

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2641 Session of
1972

INTRODUCED BY RAPPAPORT, GLEASON AND GELFAND, NOVEMBER 20, 1972

REFERRED TO CONSUMER PROTECTION, NOVEMBER 20, 1972

AN ACT

1 Relating to the sale or transfer of interests in residential
2 real property; requiring inspections and disclosure of
3 certain information and creating implied warranties;
4 prohibiting certain devices and practices; and providing
5 remedies.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short Title.--This act shall be known and may be
9 cited as the "Pennsylvania Home Buyers' Protection Act."

10 Section 2. Definitions.--The following words and phrases,
11 when used in this act, shall have the meanings given to them in
12 this section:

13 (1) "Person" means any individual, group of individuals,
14 corporation, political subdivision, or any other legal entity or
15 its legal representatives, agents, or assigns.

16 (2) "Real estate broker" means any person licensed by the
17 Real Estate Commission to engage in the real estate business,
18 including licensed salesmen.

19 (3) "Real estate investor" means any person, who, within the
20 preceding two years, has participated as owner in whole or in

1 part of legal or equitable title in his own name or the name of
2 his agent or agents, in three or more transactions involving the
3 transfer of any interest in residential real property, excluding
4 transactions where the interest transferred was merely that of
5 lessee, lessor, or mortgagee.

6 (4) "Residential real property" means one-family or two-
7 family residential dwellings, including one-family or two-family
8 condominium units.

9 (5) "Sale or transfer" regulated by this act means the sale
10 or transfer by the vendor of any interest in residential real
11 property, except to a lessee, mortgagee, donee, or devisee.

12 Section 3. Excluded Transactions.--This act shall not apply
13 to (1) the sale or transfer to a transferee taking an interest
14 for the purpose of rehabilitation and resale of the property to
15 a purchaser or transferee; or (2) the sale or transfer by a
16 vendor of any interest in a cooperative residential dwelling
17 containing three or more family units.

18 Section 4. Mandatory Disclosures.--(a) The owner of any one-
19 family or two-family residential dwelling shall be required in
20 connection with the sale or transfer of any interest therein,
21 within ten days before the earlier of the execution of any
22 purchase agreement or land contract, or the consummation of any
23 sale to disclose, in writing, to every prospective purchaser or
24 transferee except a lessee, mortgagee, donee or devisee, the
25 following:

26 (1) The nature of policy coverage, including all the yearly
27 premium sum of the home insurance, if any, existing on the
28 dwelling at the time of the aforementioned disclosure.

29 (2) The amount of city and county taxes on the property for
30 the tax year previous to the signing of the purchase agreement,

1 and any revised assessment or other changes which would increase
2 the tax burden thereon.

3 (3) Notice of any proposed condemnation of the premises for
4 public purposes received by the vendor.

5 (4) The amount of the total heating bill on the property
6 during the year previous to the signing of the purchase
7 agreement or during the period of ownership by the seller,
8 whichever is shorter; and whether or not the dwelling was
9 occupied during such period.

10 (b) Any person who has, within the preceding twelve months,
11 participated as principal in the purchase or transfer of any
12 residential real property and who has not been the last
13 permanent resident of such dwelling shall be required to
14 disclose, in writing, to every prospective purchaser or
15 transferee, except to lessee, mortgagee, donee or devisee, in
16 addition to the disclosures required under subsection (a) of
17 this section the following:

18 (1) The date the dwelling was acquired by the seller.

19 (2) The total price for which the seller acquired the
20 dwelling.

21 (3) The nature, date, and cost of each repair or
22 improvement, known to the seller, costing in excess of one
23 hundred dollars (\$100) made on the dwelling within the two-year
24 period prior to the aforementioned disclosure.

25 (c) If a real estate broker participates as an agent for the
26 vendor in a sale or transfer he shall inform the vendor of the
27 mandatory disclosures required under subsection (a) of this
28 section.

29 (d) The disclosures required by subsections (a) and (b) of
30 this section may not be waived by the purchaser or transferee

1 nor disclaimed by the vendor or transferor.

2 Section 5. Inspection and Disclosure of Defects.--(a) The
3 owner of any residential real property shall be required in
4 connection with any sale or transfer of any interest therein, to
5 conduct an inspection of said residential real property and,
6 within ten days before the earlier of the execution of any
7 purchase agreement or land contract, or the consummation of any
8 sale, to disclose, in writing, to every prospective purchaser or
9 transferee except a lessee, mortgagee, donee, or devisee, any
10 material or substantial defects which would be readily
11 discernible upon inspection by one not an expert in home
12 building and construction, or defects of which the seller has
13 actual knowledge.

14 (b) If a real estate broker participates as an agent for the
15 vendor in a sale or transfer he shall inform the vendor of the
16 mandatory disclosure required by subsection (a) of this section.

17 (c) The disclosure required by subsection (a) of this
18 section may not be waived by the purchaser or transferor nor
19 disclaimed by the vendor or transferor.

20 Section 6. Implied Warranties.--(a) Every vendor of
21 residential real property warrants that at the time of the sale
22 or transfer, the building, together with its fixtures, is free
23 from all material and substantial defects to the best of the
24 actual knowledge of the vendor or his agent and, if the vendor
25 is a real estate investor, that the dwelling is suitable for
26 habitation.

27 (b) No warranty shall be implied pursuant to subsection (a)
28 of this section for any defects disclosed pursuant to section 5
29 of this act.

30 (c) The warranty referred to in subsection (a) of this

1 section shall survive merger with the deed.

2 (d) The warranties set forth in subsection (a) of this
3 section may not be waived by the purchaser or transferee nor
4 disclaimed by the vendor or transferor.

5 Section 7. Prohibited Devices and Practices.--No real estate
6 investor or broker shall use or employ, directly or indirectly,
7 in the sale or transfer of residential real property, any
8 deceptive or fraudulent device or practice or any
9 misrepresentation, including but not limited to:

10 (1) Any device, scheme or artifice to defraud.

11 (2) Any affirmation of material fact to which the property
12 does not conform.

13 (3) Any promise which relates to the property or its use,
14 repairs or improvements thereon, area improvements, or rights to
15 use or have the benefit of facilities, which is not thereafter
16 fulfilled.

17 (4) Any sample or model to which the property does not
18 conform.

19 (5) Any statement which omits a material fact so as to be
20 misleading in light of circumstances in which the statement was
21 made.

22 (6) Any act, practice, or course of business which tends to
23 or is calculated to mislead any person to his detriment.

24 (7) Any device, scheme, practice, or course of business
25 which would operate so as to avoid the requirements of this act.

26 Section 8. Unconscionable Transactions.--A sale or transfer
27 by a real estate investor, if found by a court to be
28 unconscionable at the time it was made, shall be unenforceable
29 or subject to reformation by the court so as to avoid any
30 unconscionable result.

1 Section 9. Recovery of Damages.--If any person violates this
2 act, the purchaser or transferee may recover damages from his
3 seller. The measure of damages, when the defect in the property
4 is capable of repair, is the cost of restoring the property to
5 its state as warranted, unless the cost of repairs exceeds the
6 market value of said property in its state as warranted or the
7 property is not capable of repair, in which case the measure of
8 damages is the difference between the value of the property at
9 the time and place of discovery of the breach and the value it
10 would have had as warranted. In a proper case any incidental and
11 consequential damages may also be recovered.

12 Section 10. Rescission of Transactions.--(a) If a violation
13 of this act is such that recovery of damages is inadequate, the
14 court may order a rescission of the sale or transfer. When a
15 rescission is ordered pursuant to this section, the court shall
16 award the purchaser or transferee all moneys paid to the seller
17 or transferor, and also shall consider, and may adjust the
18 amount of such award to reflect: All settlement costs of the
19 purchaser or transferee in said transaction; any damage done to
20 the property during the term of occupancy; the cost to the
21 purchaser or transferee of moving, taxes, interest, penalties
22 for the advance payment of the mortgage and like costs; and the
23 value of the property to the purchaser or transferee as a rented
24 unit.

25 (b) In any action brought for rescission the plaintiff shall
26 notify all mortgagees and lienholders of record and they shall
27 be entitled to intervene in the proceedings to protect their
28 interests. A finding that the plaintiff is entitled to rescind
29 the sale or transfer shall not in and of itself void or nullify
30 the interest of any mortgagee or lienholder in the property.

1 (c) Any action brought for rescission shall be heard and
2 decided within ninety days after the date of filing or as soon
3 thereafter as it may be heard and decided.

4 Section 11. Limitation of Actions.--An action brought
5 pursuant to this act shall be initiated within eighteen months
6 from the time of the sale or transfer, except that an action for
7 rescission pursuant to section 10 of this act shall be initiated
8 within six months from the time of the sale or transfer.