

State of Ohio Residential Property Disclosure **Pursuant to ORC Section 5302.30**

The intent of this consumer protection legislation is to require Sellers of buildings consisting of 4 living units or less to disclose, in good faith, the known condition of the property.

Included Properties

- Buildings with 1 to 4 living units
- Land Installment Contracts
- Lease with Option to Purchase
- Exchanges
- 99-Year Leases Renewable Forever
- Auctions

Excluded Properties

- Unimproved land
- Commercial/Industrial Properties
- New Construction
- Some Foreclosure Actions
- Court-Ordered Sales
- Transfers Between Co-Owners
- State or Governmental Entity Transfers
- Sales to Tenants of More than 1 Year
- Transfers by Fiduciaries
- Inherited Property (*Seller has not lived in the property for 1 year prior to sale*)

What Constitutes Delivery?

Delivery of the completed disclosure form from Seller to Buyer can be accomplished by: fax, ordinary mail, personal delivery or certified mail. The law does not reference electronic delivery, therefore, that method cannot be depended upon to be sufficient to be in compliance with the law. Remember – delivery to an agent representing a Buyer is considered under the law to be delivery to the Buyer. Although the law also requires the Buyer to sign and date the form and return a copy to the Seller, rescission rights begin at the time of delivery of the form, not the date the Buyer signs it. It is important that buyer's agents, in the performance of their agency duty, deliver the form to their buyer-clients as quickly as possible. If the real estate agent working with the Buyer is not a representative of the Buyer, delivery does not occur until the Buyer physically receives the form.

What is Rescission?

The enforcement mechanism in this legislation is the Buyer's right to rescind the contract to purchase. A rescission right exists if the form: (a) is delivered after the contract to purchase is executed; (b) if the Buyer receives an amended form after the contract to purchase has been executed; or (c) if the form is never delivered to the Buyer. The Buyer loses the right of rescission if the form is delivered to the Buyer *before* final execution of the contract. If the form or an amended version of the form is delivered *after* the execution of the contract to purchase, the Buyer may rescind the contract by delivering a signed and dated document of rescission to the Seller or the Seller's agent within 3 business days after delivery (but, not beyond 30 days from the date of execution of the contract). If the form is never *delivered* to the Buyer, the Buyer has the right to rescind for 30 days after the execution of the contract or to the closing, whichever is the earlier. In either case, the Buyer must deliver a written notice of the rescission to the Seller within the time specified. Remember, rescission rights are based solely on the timing of the delivery of the form – not the content of the form. All rescission rights terminate at closing.

Some Points to Remember...

A relocation company or a lender may be required to complete the form if the company has taken legal title to the property. If the Seller retains legal title to the property, the Seller is required to fill out the form.

Investors who have never lived in a property are not exempt from completing the form on that basis alone. However, if the investor has no actual knowledge of the property's condition, he or she may answer accordingly.

Sellers who are not "competent" to complete the form are not exempt from completing the form on that basis alone. If it is at all possible, it is preferred that the owner of the property complete and sign the form. However, if it is not possible, a person who retains power of attorney for the Seller may complete the form and should indicate their position. If the person who retains power of attorney has no actual knowledge of the property's condition, he or she may answer accordingly.

Any questions as to a Seller's obligation to complete the Disclosure Form should be directed to their personal attorney.