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Seller Disclosure Laws Gain Popularity

by Leonard A. Bernstein and George F. Magera

I. INTRODUCTION

In recent years, an increasing number of states have enacted legislation imposing property disclosure obligations on sellers of residential real property.¹ On July 2, 1996, Pennsylvania joined these states when Pennsylvania's Governor Ridge signed into law Act 1996-84, the Real Estate Seller Disclosure Act ("RESDA").² Like other states' statutes, the RESDA, which became effective on August 31, 1996, imposes an affirmative duty on a seller to deliver a "Seller's Property Disclosure Statement" containing an extraordinarily detailed description of the conditions in and around a seller's home.³ As a result, the RESDA raises questions regarding the scope of the disclosures that a seller must make and the level of knowledge required for a seller to comply with the disclosure requirements.

This article examines the RESDA, its requirements, its effect on current law and practice, and its place among a growing number of similar statutes enacted in other states. Section II of this Article discusses the responsibilities and practices of sellers, buyers, and real estate salespersons under prior law. Section III discusses the RESDA's requirements and its effects on previous existing law and practice. Section IV discusses the national trend toward the enactment of seller disclosure laws and compares the RESDA to the laws en-

acted in other states. Finally, Section V presents the conclusion that the ambiguity and scope of these seller disclosure laws may cause sellers and real estate salespersons and brokers to initiate property inspections for their own protection.

II. PRIOR LAW AND PRACTICE

Prior to the enactment of the real estate disclosure laws, law and practice regarding seller disclosures in residential property transactions could be summarized as modified caveat emptor with voluntary disclosure. In the typical residential real property transaction, the seller would place his or her property on the market; an interested buyer would make an offer; the seller and buyer would enter into a contingent sales agreement; the buyer would have an inspection of the property performed; and, if the inspection and financing were satisfactory, the closing would

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take place.

This practice developed from the common law doctrine of *caveat emptor* — “Let the buyer beware.” Although modified in most states through judicial interpretation, *caveat emptor* imposed a general limited disclosure obligation on the seller and required the buyer to inspect the property.⁴ Under Pennsylvania law, as in other states, a seller of real property had a duty to disclose material defects known to the seller that a buyer could not discover upon reasonable inspection. A seller generally would not be subject to disclosure liability unless the seller knowingly failed to disclose a condition that involved an unreasonable risk of harm to people on the land or made an intentional or negligent misrepresentation regarding the property.⁵

Despite the lack of a comprehensive duty to disclose, in recent years most real estate salespersons and brokers in Pennsylvania and elsewhere required sellers, as a condition to their listing agreement with the agents or brokers, to voluntarily provide some form of a disclosure statement to buyers.⁶ Although versions of the form varied, the forms of disclosure previously used in Pennsylvania generally were not as detailed as the RESDA Disclosure.

Nevertheless, under the common law, the duty of inspection clearly rested with the buyer.

III. THE NEW PENNSYLVANIA REAL ESTATE SELLER DISCLOSURE ACT

A. Scope of the RESDA

The RESDA applies to the transfer of any interest in real estate consisting of one to four residential dwelling units.⁷ A “transfer” expressly includes an exchange, grant, sale, installment

sale, or lease with an option to purchase. The RESDA covers transfers of residential condominium and cooperative units.⁸

While the scope of RESDA is broad, several types of transfers are expressly excluded from RESDA’s coverage. For example, the RESDA does not apply to transfers pursuant to a court order, including, but not limited to transfers ordered by a probate court in the administration of an estate; transfers pursuant to a writ of execution; transfers by a trustee in bankruptcy; transfers by eminent domain and condemnation; and transfers resulting from a decree of specific performance.⁹ The RESDA also does not apply to certain foreclosure transfers, such as transfers to a beneficiary under a deed of trust by a trustee or successor who is in default; transfers under a power of sale or foreclosure sale after a borrower has defaulted; and transfers by a mortgagee or beneficiary under a deed of trust who acquired the real property at a foreclosure sale or by a deed in lieu of foreclosure.¹⁰

The following types of transfers also are not covered by the RESDA: transfers between co-owners; certain inter-family transfers; property settlement, divorce, or separation transfers between spouses; corporate or partnership liquidation transfers to shareholders or partners; and certain new residential construction where (1) the buyer has received a one year written warranty, (2) the dwelling has been inspected for compliance with an applicable building code, and (3) a certificate of occupancy has been issued.¹¹

B. Seller’s Affirmative Duty to Disclose Material Defects

In transactions subject to RESDA, a seller must disclose to a buyer any “material defects

with the property.”¹² A “material defect” is defined as “[a] problem with the property or any portion of it that would have a significant adverse impact on the value of the residential real property or that involves an unreasonable risk to people on the land.”¹³

The seller complies with disclosing such “material defects” in a Seller’s Property Disclosure Statement (the “Disclosure”) by completing all applicable items listed in the Disclosure.¹⁴ The Disclosure must be completed by the seller, and a signed and dated copy must be delivered to the buyer prior to the signing of an agreement of sale. The buyer is required to sign the Disclosure to acknowledge its receipt.¹⁵ The Disclosure must be substantially similar to the extraordinarily detailed model in the RESDA.¹⁶ The Disclosure can be delivered by mail, certified mail, fax, or in person. Delivery to one buyer or the buyer’s agent is deemed delivery to all persons taking title.¹⁷

The Disclosure requires the seller to provide detailed information about the property itself and certain other factors that may affect the property. Regarding the property itself, a seller is required to disclose information concerning the occupancy, roof, basement, crawl spaces, termites and other insects, structure, additions and remodeling, water and sewage, plumbing system, heating and air conditioning, electrical system, equipment and appliances included in the sale, land and soil, hazardous substances, drainage,

and flooding.¹⁸

With respect to the other factors affecting the property, the Disclosure requires the seller to disclose easements, possible legal actions, violations of laws or ordinances, liens, and defects in title.¹⁹ Most significantly, the Disclosure requires the seller to disclose whether the seller knows “of any sliding, earth movement, upheaval subsidence or earth stability problems that have occurred on or that affect the property” or “of any other environmental concerns that might

impact on the property.”²⁰ These requirements are significant because they compel a seller to make affirmative representations concerning the surrounding property that the seller is not selling and may not own.

Finally, to ensure the comprehensiveness of the Disclosure, the Disclosure contains a catch-all provision that asks the seller if there are any “material defects” to the property, dwelling or fixtures that are not disclosed elsewhere on the Disclosure.²¹

The Disclosure form provides that the representations made by the seller in the Disclosure are “accurate and complete to the best of the seller’s knowledge.”

C. How much does the RESDA Require the Seller to Know?

Despite the breadth of the information required to be disclosed in the Disclosure, the RESDA does not clearly state how much, if any, investigation is required of the seller to complete the Disclosure. For instance, the RESDA provides that a seller is not obligated “to make any

specific investigation or inquiry in an effort to complete” the Disclosure.²² The Disclosure form provides that the representations made by the seller in the Disclosure are “accurate and complete to the best of the seller’s knowledge.” The Disclosure also provides that the Disclosure is “not a substitute for any inspections or warranties that the buyer may wish to obtain.”²³

Despite the above provisions of the RESDA which appear to disclaim any affirmative inspection duty on the part of a seller, the RESDA states that if the information required to be disclosed is unknown or not available and “the seller has made an effort to ascertain it,” the seller can make a particular disclosure based on the best information available and identify such disclosure as being based on an “incomplete factual basis.”²⁴ Moreover, if the information in the form is subsequently rendered inaccurate, the RESDA requires the seller to notify the buyer of the inaccuracy, presumably up until closing.²⁵ The RESDA further provides that sellers “shall not be liable for any error, inaccuracy or omission” if: (1) the seller had no knowledge; (2) the error, inaccuracy or omission was based upon a “reasonable belief” that a material defect had been corrected; or (3) the error, inaccuracy or omission was based on the information provided in an inspection and the seller had no knowledge.²⁶

The above provisions suggest that some investigation is required on the part of the seller. First, it appears that the seller must make an effort to ascertain the information. Second, the seller must determine if the information is subsequently rendered inaccurate. Third, the seller must be able to prove that he or she had a “reasonable belief” that a defect had been corrected or that he or she had “no knowledge” of a defect in order to take advantage of the safeharbor rule.

Finally, it seems impractical to expect that the authors would have difficulty completing the Disclosure based on their general knowledge of their homes.

Thus, even though the RESDA does not expressly obligate a seller to obtain an inspection, sellers, real estate salespersons and brokers, and their attorneys may decide not to rely on their general knowledge or the general knowledge of their clients because of the imprecision of the RESDA and may decide to have their own inspections performed.

D. Duty of Realtors

Real estate salespersons and brokers are affirmatively required to advise a seller of the seller’s responsibility under the RESDA and must provide the seller with a form of the Disclosure.²⁷ The RESDA also specifically provides that it does not abrogate or diminish any responsibility of a licensed real estate salesperson or broker imposed under the Pennsylvania Real Estate Licensing and Registration Act (“PRELRA”).²⁸ The RESDA does not impose any other affirmative obligation on a real estate salesperson or broker.

E. RESDA Liability

While the failure to provide the RESDA Disclosure does not invalidate a transfer of real property, any person who willfully or negligently violates the RESDA is liable for actual damages resulting from the violation.²⁹ The RESDA also provides that it is not to “be construed as to restrict or expand the authority of a court to impose punitive damages or apply other remedies applicable under other provisions of law.”³⁰ Thus, it appears that a court could impose puni-

tive damages against a seller based upon willful and wanton conduct in connection with making an intentional misrepresentation under the common law, grant specific performance, or grant remedies to a seller against a broker as provided for under the PRERLA. There is a two year statute of limitations on RESDA lawsuits, which begins to run on the date of final settlement.³¹

F. RESDA Safeharbors

The RESDA protects sellers and real estate salespersons and brokers from liability for material defects that were disclosed, material defects that develop after the agreement of sale, and material defects that occur after final settlement.³² The RESDA provides that real estate salespersons and brokers are not liable for any violations of the RESDA unless they had actual knowledge of the material defect which was not disclosed or of a related misrepresentation.³³

The RESDA also provides sellers with three additional safeharbors from liability for any error, inaccuracy or omission in information delivered pursuant to the RESDA. First, a seller may not be held liable if the seller had no knowledge of the error, inaccuracy or omission.³⁴ Second, a seller may not be held liable if the error, inaccuracy or omission was based on a reasonable belief that a material defect or other matter not disclosed had been corrected.³⁵ Third, a seller may not be held liable if the error, inaccuracy or omission "was based on information provided by a public agency, licensed engineer, land surveyor, structural pest control inspector, home inspector or contractor about matters within the scope of the contractor's occupation and the seller had no knowledge of the error, inaccuracy or omission."³⁶

As the above discussion demonstrates,

the RESDA imposes significant disclosure obligations on sellers involved in a wide variety of residential real estate transfers while raising questions regarding the level of a seller's knowledge required to comply with the disclosure obligation.

IV. NATIONAL TREND

Pennsylvania's enactment of the RESDA represents a continuation of a national trend that began in 1985 when California enacted the first seller disclosure law³⁷ and has seen at least twenty-one other states enact some form of seller disclosure law.³⁸ Prior to this national trend, many states had enacted broker agency disclosure laws, environmental disclosure laws and "stigma" statutes.³⁹

There are several reasons for the switch to the broader seller disclosure laws. First, the laws provide increased consumer protection and fairness to buyers by eliminating a seller's perceived advantage regarding the knowledge of defects and other undesirable conditions. Second, the laws attempt to clarify the seller's disclosure obligations. Third, the laws often lessen the risk of real estate salesperson and broker liability by imposing the property disclosure obligations on the seller. Fourth, some proponents of the laws believe that the seller disclosures will result in fewer disappointed buyers, fewer disrupted sales, and fewer lawsuits.⁴⁰ Interestingly, while little case law, if any, exists given the recent enactment of the seller disclosure laws, litigation in California, since the enactment of California's seller disclosure law in 1985, indicates further increased litigation by buyers against sellers and their real estate sales person and brokers.⁴¹

Opponents of the laws argue that such statutes are too vague and undermine the devel-

opment of the sometimes more stringent common law seller disclosure obligations. Moreover, the opponents allege that the laws unfairly shift most of the risk of liability from the buyer and the real estate salesperson or broker to the seller.⁴²

Despite the arguments against such statutes, the national trend toward seller disclosure laws persists. In fact, given the continued and persistent lobbying of the National Association of Realtors, it seems likely that the national trend will continue to grow and expand into other states.⁴³

This section discusses the mandatory seller disclosure statutes that have been enacted in other states and compares them to the RESDA. This section is not intended as a comprehensive review of such statutes, but neither is meant to highlight some key differences between other state statutes and the RESDA.

A. Scope

Many of the statutes that have been enacted in other states are similar to the RESDA because they apply to transfers of multiple unit residential properties and provide for many of the same exemptions as the RESDA.⁴⁴ The scope of the seller disclosure laws, however, does vary; occasionally, some state statutes are interpreted more narrowly than RESDA. For example, the Texas statute applies to transfers of residential real property comprising not more than one dwelling unit where the value of the dwelling exceeds 5% of the value of the property.⁴⁵ The Mississippi statute appears to apply only to transfers of residential property "when the execution of such transfers is by, or with the aid of, a duly licensed real estate broker or salesperson."⁴⁶ The Idaho statute also exempts transfers to a transferee who has occupied the property as a per-

sonal residence for more than one year immediately prior to the transfer and transfers by a relocation company to a transferee within one year from the date the previous owner occupied the property.⁴⁷ In New Hampshire, a seller only has a disclosure obligation regarding water and sewage.⁴⁸ The New Jersey statute apparently applies only to newly constructed residential real estate.⁴⁹

On the other hand, some statutes may be broader in scope than the RESDA. For example, new homes in California fall within the scope of California's seller disclosure law.⁵⁰ In addition to applying to new homes, Delaware's seller disclosure law does not provide an exemption for the transfer of corporate or partnership property pursuant to a plan of liquidation.⁵¹

B. Seller's Duty

Given that the scope of the seller disclosure laws vary between states, sellers, real estate salespersons and brokers, and their attorneys should specifically examine the scope of such laws to determine if such a law may be applicable to a particular transaction. As expected, the seller disclosure laws are substantially similar regarding a seller's affirmative duty to disclose material defects in the required disclosures.⁵² Variations between the RESDA and the laws enacted in other states do exist, however. For example, in Virginia, a seller of residential real property has an option of providing a residential property disclaimer statement informing the buyer that he or she is receiving the property "as is" or a residential property disclosure statement in which the seller discloses defects to the buyer.⁵³ In Washington, a seller has no duty to provide a disclosure if "the buyer has expressly waived the right to receive the disclosure statement."⁵⁴ Under Michigan's statute, it appears that a seller's

duty may be satisfied by delivering a disclosure statement to the seller's salesperson or broker.⁵⁵ In New Jersey, a seller is required only to provide a purchaser, at the time of entering into a contract for the sale of newly constructed residential real estate, with a notice of the availability of lists containing the off-site conditions that exist within the municipality and any other municipality located within one-half mile of the property.⁵⁶

Again, even though the seller disclosure laws are substantially similar, sellers and their attorneys should examine any applicable state seller disclosure law to determine exactly what disclosure obligations are imposed on the seller.

C. Seller's Knowledge

Similar to the RESDA, the seller disclosure laws enacted in many of the other states disclaim any express seller investigation obligation or provide that the disclosure is not a substitute for any inspection or warranty. These laws also appear to imply that at least some affirmative investigation is required by the seller.⁵⁷ Unlike the RESDA, the Michigan statute does not require a seller to make any attempt to ascertain any knowledge before advising a buyer that the information required to be disclosed is unknown or unavailable to the buyer.⁵⁸ The Delaware seller disclosure law, however, appears to contemplate seller inspections. The statute specifically provides that the disclosure "is not a substitute for any inspections . . . that the seller or buyer may wish to obtain."⁵⁹ Likewise, the Indiana statute provides that a seller is not liable for any error, inaccuracy, or omission if "[t]he owner was not negligent in obtaining information from a third party and transmitting the information."⁶⁰

As the above discussion demonstrates,

the seller disclosure laws enacted in other states, like the RESDA, are not clear on how much, if any, investigation is required of the seller to complete a seller disclosure statement.

D. Duty of Realtors

The duties imposed upon real estate salespersons and brokers under the seller disclosure laws vary on a state by state basis. While some state seller disclosure laws impose obligations similar to the obligations imposed under the RESDA, others are less burdensome.⁶¹ For example, the Alaska seller disclosure law does not appear to impose any affirmative duties on real estate salespersons or brokers.⁶² In contrast, the Delaware statute imposes a disclosure obligation on both the seller and the seller's real estate salesperson or broker.⁶³ The California statute requires a real estate salesperson or broker to make separate disclosures based upon a "reasonably competent and diligent visual inspection of the accessible areas of the property."⁶⁴

E. Liability

Many of the state seller disclosure laws, similar to the RESDA, provide that a seller will be liable for actual damages resulting from any violation.⁶⁵ In addition, the seller disclosure laws enacted in several other states also permit the buyer to rescind the transaction within a certain period of time, usually two to six days (e.g., Michigan requires 72 hours and Indiana requires two days), after a disclosure or amended disclosure is delivered or upon the failure to make a proper disclosure.⁶⁶ Some seller disclosure laws also provide for treble damages, costs or attorneys' fees.⁶⁷ Finally, the Rhode Island statute imposes a civil penalty of \$100 per violation,

coupled with a right to rescind if disclosures are not properly provided in lieu of an express statutory right to actual damages.⁶⁸

F. Safeharbors

Finally, several states provide safeharbors similar to those in the RESDA.⁶⁹ For example, the Maryland seller disclosure law provides that a seller is not liable for an error that is not within the actual knowledge of the seller or if the error, inaccuracy, or omission was based on information provided by a public agency or licensed engineer, land surveyor, geologist, termite inspector, contractor, or other home inspection expert dealing with matters within the scope of his license or expertise.⁷⁰ Conversely, the Delaware seller disclosure law provides safeharbors only for disclosed defects and defects occurring after final settlement.⁷¹ The only safeharbor provided under the Alaska statute is for defects disclosed in the disclosure statement.⁷²

As with the scope of the seller disclosure laws and the duty and liability they impose, a seller, real estate salesperson or broker, and their lawyers should examine any applicable seller disclosure law and determine the safeharbors provided. They should then attempt to structure their actions within such safeharbors.

V. CONCLUSION

As the above discussion demonstrates,

the requirements imposed under the seller disclosure laws vary by state. These variations result from each state's legislative attempt to strike a balance between the arguments presented both for and against such legislation. Currently, the RESDA appears to be middle-of-the-road when compared with the seller disclosure laws enacted in other states.

Unfortunately, the RESDA, and its counterparts in other states, generally leave unanswered the question of "what did the seller know, when did the seller know it, and what obligation did the seller have to ascertain an answer." The question of "knowledge" and the imprecise obligation to investigate that is arguably imposed on the seller can lead to difficult issues and potential litigation. As sellers, real estate salespersons and brokers, and their lawyers attempt to comply with these laws in light of the uncertainty. The seller disclosure laws may cause sellers and real estate salespersons and brokers to initiate property inspections for their own protection.

In conclusion, sellers, real estate salespersons and brokers, and their lawyers should determine whether a seller disclosure law has been enacted in the jurisdiction where the property being sold is located. They should carefully study its scope, obligations and enforcement provisions. They should then determine and take the appropriate action they believe necessary to ensure that proper disclosures are provided on a timely basis.

E N D N O T E S

¹ See, e.g., ALASKA STAT. §§ 34.70.010-34.70.200 (Supp. 1995); CAL. CIV. CODE §§ 1102-1102.15 (West Supp. 1996); DEL. CODE ANN. tit. 6, §§ 2570-2578 (1993); HAW. REV. STAT. §§ 508D-1-508D-20 (Supp. 1996); IDAHO CODE §§ 55-2501-55-

2518 (1994); 765 ILL. COMP. STAT. ANN. 77/1-77/99 (West Supp. 1996); IND. CODE ANN. §§ 24-4.6-2-1-24-4.6-2-13 (Burns 1996); IOWA CODE ANN. §§ 558A.1-558A.8 (West Supp. 1996); MD. CODE ANN., REAL PROP. § 10-702 (1996);

MICH. COMP. LAWS ANN. §§ 565.951–565.966 (West Supp. 1996); MISS. CODE ANN. §§ 89-1-501–89-1-523 (Supp. 1996); N.H. REV. STAT. ANN. § 477:4-C (Supp. 1995); N.J. STAT. ANN. §§ 46:3C-1–46:3C-12 (West Supp. 1996); N.C. GEN. STAT. §§ 47E-1–47E-15 (1995); OHIO REV. CODE ANN. § 5302.30 (Baldwin 1995); OKLA. STAT. tit. 60, §§ 831–839 (Supp. 1996); R. I. GEN. LAWS §§ 5-20.8-1–5-20.8-11 (1995); S.D. CODIFIED LAWS §§ 43-4-37–43-4-44 (Supp. 1996); TENN. CODE ANN. §§ 66-5-201–66-5-210 (Supp. 1996); TEX. PROP. CODE ANN. § 5.008 (West Supp. 1996); VA. CODE ANN. §§ 55-517–55-525 (Michie 1995 & Supp. 1996); WASH. REV. CODE §§ 64.06.005–64.06.900 (Supp. 1996); WIS. STAT ANN. §§ 709.01–709.08 (West Supp. 1995). In addition, certain states have enacted statutes and regulations imposing the obligation to provide a property disclosure on a seller's real estate salesperson or broker. *See, e.g.*, CAL. CIV. CODE § 2079 (West Supp. 1996); ME. REV. STAT. ANN. tit. 32, §§ 13001–13251 (West 1988 & Supp. 1995); KY. REV. STAT. ANN. §§ 324.300–324.990 (Baldwin 1991); N.H. REV. STAT. ANN. §§ 701.04–701.07 (1996). While this article does not discuss in detail these broker disclosure statutes and regulations, for a further discussion of both types of laws, *see, e.g.*, Robert M. Washburn, Article: *Residential Real Estate Condition Disclosure Legislation*, 44 DEPAUL L. REV. 381 (1995); Steven C. Tyszka, Note, *Remnants of the Doctrine of Caveat Emptor May Remain Despite Enactment of Michigan's Seller Disclosure Act*, 41 WAYNE L. REV. 1497 (1995); Carolyn L. Mueller, *Ohio Revised Code Section 5302.30: Real Property Transferor Disclosure — A Form Without Substance*, 19 U. DAYTON L. REV. 783 (1994).

² PA. STAT. ANN. tit. 68, §§ 1021–036 (West 1996).

³ *See id.* §§ 1024–1025 (1996).

⁴ The courts in most states have created a number of exceptions to the doctrine of caveat emptor under which sellers are required to disclose, among other conditions, dangerous latent conditions and non-public legal impairments to title. *See* Tyszka, *supra* note 1, at 1504–05; *see also* Washburn, *supra* note 1, at 386–95 (discussing at length the doctrine of caveat emptor and the disclosure obligations imposed upon sellers by case law in various states).

⁵ *See* Roberts v. Estate of Barbagallo, 531 A.2d 1125 (Pa. Super. Ct. 1987); Shane v. Hoffman, 324 A.2d 532 (Pa. Super. Ct. 1974), *rev'd on other grounds*, Aiello v. Ed Saxe Real Estate, Inc., 499 A.2d 282 (Pa. 1985). *See also* Washburn, *supra* note 1, at 386–95 (discussing other Pennsylvania case law and case law from other states); Mueller, *supra* note 1, at 802–09 (discussing Ohio case law).

⁶ *See* Washburn, *supra* note 1, at 427 (noting that of the states not having a mandatory seller disclosure statute, realtors in a large majority of those states implement a voluntary disclosure program).

⁷ PA. STAT. ANN. tit. 68, § 1023(a) (West 1996).

⁸ *Id.* § 1023(a) (West 1996).

⁹ *Id.* § 1023(b)(1) (West 1996).

¹⁰ *Id.* § 1023(b)(2) (West 1996).

¹¹ *Id.* §§ 1023(b)(3)–(9) (West 1996).

¹² *Id.* § 1024 (West 1996). “Seller” is defined in the RESDA to mean “[a]ny individual, partnership, corporation, trustee or combination thereof transferring any estate or interest in residential real property as provided for in” PA. STAT. ANN. tit. 68, § 1023(a) (West 1996). PA. STAT. ANN. tit. 68, § 1022 (West 1996). Similarly, “buyer” is defined in the RESDA to mean “[a]ny individual, partnership, corporation, trustee or combination thereof purchasing any estate or interest in real property as provided under” PA. STAT. ANN. tit. 68, § 1023(a) (West 1996). PA. STAT. ANN. tit. 68, § 1022 (West 1996).

¹³ *Id.* § 1022 (West 1996).

¹⁴ *Id.* § 1024 (West 1996).

¹⁵ *Id.* §§ 1024–1026 (West 1996).

¹⁶ *Id.* § 1025 (West 1996).

¹⁷ *Id.* § 1026 (West 1996).

¹⁸ *Id.* § 1025 (West 1996).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* The RESDA also provides that “[t]he specification of items for disclosure in this act does not limit or abridge any obligation for disclosure created by any other provision of law or which may exist in order to avoid fraud, misrepresentation or deceit in the transfer transaction.” PA. STAT. ANN. tit. 68, § 1034(a) (West 1996).

²² *Id.* § 1029 (West 1996).

²³ *Id.* § 1025 (West 1996).

²⁴ *Id.* § 1027 (West 1996).

²⁵ *Id.* § 1028 (West 1996).

²⁶ *Id.* § 1030(a) (West 1996).

²⁷ *Id.* § 1034(c) (West 1996). The RESDA defines the term “agent” to mean “[a]ny broker, associate broker or salesperson, as defined in the” Pennsylvania Real Estate Licensing and Registration Act, PA. STAT. ANN. tit. 63, §§ 455.101–455.902 (West 1995 & Supp. 1996) (“PRELRA”). PA. STAT. ANN. tit. 68, § 1022 (West 1996); PA. STAT. ANN. tit. 63, § 455.201 (West 1996).

²⁸ *Id.* § 1034(b) (West 1996). The PRELRA generally requires real estate salespersons and brokers to, among other duties, make certain non-property disclosures to buyers and sellers (*e.g.*, commissions, agency status). *See* PA. STAT. ANN. tit. 63, §§ 455.601–455.609 (West 1995). The PRELRA also prohibits a real estate salesperson or agent from making misrepresentations and false promises and otherwise from engaging in any false or misleading conduct. *See* PA. STAT. ANN. tit. 63, § 455.604 (West 1995).

²⁹ *Id.* § 1032 (West 1996).

³⁰ *Id.* § 1032 (West 1996).

³¹ *Id.* § 1032 (West 1996). “Final settlement” is defined in the RESDA to mean “[t]he time at which the buyer and seller have signed and delivered all papers and consideration to convey title to the estate or interest in real property being conveyed.” PA. STAT. ANN. tit. 68, § 1022 (West 1996).

³² *Id.* §§ 1030–1035 (West 1996).

³³ *Id.* § 1031 (West 1996).

³⁴ *Id.* § 1030(a)(1) (West 1996).

³⁵ *Id.* § 1030(a)(2) (West 1996).

³⁶ *Id.* § 1030(a)(3) (West 1996). Note that the RESDA provides that:

[t]he delivery of any information required to be disclosed by this act to a prospective buyer by a public agency or other person providing information required to be disclosed under this act shall be deemed to comply with the requirements of this act and shall relieve the seller or his agent of any further duty under this act with respect to that item of information.

Id. § 1030(b) (West 1996). Moreover, the RESDA provides that the delivery of a report or opinion delivered by a licensed expert dealing with matters within the scope of such expert's license or expertise "shall be sufficient compliance for application of the exemption provided under [PA. STAT. ANN. tit. 68, § 1030(a)(3) (West 1996)] if the information is provided to the prospective buyer in writing." PA. STAT. ANN. tit. 68, § 1030(c) (West 1996).

³⁷ *Id.* §§ 1024–1026 (West 1996).

³⁸ See statutes cited, *supra* note 1; see also Tyszka, *supra* note 1, at 1499 ("Michigan's seller disclosure legislation is part of a growing trend across the country mandating similar types of disclosure with respect to the sale of residential property."); Mueller, *supra* note 1, at 783 ("On July 1, 1993, Ohio joined a small but rapidly growing number of states which have enacted legislation or promulgated regulations requiring most transferees of residential property to disclose various aspects of the property's physical condition to potential purchasers.").

³⁹ Washburn, *supra* note 1, at 382–83. See, e.g., PA. STAT. ANN. tit. 63, § 455.606–455.608 (West 1995); CAL. HEALTH & SAFETY CODE § 25359.7 (West Supp. 1991); CONN. GEN. STAT. ANN. §§ 22a-134a-d, 22a-452a (West 1990); N.J. STAT. ANN. § 13:1K-6 (West 1994); GA. CODE ANN. § 44-1-16 (Supp. 1992); S.C. CODE ANN. § 40-57-270 (Law. Co-op. 1986 & Supp. 1995). A "stigma statute" is a statute aimed at "shielding sellers and brokers from a failure to disclose psychological or prejudicial factors." Washburn, *supra* note 1, at 382.

⁴⁰ Tyszka, *supra* note 1, at 1498–99, 1507–13.

⁴¹ See, e.g., *Sweat v. Hollister*, 43 Cal. Rptr. 2d 399 (Cal. Ct. App. 1995); *Loken v. Century 21-Award Properties*, 42 Cal. Rptr. 2d 683 (Cal. Ct. App. 1995); *Loughrin v. Superior Court of San Diego County*, 19 Cal. Rptr. 2d 161 (Cal. Ct. App. 1993); *Wilson v. Century 21 Great Western Realty*, 18 Cal. Rptr. 2d 779 (Cal. Ct. App. 1993); *Braiser v. Sparks*, 22 Cal. Rptr. 2d 1 (Cal. Ct. App. 1993); *Alexander v. Mcknight*, 9 Cal. Rptr. 2d 453 (Cal. Ct. App. 1992); see also, *Manning v. VanHala* 1994 WL 615013 (Ohio Ct. App. Nov. 3, 1994).

⁴² Tyszka, *supra* note 1, at 1511; see also Washburn, *supra* note 1, at 428–37 (discussing effects of mandatory seller disclosure statutes on sellers, buyers and real estate salespersons and brokers).

⁴³ See Washburn, *supra*, note 1, at 408–09, 427–28. But see

Washburn, *supra* note 1, at 427–28 (describing Alabama, Florida, New Jersey, Kansas and Tennessee as five states that are unlikely to enact legislation similar to the RESDA).

⁴⁴ 765 ILL. COMP. STAT. ANN. 77/10 and 77/15 (West Supp. 1996); IND. CODE § 24-4.6-2-1 (1996); MD. CODE ANN., REAL PROP. § 10-702(a) (1996); MICH. COMP. LAWS ANN. § 565.952-953 (West Supp. 1996); S.D. CODIFIED LAWS ANN. §§ 43-4-37–38 and 43-4-43 (Supp. 1996); VA. CODE ANN. §§ 55-517–55-519 (Michie 1995 & Supp. 1996).

⁴⁵ See TEX. PROP. CODE ANN. §§ 5.008(a) and (e)(1) (West Supp. 1996).

⁴⁶ See MISS. CODE ANN. § 89-1-501 (Supp. 1996); see also OKLA. STAT. tit. 60, § 832 (Supp. 1996) (defining "seller" to mean a person attempting to transfer property who is often represented by a real estate licensee or who receives a written request from a purchaser to deliver a disclaimer as a disclosure statement).

⁴⁷ IDAHO CODE §§ 55-2505(13) and (15) (1994); see also OHIO REV. CODE ANN. § 5302.30(B)(2)(m) (Baldwin 1995) (providing exemption for transfer to transferee that occupied property as personal residence for one or more years); R.I. GEN. LAWS § 5-20.8-3(9) (1995) (providing execution for transfers by a relocation company).

⁴⁸ See N.H. REV. STAT. ANN. § 477:4-C (Supp. 1995).

⁴⁹ See N.J. STAT. ANN. § 46:3C-8 (West Supp. 1996).

⁵⁰ See CAL. CIV. CODE §§ 1102.2 (West Supp. 1996); see also DEL. CODE ANN. tit. 6 §§ 2571, 2576 and 2577 (1993); IOWA CODE § 558A.1(4) (West Supp. 1996); MISS. CODE ANN. § 89-1-501 and 89-1-502 (Supp. 1996); WASH. REV. CODE §§ 64.06.005 and 64.06.010 (Supp. 1996).

⁵¹ See DEL. CODE ANN. tit. 6 §§ 2577 (1993).

⁵² While the seller's disclosure to this are similar in these states, some states statutes (which are similar to the RESDA) set forth a detailed disclosure statement while others only set forth required terms and language or provide that the appropriate regulator will promulgate regulations setting forth a form of disclosure. See DEL. CODE ANN. tit. 6 § 2572 (1993); IDAHO CODE §§ 55-2506–55-2508 (1994); 765 ILL. COMP. STAT. ANN. 77/20, 77/25 and 77/35 (West Supp. 1996); IOWA CODE §§ 558A.2–558A.4 (West Supp. 1996); MD. CODE ANN., REAL PROP. § 10-702(d) (1996); OHIO REV. CODE ANN. §§ 5302.30(C), (D), (H) and (I) (Baldwin 1995); TEX. PROP. CODE ANN. § 5.008(b) (West Supp. 1996).

⁵³ See VA. CODE ANN. § 55.519 (Michie 1995 & Supp. 1996).

⁵⁴ See WASH. REV. CODE § 64.00.020(1) (Supp. 1996); see also TENN. CODE ANN. § 66-5-203 (Supp. 1996); N.C. GEN. STAT. § 47E-2(11) (1995).

⁵⁵ MICH. COMP. LAWS ANN. § 565.954(1) (West Supp. 1996).

⁵⁶ See N.J. STAT. ANN. §§ 46:3C-8, 46:3C-10 and 46:3C-11 (West Supp. 1996).

⁵⁷ See ALASKA STAT. § 34.70.040 (Supp. 1995); CAL. CIV. CODE §§ 1102.5, 1102.6 and 1102.6(a) (West Supp. 1996); IDAHO CODE §§ 55-2512 and 55-2514 (1994); 765 ILL. COMP. STAT. ANN. 77/20, 77/25 and 77/35 (West Supp. 1996); IOWA CODE ANN. §§ 558A.2–558A.6 (V); MISS. CODE ANN. §§ 89-1-507–

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- 89-1-513(V) (1996).
- ⁵⁸ MICH. COMP. LAWS ANN. § 565.956 (West Supp. 1996); *see also* OHIO REV. CODE ANN. § 5302.30(E) (Baldwin 1995) (providing that an approximation may be used if provided in good faith); S.D. CODIFIED LAWS ANN. §§ 43-4-37-43-4-44 (Supp. 1996); TEX. PROP. CODE ANN. § 5.008(d) (West Supp. 1996); VA. CODE ANN. § 55-522 (Michie 1995 & Supp. 1996).
- ⁵⁹ DEL. CODE ANN. tit. 6 § 2574 (1993).
- ⁶⁰ IND. CODE ANN. § 24-4.6-2-11(2) (Burns 1996); *See also* VA. CODE ANN. § 55-521(A) (Michie 1995 & Supp. 1996); TENN. CODE ANN. § 66-5-204(a)(2) (Supp. 1996).
- ⁶¹ MD. CODE ANN., REAL PROP. § 10-702(l) (1996); VA. CODE ANN. § 55-523 (Michie 1995 & Supp. 1996); TENN. CODE ANN. § 66-5-206 (Supp. 1996).
- ⁶² ALASKA STAT. §§ 34.70.010-34.70.090 (Supp. 1995); *see also* 765 ILL. COMP. STAT. ANN. 77/1-77/99 (West Supp. 1996); R.I. GEN. LAWS § 5-20.8-10 (1995); TEX. PROP. CODE ANN. § 5.005 (West Supp. 1996).
- ⁶³ DEL. CODE ANN. tit. 6 § 2573 (1993); *see also* IOWA CODE ANN. §§ 558A.2(1) and 558A.5(2) (West Supp. 1996); MICH. COMP. LAWS ANN. § 565.954(1) (West Supp. 1996).
- ⁶⁴ CAL. CIV. CODE § 1102.6 (West Supp. 1996).
- ⁶⁵ CAL. CIV. CODE § 1102.13 (West Supp. 1996); IOWA CODE ANN. § 558A.6 (West Supp. 1996).
- ⁶⁶ ALASKA STAT. § 34.70.020 (Supp. 1995); CAL. CIV. CODE § 1102.3 (West Supp. 1996); IDAHO CODE § 55-2515 (1994); 765 ILL. COMP. STAT. ANN. 77/40 (West Supp. 1996) IND. CODE ANN. § 24-4.6-2-13(a) (Burns 1996); MD. CODE ANN., REAL PROP. § 10-702(g) (1996); MISS. CODE ANN. § 89-1-503 (Supp. 1996); OHIO REV. CODE ANN. § 5302.30(k) (Baldwin 1995); S.D. CODIFIED LAWS § 43-4-39 (Supp. 1996); TEX. PROP. CODE ANN. § 5.008(f) (West Supp. 1996); VA. CODE ANN. § 55-524(B)(2) (Michie 1995 & Supp. 1996); WASH. REV. CODE §§ 64.06.030 and 64.06.040 (Supp. 1996); N.C. GEN. STAT. § 47E-5(b) (1995); WIS. STAT. ANN. § 709.05 (West Supp. 1995); *see also* MICH. COMP. LAWS ANN. § 565.954(3) (West Supp. 1996); IND. CODE ANN. § 24-4.6-2-10(c) (Burns 1996) (providing that an accepted offer is not enforceable against a buyer before closing until the owner and prospective buyer have signed the disclosure form).
- ⁶⁷ *See* ALASKA STAT. § 34.70.090 (Supp. 1995); 765 ILL. COMP. STAT. ANN. 77/55 (West Supp. 1996); S.D. CODIFIED LAWS ANN. § 43-4-42 (1996).
- ⁶⁸ *See* R.I. GEN. LAWS §§ 5-20.8-5(b) and 5-20.8-4 (1995).
- ⁶⁹ CAL. CIV. CODE § 1102.4 (West Supp. 1996); IOWA CODE ANN. § 558A.6 (West Supp. 1996); MD. CODE ANN., REAL PROP. §§ 10-702(h) and (i) (1996); MICH. COMP. LAWS ANN. § 565.955 (West Supp. 1996); MISS. CODE ANN. § 89-1-505 (Supp. 1996); R.I. GEN. LAWS §§ 5-20.8-7-5-20.8-10 (1995); WASH. REV. CODE § 64.06.050 (Supp. 1996).
- ⁷⁰ *See* MD. CODE ANN., REAL PROP. § 10-702(h)(2) (1996).
- ⁷¹ DEL. CODE ANN. tit 6 § 2575 (1993).
- ⁷² *See* ALASKA STAT. § 34.70.030 (Supp. 1995).
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