



## FAQs for the Illinois Radon Awareness Act

### Introduction:

The newly enacted **Illinois Radon Awareness Act (the Act)** recently became law and will go into effect on January 1, 2008. REALTORS® should have general knowledge about the existence of the Act and that the provisions will impose some additional duties on sellers of their interests in real property. In short, after January 1, 2008, before a buyer will become bound on a contract to purchase real estate the seller will be required to provide two documents to a prospective buyer: a pamphlet entitled “Radon Testing Guidelines for Real Estate Transactions” and the Illinois Disclosure of Information on Radon Hazards. The language of the latter is set forth by statute. The pamphlet is provided by the Illinois Emergency Management Agency-Division of Nuclear Safety.

Nothing in the Act will require a seller to test for radon or to engage in “mitigation activities.” The Act excludes certain types of transactions, which are summarized as follows: Transfers made pursuant to court order, transfers resulting from foreclosure, transfers by fiduciaries of estates, transfers among co-owners, transfers pursuant to testate or intestate succession, transfers made to a spouse or other “lineal” blood relative, transfers made by relocation companies (if the relocation company has the required documents from the original seller) and transfers to or from a governmental entity.

### Here are a few Frequently Asked Questions (FAQs) for your review, information and consideration:

1. **When does the Act become effective?**
  - A. As stated above, the Act becomes effective on January 1, 2008.
  
2. **To which real estate transactions does the Act apply?**
  - A. The Act applies to transactions involving the purchase of residential real property. Residential real property is defined under the Act as follows: “any estate or interest in a manufactured housing lot or a parcel of real property improved with not less than one nor [sic] more than 4 residential dwelling units.”
  
3. **Where can I obtain the disclosure form and the pamphlet?**
  - A. You will be able to download both of these from IAR’s Radon Resources in Members Only, Legal News at [www.illinoisrealtor.org/Member/legal/radon.asp](http://www.illinoisrealtor.org/Member/legal/radon.asp).

- 4. What if I have a contract pending now, but it does not close until after January 1, 2008?**
  - A. Since the Act does not become effective until January 1, 2008, it stands to reason that this will apply to residential real estate transactions that are entered on or after January 1, 2008. There is no language in the Act to suggest that these requirements will affect binding contracts entered into prior to January 1, 2008.
  
- 5. If I have a listing in effect currently, but no transaction pending yet, will the Act requirements apply?**
  - A. They will apply if a contract to purchase is entered into on or after January 1, 2008. The real estate purchase contract will be the trigger for the requirements of the Act, not the date of your listing contract between the listing office and the seller.
  
- 6. Does the real estate agent have any duties under the Act?**
  - A. The real estate agent does not have any duties that are specifically set forth in the Act. However, the disclosure form does have a section for the real estate agent to initial and sign acknowledging that the agent informed the seller of seller's obligations under Illinois Law.
  
- 7. Which agent should initial the "Agent's Acknowledgment Section," the seller's agent or the buyer's agent?**
  - A. Since it is the seller's obligation to comply with the Act, it stands to reason that the seller's agent who has the property listed would be the agent who would initial the acknowledgement section on the disclosure form. On those facts, the buyer's agent would likely have no obligation. However, if the property is not listed and the only agent involved in the transaction is the buyer's agent, the buyer's agent might very well bring the Act requirements to the attention of the seller (while serving the buyer client's interests). In this case, a buyer agent might initial the agent's acknowledgment section of the form. It should also be noted that the definition of "agent" in the Act does define agent as one who is "acting on behalf of a seller or buyer of residential real property."
  
- 8. What happens if the seller does not give the disclosure form and pamphlet PRIOR to the buyer's offer to purchase the residential real property?**
  - A. The Act states that the seller must "complete the required disclosure activities prior to accepting the buyer's offer and allow the buyer the opportunity to review the information and possibly amend the offer." If the disclosure is not made then, according to the Act, the buyer will not become obligated under the contract to

purchase the residential real property. This would presumably not preclude a buyer from proceeding to close on the purchase notwithstanding the seller's failure to disclose. There are no other penalty-type provisions under the Act.

**9. Must the seller agree to testing and/or remediation for radon under the Act?**

- A. No. The seller and buyer are free to negotiate whether there will be any testing for radon and/or remediation should test results indicate unacceptably high radon levels in the residential property that is the subject of the transaction.

**10. Does the Act apply to new construction?**

- A. Yes. There is no exclusion for newly constructed residential property.

**11. What are the exclusions under the Act?**

- A. The exclusions are as follows: Transfers pursuant to a court order, transfers from a mortgagor to a mortgagee in the context of foreclosure proceedings, transfers by a fiduciary in the administration of a decedent's estate, guardianship, conservatorship or trust, transfers from one co-owner to one or more co-owners, transfers pursuant to testate (with a will) or intestate (without a will) succession, transfers to a spouse or another blood relation, transfers from a relocation company who has taken title (so long as the original seller has provided the required disclosures to the relocation company) and transfers to or from any governmental entity.

**12. What if the seller has questions about his/her obligations under the Act?**

- A. The seller should be advised to seek legal advice from his/her attorney concerning his/her obligations under the Act.

**13. Must the seller acknowledge if he/she has previously performed a "home radon test" or just acknowledge if he/she has hired a professional radon tester? Secondly, what does "all available records and reports" include?**

- A. The Act does not specifically address this situation and it also does not define "records or reports." As a result, the safest course of action would be for the seller to make complete and accurate disclosure subject always to the advice of their own attorney who should be consulted with any questions.