

OWNER-BUILT RESIDENCE TRANSFER ACT

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 577 (as passed by the Senate)

Sponsor: Sen. Jud Gilbert, II

House Committee: Regulatory Reform

Senate Committee: Economic Development and Regulatory Reform

First Analysis (12-11-07)

BRIEF SUMMARY: The bill would regulate the use of an owner built home, require certain disclosures upon the sale or transfer of the home, and provide penalties and remedies for violations of the disclosure requirements.

FISCAL IMPACT: The bill would have no fiscal impact on the Department of Labor and Economic Growth or local units of government. In addition, the bill would not have a significant fiscal impact on the judiciary; any fiscal impact would be related to increased caseload which would depend on the number of lawsuits that might be brought under the bill.

THE APPARENT PROBLEM:

Some people elect to build their own homes instead of contracting with a licensed builder. If the home is later sold to another family, the new buyers may assume that the house was built by a builder licensed through the state, and thus assume that the plumbing, electrical, heating and cooling, flooring, and so forth were all built in adherence to the building codes applicable at the time of construction. It has been suggested that when an owner of an owner-built house sells the home, he or she should be required to disclose that the house was built without the services of a licensed builder.

THE CONTENT OF THE BILL:

The bill would regulate the use of an owner-built home, require certain disclosures upon the transfer of an owner-built home to another person, and provide for penalties and remedies if the disclosure requirements were violated. The bill would apply to a residence that was built by an individual who was not a licensed builder and who intended to live, or intended a family member to live, in the home. The bill would take effect 180 days after enactment.

More specifically, the bill would create the "Owner Built Residence Transfer Act." Upon completion of construction and issuance of the occupancy permit for a residential structure, an owner-builder intending to live in the residential structure would have to either reside in the structure or place it up for sale in any legal manner. The latter provision would only apply if, due to unforeseen circumstances, the owner-builder was unable to reside in the home. This exception could only be used once per calendar year.

Sale or transfer. An owner-builder who actually lived, whether full- or part-time, in the residential structure could not sell or transfer ownership to another for at least 120 days (about four months) after moving into the structure.

Disclosure requirements. An owner-builder who sold the home within two years or less after the date the occupancy permit was issued would have to note in the owner-builder notice form the fact that the home was built by the owner. The form would have to be on a separate sheet of paper, state in 12-point font or larger that the home had been built by an owner-builder who was not a licensed builder, and be signed and dated by the owner-builder. The notice would be supplied at the time the home was offered.

Penalties for failure to disclose. An owner-builder who failed to disclose the fact the home was not built by a licensed builder as required under the bill would be liable for the following:

- The repair costs for any defects in workmanship for up to 18 months after completion of construction, first occupancy, or purchase, whichever came later.
- The cost of any repairs needed to bring the structure into compliance with the building code in effect at the time of the issuance of the occupancy permit.
- The cost for temporary shelter for the buyers if the repairs required the buyer to vacate temporarily or if the defects rendered the structure uninhabitable.

Remedies for a buyer. The buyer of an owner-builder home could bring an action in a court of competent jurisdiction for damages that resulted from a violation of the disclosure requirements. An action would have to be filed within 18 months of completion of the construction, first occupancy, or purchase, whichever came later. If the buyer prevailed in whole or in part in the court action, the court would have to award cost and actual attorney fees.

The remedies allowed by the bill would be cumulative and the use of these remedies would not prevent the use of any other remedies allowed under law.

Definitions. "Owner-builder" would mean an individual who was not a licensed residential builder and who builds, or acts as a general contractor for the construction of, a residential structure in which he or she or a family member actually resides, or intends to occupy for his or her own use, upon the issuance of an occupancy permit.

A "residential structure" would mean a premises used or intended to be used as a residence and related facilities appurtenant to the premises used or intended to be used as an adjunct of residential occupancy (i.e., a garage).

"Residential builder" would mean that term as defined in the Occupational Code (MCL 339.2401).

HOUSE COMMITTEE ACTION:

The bill was not amended by the House Committee.

ARGUMENTS:

For:

When buying a home, buyers want to know that their new residence was constructed according to the building codes in effect at the time of construction. Licensed builders and their contractors (i.e., plumbers, electricians) are required to adhere to current building codes or face license sanctions and civil liability. A person can, however, build his or her own home without being licensed by the state. He or she is still required by law to obtain all necessary building permits and have the work for which a permit was issued inspected by local building inspectors. However, that homeowner does not have to disclose to future buyers that he or she did the work himself or herself. The bill would address this concern by requiring disclosure to potential buyers. An owner-builder who failed to disclose to a potential buyer that he or she built the house without using a licensed builder could be sued by the new owner if the new owner suffered damages (i.e., repair costs to bring the residence up to the code requirements in place at the time of construction).

Against:

The bill is problematic on several counts. First, the owner-builder would be subject to the civil penalties only if he or she failed to disclose that the house was owner built. Under the construction code, a licensed builder is subject to claims for a full 18 months after occupancy or purchase; the owner-builder should not escape liability merely by disclosing that he or she built the house without using a licensed builder. Liability should attach for at least eighteen months after the owner-builder sells the home.

Secondly, the owner-builder only has to live in the house for about four months before selling it, though this would trigger the disclosure requirement. Depending on how long it took a person to build a house (a small house with pre-built components could go up quickly), a person could build and sell one or more homes a year, or close to a year, as a small business. (The "only one time a year" restriction applies only to an owner-builder having to sell the home without occupying it due to unforeseen circumstances.) Allowing an owner-builder to sell a home after occupying it for only four months could enable some to avoid being licensed by the state and therefore the bill could create unfair competition with licensed builders, even though the competition may be on a small scale.

Further, if the owner-builder waited the full two years before selling, the new buyer wouldn't even be aware the home was not built by a licensed builder—a fact that if known, may have resulted in the buyer seeking an independent inspection to identify any code violations or workmanship problems that could affect health and safety before completing the purchase.

Moreover, a person who buys a home from an owner-builder would not be required to tell a future buyer, when reselling the home, that it was not built by a licensed builder. The fact that the home was not built by a licensed professional should always be disclosed to future buyers. It would then be up to a potential buyer to hire an independent inspector and then use the information in the inspection report in his or her purchasing decision.

POSITIONS:

The Michigan Lumber and Building Materials Association indicated support for the bill.
(11-27-07)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Richard Child
Viola Bay Wild

■ 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.