



# **Seller Disclosures and Johnson V. Davis**

Presented by:

**LEGAL EDUCATION**

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# Seller Disclosures and *Johnson v. Davis*

Today's Disclosure Requirements and the  
Continuing Impact of *Johnson v. Davis*

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## Introduction

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# TODAY'S PROGRAM

FR/Bar-7 disclosures

Other disclosures

Seller's Property Disclosure –  
Residential (SPDR-4x Rev 3/25 FR)

Cases decided and *Johnson v. Davis*

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## Goals

- Understand what disclosures are in play today
- Address disclosure hot spots (e.g., water intrusion) and impact of *Johnson v. Davis* in deciding disputes
- Review what the Seller Property Disclosure provides
- Be prepared to educate sellers, buyers and real estate professionals

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## Johnson v. Davis & Elements of Claim

*“Where seller of a home knows of facts materially affecting the value of the property which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to the buyer.”*

*Johnson v. Davis, 480 So.2d 625, 629 (Fla. 1985)*

*“A nondisclosure claim under Johnson has four elements: (1) the seller of a home must have knowledge of a defect in the property, (2) the defect must materially affect the value of the property, (3) the defect must not be readily observable and must be unknown to the buyer, and (4) the buyer must establish that the seller failed to disclose the defect to the buyer.”*

*Jensen v. Bailey, 76 So. 3d 980, 983 (Fla. 2d DCA 2011)*



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## Seller Disclosure

### FR/Bar-7, As Is ¶10(j)

**SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. *Except as provided for in the preceding sentence, Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property.* Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.



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# Buyer Waiver of Claims (As Is Contract)

\*Does not alter *Johnson v. Davis* obligations

**X. BUYER WAIVER OF CLAIMS:** *To the extent permitted by law, Buyer waives any claims against Seller and against any real estate licensee involved in the negotiation of this Contract for any damage or defects pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. This provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive Closing.*



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# Seller's Property Disclosure Residential

**Seller's Property Disclosure Residential**

**Notice to Licensee and Seller:** Only the Seller should fill out this form.

**Notice to Seller:** Florida law<sup>1</sup> requires a Seller of a home to disclose to the Buyer all known facts that materially affect the value of the property being sold and that are not readily observable or known by the Buyer. This disclosure form is designed to help you comply with the law. However, this disclosure form may not address every significant issue that is unique to the Property. You should think about what you would want to know if you were buying the Property today, and if you need more space for additional information, comments, or explanations, check the Paragraph 12 checkbox and attach an addendum.

**Notice to Buyer:** The following representations are made by Seller and not by any real estate licensee. This disclosure is not a guaranty or warranty of any kind. It is not a substitute for any inspections, warranties, or professional advice you may wish to obtain. It is not a substitute for your own personal judgment and common sense. The following information is based only upon Seller's actual knowledge of the Property's condition. Sellers can disclose only what they actually know. Seller may not know about all material or significant items. You should have an independent, professional home inspection to verify the condition of the Property and determine the cost of repairs, if any. This disclosure is not a contract and is not intended to be a part of any contract for sale and purchase.

Seller makes the following disclosure regarding the property described as: \_\_\_\_\_ (the "Property")

The Property is ☐owner occupied ☐tenant occupied ☐unoccupied (If unoccupied, how long has it been since Seller occupied the Property? \_\_\_\_\_)

**12. ☐ (if checked) Other Matters; Additional Comments:** The attached addendum contains additional information, explanation, or comments.

Seller represents that the information provided on this form and any attachments is accurate and complete to the best of Seller's knowledge on the date signed by Seller. Seller authorizes listing broker to provide this disclosure statement to real estate licensees and prospective buyers of the Property. Seller understands and agrees that Seller will promptly notify Buyer in writing if any information set forth in this disclosure statement becomes inaccurate or incorrect.

Seller: \_\_\_\_\_ / \_\_\_\_\_ Date: \_\_\_\_\_  
(signature) (print)

Seller: \_\_\_\_\_ / \_\_\_\_\_ Date: \_\_\_\_\_  
(signature) (print)



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# FR/BAR-7 DISCLOSURES

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## Disclosures – In General

Most, but not all, of our FR/Bar disclosures result from requirements imposed by state and federal statutes.

Many contain mandatory language.

But only at times include a remedy, e.g., right to cancel, for ineffective disclosure.

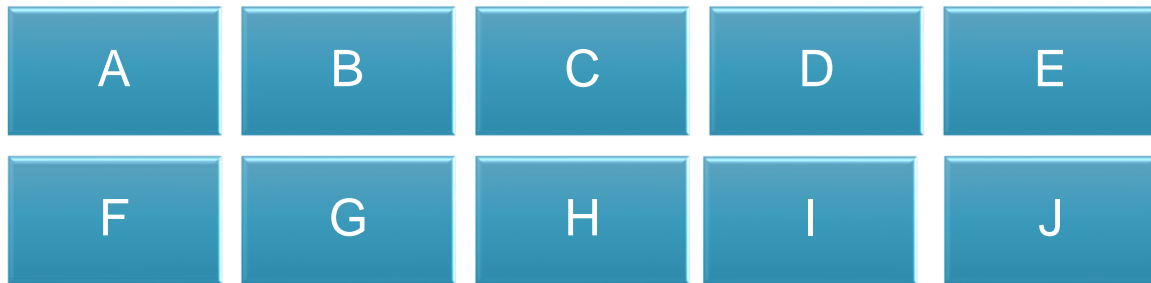


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## How Many Can You Name?

FR/Bar-7, Para. 10



## FR/BAR -7 Contract

FR/Bar-7, Para. 10



# Radon Gas

## 10(a)

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(a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

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## Radon Gas

Sec. 404.056(5), F.S.

- Statute requires notice language on “at least one document” signed at time of, or prior to, sales contract or lease of any building
- Doesn’t apply to “residential transient occupancy” 45 days or less in duration

## Other Environmental Concerns

- If a seller has actual knowledge of the presence of
  - asbestos in insulation, flooring or ceilings
  - contaminated water or soil
  - underground fuel tanks, chemical spills

*Johnson v. Davis* mandates disclosure.

# Seller's Property Disclosure

## ¶ 9 – Environmental (Radon Gas, Lead-Based Paint, Mold)

- (b) Does anything exist on the Property that may be considered an environmental hazard, including but not limited to, lead-based paint; asbestos; mold; urea formaldehyde; radon gas; methamphetamine contamination; defective drywall; fuel, propane, or chemical storage tanks (active or abandoned); or contaminated soil or water?

(c) Has there been any damage, clean up, or repair to the Property due to any of the substances or materials listed in subsection (b) above?

# Drywall Disclosure Rider M

**Comprehensive Rider to the  
Residential Contract for Sale and Purchase  
THIS FORM HAS BEEN APPROVED BY THE  
FLORIDA REALTORS AND THE FLORIDA BAR**

If initiated by all parties, the clauses below will be incorporated into the Florida Realtors/Florida Bar Residential Contract For Sale And Purchase between \_\_\_\_\_ (SELLER) and \_\_\_\_\_ (BUYER) concerning the Property described as \_\_\_\_\_

Buyer's Initials \_\_\_\_\_ Seller's Initials \_\_\_\_\_

**M. DEFECTIVE DRYWALL**

During the time Florida was experiencing building material shortages, some homes were built or renovated using drywall imported from or manufactured in China or elsewhere which reportedly emit levels of sulfur, methane and/or other volatile organic compounds that cause corrosion of air conditioner and refrigerator coils, copper piping, electronic wiring, computer wiring and other household items as well as create noxious odors which may also pose health risks ("Defective Drywall").

1. **Seller's Knowledge:** Except as indicated below, Seller has no actual knowledge of the presence of Defective Drywall or the existence of any information, records, reports, or other documents pertaining to Defective Drywall affecting the Property. (Describe all known Defective Drywall information and list all available documents pertaining to Defective Drywall and provide documents, if any, to Buyer before accepting Buyer's offer) \_\_\_\_\_

2. **Defective Drywall Inspection: (Check One):**  
(a) ☐ Buyer waives the opportunity to conduct a risk assessment or inspection for the presence of Defective Drywall and accepts the Drywall in the Property in its existing condition.  
(b) ☐ Buyer, at Buyer's expense, may have a home inspector, licensed contractor or other licensed professional (if required by law) to conduct an inspection or risk assessment of the Property for the presence of Defective Drywall within \_\_\_\_\_ (if left blank, then 15) days from the Effective Date ("Drywall Inspection Period"). If the drywall inspection or risk assessment reveals the presence of Defective Drywall or incipient damage to the Property resulting from the Defective Drywall and the cost to removereplace the Defective Drywall or damage resulting from the Defective Drywall exceeds \$ \_\_\_\_\_ (if left blank, \$500.00), Buyer may cancel the Contract by giving written notice to Seller on or before expiration of the Drywall Inspection Period. If Buyer timely terminates this Contract, the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller of all further obligations under this Contract, except as provided in Paragraph 3 below. If Buyer fails to timely cancel or fails to conduct the inspection permitted in this Paragraph, Buyer may not terminate this Contract pursuant to this Addendum.  
IF NEITHER BOX IS CHECKED, THEN OPTION (b) SHALL BE DEEMED SELECTED.

3. **Repair of Inspection Damages to Property:** Buyer shall be responsible for prompt payment for such inspections and repair of damages to the Property resulting from the inspections.

4. **Professional Advice:** Buyer acknowledges that Broker has not conducted any independent investigations to verify the accuracy or completeness of any representations about Defective Drywall made by Broker or Seller. Buyer agrees to rely solely on Seller, professional inspectors, governmental agencies or any third parties retained by the Buyer regarding any issue related to Defective Drywall.

Page 1 of 1 M. DEFECTIVE DRYWALL

# Permits Disclosure

## 10(b)

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(b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed or otherwise disposed of pursuant to Section 553.79, F.S. If Seller identifies permits which have not been closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.

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## Permits Disclosure

- No obligation on seller to close open permits or make repairs
- No true remedy provided for ineffective representation
- In 'as is' contract, additional terms typically added by buyer
  - Note – Sec. 162.06(5), F.S., does require disclosure if a **code enforcement proceeding** is pending at time of sale

## Unpermitted Work and *Johnson v. Davis*

*Jensen v. Bailey*, 76 So.3d 980 (Fla. 2d DCA 2011)

### *Facts:*

- Post-closing, buyer sued seller for breach of contract, nondisclosure of material defects under *Johnson*, and fraudulent concealment
- Seller answered 'no' on disclosure statement asking if aware of any additions "by you or others" without permits or in violation of building codes
- In fact, seller had substantial unpermitted remodeling done

# Unpermitted Work and *Johnson v. Davis*

*Jensen v. Bailey*, 76 So.3d 980 (Fla. 2d DCA 2011)

**Trial Ct.:** For buyer

**2d DCA:** Reversed and remanded

- Grounds: No evidence seller *knew* that no permits had been pulled
- *Johnson v. Davis* has not been extended to “should have known” standard

## Seller's Property Disclosure

### ¶10 – Governmental, Claims and Litigation

#### 10. Governmental, Claims and Litigation

- (a) Are there any existing, pending or proposed legal or administrative claims affecting the Property?
- (b) Are you aware of any existing or proposed municipal or county special assessments affecting the Property?
- (c) Is the Property subject to any Qualifying Improvements assessment per Section 163.081, Florida Statutes?
- (d) Are you aware of the Property ever having been, or is it currently, subject to litigation or claim, including but not limited to, defective building products, construction defects and/or title problems?
- (e) Have you ever had any claims filed against your homeowner's Insurance policy?

- (f) Are there any zoning violations or nonconforming uses?
- (g) Are there any zoning restrictions affecting improvements or replacement of the Property?
- (h) Do any zoning, land use or administrative regulations conflict with the existing use of the Property?
- (i) Do any restrictions, other than association or flood area requirements, affect improvements or replacement of the Property?
- (j) Are any improvements located below the base flood elevation?
- (k) Have any improvements been constructed in violation of applicable local flood guidelines?
- (l) Have any improvements to the Property, whether by your or by others, been constructed in violation of building codes or without necessary permits?
- (m) Are there any active permits on the Property that have not been closed by a final inspection?
- (n) Is there any violation or non-compliance regarding any unrecorded liens; code enforcement violations; or governmental, building, environmental and safety codes, restrictions or requirements?
- (o) If any answer to questions 10(a) - 10(n) is yes, please explain: \_\_\_\_\_

# Mold

## 10(c)

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(c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.

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# Mold Inspection Rider I

## I. MOLD INSPECTION

Buyer may, at Buyer's expense, have inspection(s) of the Property for the presence of mold conducted by a qualified and licensed home inspector, contractor, or other professional, as provided for in Section 468.8419, F.S., ("Mold Inspection") within \_\_\_\_\_ (if left blank, then 20) days after Effective Date ("Mold Inspection Period"). Buyer shall, within the Mold Inspection Period, deliver a copy of the written Mold Inspection report(s) to Seller if any evidence of the existence of mold or related damage is found. If this Contract does not close, Buyer will repair all damage to the Property resulting from the inspection and restore the Property to its pre-inspection condition. This latter obligation will survive termination of this Contract.

If the Mold Inspection reveals the presence of mold that requires remediation or repair at a cost which exceeds \$ \_\_\_\_\_ (if left blank, then \$500), Buyer may cancel this Contract by delivering written notice to Seller within the Mold Inspection Period, and Buyer's Deposit will be refunded, thereby releasing Buyer and Seller from all further obligations under this Contract. If Buyer fails to timely conduct the Mold Inspection or fails to timely deliver to Seller notice of Buyer's cancellation, this contingency shall be waived, and Buyer shall continue with this Contract.

## Mold and *Johnson v. Davis*

*Lorber v. Passick*, 327 So.3d 297 (Fla. 4<sup>th</sup> DCA 2021)

### *Facts:*

- Buyer canceled contract on eve of closing date
- After inspection period, buyer learned of earlier water damage claim

**Buyer:** seller should've disclosed flood claim

- Seller knew of facts materially affecting value of house not readily observable and not disclosed to buyer
- Not on Seller's Property Disclosure form

## Mold and *Johnson v. Davis*

*Lorber v. Passick* (cont.)

### **Seller's MSJ:**

- Buyer's depo showed buyer was aware of musty odor from "moment he set foot into house"
- Buyer acknowledged thinking right away smell might be mold & sign of trouble
- Buyer's realtor indicated possible water intrusion concern to buyer early on
- Thus, water intrusion/mold issue was readily observable and couldn't support claims

## Mold and *Johnson v. Davis*

*Lorber v. Passick* (cont.)

### **Buyer's response to MSJ:**

- Was misled by seller's false Property Disclosure and by seller's realtor's misstatements about source of odor
- Why be required to do mold test if buyer was affirmatively misled to believe it was not mold?

**Trial Ct:** Judgment for seller. Buyer's claims premised on an obvious defect

## Mold and *Johnson v. Davis*

*Lorber v. Passick* (cont.)

**4<sup>th</sup> DCA:** Reversed and remanded for reinstitution of buyer's claims

- Question of fact exists whether the odor was sufficient to alert Buyer of prior flood
  - Buyer could have reasonably believed odor was unrelated to a flood; Seller certainly didn't share facts
    - If case was for damage due to presence of mold, Buyer would lose; here, contract claim was for loss of value to home due to flood

## Mold and *Johnson v. Davis*

*Lorber v. Passick* (cont.)

- Under *Johnson v. Davis*, seller's alleged fraudulent misrepresentations raise questions of fact going to buyer's due diligence in investigating source of odor
- Questions of fact also exist as to buyer's negligent misrepresentation claim
  - Did seller know/should have known the Property Disclosure was wrong, and that buyer would justifiably rely on it

# Flood Zone

## 10(d)

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(d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer may terminate this Contract by delivering written notice to Seller within \_\_\_\_\_ (if left blank, then 20) days after Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property.

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# Homeowner's/Flood Insurance Rider H

H. HOMEOWNER'S/FLOOD INSURANCE
(CHECK IF APPLICABLE)
<input type="checkbox"/> (a) <b>Homeowner's Insurance:</b> If Buyer is unable to obtain homeowner's insurance coverage (including windstorm) from a standard carrier or the Citizen's Property Insurance Corporation at a first year annual premium(s) not to exceed \$ _____ or _____ % of the Purchase Price by _____, 20____ (if left blank, then the earlier of 30 days after Effective Date or 10 days prior to Closing Date), Buyer may terminate this Contract by delivering written notice to the Seller by the date set forth in this Paragraph, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.
<input type="checkbox"/> (b) <b>Flood Insurance:</b> In addition to the right of termination provided to Buyer in Paragraph 10(d), if Buyer is unable to obtain flood insurance coverage through the National Flood Insurance Program or through private flood insurance (as defined in 42 U.S.C. §4012a) at a first year premium not to exceed \$ _____ or _____ % of the purchase price by _____, 20____ (if left blank, then the earlier of 30 days after Effective Date or 10 days prior to Closing Date), Buyer may terminate this Contract by delivering written notice to the Seller by the date set forth in this Paragraph, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

## Flood Disclosure

Sec. 689.302, F.S.

**Effective Oct. 1, 2024**, seller must complete and provide flood disclosure to buyer of residential real property at or before signing of contract

- Discloses to buyer:
  - Homeowner's insurance doesn't cover flood damage
  - Need to consult with insurance agent
  - Seller has/has not filed a flood damage claim or received federal assistance, incl. from FEMA, for flood damage
  - Defines "flooding"

### Flood Disclosure

Florida Statute 689.302 requires a seller to complete and provide a flood disclosure to a purchaser of residential real property **at or before** the time the sales contract is executed.

Seller, \_\_\_\_\_, provides Buyer the following flood disclosure **at or before** the time the sales contract is executed.

Property address: \_\_\_\_\_  
\_\_\_\_\_

Seller, please check the applicable box in paragraphs (1) and (2) below.

#### FLOOD DISCLOSURE

Flood Insurance: Homeowners' insurance policies do not include coverage for damage resulting from floods. Buyer is encouraged to discuss the need to purchase separate flood insurance coverage with Buyer's insurance agent.

- (1) Seller ☐ has ☐ has not filed a claim with an insurance provider relating to flood damage on the property, including, but not limited to, a claim with the National Flood Insurance Program.
- (2) Seller ☐ has ☐ has not received federal assistance for flood damage to the property, including, but not limited to, assistance from the Federal Emergency Management Agency.
- (3) For the purposes of this disclosure, the term "flooding" means a general or temporary condition of partial or complete inundation of the property caused by any of the following:
  - a. The overflow of inland or tidal waters.
  - b. The unusual and rapid accumulation of runoff or surface waters from any established water source, such as a river, stream, or drainage ditch.
  - c. Sustained periods of standing water resulting from rainfall.



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## Seller's Property Disclosure

### ¶ 3 – Water Intrusion; Drainage; Flooding

#### 3. Water Intrusion; Drainage; Flooding

- (a) Has past or present water intrusion affected the Property?
- (b) Have past or present drainage or flooding problems affected the Property?
- (c) Is any of the Property located in a special flood hazard area?
- (d) Is any of the Property located seaward of the coastal construction control line?
- (e) Does your lender require flood insurance?
- (f) Do you have an elevation certificate? If yes, please attach a copy.
- (g) If any answer to questions 3(a) - 3(d) is yes, please explain: \_\_\_\_\_

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## Flood Concerns

### Severe Repetitive Loss Properties (“SLRPs”)

- FEMA maintains list of SLRPs
  - Flooded 2x with damage totaling value of property
  - Flooded 4x with at least \$5k of damage each time
    - 45,000 SLRPs in U.S., at least 3,100 in Florida
      - 120 properties in Florida added annually
      - Santa Rosa & Pinellas counties have most SLRPs
- Problem: FEMA will only share data with property owner, not prospective buyer or tenant

## Flood Disclosure and *Johnson v. Davis*

*Smith v. Lynch*, 403 So.3d 433 (Fla. 2d DCA 2025)

### *Facts:*

- Seller’s written Disclosure Report: property had sustained “slight” water damage in 2020 to carpets, garage floor, “all areas cleared and repaired”
- Buyer obtained satisfactory home inspection report
- Buyer told home in flood zone, purchased \$2500 flood policy
- **After closing, buyer informed by insurer of policy increase to \$7791 due to home being SLRP**

## Flood Disclosure and *Johnson v. Davis*

*Smith v. Lynch* (cont.)

- Buyer, now owner, obtained FEMA report showing:
  - 5 floods since 1982, including 2020 flood when seller owned it with \$31,000 in damages

**Buyer:**

- Seller intentionally misled him re: nature of 2020 claim
- Seller failed to disclose property's repeated flood history despite having FEMA report from when seller purchased

## Flood Disclosure and *Johnson v. Davis*

*Smith v. Lynch* (cont.)

**Trial Ct.:** For seller on grounds flooding was readily observable upon due diligence

- Relied on *Nelson v. Wiggs*, 699 So.2d 258 (Fla. 3d DCA 1997):  
“as a threshold matter, a seller of a house located in an open and obvious flood prone zone location is under no duty to disclose the flood prone nature of the property to a Buyer under Johnson v. Davis.”



## Sidebar - *Nelson v. Wiggs*

Neighborhood (not home) had long, well known history of seasonal flooding. Home built on higher elevation per Miami-Dade County regulation. Buyer did not ask seller or neighbors about seasonal flooding. Seller made no affirmative statement. Buyer/plaintiff was Miami-Dade contractor, who visited building department, with plans to rebuild house.

Complaint: Seller didn't disclose **neighborhood's seasonal flooding**

- Third DCA: for seller. For a seller to have a duty to disclose, the material facts must not only be unknown to the buyer, but also not "readily observable." *Johnson v. Davis* not applicable because the seasonal flooding was readily observable and could have been discovered by the buyers had they essentially performed their due diligence.

## Flood Disclosure Litigation

*Smith v. Lynch* (cont.)

**2<sup>nd</sup> DCA:** Reversed and remanded

- *Nelson* is distinguishable
- Here, home was regularly flooding, not neighborhood
- \$30k damage was more than "slight"
- Record showed seller had been given copy of FEMA report when seller bought home

## Flood Disclosure Litigation

### *Smith v. Lynch* (cont.)

*“The trial court's findings pertaining to the observability of the Property's flood history—the home's proximity to Tampa Bay, the flood-prone nature of the neighborhood—are not the “readily observable” conditions of a property that would absolve a seller of disclosing known flood events under [Johnson](#). See, e.g., [Lorber v. Passick...](#) (reversing summary judgment in favor of seller who failed to disclose home's flood after trial court found that buyer's observation of a “musty” smell indicated the home's defect was “obvious”).”*

# Energy Brochure

## 10(e)

(e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.

## Insulation and Energy Efficiency

Secs. 553.9085 & 553.996, F.S.



Applicable to new construction



Energy performance level for the new residential building must be provided to buyer upon request



Buyers of new residential or commercial buildings must be given written notice that the buyer may have the building's energy-efficiency rating determined



A notice to residential purchasers that the energy-efficiency rating may qualify the purchaser for an energy-efficient mortgage from lending institutions



Federal rules (FTC) also mandates an insulation rider must be attached/incorporated into the PSA showing type, thickness & R-Value of insulation in the property per the manufacturer

# Lead-Based Paint

## 10(f)

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(f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.

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# Lead-Based Paint Disclosure Rider P

Use Rider P to meet disclosure requirement

If initiated by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between \_\_\_\_\_ (SELLER) and \_\_\_\_\_ (BUYER).

☒ Use Legal from Contract ☐ Use Street Address ☐ Modify Rider Description

Buyer's Initials \_\_\_\_\_ Seller's Initials \_\_\_\_\_

**P. LEAD-BASED PAINT DISCLOSURE (Pre-1978 Housing)**

Lead-Based Paint Warning Statement

"Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspection in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

**Seller's Disclosure (INITIAL)**

(a) Presence of lead-based paint or lead-based paint hazards (CHECK ONE BELOW):  
☐ Known lead-based paint or lead-based paint hazards are present in the housing.  
☐ Seller has no knowledge of lead-based paint or lead-based paint hazards in the housing.

(b) Records and reports available to the Seller (CHECK ONE BELOW):  
☐ Seller has provided the Buyer with all available records and reports pertaining to lead-based paint or lead-based paint hazards in the housing. List documents: \_\_\_\_\_  
☐ Seller has no reports or records pertaining to lead-based paint or lead-based paint hazards in the housing.

**Buyer's Acknowledgement (INITIAL)**

(c) Buyer has received copies of all information listed above.  
☐ (d) Buyer has received the pamphlet *Protect Your Family from Lead in Your Home*.  
☐ (e) Buyer has (CHECK ONE BELOW):  
☐ Received a 10-day opportunity (or other mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint or lead-based paint hazards; or  
☐ Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint or lead-based paint hazards.

**Licensee's Acknowledgement (INITIAL)**

(f) Licensee has informed the Seller of the Seller's obligations under 42 U.S.C. 4852(d) and is aware of Licensee's responsibility to ensure compliance.

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## Lead-Based Paint Disclosure

### Rider P

- Discloses health risks to pregnant women and small children
- All sellers of "any interest" in residential property must disclose if sellers does/does not know of lead-based paint or hazards in the housing, and whether records/reports are available (enumerated) and provided to buyer

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## Lead-Based Paint Disclosure

### Rider P

Buyer acknowledges receipt of enumerated reports and pamphlet "Protect Your Family from Lead in Your Home"

Buyer chooses 10-day opportunity to conduct risk assessment or waive opportunity

Real estate licensee acknowledges informing seller of seller's obligations under federal law and is aware of responsibility to ensure compliance

Exempt properties: housing for elderly, housing sold at foreclosure sales

## Association Membership Disclosure 10(g)

**(g) HOMEOWNERS/ASSOCIATION COMMUNITY DISCLOSURE:  
BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL  
BUYER HAS RECEIVED AND READ THE HOMEOWNERS'  
ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**

# HOAs

## Association Membership Requirement

Sec. 720.401(1)(a)&(b), F.S.

- Buyer entitled to disclosure if buyer is obligated to be member of an association with restrictive covenants
- Advises of assessments (regular and special, plus municipal)
- Effect of failure to pay assessments
- Obligation to pay rec/facility fees and amount
- And more



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## Homeowner's Association

Sec. 720.401(1)(a), F.S.

- If not provided to buyer before execution of contract, buyer can cancel by providing written notice to seller or seller's agent w/in 3 after receipt or prior to closing, whichever occurs first
- Right may not be waived but terminates at closing



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# Seller's Property Disclosure - Residential

## ¶ 8-Homeowner's Association Restrictions; Boundaries; Access Roads

### 8. Homeowners' Association Restrictions; Boundaries; Access Roads

(a) Is membership in a homeowner's association mandatory or do any covenants, conditions or restrictions (CCRs) affect the Property? (CCRs include deed restrictions, restrictive covenants and declaration of covenants.)

**Notice to Buyer:** If yes, you should read the association's official records and/or the CCRs before making an offer to purchase. These documents contain information on significant matters, such as recurring dues or fees; special assessments; capital contributions, penalties; and architectural, building, landscaping, leasing, parking, pet, resale, vehicle and other types of restrictions.

(b) Are there any proposed changes to any of the restrictions?

## Association Membership Requirement

Secs. 720.401(1)(a)& (b), F.S.

*Princeton Homes v. Morgan*, 38 So.3d 207 (Fla. 4<sup>th</sup> DCA 2010)

*Facts:*

- Buyer of new construction home never got disclosure. Sued to cancel and for return of deposit
- Princeton was builder, not developer. Not in title at time of contract.
- Argued since not developer or title holder, no duty to disclose
  - And, any way, buyer w/ actual knowledge of all key terms contained in disclosure

**4<sup>th</sup> DCA:** buyer entitled to deposit - never received disclosure from anyone. Actual notice doesn't overcome failure to provide form.

# COAs

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## Comprehensive Rider to the Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between [redacted] (SELLER) and [redacted] (BUYER) concerning the Property described as [redacted]

Buyer's Initials

Seller's Initials

### A. CONDOMINIUM RIDER

*If Property is part of a master or other homeowners' association, Seller shall complete Rider B. HOMEOWNERS' ASSOCIATION / COMMUNITY DISCLOSURE for further information including additional assessments and fees. If Property is part of more than one condominium association, Seller shall also complete a separate Rider A. CONDOMINIUM RIDER for EACH condominium association.*

The condominium association ("Condominium Association") to which this Condominium Rider is applicable, and any management company, and to which assessments, special assessments, and/or rent/land use fees are due and payable, is/are:

Association

Management Company

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# Condominium Rider A

- Key changes in **CR-7 Rev. 06/2025:**
  - Buyer has 7 days (no longer 3 days) to cancel
  - Buyer “checks off” and requests (at Seller’s expense to provide) :
    - Last 12 months minutes & agendas of Board and member meetings
    - Insurance dec pages
    - If indicated available, milestone insp. summary, SIRS, turnover insp. report
  - Deletion of Seller reps and liability for failing to disclose levied special assessments; **Seller lists “aware of” levied special assessments**



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<p><b>Milestone Inspection and Structural Integrity Reserve Study Disclosure</b></p> <p>The following disclosures are made by Seller to Buyer regarding the Milestone Inspection and Structural Integrity Reserve Study.</p> <p><b>Milestone Inspections</b> Pursuant to Florida Statute 553.899:</p> <p>1) This Condominium/Cooperative is exempt from performing the Milestone Inspection? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>If YES, skip to Structural Integrity Reserve Study</b></p> <p>2) If No, what is the last date for performing the Milestone Inspection? _____</p> <p>3) Has Phase 1 of the Milestone Inspection been completed? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>4) If YES, is Phase 2 of the Milestone Inspection required? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>5) If YES, has Phase 2 of the Milestone Inspection been completed? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>6) If NO, has Phase 2 of the Milestone Inspection been scheduled? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>7) If YES, scheduled date: _____</p> <p>8) Have any special assessments been approved by the association? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>9) If YES, please identify assessments</p> <p>a. Number 1 \$ _____ Amount &amp; Date of Assessment _____</p> <p>b. Number 2 \$ _____ Amount &amp; Date of Assessment _____</p> <p>c. Number 3 \$ _____ Amount &amp; Date of Assessment _____</p> <p>d. Number 4 \$ _____ Amount &amp; Date of Assessment _____</p> <p>10) If NO, have any special assessments been discussed during board meetings in the past twelve (12) months? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>11) If YES, please provide copies of Meeting Minutes and notes for such board meetings to: _____ at _____</p> <p><b>Structural Integrity Reserve Study (SIRS)</b> Pursuant to Florida Statutes 718 (Condominiums) or 719 (Cooperatives):</p> <p>1) This Condominium/Cooperative is exempt from performing the Structural Integrity Reserve Study? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>If Yes, skip to questions 6 and 7.</b></p> <p>2) If No, has the Structural Integrity Reserve Study been completed? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>3) If No, has the Structural Integrity Reserve Study been scheduled? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>4) Relating to the Structural Integrity Reserve Study, have special assessments been approved by the association? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Continued from</p> <p>5) If YES, please identify assessments:</p> <p>a. Number 1 \$ _____ Amount &amp; Date of Assessment _____</p> <p>b. Number 2 \$ _____ Amount &amp; Date of Assessment _____</p> <p>c. Number 3 \$ _____ Amount &amp; Date of Assessment _____</p> <p>d. Number 4 \$ _____ Amount &amp; Date of Assessment _____</p> <p>6) If NO, have any special assessments been discussed during board meetings in the past twelve (12) months? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>7) If YES, please provide copies of Meeting Minutes and notes for such board meetings to: _____ at _____</p> <p><b>Seller</b> represents that the information provided on this form is accurate and complete to the best of <b>Seller's</b> knowledge on the date signed by <b>Seller</b>. <b>Seller</b> authorizes listing broker to provide this disclosure statement to real estate licensees and prospective buyers of the Property. <b>Seller</b> understands and agrees that <b>Seller</b> will promptly notify <b>Buyer</b> in writing if any information set forth in this disclosure statement becomes inaccurate or incorrect.</p> <p><b>Seller:</b> _____ / _____ Date: _____ (signature) (print)</p> <p><b>Seller:</b> _____ / _____ Date: _____ (signature) (print)</p> <p><b>Buyer</b> acknowledges that <b>Buyer</b> has read, understands, and has received a copy of this disclosure statement.</p> <p><b>Buyer:</b> _____ / _____ Date: _____ (signature) (print)</p> <p><b>Buyer:</b> _____ / _____ Date: _____ (signature) (print)</p> <p>MSIRS-1 Rev. 1/25 Page 1 of 2 © 2025 Florida Realtors</p>
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# Property Tax Disclosure Statement 10(h)

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(h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.

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## Property Tax Disclosure Statement

Sec. 689.261, F.S.

- Seller must disclose transfer of ownership may lead to increased property tax assessment related to the Save Our Homes Amendment
- Of particular importance when sellers are long-time owners (seniors) and builders (new home construction)

## Failure to Provide Property Tax Disclosure

*Mailloux v. Briella Townhomes, LLC*, 3 So.3d 394 (Fla. 4<sup>th</sup> DCA 2009)

### *Facts:*

- Builder-seller failed to provide the disclosure
- Prior to closing date, buyer sought to get out of contract, argued failure to receive disclosure gave right to revoke and return of deposit

**3d DCA:** For seller. The statute does not provide a private cause of action.

# FIRPTA

## 10(I)

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**(i) FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (“FIRPTA”):** Seller shall inform Buyer in writing if Seller is a “foreign person” as defined by the Foreign Investment in Real Property Tax Act (“FIRPTA”). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a “foreign person”, Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.

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# FIRPTA

26 U.S.C. §1445

- Seller to inform buyer in writing if seller is a foreign person
- Parties agree to comply with act – even if it means seller brings cash to close
- If seller is not foreign person, can provide to buyer at or before closing certification of non-foreign status under penalties of perjury
- Standard V contains more details
- Parties advised to obtain professional advice



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## Seller's Property Disclosure - Residential

¶11 - FIRPTA

### 11. Foreign Investment in Real Property Tax Act ("FIRPTA")

(a) Is the Seller subject to FIRPTA withholding per Section 1445 of the Internal Revenue Code?

If yes, Buyer and Seller should seek legal and tax advice regarding compliance.



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# What about Information that's Publicly Available?

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## What About Information 'Publicly Available'?

- What if developer misrepresents facts about surrounding lands, with intention that buyer believe it to his detriment?  
Example: land behind home will never be developed
- If a buyer can discover facts for himself, and they are reasonably ascertainable, there will be no actionable claim  
*Pressman v. Wolf*, 732 So.2d 356 (Fla. 3d DCA 1999)
  - But see, *Azam v. M/I Schottenstein Homes, Inc.*, 761 So.2d 1195 (Fla. 3d DCA 2000)

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## ***Azam v. MI Schottenstein Homes, Inc.,***

- Home builder misrepresented to buyers that neighboring parcel was a “natural preserve” and would be left permanently in that state
- Yet county had prepared site plan showing construction of a school that was available for buyers to see

**3DCA:** no cause of action under *Johnson v. Davis* since the claims go to an off-property site and doesn't affect physical condition of the properties sold

## ***Azam, 761 So.2d at 1196***

*“...[w]hether a fraud claim may lie with respect to statements about matters outside the property being sold, the status of which matters can be determined from a public record, is a factual question. Thus, we believe that whether the buyer exercised ordinary diligence in discovering the falsity of such statements should be determined on a case-by-case basis, and not by some bright-line rule.”*

- The law should not expect buyers in every case to “root around the bowels of the courthouse for surveys, plats and records which would verify or contradict a seller’s representations about the property ...”

# Other Statutory Disclosures

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## Statutory Disclosures

How Many Can You Identify?

S. 689.301,  
F.S.

S. 161.57(2),  
F.S.

S.  
627.7073(2)(c),  
F.S.

s. 489.140, F.S.

S. 689.29, F.S.

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## Statutory Disclosures

Sewer Lines

Coastal Const.  
Control Line

Sinkholes

Subsurface  
Rights

Construction  
Recovery  
Fund

## Coastal Construction Control Line

## Coastal Construction Control Line (CCCL)

Sec. 161.57(2), F.S.

- Disclosure required at or prior to time PSA is executed for any interest in real property located partially or totally seaward of the CCCL (as defined in s. 161.053)
  - Property may be subject to coastal erosion
  - Federal, state, local regs may govern coastal property, incl.:
    - Delineation of the CCC line, beach nourishment, protection of marine turtles
  - Additional info can be obtained FL Dept. of Environmental Protection

## Coastal Construction Control Line

Sec. 161.57(3), F.S.

- Unless waived in writing by purchaser, seller must provide at or prior to closing an affidavit, or survey, delineating the location of the CCCL on the property being transferred
- Use Rider N
  - Grants buyer option to waive right to receive affidavit or survey
  - Or not waived; affidavit or survey due “w/in time allowed to deliver evidence of title.”

## Coastal Construction Control Line

Sec. 161.57(4), F.S.

- Failure to deliver disclosure, affidavit, or survey will NOT
  - impair enforceability of the PSA by either party
  - Create right of rescission
  - Impair title conveyed

## Sewer Lines

## Sewer Lines

Sec. 689.301, F.S.

- Effective July 1, 2020, seller must disclose known defects in property's sanitary sewer lateral line before signing contract
- "Sanitary sewer line" means the privately owned pipeline connecting a property to the main sewer line

## Sinkholes

**Sinkhole Disclosure**

**The following representations are made by the Seller(s) and are not the representations of any real estate licensees.**

The seller of real property upon which a sinkhole claim has been made by the seller and paid by the insurer must disclose to the buyer of such property, before the closing, that a claim has been paid and whether or not the full amount of the proceeds was used to repair the sinkhole damage.

Are You Aware:

1. of any past or present settling, soil movement, or sinkhole problems on the property or on adjacent properties? NO ☐ YES ☐
- a. of any sinkhole insurance claim that has been made on subject property? NO ☐ YES ☐
- b. if claim made, was claim paid? NO ☐ YES ☐
- c. was the full amount of the insurance proceeds used to repair the sinkhole damage? NO ☐ YES ☐

**ACKNOWLEDGEMENT OF SELLER**


The undersigned Seller represents that the information set forth in the above disclosure statement is accurate and complete to the best of the Seller's knowledge on the date signed below. Seller does not intend for this disclosure statement to be a warranty or guaranty of any kind. Seller hereby authorizes disclosure of the information contained in this disclosure statement to prospective Buyers of the property. Seller understands and agrees that Seller will notify the Buyer in writing within five business days after Seller becomes aware that any information set forth in this disclosure statement has become inaccurate or incorrect in any way during the term of the pending purchase by the Buyer.

Seller: \_\_\_\_\_ / \_\_\_\_\_ Date: \_\_\_\_\_  
(signature) (print)

Seller: \_\_\_\_\_ / \_\_\_\_\_ Date: \_\_\_\_\_  
(signature) (print)

**RECEIPT AND ACKNOWLEDGMENT OF BUYER**

Seller is using this form to disclose Seller's knowledge of the condition of the real property and improvements located on the property as of the date signed by Seller. This disclosure form is not a warranty of any kind. The information contained in the disclosure is limited to information to which the seller has knowledge. It is not intended to be a substitute for any inspections or professional advice the Buyer may wish to obtain. An independent professional inspection is encouraged and may be helpful to verify the condition of the property and to determine the cost of repairs, if any. Buyer understands these



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## Sinkhole Damage

Sec. 627.7073(2)(c), F.S.

Seller of real property must disclose to buyer prior to closing:

- Sinkhole claim made by seller
- Paid by insurer
- Whether or not full amount of proceeds used to repair the sinkhole damage
- Note: Florida has more sinkholes than any other state in the U.S.

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# Seller's Property Disclosure - Residential

## ¶ 7 - Sinkholes

### 7. Sinkholes

**Note:** When an insurance claim for sinkhole damage has been made by the seller and paid by the insurer, Section 627.7073(2)(c), Florida Statutes, requires the seller to disclose to the buyer that a claim was paid and whether or not the full amount paid was used to repair the sinkhole damage.

(a) Does past or present settling, soil movement, or sinkhole(s) affect the Property or adjacent properties?

(b) Has any insurance claim for sinkhole damage been made?

If yes, was the claim paid? ☐ yes ☐ no If the claim was paid, were all the proceeds used to repair the damage? ☐ yes ☐ no

(c) If any answer to questions 7(a) - 7(b) is yes, please explain:

## Subsurface Rights



## Subsurface Rights

Sec. 689.29, F.S.

Seller must provide buyer disclosure if seller or affiliated/related entity has previously severed or retained or will sever or retain any of the subsurface rights or right of entry

to the following:

SUBSURFACE RIGHTS  
DISCLOSURE SUMMARY

SUBSURFACE RIGHTS HAVE BEEN OR WILL BE SEVERED FROM THE TITLE TO REAL PROPERTY BY CONVEYANCE (DEED) OF THE SUBSURFACE RIGHTS FROM THE SELLER OR AN AFFILIATED OR RELATED ENTITY OR BY RESERVATION OF THE SUBSURFACE RIGHTS BY THE SELLER OR AN AFFILIATED OR RELATED ENTITY. WHEN SUBSURFACE RIGHTS ARE SEVERED FROM THE PROPERTY, THE OWNER OF THOSE RIGHTS MAY HAVE THE PERPETUAL RIGHT TO DRILL, MINE, EXPLORE, OR REMOVE ANY OF THE SUBSURFACE RESOURCES ON OR FROM THE PROPERTY EITHER DIRECTLY FROM THE SURFACE OF THE PROPERTY OR FROM A NEARBY LOCATION. SUBSURFACE RIGHTS MAY HAVE A MONETARY VALUE.



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# Florida Homeowners' Construction Recovery Fund

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# Homeowners' Construction Recovery Fund

Sec. 489.1425, F.S. Disclosure

All contracts for construction, improvement, repair and restoration for \$2500+ (labor + materials) must include:

FLORIDA HOMEOWNERS' CONSTRUCTION  
RECOVERY FUND

PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:



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# Homeowners' Construction Recovery Fund

Secs. 489.140-144, F.S.

- Fund of last resort for natural person
- Monetary damages by financial mismanagement or misconduct of a contractor
- Exhausted all other resources of payment
- The Construction Industry Licensing Board determines eligibility
- Starting January 1, 2025, for contracts on or after July 1, 2024, \$100,000 max. payment for each Division I (GC) claim, and \$30,000 max. payment for each Division II (subs, specific trades) claim



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**Thank you**  
**for your time and attention**





**FL BAR Reference Number: 2506681N**

**Title:** Seller Disclosures and Johnson v. Davis

**Level:** Intermediate

**Approval Period:** 08/26/2025 - 02/28/2027

**CLE Credits**

General	1.0
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**Certification Credits**

Real Estate	1.0
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