

IMPORTANT NOTICE
PUBLIC ACT 102-0765
ILLINOIS RESIDENTIAL REAL PROPERTY DISCLOSURE ACT REVISED
(SELLER DISCLOSURE)

The Residential Real Property Disclosure Act (the “Act”) was recently revised and became effective immediately upon the Governor’s signature on May 13, 2022. As previously reported, this Act is more an update to existing provisions but there will be a new form for sellers to complete and provide to buyers prior to signing a contract to sell residential real property.

Q. What does this mean?

A. This means that sellers who have completed disclosure reports after Friday, May 13, 2022, the effective date of the Act, may wish to complete a “new” report depending upon the advice of seller’s legal counsel. Generally, this would be the prudent thing for sellers to do. If you have a seller client who is reluctant to complete an updated report, advise the seller to talk to their attorney. Even if sellers completed the report prior to Friday, May 13, 2022, prudence would suggest completion of a “new” report if the listing is not yet under contract to sell. Again, sellers should be directed to legal counsel if there is a question.

Q. Where might I obtain the new report form?

A. Illinois REALTORS® can access this form on our [Legal Forms](#) page (Login required)

Q. Must sellers still provide the Disclosure report along with a copy of Article 2 of the statute?

A. Yes. The revised version of Article 2 must be attached as part of the report most sellers of residential real property must provide to most buyers.

Q. What are some of the changes to the Act and the report?

A. Below is a bulleted list of some changes to the Act and the form (note that not every single technical change is noted). The definition of Residential Real Property remains the same.

- **Section 5. Definitions.**
 - “Seller” means every person or entity who:
 - (1) Is a beneficiary of an Illinois land trust **or**
 - (2) Has an interest, legal or equitable, in residential property as:
 - (i)an owner;
 - (ii) a beneficiary of a trust;
 - (iii) a beneficiary who takes title upon owner’s death (either by will, without a will or by a transfer on death instrument); **or**
 - (iv) a contract purchaser or lessee of a ground lease.

The revised Act does specifically say a seller does not include a party to an exempt transfer.

- “Contract” is defined as the agreement, subject to satisfaction of contingencies, that would require the buyer to buy (accept the transfer).
- **Section 15. Seller Exemptions.**
 - NOTE: There is a provision stating that the exempt seller does not forfeit the exempt status by supplying a disclosure report.
 - While there are some slight language changes to the exemptions, they are substantively the same as they were in prior versions of the Act.
 - There is some good clarification where the seller who had not occupied newly constructed property, the word “not” has been changed to **never** and the language clarifies that rehabs don’t count as “newly constructed.” Thus, rehabbed property is not (and has never been) exempt from the Act.
- **Section 30. Disclosure Report Supplement.**
 - NOTE: The seller has always been required to amend the report if the seller gained new information about the property that would change seller’s response. New language makes this continuing duty abundantly clear.
- **Section 35. Disclosure Report Form.**
 - There is clarification that the report must be provided before the signing of a contract.
 - The list of enumerated questions remains substantively the same. There are a few tweaks to clarify the meaning.
 - Question 1. The seller answers whether they have occupied the property in the last 12 months. If no, seller must identify the capacity or explain seller’s relationship to the property. An example could be “Absentee Owner.”
 - It is worth adding that when the answer was then, or is now, “No,” the seller has a duty to answer the remaining questions to the best of seller’s actual knowledge.
 - Question 3 has become Questions 2 and 4.
 - New Question 2: I currently have flood hazard insurance on the property.
 - New Question 4: I am aware that the property is located in a floodplain.
 - At the end of the report there is language added in BOLD type:
 - **THE SELLER ACKNOWLEDGES THAT THE SELLER IS REQUIRED TO PROVIDE THIS DISCLOSURE REPORT TO THE PROSPECTIVE BUYER BEFORE THE SIGNING OF THE CONTRACT AND HAS A CONTINUING OBLIGATION, PURSUANT TO SECTION 30 OF THE RESIDENTIAL REAL PROPERTY DISCLOSURE ACT, TO SUPPLEMENT THIS DISCLOSURE PRIOR TO CLOSING.**

- Also, the buyer acknowledges the ability to negotiate a purchase in “As Is” condition subject to disclosed defects, and the report is not a substitute for an inspection, nor is it a guarantee that a defect does not exist.
- **Section 40. Material Defect.**
 - (a) The prior version allowed buyer a 3 day right to terminate the contract if the seller disclosed a material defect after the fact. Now, the time is 5 days, and the language is slightly different, but the meaning remains the same as before.
 - (b) If seller discloses a defect in a supplement to the report, the buyer may not terminate unless
 - (i) The defect was one that seller knew about but did not disclose before (i.e. seller misrepresented the condition on the initial report);
 - (ii) The defect is not repairable prior to closing; **or**
 - (iii) It is repairable prior to closing, but within 5 days after delivery of supplement, seller declines or fails to agree in writing, to repair.
 - (c) This section does say that contract language for remedies prevails over the language in the Act.

The remaining changes are simply updates, i.e. allowing for electronic delivery of the report.