**A** **BILL**

TO AMEND TITLE 27 OF THE 1976 CODE, RELATING TO PROPERTY AND CONVEYANCES, BY ADDING CHAPTER 51, TO PROVIDE SPECIFIC DISCLOSURE REQUIREMENTS FOR WELLS UPON THE SALE OF RESIDENTIAL AND COMMERCIAL PROPERTY AND TO PROVIDE RELATED PENALTIES FOR THE FAILURE TO DISCLOSE CERTAIN INFORMATION; AND TO AMEND SECTION 27-50-40 OF THE 1976 CODE, RELATING TO DISCLOSURE STATEMENTS, TO MAKE CONFORMING CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 27 of the 1976 Code is amended by adding:

“CHAPTER 51

Disclosure Requirements for Wells

Section 27-51-10. For the purposes of this chapter:

(1) ‘Disclosure statement’ means a statement regarding the existence and operational status of wells on commercial or residential property, as required by Section 27-51-30.

(2) ‘Owner’ means each person having a recorded present or future interest in real property who is identified in a real estate contract subject to this chapter but does not include the owner or holder of a mortgage, deed of trust, mechanic’s or materialman’s lien, or other lien or security interest in the real property.

(3) ‘Purchaser’ means each person or entity named as a purchaser, buyer, or tenant in a real estate contract subject to this chapter.

(4) ‘Real estate contract’ means a contract for the transfer of ownership of real property.

(5) ‘Real property’ means the lot or parcel and the dwelling unit described in a real estate contract subject to this chapter.

(6) ‘Seller’ means the owner prior to the sale of the property.

(7) ‘Well’ means a bored, drilled, or driven shaft, or a dug hole, for which the depth is greater than the largest surface dimension and from which water is extracted or injected. This includes, but is not limited to, wells that are used for water supply for irrigation, industrial, and manufacturing processes or drinking water; wells used for the underground injection of waste for disposal, storage, or drainage disposal; wells used in mineral or geothermal recovery; and any other special process wells. Wells that are no longer in use or that have been abandoned are also included within the scope of this definition.

Section 27-51-20. (A) This chapter applies to the sale of residential and commercial real property from a seller to a purchaser.

(B) This chapter does not apply to transfers:

(1) pursuant to court order, including transfers in the administration of an estate, pursuant to a writ of execution, by foreclosure sale, by a trustee in bankruptcy, by a receiver, by eminent domain, or resulting from a decree for specific performance;

(2) to a mortgagee from the mortgagor or his successor in interest in a mortgage if the indebtedness is in default, by a trustee pursuant to a deed of trust or to a mortgagee pursuant to a mortgage if the indebtedness is in default, by a trustee under a mortgagee pursuant to a foreclosure sale, or by a mortgagee who has acquired the real property at a sale conducted pursuant to a judgment and order of foreclosure;

(3) by a fiduciary in the course of the administration of a decedent’s estate, guardianship, conservatorship, or trust;

(4) from one or more co‑owners solely to one or more other co‑owners;

(5) made solely to a spouse or a person in the lineal line of consanguinity of one or more transferors;

(6) between spouses resulting from a divorce decree, support order, or marital property distribution order;

(7) made by virtue of the record owner’s failure to pay federal, state, or local taxes;

(8) to or from the federal government;

(9) to the State, its agencies and departments, and its political subdivisions, including school districts;

(10) involving real property sold at public auction;

(11) to a residential trust;

(12) of a vacation time sharing plan as defined in Section 27‑32‑10(9); and

(13) of a vacation multiple ownership interest as described in Section 27‑32‑250.

Section 27-51-30. (A) Except for transactions exempted under Section 27-51-20, a seller of real property shall disclose in writing to a purchaser specific information concerning the existence and operational status of all known wells on the property before signing an agreement to sell the property. The seller shall satisfy this disclosure requirement by delivering to the purchaser a written disclosure statement signed by the seller providing:

(1) the location and operational status of any known wells, including a map drawn from available information showing the location of each well to the extent practicable. The seller must indicate whether each well is in use or abandoned, and sealed or unsealed; or

(2) that the owner has no knowledge of the existence of any wells on the property.

(B) The disclosure statement required by this section does not limit any other required disclosures, including, but not limited to, disclosures required pursuant to Chapter 50, Title 27.

Section 27‑51‑40. (A) Failure to provide a required disclosure statement to a purchaser does not:

(1) void the agreement of sale;

(2) create a defect in title; or

(3) present a valid reason to delay or otherwise interfere with the closing of a real estate transaction by a party, including a closing attorney or lender.

(B) A seller who has actual knowledge of the existence or operational status of a well on his property but does not provide a disclosure statement to the purchaser is liable for actual damages proximately caused to the purchaser arising from the failure to disclose the well or its operational status. Damages may include, but are not limited to, the cost of sealing the well. The court may award reasonable attorney fees incurred by the prevailing party. An action against the seller in accordance with this section must be commenced within three years of the date of the closing of the property sale.

(C) If a seller has no actual knowledge of a well and has provided a disclosure statement to the purchaser in accordance with this chapter, then the seller has met his obligations under this chapter and shall not be held liable for damages resulting from a well discovered on the property after the date of the closing of the sale.”

SECTION 2. Section 27-50-40 of the 1976 Code is amended by adding an appropriately lettered new subsection to read:

“( ) In addition to the disclosure statement described in this section, the seller, as defined in Section 27-51-10, must make a disclosure statement pursuant to Chapter 51, Title 27, regarding the existence and operational status of any known wells on the property.”

SECTION 3. This act takes effect upon approval by the Governor.

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