

By: Representative Morris

To: Judiciary B

HOUSE BILL NO. 1109

1 AN ACT TO CLARIFY THE DISCLOSURE OF NONMATERIAL FACTS OR
2 SUSPICIONS ASSOCIATED WITH REAL PROPERTY IN REAL ESTATE
3 TRANSACTIONS; TO AMEND SECTION 89-1-501, MISSISSIPPI CODE OF 1972,
4 IN CONFORMITY; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 SECTION 1. (1) The fact or suspicion that real property is
7 or was:

8 (a) The site of a natural death, suicide, homicide or
9 felony crime (except for illegal drug activity that affects the
10 physical condition of the property, its physical environment or
11 the improvements located thereon);

12 (b) The site of an act or occurrence that had no effect
13 on the physical condition of the property, its physical
14 environment or the improvements located thereon;

15 (c) Owned or occupied by a person affected or exposed
16 to any disease not known to be transmitted through common
17 occupancy of real estate including, but not limited to, the human
18 immunodeficiency virus (HIV) and the acquired immune deficiency
19 syndrome (AIDS);

20 does not constitute a material fact that must be disclosed in a
21 real estate transaction. A failure to disclose such nonmaterial
22 facts or suspicions shall not give rise to a criminal, civil or
23 administrative action against the owner of such real property, a
24 licensed real estate broker or any affiliated licensee of the
25 broker.

26 (2) A failure to disclose in any real estate transaction any
27 information that is provided or maintained, or is required to be
28 provided or maintained, in accordance with Section 45-33-21

29 through Section 45-33-57, shall not give rise to a cause of action
30 against an owner of real property, a licensed real estate broker
31 or any affiliated licensee of the broker. Likewise, no cause of
32 action shall arise against any licensed real estate broker or
33 affiliated licensee of the broker for revealing information to a
34 seller or buyer of real estate in accordance with Section 45-33-21
35 through Section 45-33-57.

36 (3) Failure to disclose any of the facts or suspicions of
37 facts described in subsections (1) and (2) shall not be grounds
38 for the termination or rescission of any transaction in which real
39 property has been or will be transferred or leased. This
40 provision does not preclude an action against an owner of real
41 estate who makes intentional or fraudulent misrepresentations in
42 response to a direct inquiry from a purchaser or prospective
43 purchaser regarding facts or suspicions that are not material to
44 the physical condition of the property including, but not limited
45 to, those factors listed in subsections (1) and (2).

46 **SECTION 2.** Section 89-1-501, Mississippi Code of 1972, is
47 amended as follows:

48 89-1-501. (1) The provisions of Sections 89-1-501 through
49 89-1-523 apply only with respect to transfers by sale, exchange,
50 installment land sale contract, lease with an option to purchase,
51 any other option to purchase or ground lease coupled with
52 improvements, of real property on which a dwelling unit is
53 located, or residential stock cooperative improved with or
54 consisting of not less than one (1) nor more than four (4)
55 dwelling units, when the execution of such transfers is by, or
56 with the aid of, a duly licensed real estate broker or
57 salesperson.

58 (2) There are specifically excluded from the provisions of
59 Sections 89-1-501 through 89-1-523:

60 (a) Transfers pursuant to court order, including, but
61 not limited to, transfers ordered by a probate court in

62 administration of an estate, transfers pursuant to a writ of
63 execution, transfers by any foreclosure sale, transfers by a
64 trustee in bankruptcy, transfers by eminent domain, and transfers
65 resulting from a decree for specific performance.

66 (b) Transfers to a mortgagee by a mortgagor or
67 successor in interest who is in default, transfers to a
68 beneficiary of a deed of trust by a trustor or successor in
69 interest who is in default, transfers by any foreclosure sale
70 after default, in an obligation secured by a mortgage, transfers
71 by a sale under a power of sale or any foreclosure sale under a
72 decree of foreclosure after default in an obligation secured by a
73 deed of trust or secured by any other instrument containing a
74 power of sale, or transfers by a mortgagee or a beneficiary under
75 a deed of trust who has acquired the real property at a sale
76 conducted pursuant to a power of sale under a mortgage or deed of
77 trust or a sale pursuant to a decree of foreclosure or has
78 acquired the real property by a deed in lieu of foreclosure.

79 (c) Transfers by a fiduciary in the course of the
80 administration of a decedent's estate, guardianship,
81 conservatorship or trust.

82 (d) Transfers from one co-owner to one or more other
83 co-owners.

84 (e) Transfers made to a spouse, or to a person or
85 persons in the lineal line of consanguinity of one or more of the
86 transferors.

87 (f) Transfers between spouses resulting from a decree
88 of dissolution of marriage or a decree of legal separation or from
89 a property settlement agreement incidental to such a decree.

90 (g) Transfers or exchanges to or from any governmental
91 entity.

92 (h) Transfers of real property on which no dwelling is
93 located.

94 (i) The provisions of Section 1 of House Bill No. 1109,
95 2005 Regular Session.

96 **SECTION 3.** This act shall take effect and be in force from
97 and after July 1, 2005.