



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3940

Introduced 1/21/2022, by Sen. Elgie R. Sims, Jr.

SYNOPSIS AS INTRODUCED:

See Index

Amends the Residential Real Property Disclosure Act. Changes the definition of "seller". Defines "contract". Changes the phrases "disclosure document" and "disclosure statement" to "disclosure report". Provides that if a seller is involved in specified types of transfers, the seller is exempt from the Act, regardless of whether a disclosure report is delivered. Provides that the seller shall deliver to the prospective buyer the written disclosure report before the signing of a contract (rather than before the signing of a written agreement by the seller and prospective buyer that would require the prospective buyer to accept a transfer of the residential real property). Provides that if, prior to closing, any seller becomes aware (rather than has actual knowledge) of an error, inaccuracy, or omission in any prior disclosure report or supplement after delivery of that disclosure report or supplement to a prospective buyer, that seller shall supplement the prior disclosure report. Makes changes to the disclosure report form. Provides that if a seller discloses a material defect in the disclosure report, a prospective buyer, within 5 (rather than 3) business days after receipt of the disclosure report, may terminate the contract. Provides that if a seller discloses a material defect in a supplement to the disclosure, the prospective buyer shall not have a right to terminate unless: (i) the material defect results from an error, inaccuracy, or omission of which the seller had actual knowledge at the time of the prior disclosure; (ii) the material defect is not repairable prior to closing; or (iii) the material defect is repairable prior to closing, but within 5 business days after delivery of the supplemental disclosure, the seller declines, or otherwise fails to agree in writing, to repair the material defect. Allows for the disclosure report to be delivered by email or other electronic delivery. Makes other changes. Effective immediately.

LRB102 22899 LNS 32052 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Residential Real Property Disclosure Act is
5 amended by changing Sections 5, 15, 20, 30, 35, 40, 45, 50, and
6 55 as follows:

7 (765 ILCS 77/5)

8 Sec. 5. Definitions. As used in this Act, unless the
9 context otherwise requires, the following terms have the
10 meaning given in this Section: -

11 "Residential real property" means real property improved
12 with not less than one nor more than 4 residential dwelling
13 units; units in residential cooperatives; or, condominium
14 units, including the limited common elements allocated to the
15 exclusive use thereof that form an integral part of the
16 condominium unit. The term includes a manufactured home as
17 defined in subdivision (53) of Section 9-102 of the Uniform
18 Commercial Code that is real property as defined in the
19 Conveyance and Encumbrance of Manufactured Homes as Real
20 Property and Severance Act.

21 "Seller" means every person or entity who:

22 (1) is a beneficiary of an Illinois land trust; or

23 (2) has an interest, legal or equitable, in

1 residential property as:

2 (i) an owner; 7

3 (ii) a beneficiary of a trust; 7

4 (iii) a beneficiary pursuant to testate
5 disposition, intestate succession, or a transfer on
6 death instrument; or

7 (iv) a contract purchaser or lessee of a ground
8 lease, who has an interest (legal or equitable) in
9 residential real property. However, "seller" shall not
10 include any person who has both (i) never occupied the
11 residential real property and (ii) never had the
12 management responsibility for the residential real
13 property nor delegated such responsibility for the
14 residential real property to another person or entity.

15 "Seller" does not include a party to a transfer that is
16 exempt under Section 15.

17 "Prospective buyer" means any person or entity negotiating
18 or offering to become an owner or lessee of a ground lease of
19 residential real property by means of a transfer for value to
20 which this Act applies.

21 "Contract" means a written agreement by the seller and
22 prospective buyer that would, subject to the satisfaction of
23 any negotiated contingencies, require the prospective buyer to
24 accept a transfer of the residential real property.

25 (Source: P.A. 98-749, eff. 7-16-14; 99-78, eff. 7-20-15.)

1 (765 ILCS 77/15)

2 Sec. 15. Seller exemptions. ~~The provisions of this Act do~~
3 ~~not apply to the following:~~ A seller in any of the following
4 transfers is exempt from this Act, regardless of whether a
5 disclosure report is delivered:

6 (1) Transfers pursuant to court order, including, but not
7 limited to, transfers ordered by a probate court in
8 administration of an estate, transfers between spouses
9 resulting from a judgment of dissolution of marriage or legal
10 separation, transfers pursuant to an order of possession,
11 transfers by a trustee in bankruptcy, transfers by eminent
12 domain, and transfers resulting from a decree for specific
13 performance.

14 (2) Transfers from a mortgagor to a mortgagee by deed in
15 lieu of foreclosure or consent judgment, transfer by judicial
16 deed issued pursuant to a foreclosure sale to the successful
17 bidder or the assignee of a certificate of sale, transfer by a
18 collateral assignment of a beneficial interest of a land
19 trust, or a transfer by a mortgagee or a successor in interest
20 to the mortgagee's secured position or a beneficiary under a
21 deed in trust who has acquired the real property by deed in
22 lieu of foreclosure, consent judgment or judicial deed issued
23 pursuant to a foreclosure sale.

24 (3) Transfers by a fiduciary in the course of the
25 administration of a decedent's estate, guardianship,
26 conservatorship, or trust. As used in this paragraph, "trust"

1 includes an Illinois land trust.

2 (4) Transfers from one co-owner to one or more other
3 co-owners.

4 (5) Transfers from a decedent pursuant to testate
5 disposition, ~~or~~ intestate succession, or a transfer on death
6 instrument.

7 (6) Transfers made to a spouse, or to a person or persons
8 in the lineal line of consanguinity of one or more of the
9 sellers.

10 (7) Transfers from an entity that has taken title to
11 residential real property from a seller for the purpose of
12 assisting in the relocation of the seller, so long as the
13 entity makes available to all prospective buyers a copy of the
14 disclosure report form furnished to the entity by the seller.

15 (8) Transfers to or from any governmental entity.

16 (9) Transfers of newly constructed residential real
17 property that has never ~~not~~ been occupied. This does not
18 include rehabilitation of an existing home.

19 (Source: P.A. 88-111.)

20 (765 ILCS 77/20)

21 Sec. 20. Disclosure report requirements. A seller of
22 residential real property shall complete all ~~applicable~~ items
23 in the disclosure report document described in Section 35 ~~of~~
24 ~~this Act~~. The seller shall deliver to the prospective buyer
25 the written disclosure report statement required by this Act

1 before the signing of a contract ~~written agreement by the~~
2 ~~seller and prospective buyer that would, subject to the~~
3 ~~satisfaction of any negotiated contingencies, require the~~
4 ~~prospective buyer to accept a transfer of the residential real~~
5 ~~property.~~

6 (Source: P.A. 88-111.)

7 (765 ILCS 77/30)

8 Sec. 30. Disclosure report supplement. If, prior to
9 closing, any seller becomes aware ~~has actual knowledge~~ of an
10 error, inaccuracy, or omission in any prior disclosure report
11 or supplement ~~document~~ after delivery of that disclosure
12 report or supplement ~~document~~ to a prospective buyer, that
13 seller shall supplement the prior disclosure report or
14 supplement ~~document~~ with a written supplemental disclosure,
15 delivered by any method set forth in Section 50.

16 (Source: P.A. 90-383, eff. 1-1-98; 91-357, eff. 7-29-99.)

17 (765 ILCS 77/35)

18 Sec. 35. Disclosure report form. The disclosures required
19 of a seller by this Act shall be made in the following form:

20 RESIDENTIAL REAL PROPERTY DISCLOSURE REPORT

21 NOTICE: THE PURPOSE OF THIS REPORT IS TO PROVIDE
22 PROSPECTIVE BUYERS WITH INFORMATION ABOUT MATERIAL DEFECTS IN
23 THE RESIDENTIAL REAL PROPERTY BEFORE THE SIGNING OF A
24 CONTRACT. THIS REPORT DOES NOT LIMIT THE PARTIES' RIGHT TO

1 CONTRACT FOR THE SALE OF RESIDENTIAL REAL PROPERTY IN "AS IS"
 2 CONDITION. UNDER COMMON LAW, SELLERS WHO DISCLOSE MATERIAL
 3 DEFECTS MAY BE UNDER A CONTINUING OBLIGATION TO ADVISE THE
 4 PROSPECTIVE BUYERS ABOUT THE CONDITION OF THE RESIDENTIAL REAL
 5 PROPERTY EVEN AFTER THE REPORT IS DELIVERED TO THE PROSPECTIVE
 6 BUYER. COMPLETION OF THIS REPORT BY THE SELLER CREATES LEGAL
 7 OBLIGATIONS ON THE SELLER; THEREFORE THE SELLER MAY WISH TO
 8 CONSULT AN ATTORNEY PRIOR TO COMPLETION OF THIS REPORT.

9 Property Address:

10 City, State & Zip Code:

11 Seller's Name:

12 This Report is a disclosure of certain conditions of the
 13 residential real property listed above in compliance with the
 14 Residential Real Property Disclosure Act. This information is
 15 provided as of ...(month) ...(day) ...(year), ~~and does not~~
 16 ~~reflect any changes made or occurring after that date or~~
 17 ~~information that becomes known to the seller after that date.~~

18 The disclosures herein shall not be deemed warranties of any
 19 kind by the seller or any person representing any party in this
 20 transaction.

21 In this form, "~~am~~ aware" means to have actual notice or
 22 actual knowledge without any specific investigation or
 23 inquiry. In this form, "material defect" means a condition
 24 that would have a substantial adverse effect on the value of
 25 the residential real property or that would significantly
 26 impair the health or safety of future occupants of the

1 residential real property unless the seller reasonably
2 believes that the condition has been corrected.

3 The seller discloses the following information with the
4 knowledge that even though the statements herein are not
5 deemed to be warranties, prospective buyers may choose to rely
6 on this information in deciding whether or not and on what
7 terms to purchase the residential real property.

8 The seller represents that to the best of his or her actual
9 knowledge, the following statements have been accurately noted
10 as "yes" (correct), "no" (incorrect), or "not applicable" to
11 the property being sold. If the seller indicates that the
12 response to any statement, except number 1, is yes or not
13 applicable, the seller shall provide an explanation⁷ in the
14 additional information area of this form.

15	YES	NO	N/A	
16				1..... Seller has occupied the property
17				within the last 12 months.
18				<u>(If "no," please explain relationship to</u>
19				<u>property.)</u> (No explanation is needed.)
20				<u>2..... I currently have flood hazard</u>
21				<u>insurance on the property.</u>
22				<u>3</u> 2 I am aware of flooding or recurring
23				leakage problems in the crawl
24				space or basement.
25				<u>4</u> 3 I am aware that the property is
26				located in a <u>floodplain</u> flood plain or

1 ~~that I currently have flood hazard~~
2 ~~insurance on the property.~~

3 5 4..... I am aware of material defects in
4 the basement or foundation
5 (including cracks and bulges).

6 6 5..... I am aware of leaks or material
7 defects in the roof, ceilings, or
8 chimney.

9 7 6..... I am aware of material defects in
10 the walls, windows, doors, or floors.

11 8 7..... I am aware of material defects in
12 the electrical system.

13 9 8..... I am aware of material defects in
14 the plumbing system (includes
15 such things as water heater, sump
16 pump, water treatment system,
17 sprinkler system, and swimming
18 pool).

19 10 9..... I am aware of material defects in
20 the well or well equipment.

21 11 10..... I am aware of unsafe conditions in
22 the drinking water.

23 12 11..... I am aware of material defects in
24 the heating, air conditioning, or
25 ventilating systems.

26 13 12..... I am aware of material defects in

1 the fireplace or woodburning
2 stove.

3 14 ~~13~~..... I am aware of material defects in
4 the septic, sanitary sewer, or
5 other disposal system.

6 15 ~~14~~..... I am aware of unsafe concentrations
7 of radon on the premises.

8 16 ~~15~~..... I am aware of unsafe concentrations
9 of or unsafe conditions relating
10 to asbestos on the premises.

11 17 ~~16~~..... I am aware of unsafe concentrations
12 of or unsafe conditions relating
13 to lead paint, lead water pipes,
14 lead plumbing pipes or lead in
15 the soil on the premises.

16 18 ~~17~~..... I am aware of mine subsidence,
17 underground pits, settlement,
18 sliding, upheaval, or other earth
19 stability defects on the
20 premises.

21 19 ~~18~~..... I am aware of current infestations
22 of termites or other wood boring
23 insects.

24 20 ~~19~~..... I am aware of a structural defect
25 caused by previous infestations
26 of termites or other wood boring

1 insects.

2 21 ~~20~~..... I am aware of underground fuel

3 storage tanks on the property.

4 22 ~~21~~..... I am aware of boundary or lot line

5 disputes.

6 23 ~~22~~..... I have received notice of violation

7 of local, state or federal laws

8 or regulations relating to this

9 property, which violation has not

10 been corrected.

11 24 ~~23~~..... I am aware that this property has

12 been used for the manufacture

13 of methamphetamine as

14 defined in Section 10 of

15 the Methamphetamine Control

16 and Community Protection Act.

17 Note: These disclosures are not intended to cover the

18 common elements of a condominium, but only the actual

19 residential real property including limited common elements

20 allocated to the exclusive use thereof that form an integral

21 part of the condominium unit.

22 Note: These disclosures are intended to reflect the

23 current condition of the premises and do not include previous

24 problems, if any, that the seller reasonably believes have

25 been corrected.

26 If any of the above are marked "not applicable" or "yes",

1 please explain here or use additional pages, if necessary:

2

3

4

5 Check here if additional pages used:

6 Seller certifies that seller has prepared this report
7 ~~statement~~ and certifies that the information provided is based
8 on the actual notice or actual knowledge of the seller without
9 any specific investigation or inquiry on the part of the
10 seller. The seller hereby authorizes any person representing
11 any principal in this transaction to provide a copy of this
12 report, and to disclose any information in the report, to any
13 person in connection with any actual or anticipated sale of
14 the property.

15 (This paragraph shall be printed in boldface type.) THE
16 SELLER ACKNOWLEDGES THAT THE SELLER IS REQUIRED TO PROVIDE
17 THIS DISCLOSURE REPORT TO THE PROSPECTIVE BUYER BEFORE THE
18 SIGNING OF THE CONTRACT AND HAS A CONTINUING OBLIGATION,
19 PURSUANT TO SECTION 30 OF THE RESIDENTIAL REAL PROPERTY
20 DISCLOSURE ACT, TO SUPPLEMENT THIS DISCLOSURE PRIOR TO
21 CLOSING.

22 Seller: Date:

23 Seller: Date:

24 THE PROSPECTIVE BUYER IS AWARE THAT THE PARTIES MAY CHOOSE
25 TO NEGOTIATE AN AGREEMENT FOR THE SALE OF THE PROPERTY SUBJECT
26 TO ANY OR ALL MATERIAL DEFECTS DISCLOSED IN THIS REPORT ("AS

1 IS"). THIS DISCLOSURE IS NOT A SUBSTITUTE FOR ANY INSPECTIONS
 2 OR WARRANTIES THAT THE PROSPECTIVE BUYER OR SELLER MAY WISH TO
 3 OBTAIN OR NEGOTIATE. (The remainder of this paragraph shall be
 4 printed in boldface type.) THE FACT THAT THE SELLER IS NOT
 5 AWARE OF A PARTICULAR CONDITION OR PROBLEM IS NO GUARANTEE
 6 THAT IT DOES NOT EXIST. THE PROSPECTIVE BUYER IS AWARE THAT THE
 7 PROSPECTIVE BUYER ~~HE~~ MAY REQUEST AN INSPECTION OF THE PREMISES
 8 PERFORMED BY A QUALIFIED PROFESSIONAL.

9 Prospective Buyer: Date: Time:

10 Prospective Buyer: Date: Time:

11 (Source: P.A. 98-754, eff. 1-1-15.)

12 (765 ILCS 77/40)

13 Sec. 40. Material defect.

14 (a) If a seller discloses a material defect in the
 15 Residential Real Property Disclosure Report, including a
 16 response to any statement that is answered "yes" except
 17 numbers 1 and 2, and, in violation of Section 20, it is
 18 delivered to the prospective buyer after all parties have
 19 signed a contract, the prospective buyer, within 5 business
 20 days after receipt of that report, may terminate the contract
 21 or other agreement with the return of all earnest money
 22 deposits or down payments paid by the prospective buyer in the
 23 transaction without any liability to or recourse by the
 24 seller. ~~If a material defect is disclosed in the Residential~~
 25 ~~Real Property Disclosure Report, after acceptance by the~~

1 ~~prospective buyer of an offer or counter offer made by a~~
2 ~~seller or after the execution of an offer made by a prospective~~
3 ~~buyer that is accepted by the seller for the conveyance of the~~
4 ~~residential real property, then the prospective buyer may,~~
5 ~~within 3 business days after receipt of that report by the~~
6 ~~prospective buyer, terminate the contract or other agreement~~
7 ~~without any liability or recourse except for the return to~~
8 ~~prospective buyer of all earnest money deposits or down~~
9 ~~payments paid by prospective buyer in the transaction.~~

10 **(b)** If a seller discloses a material defect ~~is disclosed~~
11 in a supplement to this disclosure report document, the
12 prospective buyer shall not have a right to terminate unless:
13 (i) the material defect results from an error, inaccuracy, or
14 omission of which the seller had actual knowledge at the time
15 the prior disclosure document was completed and signed by the
16 seller; (ii) the material defect is not repairable prior to
17 closing; or (iii) the material defect is repairable prior to
18 closing, but within 5 business days after the delivery of the
19 supplemental disclosure, the seller declines, or otherwise
20 fails to agree in writing, to repair the material defect.

21 **(c)** The right to terminate the contract, however, shall no
22 longer exist after the conveyance of the residential real
23 property. For purposes of this Act the termination shall be
24 deemed to be made when written notice of termination is
25 ~~personally~~ delivered to at least one of the sellers by any
26 method set forth in Section 50, at the contact information

1 provided by any seller or indicated in the contract or other
2 agreement. Nothing in subsection (a) or (b) shall limit the
3 remedies available under the contract or Section 55 identified
4 ~~in the contract or other agreement or when deposited,~~
5 ~~certified or registered mail, with the United States Postal~~
6 ~~Service, addressed to one of the sellers at the address~~
7 ~~indicated in the contract or agreement, or, if there is not an~~
8 ~~address contained therein, then at the address indicated for~~
9 ~~the residential real property on the report.~~

10 (Source: P.A. 90-383, eff. 1-1-98.)

11 (765 ILCS 77/45)

12 Sec. 45. Other law. This Act is not intended to limit
13 remedies or modify any obligation to disclose created by any
14 other statute or that may exist in common law in order to avoid
15 fraud, misrepresentation, or deceit in the transaction.

16 (Source: P.A. 88-111.)

17 (765 ILCS 77/50)

18 Sec. 50. Delivery of disclosure report. Delivery of the
19 Residential Real Property Disclosure Report provided by this
20 Act shall be by:

21 (1) personal delivery or facsimile, email, or other
22 electronic delivery to the prospective buyer at the
23 contact information provided by the prospective buyer or
24 indicated in the contract or other agreement;

1 (2) depositing the report with the United States
2 Postal Service, postage prepaid, first class mail,
3 addressed to the prospective buyer at the address provided
4 by the prospective buyer or indicated on the contract or
5 other agreement; or

6 (3) depositing the report with an alternative delivery
7 service such as Federal Express or ~~7~~ UPS, ~~or Airborne,~~
8 delivery charges prepaid, addressed to the prospective
9 buyer at the address provided by the prospective buyer or
10 indicated on the contract or other agreement.

11 For purposes of this Act, delivery to one prospective
12 buyer is deemed delivery to all prospective buyers. Delivery
13 to an authorized individual acting on behalf of a prospective
14 buyer constitutes delivery to all prospective buyers. Delivery
15 of the report is effective upon receipt by the prospective
16 buyer. Receipt may be acknowledged on the report, acknowledged
17 in an agreement for the conveyance of the residential real
18 property, or shown in any other verifiable manner.

19 (Source: P.A. 91-357, eff. 7-29-99.)

20 (765 ILCS 77/55)

21 Sec. 55. Violations and damages. If the seller fails or
22 refuses to provide the disclosure report document prior to the
23 conveyance of the residential real property, the prospective
24 buyer shall have the right to terminate the contract. A seller
25 ~~person~~ who knowingly violates or fails to perform any duty

1 prescribed by any provision of this Act or who discloses any
2 information on the Residential Real Property Disclosure Report
3 that the seller ~~he~~ knows to be false shall be liable in the
4 amount of actual damages and court costs, and the court may
5 award reasonable attorney's ~~attorney~~ fees incurred by the
6 prevailing party.

7 (Source: P.A. 90-383, eff. 1-1-98.)

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 765 ILCS 77/5

4 765 ILCS 77/15

5 765 ILCS 77/20

6 765 ILCS 77/30

7 765 ILCS 77/35

8 765 ILCS 77/40

9 765 ILCS 77/45

10 765 ILCS 77/50

11 765 ILCS 77/55