



February 12, 2013

HOUSE BILL No. 1372

DIGEST OF HB 1372 (Updated February 11, 2013 2:08 pm - DI 107)

Citations Affected: IC 25-34.1; IC 32-21.

Synopsis: Knowledge imputed to real estate broker. Provides that information concerning defects in a property that are contained in records of prior transactions maintained by a brokerage may not be imputed to a broker or affiliated licensee of the brokerage unless the broker or affiliated licensee had actual knowledge of any adverse material facts or risks, or was asked by the buyer about adverse material facts or risks and failed to provide the disclosure. Bars a civil action against a broker or licensee for failure to disclose a defect if the action is based on imputed knowledge. Provides that a buyer may not invalidate a real estate transaction or a contract to purchase real estate due to the buyer's failure to sign a seller's disclosure statement form that has been received or acknowledged by the buyer.

Effective: July 1, 2013; July 1, 2014.

Truitt

January 22, 2013, read first time and referred to Committee on Judiciary.
February 12, 2013, amended, reported — Do Pass.

C
O
P
Y

HB 1372—LS 7166/DI 106+



February 12, 2013

First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

C
O
P
Y

HOUSE BILL No. 1372

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 25-34.1-10-12.5 (*CURRENT VERSION*) IS
2 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:
3 Sec. 12.5. (a) An individual licensee affiliated with a principal broker
4 represents only the client with which the licensee is working in an
5 in-house agency relationship. A client represented by an individual
6 licensee affiliated with a principal broker is represented only by that
7 licensee to the exclusion of all other licensees. A principal or managing
8 broker does not represent any party in such transactions unless the
9 principal or managing broker has an agency relationship to personally
10 represent a client.
11 (b) A licensee who personally represents both the seller and buyer
12 or both the landlord and tenant in a real estate transaction is a limited
13 agent and is required to comply with the provisions of this chapter
14 governing limited agents.
15 (c) A licensee representing a client in an in-house agency
16 relationship owes the client duties and obligations set forth in this
17 chapter and shall not disclose material or confidential information

HB 1372—LS 7166/DI 106+



1 obtained from the client to other licensees, except to the principal or
 2 managing broker for the purpose of seeking advice or assistance for the
 3 client's benefit.

4 (d) A principal broker, managing broker, and any affiliated licensee
 5 shall take reasonable and necessary care to protect any material or
 6 confidential information disclosed by a client to the client's in-house
 7 agent.

8 (e) In all in-house agency relationships, a principal broker,
 9 managing broker, and an individual licensee possess only actual
 10 knowledge and information. There is no imputation of agency,
 11 knowledge, or information among or between clients, the principal
 12 broker, the managing broker, and licensees. **Information contained in
 13 records of prior transactions maintained by the brokerage or
 14 agency concerning any existing or previous adverse material facts
 15 or risks with respect to real property may not be imputed to a
 16 broker or affiliated licensee unless the broker or affiliated licensee
 17 had actual knowledge of any adverse material facts or risks with
 18 respect to the real property or was asked by the buyer about
 19 adverse material facts or risks with respect to the real property
 20 and failed to provide the disclosure. A person may not bring a
 21 cause of action against a broker or licensee for failure to disclose
 22 adverse material facts or risks if the cause of action is based on
 23 imputed knowledge of the adverse material facts or risks.**

24 SECTION 2. IC 25-34.1-10-12.5 (*DELAYED VERSION*), AS
 25 AMENDED BY P.L.127-2012, SECTION 45, IS AMENDED TO
 26 READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 12.5. (a) An
 27 individual licensee affiliated with a managing broker represents only
 28 the client with which the licensee is working in an in-house agency
 29 relationship. A client represented by an individual licensee affiliated
 30 with a managing broker is represented only by that licensee to the
 31 exclusion of all other licensees. A managing broker does not represent
 32 any party in such transactions unless the managing broker has an
 33 agency relationship to personally represent a client.

34 (b) A licensee who personally represents both the seller and buyer
 35 or both the landlord and tenant in a real estate transaction is a limited
 36 agent and is required to comply with the provisions of this chapter
 37 governing limited agents.

38 (c) A licensee representing a client in an in-house agency
 39 relationship owes the client duties and obligations set forth in this
 40 chapter and shall not disclose material or confidential information
 41 obtained from the client to other licensees, except to the managing
 42 broker for the purpose of seeking advice or assistance for the client's

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

benefit.
(d) A managing broker and any affiliated licensee shall take reasonable and necessary care to protect any material or confidential information disclosed by a client to the client's in-house agent.

(e) In all in-house agency relationships, a managing broker and an individual licensee possess only actual knowledge and information. There is no imputation of agency, knowledge, or information among or between clients, the managing broker, and licensees. **Information contained in transaction records maintained by the brokerage or agency concerning any existing or previous adverse material facts or risks with respect to real property may not be imputed to a broker or affiliated licensee unless the broker or affiliated licensee had actual knowledge of any adverse material facts or risks with respect to the real property or was asked by the buyer about adverse material facts or risks with respect to the real property and failed to provide the disclosure. A person may not bring a cause of action against a broker or licensee for failure to disclose adverse material facts or risks if the cause of action is based on imputed knowledge of the adverse material facts or risks.**

SECTION 3. IC 32-21-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10. (a) An owner must complete and sign a disclosure form and submit the form to a prospective buyer before an offer for the sale of the residential real estate is accepted.

(b) An appraiser retained to appraise the residential real estate for which the disclosure form has been prepared shall be given a copy of the form upon request. This subsection applies only to appraisals made for the buyer or an entity from which the buyer is seeking financing.

(c) Before closing, an accepted offer is not enforceable against the buyer until the owner and the prospective buyer have signed the disclosure form. After closing, the failure of the owner to deliver a disclosure statement form to the buyer does not by itself invalidate a real estate transaction. **A buyer may not invalidate a real estate transaction or a contract to purchase real estate due to the buyer's failure to sign a seller's disclosure form that has been received or acknowledged by the buyer.**

C
o
p
y



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1372, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 13, delete "transaction".

Page 2, line 13, after "records" insert "**of prior transactions**".

Page 2, line 16, delete "licensee." and insert "**licensee unless the broker or affiliated licensee had actual knowledge of any adverse material facts or risks with respect to the real property or was asked by the buyer about adverse material facts or risks with respect to the real property and failed to provide the disclosure.**".

Page 2, line 18, delete "based, in whole or in part," and insert "**based**".

Page 3, line 8, delete "licensee." and insert "**licensee unless the broker or affiliated licensee had actual knowledge of any adverse material facts or risks with respect to the real property or was asked by the buyer about adverse material facts or risks with respect to the real property and failed to provide the disclosure.**".

Page 3, line 10, delete "based, in whole or in" and insert "**based**".

Page 3, line 11, delete "part,".

Page 3, after line 11, begin a new paragraph and insert:

"SECTION 3. IC 32-21-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10. (a) An owner must complete and sign a disclosure form and submit the form to a prospective buyer before an offer for the sale of the residential real estate is accepted.

(b) An appraiser retained to appraise the residential real estate for which the disclosure form has been prepared shall be given a copy of the form upon request. This subsection applies only to appraisals made for the buyer or an entity from which the buyer is seeking financing.

(c) Before closing, an accepted offer is not enforceable against the buyer until the owner and the prospective buyer have signed the disclosure form. After closing, the failure of the owner to deliver a disclosure statement form to the buyer does not by itself invalidate a real estate transaction. **A buyer may not invalidate a real estate transaction or a contract to purchase real estate due to the buyer's**

C
O
P
Y



failure to sign a seller's disclosure form that has been received or acknowledged by the buyer."

and when so amended that said bill do pass.

(Reference is to HB 1372 as introduced.)

STEUERWALD, Chair

Committee Vote: yeas 10, nays 1.

C
o
p
y

