

OFFICE OF POLICY AND LEGAL ANALYSIS
Bill Analysis

To: Joint Standing Committee on Judiciary

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LD 355 An Act To Require Pest Disclosure in All Real Estate Transactions

Public Hearing Date: February 23, 2021

SUMMARY

This bill requires the seller of residential real property to provide to the purchaser a property disclosure statement containing information regarding the presence or prior removal of pests or wildlife within the last 5 years and any steps taken to remedy the infiltration.

TESTIMONY

Proponents

- Representative Connor, sponsor (written testimony)
- Ben Martin (written testimony only)
 - The idea for this bill came from a constituent who negotiated a fair price for a house, conducted a building inspection with a professional, secured financing and moved in with wife and three young children; bats were present in the house
 - Maine CDC recommends a full round of rabies vaccinations for anyone who has slept or been unconscious in a home where bats are present; each family member received a series of four rabies shots
 - Upon contacting the prior owners, via the listing agent for the property, they discovered that the prior owners had discovered bats in the attic about two years prior to the sale and had contracted with a pest management company for bat removal and to seal the attic space – which had not fixed the problem long term
 - When they inquired whether the prior owner would be willing to chip in for the cost of resolving the bat issue and their medical expenses, the former owner retained a lawyer and the listing Realtor contacted the Maine Realtor legal hotline, both of whom presented the argument that it was "debatable" and a "gray area" as to whether this would have been an issue that needed to be disclosed
 - Ultimately, the family's health insurance covered the medical expenses and the Realtors in the transaction contributed toward the cost of repairs, allowing the family to move safely back into the home
 - Intent of the bill is not to slow down the very hot real estate market but rather to ensure transparency that lets home buyers make more informed decisions and get the professional advice they need – and when necessary, take steps to protect the health and safety of their families
 - In Maine, wildlife is all around us; we all know of a house where in the colder months squirrels or mice or other small critters manage to make it inside

- When a homeowner knows something about their house, it is helpful for them to communicate that information to the home buyer
- Under current law, buyers must disclose any known defect that could impact the value of the home or the health and safety of the occupants
- The standard property disclosure forms in Maine ask about hazards such as lead paint, asbestos, radon and methamphetamines
- The form facilitates the transmission of information from the seller to any prospective buyer
- Mandating required disclosure of past pest or wildlife infiltration, we will ensure that home buyers are better prepared to understand the risks and maintenance required for the homes they are buying
- Intent is to limit to residential property, not the skunks under the shed
- Just about every southern state has mandatory termite disclosures; other states have other pest disclosures
- Discovering a bat infestation would not have been a deal-breaker – would have continued with the purchase of the house, but we would have remedied the situation prior to occupying the home; could have waited to move in until it was safe
- It was not clear that a court would agree that having a colony of bats previously living in your home would be an issue that required disclosure
- The sellers knew there was a problem, they had a pest company address it; that company came back at least 2 more times, the latest being within one year of selling the house – disclosing this information would have helped us keep our family safe

Opponents

- Andy Cashman, Maine Association of REALTORS (written testimony)
 - Realtors represent both buyers and sellers
 - We want people to be happy with their transaction and be healthy and happy in their homes
 - Oppose bill because language is vague, unnecessarily duplicative, and we want to make sure consumers are educated
 - The language of the bill is vague and open to interpretation: what constitutes a pest or wildlife? What is an infiltration and what is not?
 - Real property? Just residence?
 - The potential confusion posed by the inclusion of this proposed language is precisely why the existing statute is drafted as it is: rather than articulate numerous unappealing or dangerous circumstances that could befall a home, the statute imposes a broad disclosure requirement
 - Existing seller disclosure already requires the proposed disclosure
 - "Known defect" is defined as: a condition, known by the seller, that has a significant adverse effect on the value of the property, significantly impairs the health or safety of future occupants of the property or, if not repaired, removed or replaced, significantly shortens the expected normal life of the premises (33 MRSA §173, sub-§5)
 - Sellers are also required to disclose hazardous materials and this is patterned after real estate license law. The relevant portion of Section 173 and Section 173(4) reads: "...the seller of residential real property shall provide to the purchaser a property disclosure statement containing the following information...[t]he presence or prior removal of hazardous materials or elements on the residential real property..." The section then lists several potential hazards such as asbestos and radon – but required disclosure clearly is "not limited to" those listed hazards. Because certain pest or wildlife infiltrations can

- result in “hazardous materials or elements,” it must be disclosed when applicable under 33 MRSA §173.
- Thus, existing law already requires a seller to disclose pest or wildlife infiltration at a property – It would be duplicative and confusing to pass LD 355.
 - A seller’s disclosure requirement extends to all known problems with a property – singling out another required disclosure over others implies a greater value of one issue over all others.
 - We believe that potential purchasers should be informed and educated about all aspects of the property they are considering. I have attached to my testimony an example of how we work to achieve that goal.
 - Copy of Purchase and Sale Agreement that is filled out by REALTORS when buyers make an offer to purchase property: Paragraph 12 is entitled “Due Diligence” and it reminds buyers of the aspects of the property they should investigate, including pests.
 - If this Committee found it preferable to the proposed bill, we would be willing to provide further consumer education by amending our Residential Property Transaction Booklet.
 - We believe that well informed buyers are fully capable of making the best decision regarding their potential purchase.
 - "Grey area" is not about whether the bat infestation should have been disclosed (it should have been disclosed) , but whether the sellers had conducted sufficient mitigation
 - Distinguish between seller disclosure and home inspector requirements – we support licensing home inspectors
 - If the seller knows of a defect, the seller must disclose
 - The inspection is up to the due diligence of the buyer

Neither for nor against

- None

INFORMATION REQUESTED

- Any experience in other states about problems created with specific disclosures (to sponsor)
- Real estate disclosure form (to Andy Cashman)

FISCAL IMPACT:

Not determined as of February 23, 2021

BACKGROUND

Current law requires the seller of residential property to provide to the purchaser a property disclosure statement containing specific information, including the water supply system, the heating system or heating source, the waste disposal system, hazardous materials, known defects and access to the property. 33 MRSA §173.

"Known defect" means a condition, known by the seller, that has a significant adverse effect on the value of property, significantly impairs the health or safety of future occupants of the property or, if not repaired, removed or replaced, significantly shortens the expected normal life of the premises. 33 MRSA §171, sub-§1.

The obligation to disclose hazardous materials: The presence or prior removal of hazardous materials or elements on the residential real property, including, but not limited to:

- A. Asbestos;
- B. Lead-based paint for pre-1978 homes in accordance with federal regulations;

- C. Radon;
- D. Underground oil storage tanks as required under Title 38, section 563, subsection 6;
and
- E. Methamphetamine.
(33 MRSA §173, sub-§4)

The bill would amend subsection 4 to include pest or wildlife infiltration within the last 5 years and any steps taken to remedy the infiltration.

Section 176 provides that the disclosure statement and any supplement are not a warranty by the seller; the information is for disclosure only and is not intended to be a part of any contract between the purchaser and the seller. The information provided to the purchaser is based upon the best information available to the seller; the seller is not obligated to make specific investigation or inquiry in an effort to complete the property disclosure statement. The property disclosure statement may not be used as a substitute for any inspections or warranties that the purchaser or seller may obtain. Nothing in this subchapter precludes the obligation of a purchaser to inspect the physical condition of the property.

Section 177 provides that the seller is not liable for any error, inaccuracy or omission if it was not within the actual knowledge of the seller, or was based on information provided by a public agency or by another person with a professional license or special knowledge who provided a written or oral report or opinion that the seller reasonably believed to be correct; and the seller was not negligent in obtaining information from a 3rd party and transmitting that information to the purchaser.