

PROPOSITION ____
I-14-2008; HOMEOWNERS' BILL OF RIGHTS

ANALYSIS BY LEGISLATIVE COUNCIL

Current law provides an alternative process for purchasers and contractors or sellers to resolve issues related to the design, construction, condition or sale of a dwelling prior to filing a lawsuit. Proposition ____ makes mandatory changes to the legal procedures for any purchaser dwelling action and for the time to sue on any improvements for real property:

1. Expands existing law to grant "prospective buyers" the rights to sue over a dwelling action.

2. Prohibits sellers or purchasers from agreeing to or allowing any "reasonable alternative dispute resolution" procedures in sales contracts.

3. A purchaser would be required to give 60 days' notice, instead of 90 days' notice, to a seller of the alleged defects before filing a court action against the seller. The notice must currently contain a "detailed and itemized" list of alleged defects. Proposition ____ replaces that standard with a requirement that the notice contain a description in "ordinary, non-technical terms" of defects that a purchaser of "average experience" would be expected to observe and any defects that should have been found by the seller shall be deemed a part of the notice.

4. After receiving notice of alleged defects, the measure would require rather than allow the seller to conduct an inspection of the dwelling to determine the cause of the alleged defects and what repairs or replacements would be necessary, if any, to remedy the alleged defects.

5. The seller would be required to send the purchaser a written response within 30 days, instead of 60 days, after receiving a notice from the purchaser of the purchaser's intent to file a court action against the seller. If an offer to repair or replace any alleged defects includes an offer of compensation, the purchaser would be given the sole power to choose compensation instead of repair or replacement.

6. A seller would be required to hire a qualified licensed contractor to complete any and all repairs to the dwelling. In order for the licensed contractor to be qualified, the registrar of contractors could not have had an order against the licensed contractor in the preceding ten years.

7. The seller would be required to provide the purchaser a choice of at least three qualified licensed contractors for each contract or subcontract for repair or replacement. The right of any seller to receive attorney and expert witness fees and costs even if the seller is the successful party is eliminated.

8. A contract for the purchase of a dwelling could not require the purchaser to pay the attorney or expert fees of the seller under any circumstances. If a purchaser is awarded any relief the court must also award attorney and expert witness fees, plus taxable costs.

9. The purchase of a dwelling would include a ten year warranty of the materials and workmanship. This warranty would transfer to any subsequent purchasers within the ten year warranty period.

10. The contract for the sale of a newly constructed dwelling would need to include disclosures of a seller's financial relationships with any financial institution, including arrangements for mortgage financing, title insurance, or property and casualty insurance, ownership interests in the financial institution, and any commissions or payments the seller may receive as a result of the transaction with the buyer. This disclosure would also need to indicate whether a mortgage arranged by the seller will be held by the seller, the financial institution or is intended to be sold to other parties. A purchaser would be allowed to sue the seller for violating these disclosure requirements.

11. A seller would not be allowed to require a deposit for a contract to sell a dwelling unless the contract allowed the purchaser to cancel the contract within 100 days and receive a refund of at least ninety-five per cent of the deposit.

12. The advertised base price of a home would need to include all fixtures or equipment shown in a seller's model home, unless the fixtures or equipment are priced separately and are clearly and accurately disclosed to prospective buyers.

13. The time period in which a person can file an action against any person who makes improvements to any real property or dwelling, including commercial, industrial, raw land and retail would be extended to ten years instead of eight years.

14. An owner of a residential dwelling who is successful in a dwelling action against the seller would be able to receive damages such as out-of-pocket expenses for repairing and replacing defects, costs of relocation if defects make a dwelling uninhabitable, reimbursement for reasonably-documented time missed from work due to dealing with defects and compensation for a seller's unreasonable failure to repair the defects, consequential damages and other damages that were reasonably foreseeable.