

House Engrossed

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HOUSE BILL 2779

AN ACT

AMENDING TITLE 33, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING
SECTION 33-423; RELATING TO HAZARDS DISCLOSURES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 33, chapter 4, article 2, Arizona Revised Statutes,
3 is amended by adding section 33-423, to read:

4 33-423. Disclosure; hazards; immunity

5 A. A SELLER OF REAL PROPERTY MAY DELIVER TO THE BUYER A WRITTEN
6 HAZARDS DISCLOSURE. THE HAZARDS DISCLOSURE MAY BE PROVIDED TO THE SELLER BY
7 A THIRD PARTY AS AUTHORIZED BY THE SELLER AND SHALL BE BASED ON OFFICIALLY
8 ADOPTED AND ELECTRONICALLY POSTED OR OTHERWISE READILY AVAILABLE GOVERNMENTAL
9 MAPS OR INFORMATION THAT DISCLOSES WHETHER THE REAL PROPERTY IS SUBJECT TO
10 ANY OF THE FOLLOWING:

11 1. SPECIAL FLOOD HAZARD AREAS DESIGNATED BY THE FEDERAL EMERGENCY
12 MANAGEMENT AGENCY PURSUANT TO 42 UNITED STATES CODE CHAPTER 50.

13 2. MILITARY AIRPORTS OR ANCILLARY MILITARY FACILITIES AS DEFINED IN
14 SECTION 28-8461 OR AS DISCLOSED PURSUANT TO SECTION 28-8484 OR 32-2113.

15 3. MILITARY TRAINING ROUTES AS SHOWN IN THE MAP PRODUCED PURSUANT TO
16 SECTION 37-102 AND MILITARY RESTRICTED AIRSPACE AS SHOWN IN THE MAP PRODUCED
17 PURSUANT TO SECTION 37-102.

18 4. PUBLIC OR PRIVATE AIRPORTS THAT ARE APPROVED BY THE FEDERAL
19 AVIATION ADMINISTRATION.

20 5. EXPANSIVE SOILS AS SHOWN ON MAPS ISSUED BY THE NATURAL RESOURCE
21 CONSERVATION SERVICE OR ON OTHER OFFICIALLY ADOPTED AND READILY AVAILABLE
22 GOVERNMENTAL MAPS.

23 6. SOILS SUBJECT TO FISSURES AS SHOWN ON MAPS ISSUED BY THE NATURAL
24 RESOURCE CONSERVATION SERVICE OR ON OTHER OFFICIALLY ADOPTED AND READILY
25 AVAILABLE GOVERNMENTAL MAPS.

26 7. SPECIAL TAX ASSESSMENT AREAS AS SHOWN IN THE CURRENT TAX RECORDS OF
27 THE APPLICABLE COUNTY ASSESSOR.

28 8. RADON GAS POTENTIAL ZONES AS SHOWN ON CURRENT MAPS ISSUED BY THE
29 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

30 9. ENVIRONMENTAL HAZARD SUPERFUND SITES AS SHOWN IN REPORTS FROM THE
31 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OR ON MAPS ISSUED BY THE
32 DEPARTMENT OF ENVIRONMENTAL QUALITY.

33 B. IF THE SELLER MAKES A WRITTEN DISCLOSURE PURSUANT TO THIS SECTION:

34 1. THE SELLER OR A PERSON LICENSED UNDER TITLE 32, CHAPTER 20 IS NOT
35 LIABLE FOR ANY ERROR, INACCURACY OR OMISSION OF ANY INFORMATION DELIVERED IF
36 THE ERROR, INACCURACY OR OMISSION WAS NOT WITHIN THE ACTUAL KNOWLEDGE OF THE
37 SELLER OR LICENSEE.

38 2. NO CRIMINAL, CIVIL OR ADMINISTRATIVE ACTION MAY BE BROUGHT AGAINST
39 THE SELLER OR A PERSON LICENSED UNDER TITLE 32, CHAPTER 20 FOR FAILING TO
40 DISCLOSE THE HAZARDS IF THE ERROR, INACCURACY OR OMISSION REGARDING THE
41 HAZARD WAS NOT WITHIN THE PERSONAL KNOWLEDGE OF THE SELLER OR LICENSEE.

42 C. FOR ANY THIRD PARTY PROVIDER OF INFORMATION AS PRESCRIBED BY THIS
43 SECTION, THE FOLLOWING APPLIES:

1 1. IF THE SELLER USES A THIRD PARTY PROVIDER, THE SELLER OR A PERSON
2 LICENSED UNDER TITLE 32, CHAPTER 20 HAS NO OBLIGATION TO INDEPENDENTLY VERIFY
3 THE INFORMATION CONTAINED IN THE WRITTEN DISCLOSURE UNLESS THE SELLER OR
4 LICENSEE HAS ACTUAL KNOWLEDGE OF AN INACCURACY.

5 2. THE DISCLOSURE CONSTITUTES A DISCLOSURE BETWEEN THE SELLER AND THE
6 BUYER AND SHALL NOT BE USED FOR ANY PURPOSE BY ANY OTHER PARTY, INCLUDING AN
7 INSURANCE COMPANY, A LENDER OR A GOVERNMENTAL AGENCY.

8 3. THE THIRD PARTY PROVIDER SHALL CARRY ERRORS AND OMISSIONS INSURANCE
9 COVERAGE OF AT LEAST TEN MILLION DOLLARS.

10 D. A SELLER WHO PROVIDES DISCLOSURE PURSUANT TO SUBSECTION A OF THIS
11 SECTION BY USING A THIRD PARTY IS RELIEVED OF ANY ADDITIONAL REQUIREMENT TO
12 DISCLOSE WITH RESPECT TO THAT ITEM OF INFORMATION UNLESS THE SELLER HAS
13 ACTUAL KNOWLEDGE OF INFORMATION TO THE CONTRARY.

14 E. IF INFORMATION THAT IS DISCLOSED PURSUANT TO THIS SECTION IS
15 SUBSEQUENTLY RENDERED INACCURATE:

16 1. AS A RESULT OF ANY GOVERNMENTAL ACTION, MAP REVISION, CHANGED
17 INFORMATION OR OTHER ACT OR OCCURRENCE AFTER THE DELIVERY OF THE DISCLOSURE,
18 THE SELLER IS NOT LIABLE.

19 2. AS A RESULT OF INFORMATION FURNISHED BY A SELLER OR A PERSON
20 LICENSED UNDER TITLE 32, CHAPTER 20 OR AS A RESULT OF ANY GOVERNMENTAL
21 ACTION, MAP REVISION, CHANGED INFORMATION OR OTHER ACT OR OCCURRENCE AFTER
22 THE DELIVERY OF THE DISCLOSURE, THE THIRD PARTY REPORT PROVIDER IS NOT
23 LIABLE.

24 F. ANY DISCLOSURE MADE BY THE SELLER PURSUANT TO THIS SECTION SHALL BE
25 DELIVERED AS SOON AS PRACTICABLE BEFORE TRANSFER OF TITLE. DISCLOSURES MADE
26 PURSUANT TO THIS SECTION MAY BE AMENDED IN WRITING BY THE SELLER BUT THAT
27 AMENDMENT IS SUBJECT TO SUBSECTION E OF THIS SECTION.

28 G. EACH DISCLOSURE MADE PURSUANT TO THIS SECTION AND EACH ACTION IN
29 PROVIDING THE DISCLOSURE SHALL BE MADE IN GOOD FAITH. FOR THE PURPOSES OF
30 THIS SUBSECTION, "GOOD FAITH" MEANS HONESTY IN FACT IN THE CONDUCT OF THE
31 TRANSACTION.