

## **2020 PROPERTY DISCLOSURE REVISIONS**

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## Introduction

In 2003 the Louisiana State Legislature passed a statute requiring all SELLERS of residential real property, with certain exclusions, to provide a written disclosure to potential BUYERS of known defects to the property being sold. The Louisiana Real Estate Commission (“LREC”) prepared a form to assist SELLERS in providing that information to BUYERS, the Property Disclosure Document (the “PDD”). Since 2003, the PDD has been revised several times. This article highlights some of the 2019 changes to the PDD form (the “2020 PDD Form”) and some areas of the 2018 PDD form that generate frequent questions. The 2020 PDD Form is available on the [Louisiana Real Estate Commission website](http://lrec.state.la.us)<sup>1</sup>. The 2020 PDD Form is available for use now but use of the 2020 version is not required until January 1, 2020.

## PDD Information Sheet

The first page of the 2020 PDD Form is an information sheet.

<p style="text-align: center;"><b>PROPERTY DISCLOSURE EXEMPTION FORM</b></p> <p>In accordance with LSA-R.S. 9:3196-3200, a SELLER of residential real property must furnish BUYERS with a Property Disclosure Document. A complete copy of these statutes can be found at <a href="http://www.legis.state.la.us">www.legis.state.la.us</a>. The required Property Disclosure Document may be in the form promulgated by the Louisiana Real Estate Commission (“Commission”) or in another form that contains substantially the same information. The Commission form can be found at <a href="http://www.lrec.state.la.us">www.lrec.state.la.us</a>.</p> <p><b>WHO IS REQUIRED TO MAKE DISCLOSURE? ALL SELLERS are required to make written disclosure of known defects regarding a property being transferred.</b> A SELLER’S obligation to furnish a Property Disclosure Document applies to any transfer of any interest in residential real property, whether by sale, exchange, bond for deed, lease with option to purchase, etc. The following transfers are exempt from the requirement to provide a property disclosure document:</p> <ol style="list-style-type: none"><li>1. Transfers ordered by a court, including but not limited to a transfer ordered by a court in the administration of an estate, a transfer pursuant to a writ of execution, a transfer by any foreclosure sale, a transfer by a trustee in bankruptcy, a transfer by eminent domain, and any transfer resulting from a decree of specific performance.</li><li>2. Transfers to a mortgagee by a mortgagor or successor in interest who is in default.</li><li>3. Transfers by a mortgagee who has acquired the residential real property at a sale conducted pursuant to a power of sale under a mortgage or a sale pursuant to decree of foreclosure, or who has acquired the residential property by a deed in lieu of foreclosure.</li><li>4. Transfers by a fiduciary in the course of administration of a decedent’s estate, guardianship, conservatorship, or trust.</li><li>5. Transfers of newly constructed residential real property, which has never been occupied.</li><li>6. Transfers from one or more co-owners solely to one or more of the remaining co-owners.</li><li>7. Transfers pursuant to testate or intestate succession.</li><li>8. Transfers of residential real property that will be converted by the BUYER into a use other than residential use.</li><li>9. Transfers of residential real property to a spouse or relative in the line of consanguinity (blood line).</li><li>10. Transfers between spouses resulting from a judgment of divorce or a judgment of separate maintenance or from a property settlement agreement incidental to such a judgment.</li><li>11. Transfers or exchanges to or from any governmental entity.</li><li>12. Transfers from an entity that has acquired title or assignment of a real estate contract to a piece of residential real property to assist the prior owner in relocating, as long as the entity makes available to the BUYER a copy of the property disclosure statement, any inspection reports if any furnished to the entity by the prior owner, or both.</li><li>13. Transfers to an inter vivos trust.</li><li>14. Acts that, without additional consideration and without changing ownership or ownership interest, confirm, correct, modify, or supplement a deed or conveyance previously recorded.</li></ol>
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Some SELLERS are exempt from having to fill out a PDD form. This page of the PDD form is an information sheet which explains the exemptions available to a SELLER. For example, a

<sup>1</sup> <http://lrec.gov/wp-content/uploads/2019/09/01-01-20ResidentialPropertyDisclosure.pdf>

SELLER of new construction property which has never been occupied, does not have to complete the PDD form. Whether or not an exemption applies to a SELLER is a very fact intensive inquiry. If a SELLER is unsure of whether an exemption applies, the conservative view is to complete the PDD form; however, the SELLER may also want to seek legal counsel to analyze if an exemption is applicable.


A. All SELLERS must sign the PDD Disclosure Information Sheet.

All SELLERS are required to sign the PDD Information Sheet, which is the cover page of the PDD form, regardless of whether the SELLER is claiming an exemption.

_____	<b>SELLER claims that he/she is exempt from filling out the Property Disclosure Document and warrants that SELLER has no knowledge of known defects to the property. SELLER is claiming exemption number(s) _____ above.</b>			
SELLER (sign) _____	(print) _____	Date _____	Time _____	
BUYER (sign) _____	(print) _____	Date _____	Time _____	
<b>OR</b>				
_____	<b>SELLER has reviewed this Exemption page. SELLER does not claim any of the Exemptions listed on this page. Accordingly, SELLER will complete the Property Disclosure Form.</b>			
SELLER (sign) _____	(print) _____	Date _____	Time _____	
BUYER (sign) _____	(print) _____	Date _____	Time _____	

B. SELLERS claiming an exemption should note the exemption claimed.

If the SELLER is claiming an exemption, he/she should insert the exemption claimed in the blank and sign the first signature blank on the PDD Information Sheet. He/she does not have to complete the remainder of the PDD form.

	<b>SELLER claims that he/she is exempt from filling out the Property Disclosure Document and warrants that SELLER has no knowledge of known defects to the property. SELLER is claiming exemption number(s) <u>5</u> above.</b>			
SELLER (sign) <u>Emily Spence</u>	(print) <u>Emily Spence</u>	Date <u>9/3/19</u>	Time <u>3:04</u>	
BUYER (sign) _____	(print) _____	Date _____	Time _____	
<b>OR</b>				
_____	<b>SELLER has reviewed this Exemption page. SELLER does not claim any of the Exemptions listed on this page. Accordingly, SELLER will complete the Property Disclosure Form.</b>			
SELLER (sign) _____	(print) _____	Date _____	Time _____	
BUYER (sign) _____	(print) _____	Date _____	Time _____	

C. The BUYER always signs the PDD Information Sheet to acknowledge receipt.

Whether or not the SELLER claims an exemption, the BUYER is required to sign the PDD Information Sheet to acknowledge receipt of the PDD form.

\_\_\_\_\_ SELLER claims that he/she is exempt from filling out the Property Disclosure Document and warrants that SELLER has no knowledge of known defects to the property. SELLER is claiming exemption number(s) \_\_\_\_\_ above.

SELLER (sign) \_\_\_\_\_ (print) \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_  
 BUYER (sign) \_\_\_\_\_ (print) \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

**OR**

\_\_\_\_\_ SELLER has reviewed this Exemption page. SELLER does not claim any of the Exemptions listed on this page. Accordingly, SELLER will complete the Property Disclosure Form.

SELLER (sign) \_\_\_\_\_ (print) \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_  
 BUYER (sign) \_\_\_\_\_ (print) \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

D. The PDD Form notifies SELLERS of their obligations to complete a PDD form

Property Description (Address, City, State, Zip) \_\_\_\_\_

**PROPERTY DISCLOSURE DOCUMENT**

In accordance with LSA-R.S. 9:3196-3200, a SELLER of residential real property must furnish BUYERS with a Property Disclosure Document. A complete copy of these statutes can be found at [www.legis.state.la.us](http://www.legis.state.la.us). The required Property Disclosure Document may be in the form promulgated by the Louisiana Real Estate Commission ("Commission") or in another form that contains substantially the same information. The Commission form can be found at [www.lrec.state.la.us](http://www.lrec.state.la.us).

All SELLERS of residential real estate are required to give BUYERS information about known defects to the property being sold. If a SELLER does not want to fill out the PDD form prepared by the LREC, the SELLER may use his/her own form so long as it contains substantially the same information as contained on the LREC PDD form.

E. The PDD contains important reminders to BUYERS that the PDD information is not a warranty from the SELLER.

Additional information included in the 2020 PDD Form revises and reformats important reminders for BUYERS and SELLERS

- A Property Disclosure Document shall NOT be considered a warranty by the SELLER.
- A Property Disclosure Document is for disclosure purposes only; it is not intended to be part of any contract between the SELLER and the BUYER.
- The Property Disclosure Document may not be used as a substitute for any inspections or warranties that the BUYERS or SELLER may obtain.

- Nothing in this law precludes the rights or duties of a BUYER to inspect the physical condition of the property.
- The SELLER shall not be liable for any error, inaccuracy, or omission, of any information required to be delivered to the BUYERS if the error, inaccuracy, or omission, was not a willful misrepresentation, according to the best of the SELLER'S information, knowledge and belief or was based on information provided by a public body or another person with a professional license or special knowledge, who provided a written or oral report or opinion that the SELLER reasonably believed to be correct and which was transmitted by the SELLER to the BUYER.

*F. Response Options*

In answering all questions on the PDD form, the SELLER is giving a response based on his/her knowledge.

The following representations are made by the SELLER and **NOT** by any real estate licensee. It is not a substitute for any inspections or professional advice the BUYER may wish to obtain. The following information is based only upon the SELLER's actual knowledge of the property. The SELLER can only disclose what the SELLER actually knows. The SELLER may not know about all material or significant items affecting the property.

Y = Yes      N = No      NK = No Knowledge

The response to questions on the 2020 PDD Form may be: Y = Yes    N = No    NK = No Knowledge

**1. “No” or “Not Known”**

Some of the PDD form questions possible responses have been revised to allow for either a “no” or “no knowledge” response.

(11) Have there been any additions or alterations made to the structures during the time the SELLER owned the property?  Y    N

If yes, were the necessary permits and inspections obtained for all additions or alterations?  Y    N    NK

**2. Some of the PDD form questions now include information about prior owners of the property.**

Some questions on the PDD form now include information about a possible defect while the SELLER has owned the property and/or prior to when the SELLER owned the property. Questions 8, 14, 17 and 18 are another example of asking the SELLER about information during his/her ownership and his/her knowledge about previous owners.

(8) Has the property ever had termites or other wood-destroying insects or organisms?

(a) during the time the SELLER owned the property?  Y    N

(b) prior to the time the SELLER owned the property?  Y    N    NK

(c) Was there any damage to the property?  Y    NK

(d) Was the damage repaired?  Y    NK

(14) Has any structure on the property ever flooded, by rising water or otherwise?  
 (a) during the time the SELLER owned the property?  Y  N  
 (b) prior to the time the SELLER owned the property?  Y  N  NK  
 If yes, give the nature and frequency of the defect at the end of this section.

(17) Has there ever been any property damage, including, but not limited to, fire, wind, hail, lightning, or other property damage, excluding flood damage referenced in Section 3?  
 (a) during the time the SELLER owned the property?  Y  N  
 (b) prior to the time the SELLER owned the property?  Y  N  NK  
 If yes, detail all property damages/defects and repair status at the end of this section

(18) Has there been any foundation repair?  
 (a) during the time the SELLER owned the property?  Y  N  
 (b) prior to the time the SELLER owned the property?  Y  N  NK  
 (c) Is there a transferable warranty available?  Y  N  NK  
 (d) If yes, provide the name of warranty company \_\_\_\_\_

### 3. The PDD form revises some questions to ask SELLERS “Are you aware...”

Some questions on the PDD form now only have a “Y” or “N” response; however, the question asks the SELLER “are you aware of any defects...”

(4) Are you aware of any rights vested in others? Check all that apply and explain at the end of this section.

Timber rights	<input type="checkbox"/> Y <input type="checkbox"/> N	Common driveway	<input type="checkbox"/> Y <input type="checkbox"/> N
Right of ingress or egress	<input type="checkbox"/> Y <input type="checkbox"/> N	Mineral rights	<input type="checkbox"/> Y <input type="checkbox"/> N
Right of way	<input type="checkbox"/> Y <input type="checkbox"/> N	Surface rights	<input type="checkbox"/> Y <input type="checkbox"/> N
Right of access	<input type="checkbox"/> Y <input type="checkbox"/> N	Air rights	<input type="checkbox"/> Y <input type="checkbox"/> N
Servitude of passage	<input type="checkbox"/> Y <input type="checkbox"/> N	Usufruct	<input type="checkbox"/> Y <input type="checkbox"/> N
Servitude of drainage	<input type="checkbox"/> Y <input type="checkbox"/> N	Other _____	

(13) Are you aware of any defects regarding the following? Check all that apply and if yes, explain at the end of this section.

Roof	<input type="checkbox"/> Y <input type="checkbox"/> N	Ceilings	<input type="checkbox"/> Y <input type="checkbox"/> N
Interior walls	<input type="checkbox"/> Y <input type="checkbox"/> N	Exterior walls	<input type="checkbox"/> Y <input type="checkbox"/> N
Floor	<input type="checkbox"/> Y <input type="checkbox"/> N	Foundation	<input type="checkbox"/> Y <input type="checkbox"/> N
Attic spaces	<input type="checkbox"/> Y <input type="checkbox"/> N	Basement	<input type="checkbox"/> Y <input type="checkbox"/> N
Porches	<input type="checkbox"/> Y <input type="checkbox"/> N	Overhangs	<input type="checkbox"/> Y <input type="checkbox"/> N
Steps/Stairways	<input type="checkbox"/> Y <input type="checkbox"/> N	Railings	<input type="checkbox"/> Y <input type="checkbox"/> N
Pool	<input type="checkbox"/> Y <input type="checkbox"/> N	Spa	<input type="checkbox"/> Y <input type="checkbox"/> N
Decks	<input type="checkbox"/> Y <input type="checkbox"/> N	Patios	<input type="checkbox"/> Y <input type="checkbox"/> N
Windows	<input type="checkbox"/> Y <input type="checkbox"/> N	Other _____	

(30) Are you aware of any building restrictions or restrictive covenants which may provide for restrictions as to the use of the property or as to the type of construction or materials to be used in the construction of any of structure on the property?  Y  N

### G. New Questions

There are several new questions on the 2020 PDD Form.

#### 1. Question 21(f) requests responses about polybutylene piping.

(21) Are there any known defects with the water piping?  
 (a) during the time the SELLER owned the property?  Y  N  
 (b) prior to the time the SELLER owned the property?  Y  N  NK  
 (c) The water is supplied by:  
 Municipality  Private utility  On-site system  Shared well system  None  
 (d) How many private wells service the primary residence only? \_\_\_\_\_  
 (e) If there are private wells, when was the water last tested? Date \_\_\_\_\_ Results \_\_\_\_\_  
 (f) Are you aware of any polybutylene piping in the structure?  Y  N

**2. Question 25(c) requests responses about aluminum wiring.**

(25) Are there any known defects with the electrical system?	
(a) during the time the SELLER owned the property?	<input type="checkbox"/> Y <input type="checkbox"/> N
(b) prior to the time the SELLER owned the property?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NK
(c) Are you aware of any aluminum wiring in the structure?	<input type="checkbox"/> Y <input type="checkbox"/> N

**3. Question 39**

Question 39 is a new question in response to concerns of BUYERS with pet allergies.

(39) Has an animal or pet ever inhabited the structure?	
(a) during the time the SELLER owned the property?	<input type="checkbox"/> Y <input type="checkbox"/> N
(b) prior to the time the SELLER owned the property?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NK

*H. Required disclosure of participation of a disaster flood relief program.*

Question 45 requires SELLERS to disclose to BUYERS information on disaster relief that the SELLER received regarding the property. BUYERS need to understand the necessity of obtaining flood insurance or complying with elevation and other grant requirements regarding the property. The disclosure provided in Question 45 alone will most likely not comply with the grant requirements which often state the requirement such as to “obtain and maintain” flood insurance on the property must be in the Act of Sale, but it will provide an initial notice to BUYERS.

(45) Was SELLER and/or previous owner a recipient of any of the following:	<input type="checkbox"/> NK
<input type="checkbox"/> Road Home grant \$_____ (amount received)	
<input type="checkbox"/> FEMA \$_____ (amount received)	
<input type="checkbox"/> SBA \$_____ (amount received)	
<input type="checkbox"/> Other Federal disaster flood assistance \$_____ (amount received)	
If YES, complete (a) - (e) below.	
(a) Is the property subject to the Road Home Declaration of Covenants Running with the Land or other requirements to obtain and maintain flood insurance on the property?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NK
(b) If YES, attach a copy of the Road Home Program Declaration of Covenants other requirements to obtain and maintain flood insurance on the property.	
(c) Has SELLER personally assumed any terms of the Road Home Program Grant Agreement?	<input type="checkbox"/> Y <input type="checkbox"/> NK
(d) Has the SELLER been a recipient of any elevation grants for this property?	<input type="checkbox"/> Y <input type="checkbox"/> N
i. If YES, what is the amount received? _____	
(e) Was the previous owner of the property a recipient of any elevation grants for this property?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> NK
i. If YES, what is the amount received? _____	