



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB3200

Introduced 11/16/2006, by Sen. James F. Clayborne, Jr.

SYNOPSIS AS INTRODUCED:

765 ILCS 77/20
765 ILCS 77/25
765 ILCS 77/30
765 ILCS 77/35
765 ILCS 77/40
765 ILCS 77/50
765 ILCS 77/55

Amends the Residential Real Property Disclosure Act. Provides that prior to the sale of a residential property, the seller must have the property tested for radon and radon progeny by a licensed radon contractor and furnish a prospective buyer with the test results. Provides that if the test reveals that radon is present at a level in excess of 4.0 (pCi/L) pico curies per liter of air in the indoor atmosphere of the residential real property, the Seller must mitigate, repair, or alter the premises to reduce the radon level to below 4.0 (pCi/L) or give the prospective buyer notice of the right to terminate the sale agreement without loss of any earnest money or down payment. Effective July 1, 2007.

LRB094 21934 AJO 60407 b

1 AN ACT concerning property.

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 20, 25, 30, 35, 40, 50, and 55 as
6 follows:

7 (765 ILCS 77/20)

8 Sec. 20. A seller of residential real property shall
9 complete all applicable items in the disclosure document
10 described in Section 35 of this Act. The seller shall have
11 radon testing conducted by a radon contractor licensed under
12 the Radon Industry Licensing Act on the residential real
13 property and obtain the licensed radon contractor's written
14 report concerning the presence of radon and radon progeny in
15 the indoor atmosphere of the property. The seller shall deliver
16 to the prospective buyer a copy of the licensed radon
17 contractor's report and the written disclosure statement
18 required by this Act before the signing of a written agreement
19 by the seller and prospective buyer that would, subject to the
20 satisfaction of any negotiated contingencies, require the
21 prospective buyer to accept a transfer of the residential real
22 property.

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

24 (765 ILCS 77/25)

25 Sec. 25. Liability of seller.

26 (a) The seller is not liable for any error, inaccuracy, or
27 omission of any information delivered pursuant to this Act if
28 (i) the seller had no knowledge of the error, inaccuracy, or
29 omission, (ii) the error, inaccuracy, or omission was based on
30 a reasonable belief that a material defect or other matter not
31 disclosed had been corrected, or (iii) the error, inaccuracy,

1 or omission was based on information provided by a public
2 agency or by a licensed engineer, land surveyor, structural
3 pest control operator, or by a contractor about matters within
4 the scope of the contractor's occupation and the seller had no
5 knowledge of the error, inaccuracy, or omission.

6 (b) The seller shall disclose material defects of which the
7 seller has actual knowledge.

8 (c) The seller is not obligated by this Act to make any
9 specific investigation, except the radon testing required by
10 Section 20, or inquiry in an effort to complete the disclosure
11 statement.

12 (d) If a radon testing report states that the level of
13 radon or radon progeny in the indoor atmosphere of the
14 residential real property is 4.0 (pCi/L) pico curies per liter
15 of air or above, the seller is obligated to (i) mitigate,
16 repair, or alter the building or building design at the
17 seller's expense so as to reduce the level of radon or radon
18 progeny to a level under 4.0 (pCi/L) pico curies per liter of
19 air in the indoor atmosphere of the residential real property,
20 or (ii) give the prospective buyer written notice that the
21 prospective buyer may, within 3 days after the prospective
22 buyer's receipt of the radon testing report that states that
23 the radon or radon progeny level is 4.0 (pCi/L) or more,
24 terminate the contract or other agreement without any liability
25 or recourse except for the return to prospective buyer of all
26 earnest money deposits or down payments paid by prospective
27 buyer in the transaction.

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

29 (765 ILCS 77/30)

30 Sec. 30. Disclosure supplement or radon testing report
31 supplement. If, prior to closing, any seller has actual
32 knowledge of an error, inaccuracy, or omission in any prior
33 disclosure document or radon testing report after delivery of
34 that disclosure document or report to a prospective buyer, that
35 seller shall supplement the prior disclosure document or radon

1 testing report with a written supplemental disclosure or
2 report.

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

4 (765 ILCS 77/35)

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

7 RESIDENTIAL REAL PROPERTY DISCLOSURE REPORT

8 NOTICE: THE PURPOSE OF THIS REPORT IS TO PROVIDE
9 PROSPECTIVE BUYERS WITH INFORMATION ABOUT MATERIAL DEFECTS IN
10 THE RESIDENTIAL REAL PROPERTY. EXCEPT AS PROVIDED IN SECTIONS
11 20 AND 25, THIS REPORT DOES NOT LIMIT THE PARTIES' RIGHT TO
12 CONTRACT FOR THE SALE OF RESIDENTIAL REAL PROPERTY IN "AS IS"
13 CONDITION. UNDER COMMON LAW, SELLERS WHO DISCLOSE MATERIAL
14 DEFECTS MAY BE UNDER A CONTINUING OBLIGATION TO ADVISE THE
15 PROSPECTIVE BUYERS ABOUT THE CONDITION OF THE RESIDENTIAL REAL
16 PROPERTY EVEN AFTER THE REPORT IS DELIVERED TO THE PROSPECTIVE
17 BUYER. COMPLETION OF THIS REPORT BY THE SELLER CREATES LEGAL
18 OBLIGATIONS ON THE SELLER; THEREFORE THE SELLER MAY WISH TO
19 CONSULT AN ATTORNEY PRIOR TO COMPLETION OF THIS REPORT.

20 Property Address:
21 City, State & Zip Code:
22 Seller's Name:

23 This Report is a disclosure of certain conditions of the
24 residential real property listed above in compliance with the
25 Residential Real Property Disclosure Act. This information is
26 provided as of ...(month) ...(day) ...(year), and does not
27 reflect any changes made or occurring after that date or
28 information that becomes known to the seller after that date.
29 The disclosures herein shall not be deemed warranties of any
30 kind by the seller or any person representing any party in this
31 transaction.

32 In this form, "am aware" means (i) to have actual notice or
33 actual knowledge of the existence of radon or radon progeny in
34 the indoor atmosphere of the residential real property at a
35 level of 4.0 (pCi/L) pico curies per liter of air or above, or

1 (ii) with reference to any other condition, without any
 2 specific investigation or inquiry. In this form, "material
 3 defect" means a condition that would have a substantial adverse
 4 effect on the value of the residential real property or that
 5 would significantly impair the health or safety of future
 6 occupants of the residential real property unless the seller
 7 reasonably believes that the condition has been corrected.

8 The seller discloses the following information with the
 9 knowledge that even though the statements herein are not deemed
 10 to be warranties, prospective buyers may choose to rely on this
 11 information in deciding whether or not and on what terms to
 12 purchase the residential real property.

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

- | 20 | YES | NO | N/A | |
|----|-----|----|-----|---|
| 21 | | | | 1. Seller has occupied the property |
| 22 | | | | within the last 12 months. |
| 23 | | | | (No explanation is needed.) |
| 24 | | | | 2. I am aware of flooding or recurring |
| 25 | | | | leakage problems in the crawl |
| 26 | | | | space or basement. |
| 27 | | | | 3. I am aware that the property is |
| 28 | | | | located in a flood plain or that I |
| 29 | | | | currently have flood hazard |
| 30 | | | | insurance on the property. |
| 31 | | | | 4. I am aware of material defects in |
| 32 | | | | the basement or foundation |
| 33 | | | | (including cracks and bulges). |
| 34 | | | | 5. I am aware of leaks or material |
| 35 | | | | defects in the roof, ceilings, or |
| 36 | | | | chimney. |

1 6. I am aware of material defects in
2 the walls or floors.

3 7. I am aware of material defects in
4 the electrical system.

5 8. I am aware of material defects in
6 the plumbing system (includes
7 such things as water heater, sump
8 pump, water treatment system,
9 sprinkler system, and swimming
10 pool).

11 9. I am aware of material defects in
12 the well or well equipment.

13 10. I am aware of unsafe conditions in
14 the drinking water.

15 11. I am aware of material defects in
16 the heating, air conditioning, or
17 ventilating systems.

18 12. I am aware of material defects in
19 the fireplace or woodburning
20 stove.

21 13. I am aware of material defects in
22 the septic, sanitary sewer, or
23 other disposal system.

24 14. I am aware of unsafe concentrations
25 of radon on the premises.

26 15. I am aware of unsafe concentrations
27 of or unsafe conditions relating
28 to asbestos on the premises.

29 16. I am aware of unsafe concentrations
30 of or unsafe conditions relating
31 to lead paint, lead water pipes,
32 lead plumbing pipes or lead in
33 the soil on the premises.

34 17. I am aware of mine subsidence,
35 underground pits, settlement,
36 sliding, upheaval, or other earth

1 stability defects on the
2 premises.

3 18. I am aware of current infestations
4 of termites or other wood boring
5 insects.

6 19. I am aware of a structural defect
7 caused by previous infestations
8 of termites or other wood boring
9 insects.

10 20. I am aware of underground fuel
11 storage tanks on the property.

12 21. I am aware of boundary or lot line
13 disputes.

14 22. I have received notice of violation
15 of local, state or federal laws
16 or regulations relating to this
17 property, which violation has not
18 been corrected.

19 Note: These disclosures are not intended to cover the
20 common elements of a condominium, but only the actual
21 residential real property including limited common elements
22 allocated to the exclusive use thereof that form an integral
23 part of the condominium unit.

24 Note: These disclosures are intended to reflect the current
25 condition of the premises and do not include previous problems,
26 if any, that the seller reasonably believes have been
27 corrected.

28 If any of the above are marked "not applicable" or "yes",
29 please explain here or use additional pages, if necessary:

30
31
32

33 Check here if additional pages used:

34 Seller certifies that seller has prepared this statement
35 and certifies that the information provided is (i) based on the
36 actual notice or actual knowledge of the seller of the

1 existence of radon or radon progeny in the indoor atmosphere of
 2 the residential property, and (ii) with reference to any other
 3 condition, based on the actual notice or actual knowledge of
 4 the seller without any specific investigation or inquiry on the
 5 part of the seller. The seller hereby authorizes any person
 6 representing any principal in this transaction to provide a
 7 copy of this report, and to disclose any information in the
 8 report, to any person in connection with any actual or
 9 anticipated sale of the property.

10 Seller: Date:

11 Seller: Date:

12 THE PROSPECTIVE BUYER IS AWARE THAT THE PARTIES MAY CHOOSE,
 13 SUBJECT TO SECTIONS 20 AND 25 OF THE RESIDENTIAL REAL PROPERTY
 14 DISCLOSURE ACT, TO NEGOTIATE AN AGREEMENT FOR THE SALE OF THE
 15 PROPERTY SUBJECT TO ANY OR ALL MATERIAL DEFECTS DISCLOSED IN
 16 THIS REPORT OR THE RADON TESTING REPORT ("AS IS"). THIS
 17 DISCLOSURE IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR
 18 WARRANTIES THAT THE PROSPECTIVE BUYER OR SELLER MAY WISH TO
 19 OBTAIN OR NEGOTIATE. THE FACT THAT THE SELLER IS NOT AWARE OF A
 20 PARTICULAR CONDITION OR PROBLEM IS NO GUARANTEE THAT IT DOES
 21 NOT EXIST. THE PROSPECTIVE BUYER IS AWARE THAT HE MAY REQUEST
 22 AN INSPECTION OF THE PREMISES PERFORMED BY A QUALIFIED
 23 PROFESSIONAL.

24 Prospective Buyer: Date: Time:

25 Prospective Buyer: Date: Time:

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

27 (765 ILCS 77/40)

28 Sec. 40. Material defect. If a material defect is disclosed
 29 in the Residential Real Property Disclosure Report or the radon
 30 testing report, after acceptance by the prospective buyer of an
 31 offer or counter-offer made by a seller or after the execution
 32 of an offer made by a prospective buyer that is accepted by the
 33 seller for the conveyance of the residential real property,
 34 then the prospective buyer may, within 3 business days after
 35 receipt of that report or the radon testing report by the

1 prospective buyer, terminate the contract or other agreement
2 without any liability or recourse except for the return to
3 prospective buyer of all earnest money deposits or down
4 payments paid by prospective buyer in the transaction. If a
5 material defect is disclosed in a supplement to this disclosure
6 document or to the radon testing report, the prospective buyer
7 shall not have a right to terminate unless the material defect
8 results from an error, inaccuracy, or omission of which the
9 seller had actual knowledge at the time the prior disclosure
10 document was completed and signed by the seller. The right to
11 terminate the contract, however, shall no longer exist after
12 the conveyance of the residential real property. For purposes
13 of this Act the termination shall be deemed to be made when
14 written notice of termination is personally delivered to at
15 least one of the sellers identified in the contract or other
16 agreement or when deposited, certified or registered mail, with
17 the United States Postal Service, addressed to one of the
18 sellers at the address indicated in the contract or agreement,
19 or, if there is not an address contained therein, then at the
20 address indicated for the residential real property on the
21 report.

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

23 (765 ILCS 77/50)

24 Sec. 50. The Delivery of the Residential Real Property
25 Disclosure Report and the radon testing report provided by this
26 Act shall each be delivered by:

27 (1) personal or facsimile delivery to the prospective
28 buyer;

29 (2) depositing the report with the United States Postal
30 Service, postage prepaid, first class mail, addressed to
31 the prospective buyer at the address provided by the
32 prospective buyer or indicated on the contract or other
33 agreement; or

34 (3) depositing the report with an alternative delivery
35 service such as Federal Express, UPS, or Airborne, delivery

1 charges prepaid, addressed to the prospective buyer at the
2 address provided by the prospective buyer or indicated on
3 the contract or other agreement.

4 For purposes of this Act, delivery to one prospective buyer
5 is deemed delivery to all prospective buyers. Delivery to an
6 authorized individual acting on behalf of a prospective buyer
7 constitutes delivery to all prospective buyers. Delivery of the
8 report is effective upon receipt by the prospective buyer.
9 Receipt may be acknowledged on the report, acknowledged in an
10 agreement for the conveyance of the residential real property,
11 or shown in any other verifiable manner.

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

13 (765 ILCS 77/55)

14 Sec. 55. Violations and damages. If the seller fails or
15 refuses to provide the disclosure document or radon testing
16 report prior to the conveyance of the residential real
17 property, the buyer shall have the right to terminate the
18 contract. A person who knowingly violates or fails to perform
19 any duty prescribed by any provision of this Act or who
20 discloses any information on the Residential Real Property
21 Disclosure Report or radon testing report that he knows to be
22 false shall be liable in the amount of actual damages and court
23 costs, and the court may award reasonable attorney fees
24 incurred by the prevailing party.

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

26 Section 99. Effective date. This Act takes effect July 1,
27 2007.