

# Illinois' Seller Disclosure Act

WHAT EVERY REAL ESTATE  
SELLER AND BUYER  
SHOULD KNOW



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## What is required under the Act?

The Act is a consumer protection law designed to give buyers the benefit of the seller's knowledge about the condition of the property they are buying.

The Residential Real Property Disclosure Report form is a series of questions intended to have the seller disclose any known material defects about the property. Under the Act, a material defect is defined as a condition that would have a substantial adverse effect on the value of the residential real property or that would significantly impair the health or safety of future occupants of the residential real property, unless the seller believes the defective condition has been corrected.

**The seller and the *seller alone* is responsible for completing the disclosure form and *shall be responsible* for honestly disclosing only those matters of which the seller has actual knowledge.**

# SELLER DISCLOSURE DEFINED

## How does the Act affect you as a seller?

The seller and the seller alone is responsible for completing the disclosure form and shall be responsible for honestly disclosing only those matters of which the seller has actual knowledge. All owners of the property being sold are required to complete the form. The seller is not required to make any specific investigation or inquiry in an effort to complete the disclosure form. The seller is free to answer "no" (or not aware) about any of the items on the form if the seller has no actual knowledge regarding that issue.

The disclosure form is designed to allow sellers to fulfill disclosure requirements in a simple and comprehensive manner. The form includes 23 questions pertaining to the condition of the property, including but not limited to, the following areas: the structure, including the roof, foundation, walls, floors, windows and doors; flooding; furnace, electrical, plumbing and air conditioning systems; well and drinking water; and presence of high levels of lead paint, radon, asbestos and production of methamphetamine. The disclosure form is not a substitute for any inspections that the prospective buyer may wish to obtain or warranties that the parties may negotiate.

***It is important to note that if a homeowner chooses not to use a real estate agent to assist in the sale of the home, the homeowner is still required to complete the form and present it along with portions of the statute to prospective buyers.***

## Is disclosure required on all property?

Generally, the Residential Real Property Disclosure Report form is required on all Illinois residential real property sales transactions. Residential real property is defined as property that is improved with not less than one nor more than four residential dwelling units and includes units in residential cooperatives and condominiums. Therefore, unimproved land and commercial/industrial property are not covered in the Act.

The Act does exclude certain specific residential transactions, such as court ordered sales, transfers between co-owners, transfers made to a spouse or a direct blood relative and transfers of newly constructed residential property which has not previously been occupied, to name a few.

If you have a question concerning an exemption you should consult your attorney, or check the exemptions listed in the Act. Relevant portions of the Act must be included with the disclosure form.

## Enforcement

While no state agency is charged with enforcing the Act, if the owner does not comply with its requirements, the buyer may have the right to rescind the contract or to sue for damages. A person who knowingly violates or fails to perform any duty prescribed by the Act or who discloses any information on the report that he knows to be false can be liable for actual damages and court costs. The court may order the owner to pay the attorney's fees incurred by the prevailing party.

## Provisions for delivering the form

The form should first be completed, then signed and dated by the sellers. It should be presented to prospective buyers as soon as practicable but must be delivered to the buyer before a binding contract to purchase is entered. Seller is obligated to provide the form along with portions of the Act to the purchaser. Ideally, the purchaser will sign the disclosure report itself. Regardless, the seller should be able to show the form and the required portions of the Act were provided to the buyer. If the form is not given to the buyer before the buyer is bound by a purchase contract, the buyer may have certain rights to rescind the contract upon disclosure of a material defect. The Act requires the form to be delivered by one of the following methods: personal or facsimile delivery; United States Postal Service, first class mail; or by alternative delivery service such as Federal Express, UPS, or Airborne, delivery charges prepaid. ***Note that if delivery will be made electronically the buyer must consent to receipt by this method.***

## Buyer's right to rescind the purchase contract

If the seller gives a prospective buyer the form after the execution of a written agreement binding the buyer to the transaction and prior to closing; and the form reveals a material defect, then the buyer may, within three business days after receipt of the form, terminate the contract and be entitled to a return of all earnest money deposits or down payments. To effect such a rescission, the Act requires that, within three business days after receipt of the form, written notice of termination must be personally delivered to at least one of the sellers identified in the contract. Notice must be given personally or by mailing by certified or registered mail. The right of rescission does not exist if the buyer receives the disclosure form before a purchase contract is executed. There is no right of rescission after the transaction is closed.

## Condition of property changes after the seller has completed the form

The Act states that if, prior to closing, any seller has actual knowledge of an error, inaccuracy or omission in any prior disclosure document after delivery of that disclosure document to a prospective buyer, that seller shall supplement the prior disclosure document with a written supplemental disclosure. If a material defect is disclosed in a supplement to this disclosure document, the prospective buyer shall not have a right to terminate unless the material defect results from an error, inaccuracy or omission of which the seller had actual knowledge at the time the prior disclosure document was completed and signed by the seller.

**The Residential Real Property Disclosure Report form is available to homeowners through Illinois REALTORS®, local boards/associations of REALTORS®, and individual REALTOR® members.**

Note: This information is not a substitute for legal advice and sellers and buyers should consult with their attorneys with legal questions.



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