

**RESIDENTIAL REAL PROPERTY
DISCLOSURE ACT ARTICLE 2: DISCLOSURES
765 ILCS 77/5 et seq.**

Section 5: Definitions. Unless the context dictates otherwise, the following terms are defined as specified in this section: "**Residential real property**" refers to real property that includes at least one and no more than four residential dwelling units; units in residential cooperatives; or condominium units, including the limited common elements allocated for exclusive use that are an integral part of the condominium unit. This term also includes a manufactured home, as defined in subdivision (53) of Section 9-102 of the Uniform Commercial Code, that is considered real property under the Conveyance and Encumbrance of Manufactured Homes as Real Property and Severance Act.

"**Seller**" refers to any individual or entity who:

- (1) Holds a beneficial interest in an Illinois land trust; or
- (2) Possesses a legal or equitable interest in residential property, including:
 - i. an owner;
 - ii. beneficiary of a trust;
 - iii. a beneficiary pursuant to testate disposition, intestate succession, or a transfer on death instrument; or
 - iv. a contract purchaser or lessee of a ground lease.

"Seller" does not refer to a party involved in a transfer that is exempt under Section 15, nor to a beneficiary who has both (i) never lived in the residential real property and (ii) never held management responsibilities for the property.

"**Prospective buyer**" refers to any individual or entity engaged in discussions or making an offer to acquire ownership or leasehold interest in a ground lease of residential real property through a transfer for consideration, as governed by this Act.

"**Contract**" refers to a written agreement between the seller and the prospective buyer that, contingent upon meeting any agreed-upon conditions, obligates the prospective buyer to accept the transfer of the residential real property.

Section 10. Applicability. This Act applies to any transfer of residential real property through sale, exchange, installment land sale contract, assignment of beneficial interest, lease with a purchase option, ground lease, or assignment of a ground lease, except as specified in Section 15.

Section 15. Seller Exemptions. A seller involved in any of the following types of transfers is exempt from the requirements of this Act, regardless of whether a disclosure report is provided:

- (1) Transfers made under court orders, including but not limited to transfers mandated by probate courts for estate administration, transfers between spouses due to divorce or legal separation, transfers based on an order of possession, transfers by bankruptcy trustees, transfers through eminent domain, and transfers resulting from a decree for specific performance.
- (2) Transfers from a mortgagor to a mortgagee via a deed in lieu of foreclosure or consent judgment, transfers by judicial deed following a foreclosure sale to the winning bidder or the assignee of a certificate of sale, transfers via collateral assignment of a beneficial interest in a land trust, or transfers by a mortgagee or the successor to the mortgagee's secured position, or a beneficiary under a deed of trust who has acquired the property via deed in lieu of foreclosure, consent judgment, or judicial deed post-foreclosure sale.
- (3) Transfers conducted by a fiduciary during the administration of a decedent's estate, guardianship, conservatorship, or trust. For the purposes of this paragraph, "trust" includes an Illinois land trust.
- (4) Transfers between co-owners, from one co-owner to one or more other co-owners.
- (5) Transfers made by a decedent through testate disposition, intestate succession, or a transfer on death instrument.
- (6) Transfers made to a spouse or to individuals within the direct line of consanguinity of one or more of the sellers.
- (7) Transfers by an entity that has acquired residential real property from a seller for the purpose of aiding in the seller's relocation, provided the entity makes available a copy of the disclosure report given to it by the seller to all prospective buyers.
- (8) Transfers involving any governmental entity, whether as the buyer or seller.
- (9) Transfers of newly built residential real property that has not yet been occupied. This exemption does not apply to the rehabilitation of existing residential properties.

Section 20. Requirements for Disclosure Report. The seller of residential real property must fill out all sections of the disclosure report outlined in Section 35. The seller is required to provide the prospective buyer with the written disclosure report mandated by this Act prior to the execution of any contract.

Section 25. Seller's Liability.

- (a) he seller shall not be held responsible for any error, inaccuracy, or omission in the information provided under this Act if (i) the seller was unaware of the error, inaccuracy, or omission; (ii) the error, inaccuracy, or omission was based on the reasonable assumption that a material defect or other undisclosed issue had been resolved; or (iii) the error, inaccuracy, or omission stemmed from information given by a public agency, a licensed engineer, land surveyor, structural pest control operator, or contractor regarding matters within their professional expertise, and the seller had no knowledge of the error, inaccuracy, or omission.
- (b) The seller must disclose any material defects of which they have actual knowledge.
- (c) This Act does not require the seller to conduct any specific investigation or inquiry to complete the disclosure statement.

Section 30. Supplementing Disclosure Report. If, before closing, a seller learns of any error, inaccuracy, or omission in a previously

provided disclosure report or supplement, the seller must provide a written supplemental disclosure to correct the error. This supplemental disclosure must be delivered to the prospective buyer using any method outlined in Section 50.

Section 35. Disclosure report form.... [omitted]

Section 40. Material defect.

- (a) If the seller identifies a material defect in the Residential Real Property Disclosure Report, including a "yes" answer to any statement (except for statements 1 and 2), and the report is delivered to the prospective buyer after the contract has been signed by all parties, the prospective buyer has the right to terminate the contract within 5 business days of receiving the report. In such a case, the prospective buyer is entitled to the return of all earnest money or down payments made during the transaction, with no liability or recourse to the seller.
- (b) If the seller identifies a material defect in a supplemental disclosure report, the prospective buyer will not have the right to cancel the agreement unless:
 - (i) The material defect arises from a mistake, inaccuracy, or omission that the seller was aware of when the original disclosure was completed and signed by them; (ii) the material defect cannot be fixed before closing; or (iii) the material defect can be repaired before closing, but within 5 business days of receiving the supplemental disclosure, the seller refuses, or fails to provide written agreement, to address the issue.
- (c) However, the right to cancel the contract will no longer be valid once the residential real property has been transferred. For the purposes of this Act, termination is considered effective when written notice of cancellation is sent to at least one of the sellers through any method outlined in Section 50, using the contact details provided by the seller or stated in the contract or other agreement. Nothing in subsection (a) or (b) will limit any remedies available under the contract or Section 55.

Section 45. Other Law. This Act is not meant to restrict any remedies or alter any disclosure obligations established by other laws or common law, particularly those designed to prevent fraud, misrepresentation, or deceit in the transaction.

Section 50. Method of Delivering Disclosure Report. The Residential Real Property Disclosure Report must be delivered by the following methods:

- (1) Direct delivery or via facsimile, email, or other electronic means to the prospective buyer’s contact details provided in the agreement or contract;
- (2) Mailing the report via the U.S. Postal Service, first class, with postage prepaid, to the address provided by the prospective buyer or stated in the contract or agreement; or
- (3) Using an alternative delivery service, such as Federal Express or UPS, with prepaid delivery charges, sent to the prospective buyer’s address as provided in the contract or agreement.

For the purposes of this Act, delivering the report to one prospective buyer is considered delivery to all prospective buyers. If an authorized representative is acting on behalf of a prospective buyer, their receipt is considered as delivery to all buyers. The delivery of the Report is considered complete when the prospective buyer receives it. Acknowledgment of receipt may be recorded on the Report, in the conveyance agreement, or through any other method that can be verified.

Section 55. Violations and damages. If the seller does not provide the required disclosure report before transferring the residential real property, the prospective buyer has the right to cancel the contract. A seller who intentionally violates or fails to fulfill any requirement under this Act, or who knowingly provides false information on the Residential Real Property Disclosure Report, will be liable for actual damages and court costs. Additionally, the court may award reasonable attorney’s fees to the prevailing party.

Section 60. Limitation of Action. No legal action for a violation of this Act can be initiated more than one year after the earliest of the following events: the date of possession, the date of occupancy, or the date the deed or other transfer document for the residential real property is recorded.

Section 65. Disclosure Report Form; Contents; Copy of Act. A copy of Sections 5 through 65 of Article 2 of this Act, excluding Section 35, must be included or attached to the Residential Real Property Disclosure Report form.

Date provided to Buyer: _____

Seller:

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