

TITLE 55
PROPERTY IN GENERAL

CHAPTER 25
PROPERTY CONDITION DISCLOSURE ACT

55-2501. SHORT TITLE. This chapter may be cited as the "Idaho Property Condition Disclosure Act."

[55-2501, added 1994, ch. 366, sec. 1, p. 1173.]

55-2502. LEGISLATIVE INTENT. In order to promote the public health, safety and welfare and to protect consumers; it is the purpose of the provisions of this chapter to require sellers of residential real property as defined in this chapter to disclose certain defects in the residential real property to a prospective buyer.

[55-2502, added 1994, ch. 366, sec. 1, p. 1173.]

55-2503. DEFINITIONS. As used in this chapter:

(1) "Political subdivision" has the same meaning as provided in section [7-1303](#), Idaho Code.

(2) "Residential real property" means real property that is improved by a building or other structure that has one (1) to four (4) dwelling units or an individually owned unit in a structure of any size. This also applies to real property which has a combined residential and commercial use.

(3) "Seller" means the owner of residential real property as defined in this chapter.

[55-2503, added 1994, ch. 366, sec. 1, p. 1173; am. 1997, ch. 229, sec. 1, p. 668.]

55-2504. PROPERTY CONDITION DISCLOSURE REQUIRED. Any person who intends to transfer any residential real property, including nonowner occupied rental property, on or after July 1, 1994, by any of the methods as set forth herein shall complete all applicable items in a property disclosure form prescribed under section [55-2508](#), Idaho Code. Except as provided in section [55-2505](#), Idaho Code, this chapter applies to any transfer by sale, exchange, installment sale contract, a lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, of real property improved with or consisting of not less than one (1) nor more than four (4) dwelling units.

[55-2504, added 1994, ch. 366, sec. 1, p. 1173; am. 1997, ch. 229, sec. 2, p. 668.]

55-2505. EXEMPTIONS. The provisions of this chapter do not apply to any transfer of residential real property that is any of the following:

(1) A transfer pursuant to court order including, but not limited to, a transfer ordered by a probate court during the administration of a decedent's estate, a transfer pursuant to a writ of execution, a transfer by a trustee in bankruptcy, a transfer as a result of the exercise of the power of eminent domain, and a transfer that results from a decree for specific performance of a contract or other agreement between persons;

(2) A transfer to a mortgagee by a mortgagor by deed in lieu of foreclosure or in satisfaction of the mortgage debt;

(3) A transfer to a beneficiary of a deed of trust by a trustor in default;

(4) A transfer by a foreclosure sale that follows a default in the satisfaction of an obligation secured by a mortgage;

(5) A transfer by a sale under a power of sale following a default in the satisfaction of an obligation that is secured by a deed of trust or another instrument containing a power of sale occurring within one (1) year of foreclosure on the default;

(6) A transfer by a mortgagee, or a beneficiary under a deed of trust, who has acquired the residential real property at a sale conducted pursuant to a power of sale under a mortgage or a deed of trust or who has acquired the residential real property by a deed in lieu of foreclosure;

(7) A transfer by a fiduciary in the course of the administration of a decedent's estate, a guardianship, a conservatorship, or a trust;

(8) A transfer from one (1) co-owner to one (1) or more other co-owners;

(9) A transfer made to the transferor's spouse or to one (1) or more persons in the lineal line of consanguinity of one (1) or more of the transferors;

(10) A transfer between spouses or former spouses as a result of a decree of divorce, dissolution of marriage, annulment, or legal separation or as a result of a property settlement agreement incidental to a decree of divorce, dissolution of marriage, annulment, or legal separation;

(11) A transfer to or from the state, a political subdivision of the state, or another governmental entity;

(12) A transfer that involved newly constructed residential real property that previously has not been inhabited, except that disclosure of annexation and city service status shall be declared by the sellers of such newly constructed residential real property in accordance with the provisions of section [55-2508](#), Idaho Code;

(13) A transfer to a transferee who has occupied the property as a personal residence for one (1) or more years immediately prior to the transfer;

(14) A transfer from a transferor who both has not occupied the property as a personal residence within one (1) year immediately prior to the transfer and has acquired the property through inheritance or devise;

(15) A transfer by a relocation company to a transferee within one (1) year from the date that the previous owner occupied the property;

(16) A transfer from a decedent's estate.

[55-2505, added 1994, ch. 366, sec. 1, p. 1174; am. 1997, ch. 229, sec. 3, p. 669; am. 2002, ch. 333, sec. 4, p. 944.]

55-2506. DISCLOSURE INFORMATION. The information required in this chapter shall be set forth on the form set out in section [55-2508](#), Idaho Code. Alternative forms may be substituted for those set out in section [55-2508](#), Idaho Code, provided that alternative forms include the disclosure information as set forth in section [55-2506](#), Idaho Code, and the mandatory disclosure statements set forth in section [55-2507](#), Idaho Code. The form must be designed to permit the transferor to disclose material matters relating to the physical condition of the property to be transferred including, but not limited to, the source of water supply to the property; the nature of the sewer system serving the property; the condition of the

structure of the property including the roof, foundation, walls and floors; the known presence of hazardous materials or substances.

[55-2506, added 1994, ch. 366, sec. 1, p. 1174.]

55-2507. MANDATORY REQUIRED DISCLOSURE STATEMENTS. To comply with the provisions of this chapter, a form shall set forth a statement of purpose of the form, including statements substantially similar to the following:

(1) The form constitutes a statement of the conditions of the property and of information concerning the property actually known by the transferor.

(2) That unless the transferee is otherwise advised in writing, the transferor, other than having lived at or owning the property possesses no greater knowledge than that which could be obtained by a careful inspection of the property by a potential transferee.

(3) That the statement is not a warranty of any kind by the transferor or by any agent or subsequent agent representing the transferor in this transaction.

(4) That the statement is not a substitute for any inspections.

(5) That the transferor is familiar with the particular residential real property and each act that may be performed in making a disclosure of an item of information shall be made and performed in good faith.

[55-2507, added 1994, ch. 366, sec. 1, p. 1175.]

55-2508. DISCLOSURE FORM. The disclosures required by the provisions of this article pertaining to the property proposed to be transferred are set forth in and shall be made on a copy of the following disclosure form or an alternative form as provided in section [55-2506](#), Idaho Code:

SELLER PROPERTY DISCLOSURE FORM

SELLER'S NAME AND ADDRESS:

Section [55-2501](#), et seq., Idaho Code, requires Sellers of residential real property to complete a property condition disclosure form.

PURPOSE OF STATEMENT: This is a statement of the conditions and information concerning the property known by the Seller. Unless otherwise advised, the Seller does not possess any expertise in construction, architectural, engineering or any other specific areas related to the construction or condition of the improvements on the property. Other than having lived at or owning the property, the Seller possesses no greater knowledge than that which could be obtained upon a careful inspection of the property by the potential buyer. Unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. It is not a warranty of any kind by the Seller or by any agent representing any Seller in this transaction. It is not a substitute for any inspections. Purchaser is encouraged to obtain his/her own professional inspections. Notwithstanding that transfer of newly constructed residential real property that previously has not been inhabited is exempt from disclosure pursuant to section [55-2505](#), Idaho Code, Sellers of such newly constructed residential real property shall disclose information regarding annexation and city services in the form as prescribed in questions 1., 2. and 3.

1. Is the property located in an area of city impact, adjacent or contiguous to a city limits, and thus legally subject to annexation by the city?
Yes No
2. Does the property, if not within city limits, receive any city services, thus making it legally subject to annexation by the city? Yes No
3. Does the property have a written consent to annex recorded in the county recorder's office, thus making it legally subject to annexation by the city? Yes No
4. All appliances and service systems included in the sale, (such as refrigerator/freezer, range/oven, dishwasher, disposal, hood/fan, central vacuum, microwave oven, trash compactor, smoke detectors, tv antenna/dish, fireplace/wood stove, water heater, garage door opener, pool/hot tub, etc.) are functioning properly except: (please list and explain)
.....
.....
5. Specify problems with the following:
 Basement water
 Foundation
 Roof condition and age
 Well (type) problem
 Septic system (type) problem
 Plumbing
 Drainage
 Electrical
 Heating
6. Describe any conditions that may affect your ability to clear title (such as encroachments, easements, zoning violations, lot line disputes, etc.):

7. Are you aware of any hazardous materials or pest infestations on the property?
8. Have any substantial additions or alterations been made without a building permit?
9. Any other problems, including legal, physical or other not listed above that you know concerning the property:

The Seller certifies that the information herein is true and correct to the best of Seller's knowledge as of the date signed by the Seller. The Seller is familiar with the residential real property and each act performed in making a disclosure of an item of information is made and performed in good faith.

I/we acknowledge receipt of a copy of this statement.
 Seller: Buyer:

.....
 Date: Date:

.....
 Date: Date:

[55-2508, added 1994, ch. 366, sec. 1, p. 1175; am. 2002, ch. 333, sec. 5, p. 945.]

55-2509. DELIVERY OF DISCLOSURE FORM AND ACCEPTANCE. Every transferor shall deliver, in accordance with section [55-2510](#), Idaho Code, a signed and

dated copy of the completed disclosure form to each prospective transferee or his agent within ten (10) days of transferor's acceptance of transferee's offer. Every prospective transferee of residential real property who receives a signed and dated copy of a completed property disclosure form as prescribed under section [55-2508](#), Idaho Code, shall acknowledge receipt of the form by doing both of the following:

- (1) Signing and dating a copy of the form;
- (2) Delivering a signed and dated copy of the form to the transferor or his agent or subagent.

[55-2509, added 1994, ch. 366, sec. 1, p. 1176.]

55-2510. DELIVERY REQUIREMENTS. The transferor's delivery under section [55-2509](#), Idaho Code, of a property disclosure form as described under section [55-2508](#), Idaho Code, and the prospective transferee's delivery under section [55-2509](#), Idaho Code, of an acknowledgement of his receipt of that form shall be made by personal delivery to the other party or his agent or subagent by ordinary mail or certified mail, return receipt requested or by facsimile transmission. For the purposes of the delivery requirements of this section, the delivery of a property disclosure form to a prospective cotransferee of residential real property or his or her agent shall be deemed considered delivered to other prospective transferees unless otherwise provided by contract.

[55-2510, added 1994, ch. 366, sec. 1, p. 1177.]

55-2511. ERRORS, INACCURACIES OR OMISSIONS -- LIABILITY OF TRANSFEROR -- DELIVERY OF INFORMATION BY PUBLIC AGENCY -- DELIVERY BY EXPERTS. (1) Neither the transferor or transferor's agents shall be liable for any error, inaccuracy or omission of any information delivered pursuant to this chapter if the error, inaccuracy or omission was not within the personal knowledge of the transferor or was based upon information timely provided by public agencies or other persons specified in subsection (3) of this section that is required to be disclosed pursuant to this chapter and ordinary care was exercised in obtaining and transmitting it.

(2) The delivery of any information required to be disclosed by this chapter to a prospective transferee by a public agency or other person providing information required to be disclosed pursuant to this chapter shall be deemed to comply with the requirements of this chapter and shall relieve the transferor or transferor's agent of any further duty under this chapter with respect to that item of information.

(3) The delivery of a report or opinion prepared by any person or professional who has been hired to perform an inspection of the subject property in connection with the proposed sale shall be sufficient compliance for application of the exemption provided in subsection (1) of this section if the information is provided to the prospective transferee pursuant to a request therefore, written or oral. In responding to such a request, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of sections [55-2506](#) and [55-2507](#), Idaho Code, and if so, shall indicate the required disclosure or parts thereof to which the information being furnished is applicable. Where such a statement is furnished, the provider shall not be responsible for any items of information or parts thereof other than those expressly set forth in the statement.

[55-2511, added 1994, ch. 366, sec. 1, p. 1177.]

55-2512. INFORMATION SUBSEQUENTLY RENDERED INACCURATE -- REQUIRED INFORMATION UNKNOWN OR NOT AVAILABLE. If information disclosed in accordance with this chapter is subsequently rendered inaccurate as a result of any act, occurrence or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this chapter. If at the time the disclosures are required to be made, an item of information required to be disclosed is unknown or not available to the transferor, and the transferor's agent has made a reasonable effort to ascertain it, the transferor may use an approximation of the information provided the approximation is clearly identified as such, is reasonable, is based on the best information available to the transferor or transferor's agent and is not used for the purpose of circumventing or evading this chapter.

[55-2512, added 1994, ch. 366, sec. 1, p. 1177.]

55-2513. AMENDMENT TO FORM. Any disclosure of an item of information in the property disclosure form described in section [55-2508](#), Idaho Code, may be amended in writing by the transferor of the residential real property at any time following the delivery of the form in accordance with section [55-2510](#), Idaho Code. Transferor shall amend the disclosure statement prior to closing if transferor discovers any of the (the) information on the original statement has changed. In the event of amendments to the statement, transferee's right to rescind is strictly limited to the amendments to the disclosure statement. The amendment shall be subject to the provisions of this chapter.

[55-2513, added 1994, ch. 366, sec. 1, p. 1178; am. 1997, ch. 229, sec. 4, p. 670.]

55-2514. CHAPTER DOES NOT RELIEVE SELLER OR HIS AGENT OF OBLIGATION TO DISCLOSE OTHER INFORMATION. Specification of items of information that must be disclosed in the property disclosure form as prescribed under sections [55-2506](#) and [55-2507](#), Idaho Code, does not limit and shall not be construed as limiting any obligation to disclose an item of information that is created by any other section of the Idaho Code or the common law of the state of Idaho. The disclosure requirements of this chapter do not bar and shall not be construed as barring the application of any legal equitable defense that a transferor of residential real property may assert in a civil action commenced against the transferor by a prospective or actual transferee of the property.

[55-2514, added 1994, ch. 366, sec. 1, p. 1178.]

55-2515. RESCISSION BY TRANSFEE. Subject to section [55-2504](#), Idaho Code, if a transferee of residential real property receives a property disclosure form or an amendment of that form as described in section [55-2508](#), Idaho Code, after the transferee has entered into a transfer agreement with respect to the property, the transferee, after his receipt of the form or amendment may rescind the transfer agreement in a written, signed and dated document that is delivered to the transferor or his agents in accordance with section [55-2510](#), Idaho Code. Transferee's rescission must be based on a

specific objection to a disclosure in the disclosure statement. The notice of rescission shall specifically identify the disclosure objected to by the transferee. Transferee incurs no legal liability to the transferor because of the rescission including, but not limited to, a civil action for specific performance of the transfer agreement. Upon the rescission of the transfer agreement the transferee is entitled to the return of, and the transferor shall return, any deposits made by the transferee in connection with the proposed transfer of the residential real property.

Subject to the provisions of section [55-2505](#), Idaho Code, a rescission of a transfer agreement may only occur if the transferee's written, signed and dated document of rescission is delivered to the transferor or his agent or subagent within three (3) business days following the date on which the transferee or his agent receives the property disclosure form prescribed under section [55-2508](#), Idaho Code. If no signed notice of rescission is received by the transferor within the three (3) day period, transferee's right to rescind is waived.

[55-2515, added 1994, ch. 366, sec. 1, p. 1178; am. 1997, ch. 229, sec. 5, p. 670.]

55-2516. GOOD FAITH REQUIRED. Each disclosure required in this chapter and each act which may be performed in making the disclosure shall be made in good faith. For the purposes of this chapter, good faith means honesty in fact, in the conduct of the transaction.

[55-2516, added 1994, ch. 366, sec. 1, p. 1178.]

55-2517. FAILURE TO COMPLY. No transfer, subject to this chapter, shall be invalidated solely because of the failure of any person to comply with any provision of this chapter. However, any person who willfully or negligently violates or fails to perform any duties prescribed by any provision of this chapter shall be liable in the amount of actual damages suffered by the transferee.

[55-2517, added 1994, ch. 366, sec. 1, p. 1179.]

55-2518. DUTIES OF REAL ESTATE LICENSEES UNCHANGED. Nothing contained in this chapter shall in any way limit or reduce the duties that a real estate licensee owes to his or her client or to the general public.

[55-2518, added 1994, ch. 366, sec. 1, p. 1179.]