodplain, flood pool, or reservoir or stating that no area is in a 100-year floodplain, 500-year floodplain, flood pool, or reservoir.

(f)  In this section, "100-year floodplain," "500-year floodplain," "flood pool," and "reservoir" have the meanings assigned by Section 5.020, Property Code.

SECTION 2.  Section 232.001, Local Government Code, is amended by amending Subsection (b) and adding Subsection (g) to read as follows:

(b)  To be recorded, the plat must:

(1)  describe the subdivision by metes and bounds;

(2)  locate the subdivision with respect to an original corner of the original survey of which it is a part; [~~and~~]

(3)  state the dimensions of the subdivision and of each lot, street, alley, square, park, or other part of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, square, park, or other part; and

(4)  include a certification by a surveyor or engineer registered to practice in this state describing any area of the subdivision that is in a 100-year floodplain, 500-year floodplain, flood pool, or reservoir or stating that no area is in a 100-year floodplain, 500-year floodplain, flood pool, or reservoir.

(g)  In this section, "100-year floodplain," "500-year floodplain," "flood pool," and "reservoir" have the meanings assigned by Section 5.020, Property Code.

SECTION 3.  Section 232.021, Local Government Code, is amended by amending Subdivisions (1) and (4) and adding Subdivisions (1-a) and (8-a) to read as follows:

(1)  "100-year floodplain" and "500-year floodplain" have the meanings assigned by Section 5.020, Property Code.

(1-a)  "Board" means the Texas Water Development Board.

(4)  "Flood pool" has the meaning assigned by Section 5.020, Property Code [~~"Floodplain" means any area in the 100-year floodplain that is susceptible to being inundated by water from any source or that is identified by the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. Sections 4001 through 4127)~~].

(8-a)  "Reservoir" has the meaning assigned by Section 5.020, Property Code.

SECTION 4.  Section 232.023(b), Local Government Code, is amended to read as follows:

(b)  A plat required under this section must:

(1)  be certified by a surveyor or engineer registered to practice in this state;

(2)  define the subdivision by metes and bounds;

(3)  locate the subdivision with respect to an original corner of the original survey of which it is a part;

(4)  describe each lot, number each lot in progression, and give the dimensions of each lot;

(5)  state the dimensions of and accurately describe each lot, street, alley, square, park, or other part of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, square, park, or other part;

(6)  include or have attached a document containing a description in English and Spanish of the water and sewer facilities and roadways and easements dedicated for the provision of water and sewer facilities that will be constructed or installed to service the subdivision and a statement specifying the date by which the facilities will be fully operable;

(7)  have attached a document prepared by an engineer registered to practice in this state certifying that the water and sewer service facilities proposed under Subdivision (6) are in compliance with the model rules adopted under Section 16.343, Water Code, and a certified estimate of the cost to install water and sewer service facilities;

(8)  provide for drainage in the subdivision to:

(A)  avoid concentration of storm drainage water from each lot to adjacent lots;

(B)  provide positive drainage away from all buildings; and

(C)  coordinate individual lot drainage with the general storm drainage pattern for the area;

(9)  include a description of the drainage requirements as provided in Subdivision (8);

(10)  identify the topography of the area;

(11)  include a certification by a surveyor or engineer registered to practice in this state describing any area of the subdivision that is in a 100-year floodplain, 500-year floodplain, flood pool, or reservoir or stating that no area is in a 100-year floodplain, 500-year floodplain, flood pool, or reservoir; and

(12)  include certification that the subdivider has complied with the requirements of Section 232.032 and that:

(A)  the water quality and connections to the lots meet, or will meet, the minimum state standards;

(B)  sewer connections to the lots or septic tanks meet, or will meet, the minimum requirements of state standards;

(C)  electrical connections provided to the lot meet, or will meet, the minimum state standards; and

(D)  gas connections, if available, provided to the lot meet, or will meet, the minimum state standards.

SECTION 5.  Section 232.024(b), Local Government Code, is amended to read as follows:

(b)  If any part of a plat applies to land intended for residential housing and any part of that land lies in a 100-year floodplain, the commissioners court shall not approve the plat unless:

(1)  the subdivision is developed in compliance with the minimum requirements of the National Flood Insurance Program and local regulations or orders adopted under Section 16.315, Water Code; and

(2)  the plat evidences a restrictive covenant prohibiting the construction of residential housing in any area of the subdivision that is in a 100-year floodplain unless the housing is developed in compliance with the minimum requirements of the National Flood Insurance Program and local regulations or orders adopted under Section 16.315, Water Code.

SECTION 6.  Section 5.008(b), Property Code, is 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).

|  |
| --- |
|  |
| \_\_ Range |  | \_\_ Oven |  | \_\_ Microwave |
| \_\_ Dishwasher |  | \_\_ Trash Compactor |  | \_\_ Disposal |
| \_\_ Washer/Dryer |  | \_\_ Window |  | \_\_ Rain Gutters |
|    Hookups |  |    Screens |  |  |
| \_\_ Security |  | \_\_ Fire Detection |  | \_\_ Intercom |
|    System |  |    Equipment |  |    System |
|  |  | \_\_ Smoke Detector |  |  |
|  |  | \_\_ Smoke Detector - |  |  |
|  |  |    Hearing Impaired |  |  |
|  |  | \_\_ Carbon Monoxide |  |  |
|  |  |    Alarm |  |  |
|  |  | \_\_ Emergency Escape |  |  |
|  |  |    Ladder(s) |  |  |
| \_\_ TV Antenna |  | \_\_ Cable TV |  | \_\_ Satellite |
|  |  |    Wiring |  |    Dish |
| \_\_ Ceiling Fan(s) |  | \_\_ Attic Fan(s) |  | \_\_ Exhaust |
|  |  |  |  |    Fan(s) |
| \_\_ Central A/C |  | \_\_ Central Heating |  | \_\_ Wall/Window |
|  |  |  |  |    Air |
|  |  |  |  |    Conditioning |
| \_\_ Plumbing System |  | \_\_ Septic System |  | \_\_ Public Sewer |
|  |  |  |  |    System |
| \_\_ Patio/Decking |  | \_\_ Outdoor Grill |  | \_\_ Fences |
| \_\_ Pool |  | \_\_ Sauna |  | \_\_ Spa |
|  |  |  |  | \_\_ Hot Tub |
| \_\_ Pool Equipment |  | \_\_ Pool Heater |  | \_\_ Automatic Lawn |
|  |  |  |  |    Sprinkler |
|  |  |  |  |    System |
| \_\_ Fireplace(s) & |  |  |  | \_\_ Fireplace(s) & |
|    Chimney |  |  |  |    Chimney |
|    (Woodburning) |  |  |  |    (Mock) |
| \_\_ Natural Gas Lines |  |  |  | \_\_ Gas Fixtures |
| \_\_ Liquid Propane Gas: |  | \_\_ LP Community |  | \_\_ LP on Property |
|  |  |    (Captive) |  |  |
| Garage: \_\_ Attached |  | \_\_ Not Attached |  | \_\_ Carport |
| Garage Door Opener(s): |  | \_\_ Electronic |  | \_\_ Control(s) |
| Water Heater: |  | \_\_ Gas |  | \_\_ Electric |
| Water Supply: \_\_ City |  | \_\_ Well \_\_ MUD |  | \_\_ Co-op |

Roof Type:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Age:  \_\_\_\_\_(approx)

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

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

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

|  |
| --- |
|  |
| \_\_ Interior Walls |  | \_\_ Ceilings |  | \_\_ Floors |  |
| \_\_ Exterior Walls |  | \_\_ Doors |  | \_\_ Windows |  |
| \_\_ Roof |  | \_\_ Foundation/ |  | \_\_ Basement |  |
|  |  |    Slab(s) |  |  |  |
| \_\_ Walls/Fences |  | \_\_ Driveways |  | \_\_ Sidewalks |  |
| \_\_ Plumbing/Sewers/ |  | \_\_ Electrical |  | \_\_ Lighting |  |
|    Septics |  |    Systems |  |    Fixtures |  |

\_\_ Other Structural Components (Describe):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

|  |
| --- |
|  |
| \_\_ Active Termites |  | \_\_ Previous Structural |
|    (includes |  |    or Roof Repair |
|    wood-destroying insects) |  |  |
| \_\_ Termite or Wood Rot Damage |  | \_\_ Hazardous or Toxic Waste |
|    Needing Repair |
| \_\_ Previous Termite Damage |  | \_\_ Asbestos Components |
| \_\_ Previous Termite |  | \_\_ Urea formaldehyde |
|    Treatment |  |    Insulation |
| \_\_ Previous Flooding |  | \_\_ Radon Gas |
| \_\_ Improper Drainage |  | \_\_ Lead Based Paint |
| \_\_ Water Penetration |  | \_\_ Aluminum Wiring |
| [~~\_\_ Located in 100-Year~~ |  | \_\_ Previous Fires |
|    ~~Floodplain~~] |  |  |
| \_\_ Present Flood Insurance |  | \_\_ Unplatted Easements |
|    Coverage |  |  |
| \_\_ Landfill, Settling, Soil |  | \_\_ Subsurface |
|    Movement, Fault Lines |  |    Structure or Pits |
| \_\_ Single Blockable Main |  | \_\_ Previous Use of Premises |
|    Drain in Pool/Hot |  |    for Manufacture of |
|    Tub/Spa\* |  |    Methamphetamine |

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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\*A single blockable main drain may cause a suction entrapment hazard for an individual.

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 are 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. |
| \_\_  | Any rainwater harvesting system located on the property that is larger than 500 gallons and that uses a public water supply as an auxiliary water source. |
| \_\_ | Any portion of the property that is located in a groundwater conservation district or a subsidence district. |

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

8.  This property may be located near a military installation and may be affected by high noise or air installation compatible use zones or other operations.  Information relating to high noise and compatible use zones is available in the most recent Air Installation Compatible Use Zone Study or Joint Land Use Study prepared for a military installation and may be accessed on the Internet website of the military installation and of the county and any municipality in which the military installation is located.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_         \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date                     Signature of Seller

The undersigned purchaser hereby acknowledges receipt of the foregoing notice.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_         \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date                     Signature of Purchaser

SECTION 7.  Subchapter A, Chapter 5, Property Code, is amended by adding Section 5.020 to read as follows:

Sec. 5.020.  NOTICE OF FLOODPLAIN, FLOOD POOL, OR RESERVOIR. (a) In this section:

(1)  "100-year floodplain" means any area of land that is identified as an area that has a one percent chance of being inundated by a flood event each year on a flood insurance rate map.

(2)  "500-year floodplain" means any area of land that is identified as an area that has a two-tenths of one percent chance of being inundated by a flood event each year on a flood insurance rate map.

(3)  "Flood pool" means the area adjacent to a reservoir that lies above the normal maximum operating level of the reservoir and that is subject to controlled inundation under the management of the United States Army Corps of Engineers.

(4)  "Flood insurance rate map" means the most recent flood hazard map published by the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. Section 4001 et seq.).

(5)  "Reservoir" means a water impoundment project operated by the United States Army Corps of Engineers that is intended to retain water or delay the runoff of water in a designated surface area of land.

(b)  This section applies only to the sale of residential or commercial real property located in a 100-year floodplain, 500-year floodplain, flood pool, or reservoir.

(c)  On or before the date a seller of real property and a purchaser enter into a contract binding the purchaser to purchase the property, the seller shall give to the purchaser a signed, written notice in substantially the following form:

NOTICE OF FLOODPLAIN, FLOOD POOL, OR RESERVOIR

The property at \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (street address and city) or described as \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (legal description) is located (check as applicable):

( ) wholly  ( ) partly in a 100-year floodplain

( ) wholly  ( ) partly in a 500-year floodplain

( ) wholly  ( ) partly in a flood pool

( ) wholly  ( ) partly in a reservoir

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Purchaser's signature)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Date)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Seller's signature)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Date)

(d)  If a contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason within seven days after the date the purchaser receives:

(1)  the notice from the seller; or

(2)  information described by the notice under Subsection (c) from any other person.

(e)  After the date of the conveyance, the purchaser may bring an action for misrepresentation against the seller if the seller:

(1)  failed to provide the notice before the date of the conveyance; and

(2)  had actual knowledge that the property was located in a 100-year floodplain, 500-year floodplain, flood pool, or reservoir.

SECTION 8.  (a)  The changes in law made by this Act to Sections 212.004, 232.001, 232.021, and 232.023, Local Government Code, apply only to a subdivision plat application submitted for approval on or after the effective date of this Act. A subdivision plat application submitted for approval before the effective date of this Act is governed by the law in effect on the date the application was submitted, and that law is continued in effect for that purpose.

(b)  The changes in law made by this Act in amending Section 5.008, Property Code, and adding Section 5.020, Property Code, apply only to a contract for the sale of real property entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect on the date the contract was entered into, and that law is continued in effect for that purpose.

SECTION 9.  This Act takes effect September 1, 2019.