

By: Murphy

H.B. No. 3839

A BILL TO BE ENTITLED

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

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

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

9 (b) To be recorded, the plat must:

10 (1) describe the subdivision by metes and bounds;

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

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

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

24 (f) In this section, "100-year floodplain," "500-year

1 floodplain," "flood pool," and "reservoir" have the meanings
2 assigned by Section 5.020, Property Code.

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

6 (b) To be recorded, the plat must:

7 (1) describe the subdivision by metes and bounds;

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

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

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

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

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

26 (1) "100-year floodplain" and "500-year floodplain"
27 have the meanings assigned by Section 5.020, Property Code.

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

2 (4) "Flood pool" has the meaning assigned by Section
3 5.020, Property Code [~~"Floodplain" means any area in the 100-year~~
4 ~~floodplain that is susceptible to being inundated by water from any~~
5 ~~source or that is identified by the Federal Emergency Management~~
6 ~~Agency under the National Flood Insurance Act of 1968 (42 U.S.C.~~
7 ~~Sections 4001 through 4127)]].~~

8 (8-a) "Reservoir" has the meaning assigned by Section
9 5.020, Property Code.

10 SECTION 4. Section [232.023\(b\)](#), Local Government Code, is
11 amended to read as follows:

12 (b) A plat required under this section must:

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

15 (2) define the subdivision by metes and bounds;

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

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

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

25 (6) include or have attached a document containing a
26 description in English and Spanish of the water and sewer
27 facilities and roadways and easements dedicated for the provision

1 of water and sewer facilities that will be constructed or installed
2 to service the subdivision and a statement specifying the date by
3 which the facilities will be fully operable;

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

10 (8) provide for drainage in the subdivision to:

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

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

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

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

19 (10) identify the topography of the area;

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

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

27 (A) the water quality and connections to the lots

1 meet, or will meet, the minimum state standards;

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

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

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

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

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

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

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

24 SECTION 6. Section 5.008(b), Property Code, is amended to
25 read as follows:

26 (b) The notice must be executed and must, at a minimum, read
27 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 System | ___ Fire Detection Equipment | ___ Intercom System |
| | ___ Smoke Detector | |
| | ___ Smoke Detector - Hearing Impaired | |
| | ___ Carbon Monoxide Alarm | |
| | ___ Emergency Escape Ladder(s) | |
| ___ TV Antenna | ___ Cable TV | ___ Satellite Dish |
| ___ Ceiling Fan(s) | ___ Wiring | ___ Exhaust Fan(s) |
| ___ Central A/C | ___ Attic Fan(s) | ___ Wall/Window Air Conditioning |
| ___ Plumbing System | ___ Central Heating | ___ Public Sewer System |
| ___ Patio/Decking | ___ Septic System | ___ Fences |
| ___ Pool | ___ Outdoor Grill | ___ Spa |
| ___ Pool Equipment | ___ Sauna | ___ Hot Tub |
| | ___ Pool Heater | ___ Automatic Lawn Sprinkler System |
| ___ Fireplace(s) & Chimney (Woodburning) | | ___ Fireplace(s) & Chimney (Mock) |
| ___ Natural Gas Lines | | ___ Gas Fixtures |

1 impaired; (2) the buyer gives the seller written evidence of the
2 hearing impairment from a licensed physician; and (3) within 10
3 days after the effective date, the buyer makes a written request for
4 the seller to install smoke detectors for the hearing impaired and
5 specifies the locations for installation. The parties may agree
6 who will bear the cost of installing the smoke detectors and which
7 brand of smoke detectors to install.

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

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

- 11 Interior Walls Ceilings Floors
- 12 Exterior Walls Doors Windows
- 13 Roof Foundation/
14 Slab(s) Basement
- 15 Walls/Fences Driveways Sidewalks
- 16 Plumbing/Sewers/
17 Septics Electrical Lighting
18 Systems Fixtures

19 Other Structural Components (Describe): _____

20 _____

21 _____

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

24 _____

25 _____

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

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

- 28 Active Termites Previous Structural
29 (includes or Roof Repair
- 30 wood-destroying insects)
- 31 Termite or Wood Rot Damage Hazardous or Toxic Waste
- 32 Needing Repair
- 33 Previous Termite Damage Asbestos Components
- 34 Previous Termite Urea formaldehyde
- 35

- 1 Treatment
- 2 Previous Flooding
- 3 Improper Drainage
- 4 Water Penetration
- 5 [~~Located in 100-Year~~
- 6 ~~Floodplain~~]
- 7 Present Flood Insurance
- 8 Coverage
- 9 Landfill, Settling, Soil
- 10 Movement, Fault Lines
- 11 Single Blockable Main
- 12 Drain in Pool/Hot
- 13 Tub/Spa*
- Insulation
- Radon Gas
- Lead Based Paint
- Aluminum Wiring
- Previous Fires
- Unplatted Easements
- Subsurface
- Structure or Pits
- Previous Use of Premises
- for Manufacture of
- Methamphetamine

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

16 _____
17 _____

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

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

24 _____

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

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

- 27
- 28 Room additions, structural modifications, or other
- 29 alterations or repairs made without necessary permits or not
- 30 in compliance with building codes in effect at that time.
- 31 Homeowners' Association or maintenance fees or assessments.
- 32 Any "common area" (facilities such as pools, tennis courts,
- 33 walkways, or other areas) co-owned in undivided interest with
- 34 others.
- 35 Any notices of violations of deed restrictions or
- 36 governmental ordinances affecting the condition or use of the
- 37 Property.
- 38 Any lawsuits directly or indirectly affecting the Property.
- 39 Any condition on the Property which materially affects the
- 40 physical health or safety of an individual.

- 1 Any rainwater harvesting system located on the property that
- 2 is larger than 500 gallons and that uses a public water supply
- 3 as an auxiliary water source.
- 4 Any portion of the property that is located in a groundwater
- 5 conservation district or a subsidence district.

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

10 7. If the property is located in a coastal area that is seaward of
 11 the Gulf Intracoastal Waterway or within 1,000 feet of the mean high
 12 tide bordering the Gulf of Mexico, the property may be subject to
 13 the Open Beaches Act or the Dune Protection Act (Chapter 61 or 63,
 14 Natural Resources Code, respectively) and a beachfront
 15 construction certificate or dune protection permit may be required
 16 for repairs or improvements. Contact the local government with
 17 ordinance authority over construction adjacent to public beaches
 18 for more information.

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

27 _____
 28 Date Signature of Seller

29 The undersigned purchaser hereby acknowledges receipt of the
 30 foregoing notice.

1 _____
2 Date Signature of Purchaser

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

5 Sec. 5.020. NOTICE OF FLOODPLAIN, FLOOD POOL, OR RESERVOIR.

6 (a) In this section:

7 (1) "100-year floodplain" means any area of land that
8 is identified as an area that has a one percent chance of being
9 inundated by a flood event each year on a flood insurance rate map.

10 (2) "500-year floodplain" means any area of land that
11 is identified as an area that has a two-tenths of one percent chance
12 of being inundated by a flood event each year on a flood insurance
13 rate map.

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

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

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

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

1 floodplain, flood pool, or reservoir.

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

6 NOTICE OF FLOODPLAIN, FLOOD POOL, OR RESERVOIR

7 The property at _____ (street address and city) or
8 described as _____ (legal description) is located (check
9 as applicable):

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

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

12 () wholly () partly in a flood pool

13 () wholly () partly in a reservoir

14 _____

15 (Purchaser's signature)

16 _____

17 (Date)

18 _____

19 (Seller's signature)

20 _____

21 (Date)

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

26 (1) the notice from the seller; or

27 (2) information described by the notice under

1 Subsection (c) from any other person.

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

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

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

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

18 (b) The changes in law made by this Act in amending Section
19 [5.008](#), Property Code, and adding Section [5.020](#), Property Code,
20 apply only to a contract for the sale of real property entered into
21 on or after the effective date of this Act. A contract entered into
22 before the effective date of this Act is governed by the law in
23 effect on the date the contract was entered into, and that law is
24 continued in effect for that purpose.

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