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SELLER DISCLOSURE ACT REVISIONS

House Bill 5014 (Substitute H-1) First Analysis (12-2-99)

Sponsor: Rep. Mary Ann Middaugh
Committee: Regulatory Reform

THE APPARENT PROBLEM:

Reportedly, the Michigan Association of Realtors has been soliciting suggestions from its members for changes to the Seller Disclosure Statement form required under the Seller Disclosure Act in order to alleviate problems that have been occurring between sellers and buyers.

In addition, changes have been made to the property tax law that makes some information required on the form not only out of date, but misleading. For example, the form requires the most recent state equalized valuation (SEV) of the property to be listed. However, changes brought about by Proposal A in 1994 provide for property assessments to be limited to an increase of five percent per year or the rate of inflation, whichever is lower. When property is transferred, it is reassessed at the current market value and the property tax is adjusted to reflect taxes based on the current SEV. Therefore, listing the most recent SEV can be misleading. Legislation has been proposed that would incorporate the suggestions made by members of the real estate industry and also incorporate changes to the property tax laws.

THE CONTENT OF THE BILL:

The Seller Disclosure Act (Public Act 92 of 1993) requires sellers of residential property to make certain written disclosures about the property to prospective buyers. The bill would make the following additions to the information already required to be listed on the seller disclosure statement form:

- A buyer could terminate a purchase agreement if the seller failed to provide a signed disclosure statement.
- A statement would be added that all the items listed under the section of the disclosure form entitled "Appliances/Systems/Services" would be included in the sale of the property only if provided for in the purchase agreement. "Washer" and "dryer" would be added to the list of appliances, and "furnace" would be changed to "wall furnace". Unless otherwise agreed upon, all household appliances would be sold in working

order except as noted on the disclosure form, and would be without warranty beyond the date of closing.

- Under "Property conditions, improvements & additional information", a seller would have to disclose whether or not he or she had flood insurance on the property and if he or she owned the mineral rights. Also, any evidence of water in a crawl space would have to be disclosed.

- Any outstanding utility assessments or fees, including any natural gas main extension surcharges, and any outstanding municipal assessments or fees would have to be disclosed, as well as any pending litigation that could affect the property or the seller's right to convey it.

- Language would be added to specify that a buyer should obtain professional advice and inspections of the property to more fully determine the condition of the property. In addition, buyers would be advised that the state equalized value of the property (SEV) and other real property tax information can be obtained from the appropriate local assessor's office. Buyers would also be advised not to assume that the tax bill on the property would be the same as the seller's present tax bill because under Michigan law, real property tax obligations can change significantly when property is transferred. A requirement that the most recent state equalized valuation of the property be included on the disclosure form would be deleted.

- A seller disclosure form in use at the time of the bill's effective date could still be used and would be considered in compliance until 90 days after the effective date of the bill.

MCL 565.957

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

When a home or other property is sold, the seller must provide certain information about the property to prospective buyers. This is true whether or not a real estate agent is involved in the transaction. The bill would incorporate changes to the Seller Disclosure Statement form that have been suggested by members of the real estate industry. The bill would require several additions to the list of information that must be disclosed, such as whether flood insurance had been maintained on the property and whether or not the seller has the mineral rights to the property. In addition, important clarifications would be added; for example, buyers would clearly know that a purchase agreement could be canceled if the seller failed to provide a signed disclosure statement. Buyers would be advised to obtain professional advice and inspections of the property in order to have a more accurate picture of the condition of the property. Most importantly, buyers would be advised that the amount of property taxes that the seller is paying yearly would not necessarily be the same that the buyer would be assessed. Under Proposal A, the annual increase in the property assessment is capped at five percent or the rate of inflation, whichever is lower. When a piece of property is sold, the tax rate is adjusted to the current SEV level. Since in many areas the market value of homes and land has grown faster than the rate of inflation, buyers may pay significantly higher taxes than the current owner. Therefore, it is important for buyers, and especially first time homeowners, to be aware of this so that the buyer can determine if he or she can afford both the monthly mortgage and the property tax that would be assessed when the property changes ownership. The bill would not only alert buyers to this fact, but also direct them to the local assessor’s office, where accurate information can be obtained. This is particularly important since many homes and properties are sold by individuals without the assistance and expertise of real estate professionals. Basically, the additional information that the bill requires to be reported will minimize “surprises” and better allow buyers to make informed choices.

POSITIONS:

The Michigan Association of Realtors support the bill. (11-30-99)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.