



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB3973

Introduced 2/26/2009, by Rep. Cynthia Soto

SYNOPSIS AS INTRODUCED:

765 ILCS 605/22	from Ch. 30, par. 322
765 ILCS 605/22.1	from Ch. 30, par. 322.1
765 ILCS 605/24.5 new	

Amends the Condominium Property Act. Provides that in relation to an initial sale or offering for sale of a condominium unit, the seller and developer must disclose, in a required form, to any purchaser of a condominium unit any information of which they are aware about any material or latent defect in the condominium unit or common elements; the required form includes definitions of the terms "aware", "material defect", and "latent defect". Provides that the information is not a warranty, but the disclosures are ones that the seller and developer should provide knowing that a prospective buyer may choose to rely on this information in deciding whether or not, and on what terms, to purchase the unit. Provides that the disclosure applies to all common elements. Provides that the report provided to an initial buyer shall be provided to a subsequent purchaser if the purchase occurs within 18 months after the initial sale. Provides that the developer must place in an escrow account an amount of money equal to 10% of the amount of the initial offering prices of the condominium units and the escrow funds shall be segregated in a separate account designated for this purpose in an interest bearing account at a federally insured institution, within applicable federal insurance limits. Provides that the interest earned on the escrow shall be available to and follow the disposition of the escrow. Escrow funds shall not be subject to attachment by any creditor of a buyer or of the developer or by the holder of a lien against any unit or the condominium property. The account shall be applied to the cost of repair or reconstruction of any unit or the common elements to correct a material or latent defect. This escrow requirement cannot be waived by any individual unit buyer, unit owner, or the association. A developer who violates the escrow requirement shall be subject to an action by a unit buyer or the association for damages and attorney's fees from the developer due to a violation of the escrow requirement.

LRB096 06147 AJO 16229 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Condominium Property Act is amended by
5 changing Sections 22 and 22.1 and by adding Section 24.5 as
6 follows:

7 (765 ILCS 605/22) (from Ch. 30, par. 322)

8 Sec. 22. Full disclosure before sale. In relation to the
9 initial sale or offering for sale of any condominium unit, the
10 seller and developer must make full disclosure of, and provide
11 copies to the prospective buyer of, the following information
12 relative to the condominium project:

13 (a) the Declaration;

14 (b) the Bylaws of the association;

15 (c) a projected operating budget for the condominium unit
16 to be sold to the prospective buyer, including full details
17 concerning the estimated monthly payments for the condominium
18 unit, estimated monthly charges for maintenance or management
19 of the condominium property, and monthly charges for the use of
20 recreational facilities; and

21 (d) a floor plan of the apartment to be purchased by the
22 prospective buyer and the street address of the unit, if any,
23 and if the unit has no unique street address, the street

1 address of the project.

2 (d-5) A disclosure report completed jointly by the seller
3 and the developer concerning the condominium unit and common
4 areas that discloses any material or latent defects. The
5 disclosure report shall be in the following form:

6 CONDOMINIUM DISCLOSURE REPORT

7 Unit Address:.....

8 City, State & Zip Code:.....

9 Seller's Name:

10 Developer's Name

11 This report is a disclosure of certain conditions of the
12 unit and common elements listed above in compliance with the
13 Condominium Property Act. This information is provided as of
14 ...(month) ...(day) ...(year). The disclosures herein shall
15 not be deemed warranties of any kind by the seller, developer,
16 or any person representing any party in the sale of a
17 condominium unit.

18 In this form, "am aware" means to have actual notice or
19 actual knowledge without any specific investigation or
20 inquiry. In this form, "material defect" means a condition that
21 would have a substantial adverse effect on the value of the
22 unit or that would significantly impair the health or safety of
23 future occupants of the unit unless the seller and developer
24 reasonably believe that the condition has been corrected. In
25 this form, "latent defect" means a condition that could not
26 have been discovered by a reasonably thorough inspection before

1 the sale, would have a substantial adverse effect on the value
 2 of the condominium unit, or would significantly impair the
 3 health or safety of future occupants of the condominium unit,
 4 unless the seller and developer reasonably believe that the
 5 condition has been corrected.

6 The seller and developer disclose the following
 7 information with the knowledge that even though the statements
 8 herein are not deemed to be warranties, prospective buyers may
 9 choose to rely on this information in deciding whether or not
 10 and on what terms to purchase the unit. The seller and
 11 developer represent that to the best of his, her, or their
 12 actual knowledge, the following statements have been
 13 accurately answered.

14 1. I am aware of material defects in the unit or the common
 15 elements as follows:

16 2. I am aware of latent defects in the unit or the common
 17 elements as follow:

18 Note: These disclosures include all of the common elements and
 19 not only the common elements allocated to the exclusive use of
 20 and that form an integral part of the condominium unit.

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

25 Seller and developer certify that they prepared this
 26 statement and certify that the information provided is based on

1 the actual notice or actual knowledge of the seller and
 2 developer without any specific investigation or inquiry on the
 3 part of the seller and developer. The seller and developer
 4 hereby authorize any person representing any principal in a
 5 unit purchase to provide a copy of this report, and to disclose
 6 any information in the report, to any person in connection with
 7 any actual or anticipated sale of the unit.

8 Seller:.....Date:.....

9 Developer:..... Date:.....

10 This disclosure report required by subparagraph (d-5) of
 11 Section 22 of the Condominium Property Act cannot be waived by
 12 any buyer.

13 In the event of any resale of a condominium unit by a unit
 14 owner within 18 months after the date that title is conveyed to
 15 the initial buyer, the original seller and the developer shall
 16 likewise furnish a copy of this report to that subsequent
 17 buyer.

18

19 (e) in addition, any developer of a conversion condominium
 20 shall include the following information:

21 (1) A specific statement of the amount of any initial
 22 or special condominium fee due from the purchaser on or
 23 before settlement of the purchase contract and the basis of
 24 such fee;

25 (2) Information, if available, on the actual
 26 expenditures made on all repairs, maintenance, operation,

1 or upkeep of the subject building or buildings within the
2 last 2 years, set forth tabularly with the proposed budget
3 of the condominium and cumulatively, broken down on a per
4 unit basis in proportion to the relative voting strengths
5 allocated to the units by the bylaws. If such building or
6 buildings have not been occupied for a period of 3 years
7 then the information shall be set forth for the last 2 year
8 period such building or buildings have been occupied;

9 (3) A description of any provisions made in the budget for
10 reserves for capital expenditures and an explanation of the
11 basis for such reserves, or, if no provision is made for
12 such reserves, a statement to that effect;

13 For developments of more than 6 units for which the
14 notice of intent to convert is issued after the effective
15 date of this amendatory Act of 1979, an engineer's report
16 furnished by the developer as to the present condition of
17 all structural components and major utility installations
18 in the condominium, which statement shall include the
19 approximate dates of construction, installation, major
20 repairs and the expected useful life of such items,
21 together with the estimated cost (in current dollars) of
22 replacing such items; and

23 (5) Any release, warranty, certificate of insurance,
24 or surety required by Section 9.1.

25 All of the information required by this Section which is
26 available at the time shall be furnished to the prospective

1 buyer before execution of the contract for sale. Thereafter, no
2 changes or amendments may be made in any of the items furnished
3 to the prospective buyer which would materially affect the
4 rights of the buyer or the value of the unit without obtaining
5 the approval of at least 75% of the buyers then owning interest
6 in the condominium. If all of the information is not available
7 at the time of execution of the contract for sale, then the
8 contract shall be voidable at option of the buyer at any time
9 up until 5 days after the last item of required information is
10 furnished to the prospective buyer, or until the closing of the
11 sale, whichever is earlier. Failure on the part of the seller
12 to make full disclosure as required by this Section shall
13 entitle the buyer to rescind the contract for sale at any time
14 before the closing of the contract and to receive a refund of
15 all deposit moneys paid with interest thereon at the rate then
16 in effect for interest on judgments.

17 A sale is not an initial sale for the purposes of this
18 Section if there is not a bona fide transfer of the ownership
19 and possession of the condominium unit for the purpose of
20 occupancy of such unit as the result of the sale or if the sale
21 was entered into for the purpose of avoiding the requirements
22 of this Section. The buyer in the first bona fide sale of any
23 condominium unit has the rights granted to buyers under this
24 Section. If the buyer in any sale of a condominium unit asserts
25 that such sale is the first bona fide sale of that unit, the
26 seller has the burden of proving that his interest was acquired

1 through a bona fide sale.

2 (Source: P.A. 91-616, eff. 8-19-99.)

3 (765 ILCS 605/22.1) (from Ch. 30, par. 322.1)

4 Sec. 22.1. (a) In the event of any resale of a condominium
5 unit by a unit owner other than the developer such owner shall
6 obtain from the Board of Managers and shall make available for
7 inspection to the prospective purchaser, upon demand, the
8 following:

9 (1) A copy of the Declaration, by-laws, other
10 condominium instruments and any rules and regulations.

11 (2) A statement of any liens, including a statement of
12 the account of the unit setting forth the amounts of unpaid
13 assessments and other charges due and owing as authorized
14 and limited by the provisions of Section 9 of this Act or
15 the condominium instruments.

16 (3) A statement of any capital expenditures
17 anticipated by the unit owner's association within the
18 current or succeeding two fiscal years.

19 (4) A statement of the status and amount of any reserve
20 for replacement fund and any portion of such fund earmarked
21 for any specified project by the Board of Managers.

22 (5) A copy of the statement of financial condition of
23 the unit owner's association for the last fiscal year for
24 which such statement is available.

25 (6) A statement of the status of any pending suits or

1 judgments in which the unit owner's association is a party.

2 (7) A statement setting forth what insurance coverage
3 is provided for all unit owners by the unit owner's
4 association.

5 (8) A statement that any improvements or alterations
6 made to the unit, or the limited common elements assigned
7 thereto, by the prior unit owner are in good faith believed
8 to be in compliance with the condominium instruments.

9 (9) The identity and mailing address of the principal
10 officer of the unit owner's association or of the other
11 officer or agent as is specifically designated to receive
12 notices.

13 (10) If the resale is within 18 months of the initial
14 transfer of title, the same report for the unit at the time
15 of the initial sale as required by subsection (d-5) of
16 Section 22.

17 (b) The principal officer of the unit owner's association
18 or such other officer as is specifically designated shall
19 furnish the above information when requested to do so in
20 writing and within 30 days of the request.

21 (c) Within 15 days of the recording of a mortgage or trust
22 deed against a unit ownership given by the owner of that unit
23 to secure a debt, the owner shall inform the Board of Managers
24 of the unit owner's association of the identity of the lender
25 together with a mailing address at which the lender can receive
26 notices from the association. If a unit owner fails or refuses

1 to inform the Board as required under subsection (c) then that
2 unit owner shall be liable to the association for all costs,
3 expenses and reasonable attorneys fees and such other damages,
4 if any, incurred by the association as a result of such failure
5 or refusal.

6 A reasonable fee covering the direct out-of-pocket cost of
7 providing such information and copying may be charged by the
8 association or its Board of Managers to the unit seller for
9 providing such information.

10 (Source: P.A. 87-692.)

11 (765 ILCS 605/24.5 new)

12 Sec. 24.5. Initial sales escrow. To provide assurance to
13 the buyer in the initial sale of the unit, or to the buyer in a
14 resale within 18 months of the initial sale, that the developer
15 will fulfill his or her obligations to the association or the
16 unit owners collectively with respect to any material or latent
17 defect in any unit or in the common elements for which the
18 developer is responsible, the developer shall establish an
19 escrow in an amount equal to 10% of the aggregate initial sale
20 prices of all units in the condominium, which escrow shall be
21 kept separate and apart from the developer's funds or the funds
22 of any other person and which funds shall be maintained at a
23 federally insured depository. The escrow shall be maintained
24 for a period of not less than 2 years after the last initial
25 sale of a condominium unit unless sooner disbursed to or at the

1 direction of the association in order to remedy or repair a
2 condition caused by a material or latent defect in one or more
3 units or the common elements. If the escrow is not used, or if
4 the escrow is partially used then so much of the escrow as
5 remains, on the date that is 2 years after the last initial
6 sale shall become the property of the developer unless there is
7 a court order to the contrary because of a pending claim for a
8 material or latent defect in one or more units or in the common
9 elements. The escrow shall not be deemed to impose any
10 limitation on the developer's obligation under any warranty or
11 other legal obligation. The interest earned on the escrow shall
12 be available to and follow the disposition of the escrow.
13 Escrow funds shall not be subject to attachment by any creditor
14 of a buyer or of the developer or by the holder of a lien
15 against any unit or the condominium property. The account shall
16 be applied to the cost of repair or reconstruction of any unit
17 or common elements to correct a material or latent defect. This
18 escrow requirement cannot be waived by any individual unit
19 buyer, unit owner, or the association. A developer who violates
20 this Section shall be subject to an action by a unit buyer or
21 the association to recover damages and attorney's fees from the
22 developer due to a violation of this Section.