



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB0659

Introduced 2/8/2007, 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.

LRB095 07038 AJO 27160 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.)

1 (765 ILCS 77/25)

2 Sec. 25. Liability of seller.

3 (a) The seller is not liable for any error, inaccuracy, or
4 omission of any information delivered pursuant to this Act if
5 (i) the seller had no knowledge of the error, inaccuracy, or
6 omission, (ii) the error, inaccuracy, or omission was based on
7 a reasonable belief that a material defect or other matter not
8 disclosed had been corrected, or (iii) the error, inaccuracy,
9 or omission was based on information provided by a public
10 agency or by a licensed engineer, land surveyor, structural
11 pest control operator, or by a contractor about matters within
12 the scope of the contractor's occupation and the seller had no
13 knowledge of the error, inaccuracy, or omission.

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

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

20 (d) If a radon testing report states that the level of
21 radon or radon progeny in the indoor atmosphere of the
22 residential real property is 4.0 (pCi/L) pico curies per liter
23 of air or above, the seller is obligated to (i) mitigate,
24 repair, or alter the building or building design at the
25 seller's expense so as to reduce the level of radon or radon

1 progeny to a level under 4.0 (pCi/L) pico curies per liter of
2 air in the indoor atmosphere of the residential real property,
3 or (ii) give the prospective buyer written notice that the
4 prospective buyer may, within 3 days after the prospective
5 buyer's receipt of the radon testing report that states that
6 the radon or radon progeny level is 4.0 (pCi/L) or more,
7 terminate the contract or other agreement without any liability
8 or recourse except for the return to prospective buyer of all
9 earnest money deposits or down payments paid by prospective
10 buyer in the transaction.

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

12 (765 ILCS 77/30)

13 Sec. 30. Disclosure supplement or radon testing report
14 supplement. If, prior to closing, any seller has actual
15 knowledge of an error, inaccuracy, or omission in any prior
16 disclosure document or radon testing report after delivery of
17 that disclosure document or report to a prospective buyer, that
18 seller shall supplement the prior disclosure document or radon
19 testing report with a written supplemental disclosure or
20 report.

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

22 (765 ILCS 77/35)

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

RESIDENTIAL REAL PROPERTY DISCLOSURE REPORT

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

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

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

In this form, "am aware" means (i) to have actual notice or

1 actual knowledge of the existence of radon or radon progeny in
 2 the indoor atmosphere of the residential real property at a
 3 level of 4.0 (pCi/L) pico curies per liter of air or above, or
 4 (ii) with reference to any other condition, without any
 5 specific investigation or inquiry. In this form, "material
 6 defect" means a condition that would have a substantial adverse
 7 effect on the value of the residential real property or that
 8 would significantly impair the health or safety of future
 9 occupants of the residential real property unless the seller
 10 reasonably believes that the condition has been corrected.

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

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

23 YES NO N/A

24 1. Seller has occupied the property
 25 within the last 12 months.
 26 (No explanation is needed.)

1 the drinking water.

2 11. I am aware of material defects in
3 the heating, air conditioning, or
4 ventilating systems.

5 12. I am aware of material defects in
6 the fireplace or woodburning
7 stove.

8 13. I am aware of material defects in
9 the septic, sanitary sewer, or
10 other disposal system.

11 14. I am aware of unsafe concentrations
12 of radon on the premises.

13 15. I am aware of unsafe concentrations
14 of or unsafe conditions relating
15 to asbestos on the premises.

16 16. I am aware of unsafe concentrations
17 of or unsafe conditions relating
18 to lead paint, lead water pipes,
19 lead plumbing pipes or lead in
20 the soil on the premises.

21 17. I am aware of mine subsidence,
22 underground pits, settlement,
23 sliding, upheaval, or other earth
24 stability defects on the
25 premises.

26 18. I am aware of current infestations

1 of termites or other wood boring
2 insects.

3 19. I am aware of a structural defect
4 caused by previous infestations
5 of termites or other wood boring
6 insects.

7 20. I am aware of underground fuel
8 storage tanks on the property.

9 21. I am aware of boundary or lot line
10 disputes.

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

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

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

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

1
 2
 3

4 Check here if additional pages used:

5 Seller certifies that seller has prepared this statement
 6 and certifies that the information provided is (i) based on the
 7 actual notice or actual knowledge of the seller of the
 8 existence of radon or radon progeny in the indoor atmosphere of
 9 the residential property, and (ii) with reference to any other
 10 condition, based on the actual notice or actual knowledge of
 11 the seller without any specific investigation or inquiry on the
 12 part of the seller. The seller hereby authorizes any person
 13 representing any principal in this transaction to provide a
 14 copy of this report, and to disclose any information in the
 15 report, to any person in connection with any actual or
 16 anticipated sale of the property.

17 Seller: Date:

18 Seller: Date:

19 THE PROSPECTIVE BUYER IS AWARE THAT THE PARTIES MAY CHOOSE,
 20 SUBJECT TO SECTIONS 20 AND 25 OF THE RESIDENTIAL REAL PROPERTY
 21 DISCLOSURE ACT, TO NEGOTIATE AN AGREEMENT FOR THE SALE OF THE
 22 PROPERTY SUBJECT TO ANY OR ALL MATERIAL DEFECTS DISCLOSED IN
 23 THIS REPORT OR THE RADON TESTING REPORT ("AS IS"). THIS
 24 DISCLOSURE IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR
 25 WARRANTIES THAT THE PROSPECTIVE BUYER OR SELLER MAY WISH TO
 26 OBTAIN OR NEGOTIATE. THE FACT THAT THE SELLER IS NOT AWARE OF A

1 PARTICULAR CONDITION OR PROBLEM IS NO GUARANTEE THAT IT DOES
 2 NOT EXIST. THE PROSPECTIVE BUYER IS AWARE THAT HE MAY REQUEST
 3 AN INSPECTION OF THE PREMISES PERFORMED BY A QUALIFIED
 4 PROFESSIONAL.

5 Prospective Buyer: Date: Time:

6 Prospective Buyer: Date: Time:

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

8 (765 ILCS 77/40)

9 Sec. 40. Material defect. If a material defect is disclosed
 10 in the Residential Real Property Disclosure Report or the radon
 11 testing report, after acceptance by the prospective buyer of an
 12 offer or counter-offer made by a seller or after the execution
 13 of an offer made by a prospective buyer that is accepted by the
 14 seller for the conveyance of the residential real property,
 15 then the prospective buyer may, within 3 business days after
 16 receipt of that report or the radon testing report by the
 17 prospective buyer, terminate the contract or other agreement
 18 without any liability or recourse except for the return to
 19 prospective buyer of all earnest money deposits or down
 20 payments paid by prospective buyer in the transaction. If a
 21 material defect is disclosed in a supplement to this disclosure
 22 document or to the radon testing report, the prospective buyer
 23 shall not have a right to terminate unless the material defect
 24 results from an error, inaccuracy, or omission of which the
 25 seller had actual knowledge at the time the prior disclosure

1 document was completed and signed by the seller. The right to
2 terminate the contract, however, shall no longer exist after
3 the conveyance of the residential real property. For purposes
4 of this Act the termination shall be deemed to be made when
5 written notice of termination is personally delivered to at
6 least one of the sellers identified in the contract or other
7 agreement or when deposited, certified or registered mail, with
8 the United States Postal Service, addressed to one of the
9 sellers at the address indicated in the contract or agreement,
10 or, if there is not an address contained therein, then at the
11 address indicated for the residential real property on the
12 report.

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

14 (765 ILCS 77/50)

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

18 (1) personal or facsimile delivery to the prospective
19 buyer;

20 (2) depositing the report with the United States Postal
21 Service, postage prepaid, first class mail, addressed to
22 the prospective buyer at the address provided by the
23 prospective buyer or indicated on the contract or other
24 agreement; or

25 (3) depositing the report with an alternative delivery

1 service such as Federal Express, UPS, or Airborne, delivery
2 charges prepaid, addressed to the prospective buyer at the
3 address provided by the prospective buyer or indicated on
4 the contract or other agreement.

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

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

14 (765 ILCS 77/55)

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

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