

MAR 28 2002
COMMERCE AND REGULATION

HOUSE FILE 2596
BY FORD

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to residential real estate installment contracts
2 by requiring contract disclosure statements for certain
3 contracts, providing for a penalty, and providing an
4 applicability date.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2596

1 Section 1. NEW SECTION. 558.70 CONTRACT DISCLOSURE
2 STATEMENT REQUIRED FOR CERTAIN RESIDENTIAL REAL ESTATE
3 INSTALLMENT SALES.

4 1. Prior to executing a residential real estate
5 installment sales contract, the contract seller shall deliver
6 a written contract disclosure statement to the contract
7 purchaser which shall clearly set forth the following
8 information:

9 a. If the real estate subject to the contract has been
10 separately assessed for property tax purposes, the current
11 assessed value of the real estate.

12 b. (1) A complete description of any property taxes due
13 and payable on the real estate and a complete description of
14 any special assessment on the real estate and the term of the
15 assessment.

16 (2) Information on whether any property taxes or special
17 assessments are delinquent and whether any tax sale
18 certificates have been issued for delinquent property taxes or
19 special assessment on the real estate.

20 c. A complete description of any mortgages or other liens
21 encumbering or secured by the real estate, including the
22 identity and address of the current owner of record with
23 respect to each such mortgage or lien, as well as a
24 description of the total outstanding balance and due date
25 under any such mortgage or lien.

26 d. A complete amortization schedule for all payments to be
27 made pursuant to the contract, which amortization schedule
28 shall include information on the portion of each payment to be
29 applied to principal and the portion to be applied to
30 interest.

31 e. If the contract requires a balloon payment, a complete
32 description of the balloon payment, including the date the
33 payment is due, the amount of the balloon payment, and other
34 terms related to the balloon payment. For purposes of this
35 paragraph, a "balloon payment" is any scheduled payment that

1 is more than twice as large as the average of earlier
2 scheduled payments.

3 f. The annual rate of interest to be charged under the
4 contract.

5 g. A statement that the purchaser has a right to seek
6 independent legal counsel concerning the contract and any
7 matters pertaining to the contract.

8 h. A statement that the purchaser has a right to receive a
9 true and complete copy of the contract after it has been
10 executed by all parties to the contract.

11 i. The mailing address of each party to the contract.

12 j. If the contract is subject to forfeiture, a statement
13 that if the purchaser does not comply with the terms of the
14 contract, the purchaser may lose all rights in the real estate
15 and all sums paid under the contract.

16 2. The contract disclosure statement shall be dated and
17 signed by each party to the contract.

18 3. Within five days after a residential real estate
19 installment sales contract has been executed by all parties to
20 the contract, the contract seller shall mail a true and
21 correct copy of the contract by regular first class mail to
22 the last known address of each contract purchaser. However,
23 this requirement is satisfied as to any purchaser who
24 acknowledges in writing that the purchaser has received a true
25 and correct copy of the fully executed contract.

26 4. This section applies to a contract seller who entered
27 into four or more residential real estate contracts in the
28 previous calendar year. For purposes of this subsection, two
29 or more entities sharing a common owner or manager are
30 considered a single contract seller.

31 5. A violation of this section affects title to property
32 only as provided in section 558.72.

33 6. For purposes of this section, "residential real estate"
34 means a residential dwelling containing no more than two
35 single-family dwelling units, which is not located on a tract

1 of land used for agricultural purposes as defined in section
2 535.13.

3 7. The attorney general may adopt rules necessary to
4 administer this section.

5 8. This section and any rules adopted to administer this
6 section shall not limit or abridge any duty, requirement,
7 obligation, or liability for disclosure created by any other
8 provision of law, or under a contract between the parties.

9 Sec. 2. NEW SECTION. 558.71 PENALTY.

10 A contract seller who intentionally provides inaccurate
11 information with regard to any matter required to be disclosed
12 under section 558.70, subsection 1, or who fails to exercise
13 reasonable care in determining the accuracy of such
14 information is guilty of a fraudulent practice in the fifth
15 degree regardless of the value of the real estate subject to
16 the contract.

17 Sec. 3. NEW SECTION. 558.72 CIVIL LIABILITIES.

18 1. A contract purchaser injured by a violation of section
19 558.70 may within one year of the execution of the contract
20 bring an equitable action in the district court of record
21 where the real estate is located to obtain relief as follows:

22 a. The court may rescind a contract that remains in
23 existence at the time the action is commenced, and award
24 restitution to the contract purchaser determined in accordance
25 with the standards for damages specified in paragraph "b".

26 b. If the contract has been terminated by any means prior
27 to commencement of the action, the contract purchaser may
28 recover a money judgment against the original contract seller
29 for a sum equal to all amounts the contract purchaser paid to
30 the contract seller, plus the reasonable value of any
31 improvements to the real estate made by the contract
32 purchaser, plus any other proximately caused or incidental
33 damages, less the fair rental value of the real estate for the
34 period of time the contract purchaser was in possession of the
35 real estate.

1 2. A contract purchaser alleging a violation of section
2 558.70 bears the burden of establishing such violation by a
3 preponderance of the evidence.

4 3. An order of rescision or a money judgment awarded shall
5 not affect any rights or responsibilities arising from any
6 conveyance or encumbrance made by either the contract
7 purchaser or the contract seller prior to the filing of a lis
8 pendens in the action in which such relief is sought, unless
9 it is established by clear and convincing evidence that the
10 recipient of such conveyance or encumbrance had prior
11 knowledge that the contract was executed in violation of the
12 requirements of section 558.70.

13 4. In an action in which a contract purchaser obtains
14 relief under this section, the court shall also award to such
15 contract purchaser reasonable attorney fees incurred in
16 bringing the action.

17 Sec. 4. Section 558.46, Code 2001, is amended by adding
18 the following new subsection:

19 NEW SUBSECTION. 7. If a contract seller is subject to the
20 requirements of section 558.70, the contract must be recorded
21 within forty-five days rather than one hundred eighty days and
22 the recording requirement is only satisfied by recording the
23 real estate contract rather than a memorandum of the contract.

24 Sec. 5. Section 558A.4, Code 2001, is amended by adding
25 the following new subsection:

26 NEW SUBSECTION. 3. A transferor subject to the
27 requirements of section 558.70 shall provide a report or
28 opinion under subsection 2, if the transferor does not have
29 sufficient knowledge to provide full and complete information
30 about any matter or circumstance required to be disclosed by
31 this chapter.

32 Sec. 6. APPLICABILITY DATE. This Act applies to
33 residential real estate installment sales contracts entered
34 into on or after the effective date of this Act.

35 EXPLANATION

1 This bill requires that a person selling real estate
2 pursuant to an installment sales contract prepare and deliver
3 to the contract purchaser a written contract disclosure
4 statement. The contract disclosure statement is required if
5 the contract seller entered into more than four real estate
6 installment sales contracts in the previous calendar year.

7 The bill requires that the contract disclosure statement
8 contain specified information, including the property tax
9 assessment on the real estate, information on delinquent
10 property taxes or special assessments, information on
11 mortgages or liens on the real estate, an amortization
12 schedule, balloon payment information, the annual rate of
13 interest to be charged under the contract, statements as to
14 the purchaser's rights, mailing addresses of the parties to
15 the contract, and information on forfeiture of the contract.

16 The bill defines residential real estate as a residential
17 dwelling containing no more than two single-family dwelling
18 units which is not located on agricultural land.

19 The bill provides that the attorney general may adopt rules
20 pertaining to the contract disclosure statement requirement.

21 The bill provides that a contract seller who intentionally
22 provides inaccurate information on the disclosure statement or
23 who fails to use reasonable care in determining the accuracy
24 of information required on the disclosure statement is guilty
25 of a fraudulent practice in the fifth degree regardless of the
26 value of the real estate. A fraudulent practice in the fifth
27 degree is a simple misdemeanor.

28 The bill provides that the civil remedies for violation of
29 the contract disclosure requirements is rescision of the
30 installment sales contract or recovery of a money judgment
31 against the contract seller. The contract purchaser has the
32 burden of proof by a preponderance of the evidence. If a
33 contract purchaser prevails in an action for rescision or for a
34 money judgment, the court may also award to the contract
35 purchaser reasonable attorney fees incurred in bringing the

1 action.

2 The bill requires a transferor who is required to provide a
3 contract disclosure statement to provide a written report or
4 opinion on any information required to be disclosed on a
5 property disclosure statement under Code chapter 558A if the
6 transferor does not have sufficient knowledge to provide the
7 full and complete information.

8 The bill applies to residential real estate installment
9 sales contracts entered into on or after the effective date of
10 the bill.

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