

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 968 (Grayson)
Version: June 1, 2023
Hearing Date: June 20, 2023
Fiscal: No
Urgency: No
ID

SUBJECT

Single-family residential property: disclosures

DIGEST

This bill adds an additional disclosure requirement to the Transfer Disclosure Statement (TDS) required by law to be provided by a seller of a single-family residential property to the buyer disclosing any improvements completed on the property for which the seller contracted with a contractor to complete, the name and contact information for any contractors who completed the work, and a copy of any permits obtained, if the property is sold within 18 months of when it was purchased by the seller.

EXECUTIVE SUMMARY

House flipping is a phenomenon that has grown in prevalence throughout California cities. Often, due to the short-term nature of house flipping, house flippers may complete renovations to the flipped property either through unlicensed contractors or without obtaining the appropriate building permits for the renovations. This puts would-be buyers at risk of harm from poor renovation work and of higher costs after purchasing a property because of this sub-standard renovation work. Current law does not require disclosure of all renovations or work done on a property, permitted or unpermitted, or of the names of contractors responsible for the work, putting buyers at risk of unknowingly buying a flipped property with poor, unpermitted renovations.

This bill seeks to disincentive unpermitted renovations and unlicensed contracting in house flipping by requiring, when a single-family residential property is sold within 18 months of the seller's purchase of that property, that the seller disclose to the buyer all room additions, structural modifications, other alterations, or repairs that the seller completed through a contractor since buying the property, and the name and contact information of the contractor. It also requires the seller to provide a copy of any permits obtained or if the seller was not provided with a copy of any permits obtained, the seller may instead inform the buyer that any information on permits may be obtained from

the contractor. In this case, the seller must also provide the contact information that was provided to the seller.

This bill is author-sponsored, and has no known support or opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires a transferor (seller) of single-family residential property to provide the transferee (buyer) with certain disclosures about the property by use of a statutorily prescribed Real Estate Transfer Disclosure Statement (TDS). (Civ. Code §§ 1102-1102.6.)
- 2) Exempts from these disclosure requirements certain sales, such as sales between co-owners or spouses, sales from a foreclosure, sales to or from any government entity, sales that require a public report under section 11018.1 of the Business and Professions Code, and sales pursuant to a court order. (Civ. Code § 1102.2.)
- 3) Requires that delivery of the disclosures required be made by the seller to the buyer as soon as practicable before transfer of title, or in the case of a sale by a real property sales contract, lease with an option to purchase, or ground lease with improvements, as soon as practicable before the making or acceptance of an offer. If disclosure is delivered after the execution of an offer to purchase the property, the prospective buyer has three to five days (depending on the method of delivery) to terminate the offer. (Civ. Code § 1102.3.)
- 4) Requires that the delivery of the disclosures be by personal delivery to the potential buyer or by mail to the potential buyer. Delivery to the spouse of a potential buyer shall be deemed delivery to the buyer themselves, unless provided otherwise by contract. (Civ. Code § 1102.10.)
- 5) Provides that if a seller willfully or negligently fails to provide specified disclosures in specified real estate transactions they can be held liable for actual damages by the buyer. (Cal. Civ. Code § 1102.13.)
- 6) Prohibits any person who is not licensed from advertising for construction work or work of improvements unless the aggregate contract price for labor, material and all other items on a project or undertaking is less than five hundred dollars (\$500) and they state that they are unlicensed. (Business & Professions Code § 7027.2.)

- 7) Requires any person engaged in construction projects exceeding \$500 in labor and materials to have an active contractor's license. (Business & Professions Code §§ 7027.2 and 7028.)
- 8) Establishes minimum standards for construction in the state, including structural design. (California Buildings Standards Code, Title 24.)

This bill:

- 1) Requires a seller of a single-family residential property that was purchased by the seller in the previous 18 months to make the following disclosures to a potential buyer in the TDS, in addition to other disclosures already required by law:
 - a) any room additions, structural modifications, other alterations, or repairs made to the property since the seller purchased the property, that were performed by a contractor with whom the seller entered into a contract; and
 - b) the name of each contractor and their contact information with whom the seller entered into a contract for the work on the disclosed improvements, except in limited circumstances where the contract was for less than \$500.
- 2) Permits a seller to fulfill their disclosure obligation under this section by providing a list provided by the contractor of all room additions, structural modifications, other alterations, or repairs performed by the contractor with whom they have entered into a contract.
- 3) Requires a seller to provide a copy of the permit they obtained for any work disclosed under these provisions, or if the seller was not provided a copy of the permits obtained by the contractor, to state that any information on permits may be obtained from the contractor and provide the contact information for the contractor.
- 4) Clarifies that the disclosure requirements under these provisions only apply to a sale of a single-family residential property where the seller and buyer enter into a contract or agreement for the property on or after July 1, 2024.

COMMENTS

1. Author's statement

The Author states that:

Under California law, residential home sellers are required to provide comprehensive disclosures to home buyers in the transfer disclosure statement or TDS. The transfer disclosure statement is an important consumer protection tool that informs consumers of any defects that may be present with the property

they are buying, and gives buyers an opportunity to follow up on any potential issues and inform how they may proceed in the home buying process. While the current disclosures that are required are comprehensive, they may not be enough to protect a consumer from the behavior of a bad actor, such as self-described home flippers. In certain cases, these home flippers may be performing home renovations prior to the sale of a home that may be unpermitted and not done according to local ordinances, or are conducting projects while not being licensed themselves. The unpermitted work may be of poor quality, putting home buyers at a disadvantage if they are unaware it was done improperly. AB 968 would add additional disclosures to the existing transfer disclosure statement that would require the seller of a home to disclose any renovations or changes they made prior to its sale. The disclosure would require the seller to disclose if home renovations were conducted at the home, who did the renovations, and if the work was properly permitted. This bill simply would ask a seller to disclose if they followed the law, helping provide greater transparency and accountability, helping ensure that home buyers have all of the information they need when purchasing a home.

2. The phenomenon and problems of house flipping

House flipping is the process of buying a residential property, renovating it as quickly and cheaply as possible, and then selling it for inflated prices. It aims to make a profit on aging properties, cheap renovations and often cosmetic redesigns, and the ups and downs of the housing market. Flipped homes may be put back on the market only a few months or even weeks after they were purchased by home flippers. In recent years, house flipping has become increasingly common. There are dozens of websites dedicated to instructing would-be house flippers on exactly how to extract as much profit as possible from their flipped properties.¹ As part of this recent growth in house flipping, many corporations looking to maximize short-term returns have created business models of house flipping as efficiently as possible. Many of these companies are publicly-traded corporations obligated to maximize profits for their shareholders.

Considering that local building permits are often expensive and require time and resources to request and be approved, obtaining the otherwise necessary permits is a step home flippers may sometimes skip. One corporation in the business of home flipping, for example, has been accused of avoiding building permits otherwise

¹ See e.g., Dan Rafter, "What is the 70% Rule in House Flipping and Does it Show How Much to Pay for a Distressed Property?" Rocket Mortgage (Apr. 21, 2023), <https://www.rocketmortgage.com/learn/what-is-70-rule-in-house-flipping>; James McWhinney, "Flipping Houses: How it Works, Where to Start, and 5 Mistakes to Avoid," Investopedia (Jun. 8, 2023), <https://www.investopedia.com/articles/mortgages-real-estate/08/house-flip.asp>.

required for the renovations to thousands of its flipped properties.² A suit alleges the company obtained permits for less than seven percent of the more than 6,000 single-family dwellings it owns in cities throughout California.³

Another expense of renovations that home flippers may try to trim or cut is the price of licensed contract work. Because of the expertise and work required to be a licensed contractor, licensed contractors typically charge more than unlicensed contractors. Unscrupulous home flippers may try to cut costs further by paying less for a contractor not actually licensed to complete the renovations for which they are contracted, especially if they also promise to complete the work in a very short period of time.

But unlicensed contractors and unpermitted renovations can have real costs: they can depress the value of properties once the defects are discovered, they can result in necessary costly repairs to fix shoddy work, they may make it more difficult to re-sell a property once the sub-standard renovations are discovered, and they can cost local jurisdictions lost revenue in the form of permit fees that would otherwise be required. While some disclosures are required by law regarding any unpermitted work, current law does not require that buyers be provided with information about all renovations completed, who was involved, or about what permits were obtained.

3. This bill seeks to mitigate the risks of shoddy renovations to buyers of flipped houses by requiring disclosures:

To address the problem of house flipping and its potential adverse consequences of shoddy, unpermitted renovations that hurt buyers, this bill seeks to ensure that potential home buyers are aware of what renovations have been done on a home and by whom. It requires the disclosure of any renovations, room additions, structural modifications, or other alterations since the seller bought the house, if those improvements were performed by a contractor with whom the seller entered into a contract. It requires in such instance the disclosure of the contractor who performed the renovations and their contact information. A seller can satisfy this requirement by either providing the additions, modifications, other alterations, or repairs and the name and contact information of the contractor who performed the work, or by providing a list provided to the seller by the contractor of all additions, modifications, other alterations, or repairs.

This bill also requires, if permits were obtained for the room additions, structural modifications, other alterations, or repairs completed by the contractor, that the seller provide a copy of those permits to the buyer. If the seller contracted with a third party and the seller was not provided a copy of the permits obtained, the seller may satisfy

² Scott Schwebke, "Company accused of cheating Southern California cities out of millions in building fees," The Sun (Feb. 16, 2022 4:34 pm), <https://www.sbsun.com/2022/02/15/company-accused-of-cheating-southern-california-cities-out-of-millions-in-building-fees/>.

³ *Id.*

this requirement by stating that information on permits may be obtained from the third party and providing the contact information for that third party.

Because Business and Professions Code section 7027.2 allows unlicensed contractors to perform work if they disclose in their advertisements that they are not licensed and perform work with an aggregate contract price less than \$500, this bill exempts from its disclosure requirements any contracted work that was for an aggregate contract price of less than \$500.

The bill only applies to home sales of single-family residential properties that enter into a contract or agreement for the property on or after July 1, 2024. It also only applies to sales of such residential properties when the property is sold within 18 months of the seller's purchase of the property, though it is unclear from the text of the bill exactly when the 18-month period ends. Considering the discussion in the preceding paragraph, it is likely the period would end when an offer is accepted. In order to avoid any ambiguity as to when the 18 month period ends, the author has agreed to amend the bill to make it clear that the period begins on the date title was transferred and ends on the date an offer was accepted.

Amendment

1102.6h (a) A seller of a single-family residential property who ~~sells that~~ accepts an offer for the sale of the single-family residential property to a buyer within 18 months ~~of purchasing that~~ from the date that title for the single-family residential property was transferred to the seller shall disclose, in addition to any other disclosure required pursuant to this article, to the buyer both of the following:

(1) Any room additions, structural modifications, other alterations, or repairs made to the property since title to the property was transferred to the seller ~~purchased the property~~ that were performed by a contractor with whom the seller entered into a contract.

[. . .]

(d) This section shall apply to the sale of a single-family residential property where the seller ~~and buyer enter into a contract or agreement for~~ accepts an offer from a buyer to purchase the property on or after July 1, 2024.

Once the provisions of this bill are triggered, the seller will be bound to provide the corresponding disclosures pursuant to the other provisions of the Civil Code that relate to the transfer disclosure statement (Cal. Civ. Code §§ 1102-1102.19). Under the provisions of those sections, the seller must deliver the disclosure statement as soon as practicable before transfer of title, or in the case of a sale through a real property sales contract, a lease with an option to purchase, or a ground lease with improvements, as soon as practicable before the making or acceptance of an offer. (Cal. Civ. Code §

1102.3). If the disclosure or an amendment to it is delivered after the execution of an offer to purchase, the buyer has three to five days (depending on the method of delivery of the disclosure) to terminate the offer. (Cal. Civ. Code § 1102.3(c).) If a seller willfully or negligently fails to provide the disclosures required by AB 968, they can be held liable for actual damages by the buyer. (Cal. Civ. Code § 1102.13.)

By requiring sellers to disclose what work has been done, who completed the work, and whether permits were obtained for the work on the residential property they are quickly reselling, AB 968 will provide buyers with more information to better gauge the risks, potential repairs, and quality of renovation work done on the home before they buy it. If work has been completed without a permit when a permit would otherwise have been required, this information will be more readily available to the buyer. The buyer will be able to investigate the improvements, as well as the licensure or qualifications of the contractor who completed the work. Moreover, by requiring such information to be disclosed, AB 968 may compel would-be home flippers to actually seek permits for renovations they complete on the properties they flip, and to confirm that their contractors are licensed to do the renovations. Unlicensed contractors likewise may be discouraged from completing work for house flippers they are not authorized to complete, as their information will likewise be available to buyers to investigate once the property is sold. While it is possible a seller may elect to wait out the 18-month period from purchase to resale in order to avoid having to disclose shoddy, unpermitted or unlicensed renovations, for house flippers, every day and week counts in costs accrued and profits and returns on investment delayed. AB 968 would be a mechanism for pushing such bad-actors to better follow the rules.

SUPPORT

None known

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 892 (Holden, Ch. 310, Stats. 2019) Revised the form for the real estate transfer disclosure statement, defined the terms “single-family residential property” and “single-family residential real property,” among other changes.

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AB 315 (Lieu, Ch. 392, Stats. 2013) Created multiple requirements for contractors, including that it is a misdemeanor to engage in the business of a contractor if a person is not licensed to be a contractor, unless the contractor advertises their work as unlicensed and the work is for less than \$500.

SB 1406 (Petris, Ch. 1574, Stats. 1985) Required specified written disclosures by the seller of real property to the buyer on a transfer disclosure statement, and creates a duty for seller to make a record of compliance with the disclosure requirements.

PRIOR VOTES:

Assembly Floor (Ayes 73, Noes 0)

Assembly Judiciary Committee (Ayes 9, Noes 0)
