

## **IC 32-21-5**

### **Chapter 5. Residential Real Estate Sales Disclosure**

#### **IC 32-21-5-1**

##### **Applicability of chapter**

Sec. 1. (a) This chapter applies only to a sale of, an exchange of, an installment sales contract for, or a lease with option to buy residential real estate that contains not more than four (4) residential dwelling units.

(b) This chapter does not apply to the following:

(1) Transfers ordered by a court, including transfers:

(A) in the administration of an estate;

(B) by foreclosure sale;

(C) by a trustee in bankruptcy;

(D) by eminent domain;

(E) from a decree of specific performance;

(F) from a decree of divorce; or

(G) from a property settlement agreement.

(2) Transfers by a mortgagee who has acquired the real estate at a sale conducted under a foreclosure decree or who has acquired the real estate by a deed in lieu of foreclosure.

(3) Transfers by a fiduciary in the course of the administration of the decedent's estate, guardianship, conservatorship, or trust.

(4) Transfers made from at least one (1) co-owner solely to at least one (1) other co-owner.

(5) Transfers made solely to any combination of a spouse or an individual in the lineal line of consanguinity of at least one (1) of the transferors.

(6) Transfers made because of the record owner's failure to pay any federal, state, or local taxes.

(7) Transfers to or from any governmental entity.

(8) Transfers involving the first sale of a dwelling that has not been inhabited.

(9) Transfers to a living trust.

*As added by P.L.2-2002, SEC.6.*

#### **IC 32-21-5-2**

##### **"Buyer" defined**

Sec. 2. As used in this chapter, "buyer" means a transferee in a transaction described in section 1 of this chapter.

*As added by P.L.2-2002, SEC.6.*

#### **IC 32-21-5-3**

##### **"Closing" defined**

Sec. 3. As used in this chapter, "closing" means a transfer of an interest described in section 1 of this chapter by a deed, installment sales contract, or lease.

*As added by P.L.2-2002, SEC.6.*

#### **IC 32-21-5-4**

##### **"Defect" defined**

Sec. 4. As used in connection with disclosure forms required by this chapter, "defect" means a condition that would have a significant adverse effect on the value of the property, that would significantly impair the health or safety of future occupants of the property, or that if not repaired, removed, or replaced would significantly shorten or adversely affect the expected normal life of the premises.

*As added by P.L.2-2002, SEC.6.*

#### **IC 32-21-5-5**

##### **"Disclosure form" defined**

Sec. 5. As used in this chapter, "disclosure form" refers to a disclosure form prepared under section 8 of this chapter or a disclosure form that meets the requirements of section 8 of this chapter.

*As added by P.L.2-2002, SEC.6.*

#### **IC 32-21-5-5.5**

##### **Repealed**

*(As added by P.L.186-2007, SEC.8. Repealed by P.L.3-2008, SEC.269.)*

#### **IC 32-21-5-6**

##### **"Owner" defined**

Sec. 6. As used in this chapter, "owner" means the owner of residential real estate that is for sale, exchange, lease with an option to buy, or sale under an installment contract.

*As added by P.L.2-2002, SEC.6.*

#### **IC 32-21-5-7**

##### **Disclosure form; contents**

Sec. 7. The Indiana real estate commission established by IC 25-34.1-2-1 shall adopt a specific disclosure form that contains the following:

- (1) Disclosure by the owner of the known condition of the following:
  - (A) The foundation.
  - (B) The mechanical systems.
  - (C) The roof.
  - (D) The structure.
  - (E) The water and sewer systems.
  - (F) Additions that may require improvements to the sewage disposal system.
  - (G) Other areas that the Indiana real estate commission determines are appropriate.
- (2) Disclosure by the owner of known:
  - (A) contamination caused by the manufacture of a controlled substance on the property that has not been certified as

decontaminated by an inspector approved under IC 13-14-1-15; or

(B) manufacture of methamphetamine or dumping of waste from the manufacture of methamphetamine in a residential structure on the property.

(3) A notice to the prospective buyer that contains substantially the following language:

"The prospective buyer and the owner may wish to obtain professional advice or inspections of the property and provide for appropriate provisions in a contract between them concerning any advice, inspections, defects, or warranties obtained on the property."

(4) A notice to the prospective buyer that contains substantially the following language:

"The representations in this form are the representations of the owner and are not the representations of the agent, if any. This information is for disclosure only and is not intended to be a part of any contract between the buyer and owner."

(5) A disclosure by the owner that an airport is located within a geographical distance from the property as determined by the Indiana real estate commission. The commission may consider the differences between an airport serving commercial airlines and an airport that does not serve commercial airlines in determining the distance to be disclosed.

*As added by P.L.2-2002, SEC.6. Amended by P.L.1-2003, SEC.83; P.L.159-2011, SEC.41; P.L.180-2014, SEC.5.*

### **IC 32-21-5-8**

#### **Owner prepared disclosure form**

Sec. 8. An owner may prepare or use a disclosure form that contains the information required in the disclosure form under section 7 of this chapter and any other information the owner determines is appropriate, including whether the subject property is located in a regional sewage district.

*As added by P.L.2-2002, SEC.6. Amended by P.L.97-2012, SEC.18.*

### **IC 32-21-5-8.5**

#### **Disclosures relating to property covered by governing documents of homeowners association**

Sec. 8.5. (a) This section applies to all transfers of title to property after June 30, 2015.

(b) The definitions in IC 32-25.5-2 apply in this section.

(c) As used in this section, "property" refers to real property covered by the governing documents of a homeowners association.

(d) As used in this section, "purchaser" refers to a person who purchases property.

(e) The following must be provided by the seller to a purchaser not later than ten (10) days before the sale of the property closes:

(1) A disclosure that the property is in a community governed

by a homeowners association.

(2) A copy of the recorded governing documents.

(3) A statement indicating whether there are assessments and the amount of any assessments.

(4) The following information about a board member, homeowners association agent, or other person who has a contract with the homeowners association to provide any management services for the homeowners association:

(A) The name.

(B) The business or home address.

(f) A homeowners association or agent of a homeowners association providing a statement of unpaid assessments or other charges of the homeowners association relating to the property may charge not more than two hundred fifty dollars (\$250) for the statement.

(g) The failure to provide any of the documents listed in subsection (e) does not limit or prevent enforcement of the governing documents by the homeowners association.

*As added by P.L.141-2015, SEC.1.*

#### **IC 32-21-5-9**

##### **Disclosure form distinguished from warranty**

Sec. 9. A disclosure form is not a warranty by the owner or the owner's agent, if any, and the disclosure form may not be used as a substitute for any inspections or warranties that the prospective buyer or owner may later obtain.

*As added by P.L.2-2002, SEC.6.*

#### **IC 32-21-5-10**

##### **Disclosure form; presentation required before acceptance of offer**

Sec. 10. (a) An owner must complete and sign a disclosure form and submit the form to a prospective buyer before an offer for the sale of the residential real estate is accepted.

(b) An appraiser retained to appraise the residential real estate for which the disclosure form has been prepared shall be given a copy of the form upon request. This subsection applies only to appraisals made for the buyer or an entity from which the buyer is seeking financing.

(c) Before closing, an accepted offer is not enforceable against the buyer until the owner and the prospective buyer have signed the disclosure form. After closing, the failure of the owner to deliver a disclosure statement form to the buyer does not by itself invalidate a real estate transaction. A buyer may not invalidate a real estate transaction or a contract to purchase real estate due to the buyer's failure to sign a seller's disclosure form that has been received or acknowledged by the buyer.

*As added by P.L.2-2002, SEC.6. Amended by P.L.150-2013, SEC.3.*

#### **IC 32-21-5-11**

### **Owner liability for errors in form**

Sec. 11. The owner is not liable for any error, inaccuracy, or omission of any information required to be delivered to the prospective buyer under this chapter if:

- (1) the error, inaccuracy, or omission was not within the actual knowledge of the owner or was based on information provided by a public agency or by another person with a professional license or special knowledge who provided a written or oral report or opinion that the owner reasonably believed to be correct; and
- (2) the owner was not negligent in obtaining information from a third party and transmitting the information.

*As added by P.L.2-2002, SEC.6.*

### **IC 32-21-5-12**

#### **Matters arising after form delivered; requirement to disclose at settlement; unknown or unavailable information**

Sec. 12. (a) An owner does not violate this chapter if the owner subsequently discovers that the disclosure form is inaccurate as a result of any act, circumstance, information received, or agreement subsequent to the delivery of the disclosure form. However, at or before settlement, the owner is required to disclose any material change in the physical condition of the property or certify to the purchaser at settlement that the condition of the property is substantially the same as it was when the disclosure form was provided.

(b) If at the time disclosures are required to be made under subsection (a) an item of information required to be disclosed is unknown or not available to the owner, the owner may state that the information is unknown or may use an approximation of the information if the approximation is clearly identified, is reasonable, is based on the actual knowledge of the owner, and is not used to circumvent the disclosure requirements of this chapter.

*As added by P.L.2-2002, SEC.6.*

### **IC 32-21-5-13**

#### **Disclosure of defect after offer accepted; buyer's right to nullify contract; return of deposits**

Sec. 13. (a) Notwithstanding section 12 of this chapter, if a prospective buyer receives a disclosure form or an amended disclosure form after an offer has been accepted that discloses a defect, the prospective buyer may after receipt of the disclosure form and within two (2) business days nullify the contract by delivering a written rescission to the owner or the owner's agent, if any.

(b) A prospective buyer is not liable for nullifying a contract under this section and is entitled to a return of any deposits made in the transaction.

*As added by P.L.2-2002, SEC.6.*