



Effective: January 1, 2008

Vernon's Texas Statutes and Codes Annotated [Currentness](#)

Property Code ([Refs & Annos](#))

Title 2. Conveyances

[Chapter 5. Conveyances \(Refs & Annos\)](#)

[Subchapter A. General Provisions](#)

→ **§ 5.008. Seller's Disclosure of Property Condition**

(a) A seller of residential real property comprising not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice as prescribed by this section or a written notice substantially similar to the notice prescribed by this section which contains, at a minimum, all of the items in the notice prescribed by this section.

(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 Hookups | ___ Window Screens | ___ Rain Gutters |

- | | | |
|---|--|--|
| <input type="checkbox"/> Security System | <input type="checkbox"/> Fire Detection Equipment | <input type="checkbox"/> Intercom System |
| | <input type="checkbox"/> Smoke Detector | |
| | <input type="checkbox"/> Smoke Detector - Hearing Impaired | |
| | <input type="checkbox"/> Carbon Monoxide Alarm | |
| | <input type="checkbox"/> Emergency Escape Ladder(s) | |
| <input type="checkbox"/> TV Antenna | <input type="checkbox"/> Cable TV Wiring | <input type="checkbox"/> Satellite Dish |
| <input type="checkbox"/> Ceiling Fan(s) | <input type="checkbox"/> Attic Fan(s) | <input type="checkbox"/> Exhaust Fan(s) |
| <input type="checkbox"/> Central A/C | <input type="checkbox"/> Central Heating | <input type="checkbox"/> Wall/Window Air Conditioning |
| <input type="checkbox"/> Plumbing System | <input type="checkbox"/> Septic System | <input type="checkbox"/> Public Sewer System |
| <input type="checkbox"/> Patio/Decking | <input type="checkbox"/> Outdoor Grill | <input type="checkbox"/> Fences |
| <input type="checkbox"/> Pool | <input type="checkbox"/> Sauna | <input type="checkbox"/> Spa |
| | | <input type="checkbox"/> Hot Tub |
| <input type="checkbox"/> Pool Equipment | <input type="checkbox"/> Pool Heater | <input type="checkbox"/> Automatic Lawn Sprinkler System |
| | | <input type="checkbox"/> Fireplace(s) & Chimney (Mock) |
| <input type="checkbox"/> Fireplace(s) & Chimney (Woodburning) | | |
| <input type="checkbox"/> Gas Lines (Nat./LP) | | <input type="checkbox"/> Gas Fixtures |
| Garage: <input type="checkbox"/> Attached | <input type="checkbox"/> Not Attached | <input type="checkbox"/> Carport |
| Garage Door Opener(s): | <input type="checkbox"/> Electronic | <input type="checkbox"/> Control(s) |
| Water Heater: | <input type="checkbox"/> Gas | <input type="checkbox"/> Electric |
| Water Supply: <input type="checkbox"/> City | <input type="checkbox"/> Well <input type="checkbox"/> MUD | <input type="checkbox"/> 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):

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

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

- | | | |
|--|---|--|
| <input type="checkbox"/> Interior Walls | <input type="checkbox"/> Ceilings | <input type="checkbox"/> Floors |
| <input type="checkbox"/> Exterior Walls | <input type="checkbox"/> Doors | <input type="checkbox"/> Windows |
| <input type="checkbox"/> Roof | <input type="checkbox"/> Foundation/Slab(s) | <input type="checkbox"/> Basement |
| <input type="checkbox"/> Walls/Fences | <input type="checkbox"/> Driveways | <input type="checkbox"/> Sidewalks |
| <input type="checkbox"/> Plumbing/Sewers/Septics | <input type="checkbox"/> Electrical Systems | <input type="checkbox"/> Lighting Fixtures |
| <input type="checkbox"/> Other Structural Components (Describe): _____ | | |

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

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.

- | | |
|---|--|
| <input type="checkbox"/> Active Termites (includes wood-destroying insects) | <input type="checkbox"/> Previous Structural or Roof Repair |
| <input type="checkbox"/> Termite or Wood Rot Damage Needing Repair | <input type="checkbox"/> Hazardous or Toxic Waste |
| <input type="checkbox"/> Previous Termite Damage | <input type="checkbox"/> Asbestos Components |
| <input type="checkbox"/> Previous Termite Treatment | <input type="checkbox"/> Urea formaldehyde Insulation |
| <input type="checkbox"/> Previous Flooding | <input type="checkbox"/> Radon Gas |
| <input type="checkbox"/> Improper Drainage | <input type="checkbox"/> Lead Based Paint |
| <input type="checkbox"/> Water Penetration | <input type="checkbox"/> Aluminum Wiring |
| <input type="checkbox"/> Located in 100-Year Floodplain | <input type="checkbox"/> Previous Fires |
| <input type="checkbox"/> Present Flood Insurance Coverage | <input type="checkbox"/> Unplatted Easements |
| <input type="checkbox"/> Landfill, Settling, Soil Movement, Fault Lines | <input type="checkbox"/> Subsurface Structure or Pits |
| | <input type="checkbox"/> Previous Use of Premises for Manufacture of Methamphetamine |

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

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 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.

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

7. [FN1] 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.

Date

Signature of Seller

The undersigned purchaser hereby acknowledges receipt of the foregoing notice and acknowledges the property complies with the smoke detector requirements of Chapter 766, Health and Safety Code, or, if the property does not comply with the smoke detector requirements of Chapter 766, the buyer waives the buyer's rights to have smoke detectors installed in compliance with Chapter 766.

Date

Signature of Purchaser

(c) A seller or seller's agent shall have no duty to make a disclosure or release information related to whether a death by natural causes, suicide, or accident unrelated to the condition of the property occurred on the property or whether a previous occupant had, may have had, has, or may have AIDS, HIV related illnesses, or HIV infection.

(d) The notice shall be completed to the best of seller's belief and knowledge as of the date the notice is completed and signed by the seller. If the information required by the notice is unknown to the seller, the seller shall indicate that fact on the notice, and by that act is in compliance with this section.

(e) This section does not apply to a transfer:

- (1) pursuant to a court order or foreclosure sale;
 - (2) by a trustee in bankruptcy;
 - (3) to a mortgagee by a mortgagor or successor in interest, or to a beneficiary of a deed of trust by a trustor or successor in interest;
 - (4) by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a deed of trust or a sale pursuant to a court ordered foreclosure or has acquired the real property by a deed in lieu of foreclosure;
 - (5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
 - (6) from one co-owner to one or more other co-owners;
 - (7) made to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors;
 - (8) between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to such a decree;
 - (9) to or from any governmental entity;
 - (10) of a new residence of not more than one dwelling unit which has not previously been occupied for residential purposes; or
 - (11) of real property where the value of any dwelling does not exceed five percent of the value of the property.
- (f) The notice shall be delivered by the seller to the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property. If a contract is entered without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason within seven days after receiving the notice.

CREDIT(S)

Added by [Acts 1993, 73rd Leg., ch. 356, § 1, eff. Jan. 1, 1994](#). Amended by [Acts 2005, 79th Leg., ch. 728, § 17.001, eff. Sept. 1, 2005](#); [Acts 2007, 80th Leg., ch. 448, § 1, eff. Jan. 1, 2008](#); [Acts 2007, 80th Leg., ch. 1051, § 11, eff. Sept. 1, 2007](#); [Acts 2007, 80th Leg., ch. 1256, § 22, eff. Sept. 1, 2007](#).

[FN1] Subsection (b), question 6 as added by Acts 2007, 80th Leg., ch. 1256, § 22 was editorially redesignated as subsec. (b), question 7.

HISTORICAL AND STATUTORY NOTES

2009 Electronic update

2005 Legislation

Acts 2005, 79th Leg., ch. 728 in subsec. (e) made nonsubstantive corrections.

2007 Legislation

Acts 2007, 80th Leg., ch. 448, in subsec. (b), in the seller's disclosure notice, inserted in question 3. the condition regarding previous use of premises for manufacture of methamphetamine.

Acts 2007, 80th Leg., ch. 1051 in subsec. (b), in the "SELLER'S DISCLOSURE NOTICE" form, inserted in the second column under subsec. (b)(1), "Smoke Detector", "Smoke Detector-Hearing Impaired", "Carbon Monoxide Alarm" and "Emergency Escape Ladder(s)", inserted new subsec. (b)(2) and added subsec. (b)(3) designation, redesignated subsec. (b)(3) to (5) as subsec. (b)(4) to (6), and rewrote the final paragraph of the form, which formerly read:

"The undersigned purchaser hereby acknowledges receipt of the foregoing notice."

Section 13 of Acts 2007, 80th Leg., ch. 1051 provides:

"The change in law made by this Act to Section 5.008, Property Code, applies only to a notice executed on or after the effective date [Sept. 1, 2007] of this Act. A notice executed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose."

Acts 2007, 80th Leg., ch. 1256 added subsec. (b)(6), which was editorially redesignated as subsec. (b)(7).


2003 Main Volume

Former Sections:

A former § 5.008, as added by Acts 1993, 73rd Leg., ch. 846, § 34, was renumbered as [V.T.C.A., Property Code § 5.009](#) by Acts 1995, 74th Leg., ch. 76, art. 17, § 17.01(42).

LIBRARY REFERENCES

2003 Main Volume

Consumer [Protection](#)  8.
Westlaw Topic No. 92H.
C.J.S. Credit Reporting Agencies.
[C.J.S. Consumer Protection §§ 40 to 51, 64.](#)

RESEARCH REFERENCES

2009 Electronic update

ALR Library

[46 ALR 4th 546](#), Real-Estate Broker's Liability to Purchaser for Misrepresentation or Nondisclosure of Physical Defects in Property Sold.

Encyclopedias

[39 Am. Jur. Proof of Facts 3d 309](#), Real-Estate Broker's Misrepresentation or Nondisclosure as to Condition or Value of Realty.

[93 Am. Jur. Proof of Facts 3d 293](#), Real Estate Purchaser's Recovery of Damages for Seller's Nondisclosure of Dangerous Condition of Land.

[TX Jur. 3d Brokers § 47](#), Duty to Inspect.

Forms

[Texas Forms Legal and Business § 1E:1](#), Introduction.

[Texas Forms Legal and Business § 1:136](#), Seller's Disclosure Notice.

[Texas Forms Legal and Business § 1E:30](#), Checklist--Matters to be Considered in Drafting Brokerage Agreement.

[Texas Forms Legal and Business § 1E:33.10](#), Seller's Disclosure of Property's Condition (Trec Form Op-H).

[13 West's Texas Forms § 6.29](#), Requirement for Seller to Disclose Condition of Residential Real Property.

[13 West's Texas Forms § 6.30](#), Requirement for Seller to Disclose Condition of Residential Real Property--Exceptions from Property Condition Disclosure Requirement.

[13 West's Texas Forms § 6.31](#), Requirement for Seller to Disclose Condition of Residential Real Property--Minimum Requirements for Written Notice of Property Condition.

Treatises and Practice Aids

Elliott, 11 Tex. Prac. Series § 3.2, Contract Law and Statutes Relating to Real Estate Transfers.

Elliott, 11 Tex. Prac. Series § 3.24, Seller's Disclosure of Property Condition--Residential Property--Statutory Form.

[Cochran, 27 Tex. Prac. Series § 7.2](#), Protection Against Fraudulent Sales Practices--Texas Law.

[Cochran, 27 Tex. Prac. Series § 7.11](#), Real Estate Brokers.

[Cochran, 28A Tex. Prac. Series Ch. 7 A](#), a Protection Against Fraudulent Sales Practices.


NOTES OF DECISIONS

Construction and application [1](#)


Evidence [2](#)

Listing broker liability [3](#)


1. Construction and application

Statute requiring a home vendor to provide a disclosure statement to the purchaser does not require continuing disclosure beyond the date of the statement. *Bynum v. Prudential Residential Services, Ltd. Partnership* (App. 1 Dist. 2003) 2003 WL 22456111. [Consumer Protection](#)  [8](#)


2. Evidence


Evidence did not establish that prior vendors had actual knowledge that building permits or government approvals had been needed for remodeling of bathrooms, and thus, "as is" clause of purchase agreement between purchasers and relocation firm which bought home from prior vendors and resold it to purchasers was not unenforceable based on fraudulent misrepresentation or concealment in prior vendors' statutory disclosure form, in which prior vendors answered "no" to whether structural changes had been made without "necessary" permits; prior vendors had intentionally declined to obtain approval from civic association as was required under deed restrictions, had failed to inquire as to their remodeling contractor's qualifications, had heard of the concept of building permits, and had neighbors that had obtained building permits and displayed them in their windows. *Bynum v. Prudential Residential Services, Ltd. Partnership* (App. 1 Dist. 2003) 2003 WL 22456111. [Fraud](#)  [36](#)

Evidence that vendors' listing broker knew of vendors' lawsuit against prior owner of home, knew that settlement re-

ceived by vendors in prior lawsuit had not provided vendors with sufficient funds to cover cost of repairing all defects that were the subject of prior lawsuit, and advised vendors they did not have to disclose defects that had been repaired, and evidence that vendors had listed broker in earlier lawsuit as a person with knowledge of relevant facts, did not establish that broker's statement, in vendors' statutorily-required disclosure notice, that "Listing Broker and Other Broker have relied on this notice as true and correct and have no reason to believe it to be false or inaccurate," was false and therefore constituted a misrepresentation; while vendors failed to disclose defects that had been subject of prior lawsuit, evidence did not show that broker knew the nature of the defects that had been the subject of the prior lawsuit and knew that those defects still existed. [Sherman v. Elkowitz \(App. 14 Dist. 2004\) 130 S.W.3d 316. Brokers](#)  102

3. Listing broker liability

Vendors' listing broker, by signing vendors' statutorily-required disclosure notice which included the statement "Listing Broker and Other Broker have relied on this notice as true and correct and have no reason to believe it to be false or inaccurate," did not adopt as their own vendors' representations regarding non-existence of defects and of prior lawsuits directly or indirectly affecting the home; thus, listing broker would have duty to come forward only if he had any reason to believe that vendors' disclosures were false or inaccurate, and the only way he could be held liable for misrepresentation was if his statement was shown to be untrue. [Sherman v. Elkowitz \(App. 14 Dist. 2004\) 130 S.W.3d 316. Brokers](#)  102

Vendors' listing broker did not owe a duty of care to home purchasers to learn the details of vendors' lawsuit against prior owner of the home, when advising vendors whether to disclose the prior lawsuit in vendors' statutorily-required disclosure notice. [Sherman v. Elkowitz \(App. 14 Dist. 2004\) 130 S.W.3d 316. Brokers](#)  102

V. T. C. A., Property Code § 5.008, TX PROPERTY § 5.008

Current through Chapters effective immediately through Ch. 87 of the 2009 Regular Session of the 81st Legislature.

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