

Indiana County Assessors Association  
2011 Summer Conference

**SALES DISCLOSURE FORM TRANSFER ISSUES**  
**A Lawyer's Perspective**

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**Disclaimer**

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## A. Dependable Sources of Information About Sales Disclosure Form Requirements

- (1) The sections in Ind. Code 6-1.1-5.5 (“chapter 5.5”) are the sole original source of authority for (1) the requirement that sales disclosure forms (SDF) be filed for particular transfers and (2) the required content of SDFs.
- (2) DLGF has added requirements to fill in details that are not inconsistent with the statutes as enacted by the General Assembly, where those added details make sense in light of the legislative purpose for the SDF:

**§6-1.1-5.5-5(a)** “The department of local government finance shall prescribe a sales disclosure form for use under this chapter. The form prescribed by the department of local government finance must include *at least* the following information: . . . .”

- (3) DLGF’s instructions, memos, FAQ documents, and training materials are, for the most part, consistent with the statute and either generally helpful or extremely helpful.
- (4) However, any instructions, training materials, or other information that are *inconsistent* with the statutes in I.C. 6-1.1-5.5 are probably not trustworthy.
- (5) URL links to instructions, memos, FAQ documents, etc. from the DLGF website appear on the last page of these materials.

## B. What is a “Conveyance” or a “Conveyance Document” for SDF Purposes?

- (1) “Conveyance” and “conveyance document” have specific definitions for SDF purposes, but not in the general context of the required content for deeds (I.C. 32-21-1), or the requirements for making deeds recordable (I.C. §32-21-2-3).<sup>1</sup>

**§6-1.1-5.5-1** “As used in this chapter, ‘conveyance’ means any transfer of a real property interest for valuable consideration.”

DLGF takes the position that if a deed recites consideration using words like “for ten dollars [*or one dollar*] and other good and valuable consideration,” then that deed makes a transfer for “valuable consideration,” even if the actual amount paid is only \$1.00.<sup>2</sup>

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<sup>1</sup> “Conveyance” is not defined at all in I.C. 32-21-1, in I.C. 32-21-2 or in I.C. §36-2-11-14. “Conveyance” *is* defined broadly in I.C. §32-21-3-1 as “(1) an instrument of writing concerning land or an interest in land, except a last will and testament; (2) a lease for a term not exceeding three (3) years; or (3) an executory contract for the sale and purchase of land” — but this is only for the purpose of defining the effect of recording on third persons.

<sup>2</sup> See the DLGF’s single-page “three-headed monster” handout titled “When is a sales disclosure form needed?” and dated August 19, 2008. *However*, Item 65 in the DLGF’s FAQ documents (dated October 2, 2008 and September 23, 2009) says that if the Auditor asks what the actual consideration was and if the answer is “None, it was a gift,” then no SDF should be required, even if the deed recites a nominal amount of consideration such as \$1.00 or \$10.00.

- (2) There are three categories of “conveyance documents” defined in I.C. §6-1.1-5-5-2:

**First category** [transfer “for valuable consideration” is an essential element, and a sales disclosure filing fee is required under I.C. §6-1.1-5.5-4(a)]:

**§6-1.1-5.5-2(a)(1)** “Any of the following that purports to transfer a real property interest for valuable consideration”:

- |  |  |
|--|--|
| (A) A document [ <i>broad and vague! This and (H) below are DLGF's basis for adding the category of “easement or right-of-way grant,” Box 12</i> ] | (E) A judgment [ <i>rare that a judgment would both transfer an interest <b>and</b> also involve payment of valuable consideration</i> ] |
| (B) A deed   | (F) A lease that includes the fee simple estate and is for a period in excess of 90 years  |
| (C) A contract of sale   | (G) A quitclaim deed serving as a source of title  |
| (D) An agreement   | (H) Another document presented for recording [ <i>broad and vague!</i> ]   |

**Second category** [valuable consideration is *not* a required element here]:

**§6-1.1-5.5-2(a)(2)** “Documents for compulsory transactions *as a result of* [1] foreclosure or express threat of foreclosure, [2] divorce, [3] court order, [4] condemnation, or [5] probate.”

Examples of transfer documents in this second category:

- Personal representative’s or executor’s deed distributing an interest in real property to a distributee (legatee under a Will or an heir-at-law) from a supervised estate
- A sheriff’s deed or other transfer document resulting from a decree of foreclosure
- A deed in lieu of foreclosure signed and delivered by the owner / borrower
- A court order or judgment in a quiet title action that resolves a dispute about real property ownership
- A deed for transfer of a piece of real property “taken” for a public purpose, as a result of a judgment or settlement in an eminent domain or condemnation action

- A deed from one spouse to another to carry out a real estate transfer required by a dissolution decree or settlement agreement

**Third category** of “conveyance document in I.C. §6-1.1-5.5-2(a):

**§6-1.1-5.5-2(a)(3)** “Documents involving the partition of land between tenants in common, joint tenants, or tenants by the entirety.”

**Fourth category** invented by DLGF (Box 15 on the SDF, page 1):

“Transfer to a charity, not-for-profit organization, or government.”

**Q.** What is the policy purpose for triggering the filing of a SDF in situations where the transfer is “compulsory” or involves a court proceeding or a donation to a nonprofit or governmental entity, even when the payment of “valuable consideration” is not necessarily involved?

**A.** [*Only an educated guess*] When real estate transfer is made in the context of a divorce or dissolution proceeding, an estate administration, a charitable donation, a mortgage foreclosure action, or an action for partition, quiet title, or condemnation, there is a fairly good chance that a recent fair-market-value appraisal was obtained by one party or another, and perhaps even filed with the court. Requiring the parties to file an SDF is one way to put the possible existence of such an appraisal “on the radar” of the Assessor’s Office, even if the deed or judgment itself does not recite specific consideration has been paid.

Under I.C. §6-1.1-5.5-4(b), the County Auditor is prohibited from charging and collecting the \$10.00 sales disclosure filing fee if the SDF is being filed for a “conveyance document” that fits only into the second, third or fourth categories (Boxes 13, 14, or 15 on Page 1 of the SDF). *See also* the DLGF’s one-page, 4-column handout titled “When is a Sales Disclosure Form and fee necessary?”

**C. Documents That Are Explicitly Excluded by Statute from the Class of “Conveyance Documents” for SDF Purposes**

- (1) “Security interest documents such as mortgages and trust deeds” [I.C. §6-1.1-5.5-2(b)(1)]
- (2) “Leases that are for a term of less than ninety (90) years” [I.C. §6-1.1-5.5-2(b)(2)]
- (3) “Agreements and other documents for mergers, consolidations, and incorporations involving solely non-listed stock [I.C. §6-1.1-5.5-2(b)(3); *even if the corporation(s) involve own no assets other than real property*]
- (4) “Quitclaim deeds not serving as a source of title” [I.C. §6-1.1-5.5-2(b)(4); *see Part D on next page*]
- (5) “Public utility or governmental easements or rights-of-way” [I.C. §6-1.1-5.5-2(b)(5)]

Note that in the wake of the enactment of House Enrolled Act 1293 (P.L. 144-2008, effective July 1, 2008), INDOT began submitting SDFs for land acquisitions, including acquisitions of permanent highway easements and grants of rights-of-way. See the DGLF’s one-page notice on INDOT’s submissions of SDFs and the two-page DLGF memo dated September 16, 2008.

**D. When Does a Quit-Claim Deed Not Serve as a Source of Title?**

In this writer’s opinion, the General Assembly committed a serious goof when it decided to require or not require the filing of an SDF for a quit-claim deed on the basis of a difficult technical / philosophical distinction.

Quit-Claim Deed is <i>NOT</i> a Source of Title SDF <i>IS NOT</i> required	Quit-Claim Deed <i>IS</i> a Source of Title SDF <i>IS</i> required
<ul style="list-style-type: none"> <li>• QC Deed shows a conveyance by owner to himself or herself in order to make public title records reflect a change in the owner’s name [<i>See DLGF FAQ document 9-23-2008, Item 64</i>]</li> </ul>	<ul style="list-style-type: none"> <li>• QC Deed is signed and delivered by one ex-spouse to the other ex-spouse to transfer a ½ interest or a fee simple interest in real estate, as required by a divorce decree or settlement [<i>This is also a “conveyance document” under I.C. §6-1.1-5.5-2(a)(2) and Box 13</i>]</li> </ul>
<ul style="list-style-type: none"> <li>• QC Deed previously signed by the contract purchaser under a land contract is released from escrow and recorded, as a result of the uncured default by the purchaser [<i>Merely transfers back to the contract seller whatever interest the purchaser had</i>]</li> </ul>	<ul style="list-style-type: none"> <li>• The parties could have used a warranty deed to convey real estate for valuable consideration, but the seller chose to sign and deliver a QC Deed in order to avoid giving the standard warranties as to title</li> </ul>
<ul style="list-style-type: none"> <li>• QC Deed is used to convey real property by gift to some recipient <i>or</i> to the current owner’s revocable living trust, <i>and</i> the QC Deed states “for no consideration” [<i>Technically, the QC Deed is serving as a source of title, but because no consideration is being paid, it is not a “conveyance document”</i>]</li> </ul>	<ul style="list-style-type: none"> <li>• QC Deed is used to convey real property by gift to some recipient, but the QC Deed recites nominal consideration [<i>Unless the “seller” takes the time to revise the deed to recite “no consideration / gift” or convinces the Auditor that there was no consideration, this QC Deed arguably IS a source of title</i>]</li> </ul>

**E. Examples of Recordable Documents That Arguably Are NOT “Conveyance Documents” for Which an SDF is Required**

Name of Document	Use of Document and Statutory Basis (if any)	Why the Document Does Not Require an SDF
<p>Affidavit by surviving heir or legatee of deceased owner who was the sole record owner of the real property</p>	<p>I.C. §§29-1-7-23 and 36-2-11-19(a)(1)                      Recorded to cause the public title records to reflect the death of the former owner and the automatic transfer of ownership occurring at death</p>	<ul style="list-style-type: none"> <li>• I.C. §29-1-7-23 essentially states that upon the death of a decedent, ownership of the decedent’s real property passes <i>automatically and by operation of law</i> to the heirs or legatees, subject only to the right of the personal representative to sell the real estate to pay expenses and debts</li> <li>• DLGF FAQ document 9-23-2009, Item 10 [an affidavit is not a conveyance document]</li> </ul>
<p>Affidavit of survivorship by surviving joint tenant or remainderman, following the death of one joint owner or the life tenant</p>	<p>I.C. §§29-1-7-23 and 36-2-11-19(a)(1)                      Recorded to cause the public title records to reflect the death of the former owner and the automatic transfer of ownership occurring at death</p>	<ul style="list-style-type: none"> <li>• The transfer of ownership to the surviving joint tenant(s) or to the remainderman(men) occurs by operation of law upon the death, and not as a result of the filing of the affidavit; the affidavit merely updates the title records</li> <li>• DLGF FAQ document 9-23-2009, Item 10 [an affidavit is not a conveyance document]</li> </ul>
<p>Personal representative’s deed distributing real property to an heir or legatee from an <i>unsupervised estate</i></p>	<p>Distributing real property (not selling it to a purchaser)                      Deed should recite an estate cause number containing “EU”                      I.C. §§29-1-7-23 and 29-1-7.5-3</p>	<ul style="list-style-type: none"> <li>• DLGF FAQ document 9-23-2009, Item 75</li> <li>• A <i>distribution</i> of real property from an estate to an heir or legatee is always for no valuable consideration</li> <li>• A distribution of real property from an <i>unsupervised</i> estate is done without any court order and therefore is outside the scope of I.C. §6-1.1-5.5-2(a)(2)</li> <li>• SDF Instructions, Page 1</li> </ul>

Name of Document	Use of Document and Statutory Basis (if any)	Why the Document Does Not Require an SDF
A deed that transfers real property to a trust (or to the trustee), reciting zero consideration	Typically, an individual transfers record ownership to the trust for estate planning purposes or to “avoid probate”	<ul style="list-style-type: none"> <li>• Unless the trust is actually <i>purchasing</i> the real property, this is not a “conveyance document” for SDF purposes because no consideration has been paid and no court proceeding or court order is involved</li> </ul>
A deed distributing (not selling) real property <i>out of</i> a trust	Trustee performs a duty or exercises discretion under the trust document, to transfer ownership of the real property to a beneficiary I.C. §30-4-3-3	<ul style="list-style-type: none"> <li>• DLGF FAQ document 9-23-2009, Item 75</li> <li>• This is not a “conveyance” document for SDF purposes because no consideration has been paid and no court proceeding or court order is involved</li> </ul>
A deed distributing real property out of a business entity that has dissolved	Part of liquidation and winding-up, to distribute net assets to the shareholders, partners or members	<ul style="list-style-type: none"> <li>• Not mentioned in SDF statute or in SDF instructions or DLGF guidance</li> <li>• <i>Arguably</i> exempt if deed recites it is for no consideration</li> </ul>
A corrective deed	Recorded to correct an error in legal description some other technical defect in a prior recorded deed	<ul style="list-style-type: none"> <li>• SDF Instructions, Page 1</li> <li>• Does not make a new transfer of an interest in real property</li> <li>• No consideration is involved</li> </ul>
A document granting a temporary easement	Often granted to a governmental entity or adjoining landowner to permit construction work during a limited period	<ul style="list-style-type: none"> <li>• DLGF’s 2-page memo dated 9-16-2008 says that an SDF is not needed for the grant of a “non-permanent easement”</li> <li>• Arguably not enough to constitute an “interest <i>in</i> real property”</li> </ul>
A document granting a permanent easement for no consideration	Could be granted as a gratuitous “favor” to a neighbor, <i>e.g.</i> , the right to use a driveway for ingress and egress	<ul style="list-style-type: none"> <li>• DLGF’s memo dated 9-16-2008 says no SDF is required if no valuable consideration is paid</li> <li>• Same memo says that an SDF <i>is</i> required if easement is granted for valuable consideration</li> </ul>

Name of Document	Use of Document and Statutory Basis (if any)	Why the Document Does Not Require an SDF
<p>A transfer-on-death (TOD) deed putting real property into the name of an “owner” with 1 or more TOD beneficiaries</p>	<p>I.C. §32-17-14-11, as amended by P.L. 36-2011 (SEA 169), effective July 1, 2011</p> <p>To put real estate into “non-probate” form so that it passes by operation of law, at the owner’s death, to the named TOD beneficiaries</p>	<ul style="list-style-type: none"> <li>• Not a “conveyance of land” for the County Auditor’s purposes (no “endorsement” and no fee for property tax purposes under I.C. §36-2-11-14)</li> <li>• A TOD deed is revocable by the owner and does not cause any transfer of ownership of the real property until the owner’s death</li> <li>• DLGF FAQ document 9-23-2009, Item 76</li> </ul>

**F. An Affidavit for Which an SDF *Might be* Required as a Condition to Recording**

In the Indiana Transfer-on-Death Property Act, I.C. §32-17-14-26(b)(18) and (20) explain how and when a transfer-on-death (TOD) transfer of real property occurs, and what at least one beneficiary must do after the death of the owner:

- (18) A transfer under a transfer on death deed occurs automatically upon the owner's death subject to the requirements of subdivision (20) and does not require a request for the execution of the transfer.
- (20) On the death of an owner whose transfer on death deed has been recorded, the beneficiary shall file an affidavit in the office of the recorder of the county in which the real property is located. ***The affidavit must be endorsed by the county auditor under IC 36-2-11-14 in order to be recorded.*** The affidavit must contain the following:
  - (A) The legal description of the property.
  - (B) A certified copy of the death certificate certifying the owner's death.
  - (C) The name and address of each designated beneficiary who survives the owner or is in existence on the date of the owner's death.
  - (D) The name of each designated beneficiary who has not survived the owner's death or is not in existence on the date of the owner's death.
  - (E) A cross-reference to the recorded transfer on death deed.

The sentence in bold italics in I.C. §32-17-14-26(b)(20) was added by P.L. 36-2011 (SEA 169), effective July 1, 2011.

A TOD deed could name any number of beneficiaries (who could be individuals or trusts), and if 4 out of 6 named TOD beneficiaries survive the owner's death, any one of them could sign and record the required affidavit, in order to name the other surviving beneficiaries and those that did not survive.

**ASIDE:** Note that a certified copy of the owner's death certificate must be included as a part of the recorded affidavit. Although Indiana death certificates bear the social security numbers of the decedent, I.C. §36-2-11-15(b)(2) does not require the decedent's SSN to be blacked out, because subsection (a)(3) of the same statute says that the SSN redaction requirements do not apply to "a will or death certificate."

Although subdivision (18) says that the transfer of TOD real property "occurs automatically upon the owner's death," this occurs "subject to the requirements of subdivision (20)." If the affidavit required by (20) must be endorsed by the County Auditor (*i.e.*, "duly entered for taxation") before it can be recorded, then in this writer's opinion, this affidavit is some sort of real property conveyance document.

Is this affidavit a "conveyance document" for SDF purposes? **Arguably NO.** The real property is being transferred at death without consideration, so it is not a "conveyance document" of the first type under I.C. §6-1.1-5.5-2(a)(1). No court order or court proceeding is required, and no partition is involved, so the affidavit is not a "conveyance" document of the second or third types under §6-1.1-5.5-2(a)(2) or (3).

However, it is conceivable that DLGF may instruct County Auditors and Assessors to require an SDF. In this writer's opinion, to require an SDF as a condition to recording this statutory TOD beneficiary affidavit might make a certain amount of practical sense to the bureaucratic mind, but it is not consistent with how the SDF statutes are currently worded.

#### **G. "Existence of Family or Business Relationship Between Buyer and Seller"**

This is the text in Box 7 of the SDF form. DLGF did not just dream this up on a personal whim. I.C. §6-1.1-5.5-5(a)(15) requires the SDF form to include information about "[a]ny family or business relationship between the transferor and the transferee."

The public policy reason to request such information is obvious if the real estate conveyance document is *a sale* in exchange for a valuable consideration: If seller and buyer are members of the same family or are business entities with a relationship of parent-subsidiary or sister companies, the stated sale price may be a "part gift" or "bargain sale" price that is less than the fair market value that would be paid in an arms-length transaction between unrelated parties.

And so checking "YES" in Box 7 on the SDF will require the "seller" and "buyer" to complete the information requested in Table C, Item 4.

If a real property transfer is occurring for no valuable consideration (Box 1 is checked "NO"), it does not matter whether Box 7 is checked "YES" or "NO." Whether an SDF is required at all will be determined according to whether any of the questions in Boxes 13, 14, and 15 are checked "YES."

## **H. Real Property Transfers as Capital Contributions to Corporations, Partnerships, and LLCs**

When a new business entity such as a C or S corporation, a general or limited partnership, a limited liability partnership, or a limited liability company (LLC) is formed, the new owner(s) (shareholders, partners, LLC members) transfer money or property to the business entity in exchange for their respective ownership interests (shares of stock, partnership interests, or LLC member interests).

Such a transfer of money or property to a business entity by a new or incoming owner is typically called a “capital contribution” (It may also be referred to as payment of a “subscription price”). The vast majority of these transfers are not “sales” for federal income tax purposes; they do not trigger any gain or loss for the new or incoming owner.

If a shareholder, partner, or member transfers real property to the corporation, partnership, or LLC in exchange for his or her ownership interest, has a “transfer for valuable consideration” occurred, and should an SDF be required?

In a technical sense, the new or incoming owner *has received* “valuable consideration,” in the form of the shares of stock, the partnership interest, or the LLC member interest, and this ownership interest arguably has value equal to the market value of the real property (minus any secured debt) that has been transferred to the business entity.

However, the new or incoming owner who transfers real property to the business entity may not have any dependable or accurate idea about what the real property is worth. There may be no appraisal, and the internal documents for the capital contribution may not recite a value for the real property.

In this writer's opinion, the sales disclosure form statutes should not be interpreted to require an SDF to be filed for a capital contribution of real property to a business entity, because the transferor (the shareholder, partner, or LLC member) has not made an arms-length sale in the usual sense, has not received money, and probably cannot provide any usable information to the Assessor about the market value of the real property.

## **I. Language Usable in a Recordable Document to Confirm that No Valuable Consideration Has Been Received**

- (1) The following is the paragraph that this writer uses in deeds when the real property transfer is a gift or is made for no consideration whatsoever, such as for a distribution by the personal representative of an estate:

Because this Deed has been executed and delivered [*optional: add* “as a gift”] without the payment or receipt of any valuable consideration, this Deed is not a “conveyance document” for purposes of the sales disclosure form statute, I.C. §6-1.1-5.5-2(a)(1).

- (2) And the following is the paragraph that this writer uses in a recordable affidavit, to confirm that no consideration has been received and that the affidavit itself is not a conveyance document:

Because the undersigned has neither paid nor received any consideration for this Affidavit, and because this Affidavit itself does not make a transfer of real property, it is not a “conveyance document” for purposes of the sales disclosure form statute, I.C. §6-1.1-5.5-2(a)(1).

**J. Signing of SDFs by Attorneys-in-Fact (Agents) under Durable Powers of Attorney**

To the best of this writer's knowledge, the SDF statute (I.C. 6-1.1-5.5) is silent on the issue of what kind of authority an individual must have in order to be able to sign an SDF for a transferor or transferee. I.C. §6-1.1-5.5-9 says only this:

**§6-1.1-5.5-9.** A person who signs a sales disclosure form shall attest in writing and under penalties for perjury that to the best of the person's knowledge and belief the information contained in the sales disclosure form is true and correct.

Page 2 of the SDF instructions and Item 7 of the DLGF's September 23, 2009 FAQ document say that the lawyer for a buyer or seller may sign the SDF for his or her client without having a power of attorney (This writer prints “atty for seller” or “atty for buyer” after his signature). The DGLF has decided that if anyone other than an attorney signs on behalf of the buyer or seller, that individual must attach a “properly executed Power of Attorney” to the SDF when it is filed. *See also* Item 31 in the FAQ document.

If the buyer or seller is a corporation, LLC, or other business entity, the DLGF states (Item 7, FAQ document dated 9-23-2009) that “a resolution or other legal document that designates authorized signatories for the business is an acceptable substitute for a power of attorney.” However, there is no basis in the statute for *requiring* that a business entity provide a copy of such a resolution with the SDF.

A power of attorney will be sufficient to authorize the named attorney-in-fact or Agent to sign an SDF if it (1) is signed and notarized under I.C. §30-5-4-1, (2) does not state a delayed effective date that has not already arrived, and (3) gives the attorney-in-fact or Agent “general authority with respect to real property transactions” *or* narrower authority to sign and deliver documents regarding a specific parcel(s) or real property transaction.

A County Assessor, County Auditor, or staffperson is fully protected in relying on the statements and the signature of the attorney-in-fact or Agent if the attorney-in-fact or Agent signs in the form “Sam Seller by Alex Agent, Atty in Fact” or “Bertha Buyer by Alex Agent, POA,” unless the official receiving the POA or the Agent's signature has independent knowledge that the principal (the buyer or seller) is dead or that the POA has been revoked. *See* I.C. §§30-5-8-2 through 30-5-8-4.

Under I.C. §30-5-8-5, a photocopy or faxed copy of a POA must be honored by third parties to the same extent as an original, if the Agent or attorney-in-fact certifies that the

copy is a true and correct copy. A County Auditor or County Assessor does not have the right to insist on receiving an original of a POA.

**K. Must a Sales Disclosure Form Be Printed and Signed in Black Ink?**

To the best of this writer's knowledge, the sole source for this idea is Item 6 in the DLGF's FAQ document dated September 23, 2009:

Black ink is the preferred type of ink to be used, as other colors can cause problems for scanning purposes; therefore, we request that the form be either typed or printed in black ink. However, the signatures on page 2 do not have to be in black ink.

Note the words "preferred" and "request." There is nothing in the statute or current instructions that *requires* an SDF to be filled out, printed, or signed in black ink. That being said, it makes good practical sense to use black ink or toner. More recently, the DLGF has taken great pains to encourage on-line completion and filing of SDFs and to make ink color irrelevant.

In this writer's opinion, a county official has no justification for rejecting an otherwise complete SDF because it was filled out with an ink color other than black. If a paper hard copy is submitted and was filled out in blue ink, for example, what would prevent or prohibit the Assessor from making a black-and-white photocopy of the original and then scanning the photocopy?

**L. One Lawyer's Favorite Two Sections of the Sales Disclosure Form Statute**

**§6-1.1-5.5-3(f).** County assessing officials, county auditors, and other local officials may not establish procedures or requirements concerning sales disclosure forms that substantially differ from the procedures and requirements of this chapter.

**§6-1.1-5.5-3(b)(2)(B)(i).** . . . The [sales disclosure] form may not be rejected for failure to contain information other than that required by section 5(a)(1) through 5(a)(16) of this chapter.

The verbatim text of sections 3, 4, and 5 of the sales disclosure form statute, as last amended, is reproduced starting on the next page.

**M. Providing "Forms" and "Samples" to Transferors and Transferees of Real Property**

Please, please discourage the personnel of the Assessor's, Recorder's, and Auditor's offices from providing sample forms of deeds and affidavits to layperson transferors or transferees who come to submit documents for recording. Unfortunately, it is extremely easy to suggest a form or a format that is wrong for the fact situation and for the objectives of the transferor and transferee. Use of the wrong form can create problems of public record that may be difficult and expensive to correct.

**IC § 6-1.1-5.5-3****Sales disclosure form filing and review process; forwarding and use of forms; confidential information; conveyance of multiple parcels**

Sec. 3. (a) For purposes of this section, "party" includes:

- (1) a seller of property that is exempt under the seller's ownership; or
- (2) a purchaser of property that is exempt under the purchaser's ownership;

from property taxes under IC 6-1.1-10.

(b) Subject to subsections (g) and (h), before filing a conveyance document with the county auditor under IC 6-1.1-5-4, all the parties to the conveyance must do the following:

- (1) Complete and sign a sales disclosure form as prescribed by the department of local government finance under section 5 of this chapter. All the parties may sign one (1) form, or if all the parties do not agree on the information to be included on the completed form, each party may sign and file a separate form. For conveyance transactions involving more than two (2) parties, one (1) transferor and one (1) transferee signing the sales disclosure form is sufficient.
- (2) Before filing a sales disclosure form with the county auditor, submit the sales disclosure form to the county assessor. The county assessor must review the accuracy and completeness of each sales disclosure form submitted immediately upon receipt of the form and, if the form is accurate and complete, stamp or otherwise approve the form as eligible for filing with the county auditor and return the form to the appropriate party for filing with the county auditor. If multiple forms are filed in a short period, the county assessor shall process the forms as quickly as possible. For purposes of this subdivision, a sales disclosure form is considered to be accurate and complete if:
  - (A) the county assessor does not have substantial evidence when the form is reviewed under this subdivision that information in the form is inaccurate; and
  - (B) both of the following conditions are satisfied:
    - (i) The form contains the information required by section 5(a)(1) through 5(a)(16) of this chapter as that section applies to the conveyance transaction, subject to the obligation of a party to furnish or correct that information in the manner required by and subject to the penalty provisions of section 12 of this chapter. The form may not be rejected for failure to contain information other than that required by section 5(a)(1) through 5(a)(16) of this chapter.
    - (ii) The form is submitted to the county assessor in a format usable to the county assessor.

(3) File the sales disclosure form with the county auditor.

(c) The auditor shall review each sales disclosure form and process any deduction for which the form serves as an application under IC 6-1.1-12-44. The auditor shall forward each sales disclosure form to the county assessor. The county assessor shall verify the assessed

valuation of the property for the assessment date to which the application applies and transmit that assessed valuation to the auditor. The county assessor shall retain the forms for five (5) years. The county assessor shall forward the sales disclosure form data to the department of local government finance and the legislative services agency in an electronic format specified jointly by the department of local government finance and the legislative services agency. The county assessor shall forward a copy of the sales disclosure forms to the township assessors in the county. The forms may be used by the county assessing officials, the department of local government finance, and the legislative services agency for the purposes established in IC 6-1.1-4-13.6, sales ratio studies, equalization, adoption of rules under IC 6-1.1-31-3 and IC 6-1.1-31-6, and any other authorized purpose.

(d) In a county containing a consolidated city, the auditor shall review each sales disclosure form and process any deduction for which the form serves as an application under IC 6-1.1-12-44. The auditor shall forward the sales disclosure form to the appropriate township assessor (if any). The township assessor shall verify the assessed valuation of the property for the assessment date to which the application applies and transmit that assessed valuation to the auditor. The township or county assessor shall forward the sales disclosure form to the department of local government finance and the legislative services agency in an electronic format specified jointly by the department of local government finance and the legislative services agency. The forms may be used by the county assessing officials, the county auditor, the department of local government finance, and the legislative services agency for the purposes established in IC 6-1.1-4-13.6, sales ratio studies, equalization, adoption of rules under IC 6-1.1-31-3 and IC 6-1.1-31-6, and any other authorized purpose.

(e) If a sales disclosure form includes the telephone number or Social Security number of a party, the telephone number or Social Security number is confidential.

(f) County assessing officials, county auditors, and other local officials may not establish procedures or requirements concerning sales disclosure forms that substantially differ from the procedures and requirements of this chapter.

(g) Except as provided in subsection (h), a separate sales disclosure form is required for each parcel conveyed, regardless of whether more than one (1) parcel is conveyed under a single conveyance document.

(h) Only one (1) sales disclosure form is required for the conveyance under a single conveyance document of two (2) or more contiguous parcels located entirely within a single taxing district.

*As added by P.L.63-1993, SEC.1. Amended by P.L.6-1997, SEC.26; P.L.89-2001, SEC.2; P.L.90-2002, SEC.52; P.L.245-2003, SEC.6; P.L.1-2004, SEC.9 and P.L.23-2004, SEC.10; P.L.64-2004, SEC.1; P.L.228-2005, SEC.16; P.L.219-2007, SEC.16; P.L.144-2008, SEC.3; P.L.146-2008, SEC.94; P.L.1-2009, SEC.28.*

#### **IC § 6-1.1-5.5-4**

##### **Filing fee; exceptions; distribution of revenue**

Sec. 4. (a) Except as provided in subsection (b), a person filing a sales disclosure form under this chapter shall pay a fee of ten dollars (\$10) to the county auditor.

(b) No fee is due and payable under subsection (a) if the conveyance to which the sales disclosure form filing applies is either or both of the following:

- (1) To a charity.
- (2) Under a conveyance document described in section 2(a)(2) or 2(a)(3) of this chapter.

(c) Fifty percent (50%) of the revenue collected under this section and section 12 of this chapter shall be deposited in the county sales disclosure fund established under section 4.5 of this chapter. Fifty percent (50%) of the revenue shall be transferred to the state treasurer for deposit in the state assessment training fund established under section 4.7 of this chapter.

*As added by P.L.63-1993, SEC.1. Amended by P.L.198-2001, SEC.21; P.L.178-2002, SEC.10; P.L.144-2008, SEC.4.*

### **IC § 6-1.1-5.5-5**

#### **Information required in form; exception**

*Revisor's Note: P.L.75-2009, SEC.5 required the printing of this section as follows.*

Sec. 5. (a) The department of local government finance shall prescribe a sales disclosure form for use under this chapter. The form prescribed by the department of local government finance must include at least the following information:

- (1) The key number (as defined in IC 6-1.1-1-8.5) of each parcel.
- (2) With respect to each parcel, whether the entire parcel is being conveyed.
- (3) The address of each improved parcel.
- (4) The date of the execution of the form.
- (5) The date the property was transferred.
- (6) Whether the transfer includes an interest in land or improvements, or both.
- (7) Whether the transfer includes personal property.
- (8) An estimate of the value of any personal property included in the transfer.
- (9) The name, address, and telephone number of:
  - (A) each transferor and transferee; and
  - (B) the person that prepared the form.
- (10) The mailing address to which the property tax bills or other official correspondence should be sent.
- (11) The ownership interest transferred.
- (12) The classification of the property (as residential, commercial, industrial, agricultural, vacant land, or other).
- (13) Subject to subsection (c), the total price actually paid or required to be paid in exchange for the conveyance, whether in terms of money, property, a service, an agreement, or other consideration, but excluding tax payments and payments for legal and other services that are incidental to the conveyance.
- (14) The terms of seller provided financing, such as interest rate, points, type of loan, amount of loan, and amortization period, and whether the borrower is personally liable for repayment of the loan.

- (15) Any family or business relationship existing between the transferor and the transferee.
- (16) A legal description of each parcel subject to the conveyance.
- (17) Whether the transferee is using the form to claim one (1) or more deductions under IC 6-1.1-12-44 for property taxes first due and payable in a calendar year after 2008.
- (18) If the transferee uses the form to claim the standard deduction under IC 6-1.1-12-37, the information required for a standard deduction under IC 6-1.1-12-37.
- (19) Sufficient instructions and information to permit a party to terminate a standard deduction under IC 6-1.1-12-37 on any parcel of property on which the party or the spouse of the party will no longer be eligible for the standard deduction under IC 6-1.1-12-37 after the party or the party's spouse begins to reside at the property that is the subject of the sales disclosure form, including an explanation of the tax consequences and applicable penalties if a party unlawfully claims a standard deduction under IC 6-1.1-12-37.
- (20) Other information as required by the department of local government finance to carry out this chapter.

If a form under this section includes the telephone number or part or all of the Social Security number of a party, the telephone number or the Social Security number is confidential.

(b) The instructions for completing the form described in subsection (a) must include the information described in IC 6-1.1-12-43(c)(1).

(c) If the conveyance includes more than one (1) parcel as described in section 3(h) of this chapter, the form:

- (1) is not required to include the price referred to in subsection (a)(13) for each of the parcels subject to the conveyance; and
- (2) may state a single combined price for all of those parcels.

*As added by P.L.63-1993, SEC.1. Amended by P.L.90-2002, SEC.54; P.L.64-2004, SEC.2; P.L.228-2005, SEC.18; P.L.154-2006, SEC.3; P.L.144-2008, SEC.5; P.L.75-2009, SEC.1; P.L.87-2009, SEC.1.*

Sales Disclosure form in a fillable pdf format, Version R10, as revised October 2009:

<https://forms.in.gov/Download.aspx?id=7477>

Sales Disclosure Form in non-fillable pdf format, Version R9, as revised July 2009:

[http://www.in.gov/dlgf/files/State\\_Form\\_46021\\_-\\_Sales\\_Disclosure\\_Form\\_Version\\_R9.pdf](http://www.in.gov/dlgf/files/State_Form_46021_-_Sales_Disclosure_Form_Version_R9.pdf)

SDF instructions on DLGF website:

<http://www.in.gov/dlgf/files/SalesDisclosureInstructionsR9.pdf>

“Revised Sales Disclosure Form,” 22-page local workshop presentation:

<http://www.in.gov/dlgf/files/SalesDisclosureFormLocalWorkshopPresentation.pdf>

SDF FAQ as updated September 23, 2009 (13 pp.): [http://www.in.gov/dlgf/files/092309-\\_FAQ-\\_Sales\\_Disclosure\\_Form.pdf](http://www.in.gov/dlgf/files/092309-_FAQ-_Sales_Disclosure_Form.pdf)

SDF FAQs as updated October 2, 2008: [http://www.in.gov/dlgf/files/Memo-Sales\\_Disclosure\\_FAQ.pdf](http://www.in.gov/dlgf/files/Memo-Sales_Disclosure_FAQ.pdf)

SDF FAQs, Auditor edition (3 pp.), September 4, 2009: [http://www.in.gov/dlgf/files/090904-\\_FAQ-\\_SALES\\_DISCLOSURE\\_FORM\\_AUDITOR\\_EDITION.pdf](http://www.in.gov/dlgf/files/090904-_FAQ-_SALES_DISCLOSURE_FORM_AUDITOR_EDITION.pdf)

DLGF's June 2, 2008 memo (“Changes to the Sales Disclosure Form Memo,” 22 pp. with 1-page chart of Deductions Deadlines): [http://www.in.gov/dlgf/files/Memo-Changes\\_to\\_Sales\\_Disclosure\\_Form.pdf](http://www.in.gov/dlgf/files/Memo-Changes_to_Sales_Disclosure_Form.pdf)

DLGF memo on SDF filings for easements and right-of-way grants, 2 pp., September 16, 2008:

<http://www.in.gov/dlgf/files/Memo-SalesDisclosureFilings-for-Easements-and-Right-of-WayGrants.pdf>

One-page DLGF summary chart, “When is a Sales Disclosure Form and Fee Necessary?”:

[http://www.in.gov/dlgf/files/SDF\\_and\\_fee.pdf](http://www.in.gov/dlgf/files/SDF_and_fee.pdf)

DLGF's one-page notice on INDOT submission of SDFs: <http://www.in.gov/dlgf/files/INDOT-and-SalesDisclosures.pdf>

Visual aid (multi-column chart showing Boxes 1 through 15) for multiple parcels and SDF reporting, “When is a Sales Disclosure Form and fee necessary?”:

<http://www.in.gov/dlgf/files/SalesDisclosure-MultipleParcelVisualAid.pdf>

“Three-eyed monster” visual aid illustrating the 3 types of “conveyance documents,” (1 p.):

<http://www.in.gov/dlgf/files/ThreeHeadedSalesDisclosureMonster.pdf>

Memo (September 22, 2009, 2 pp.) announcing end of direct DLGF technical support for SDF

program as of January 1, 2010: [http://www.in.gov/dlgf/files/090922\\_-\\_Volz\\_Memo\\_-\\_Sales\\_Disclosure\\_Program\\_Status.pdf](http://www.in.gov/dlgf/files/090922_-_Volz_Memo_-_Sales_Disclosure_Program_Status.pdf)

Gateway to on-line SDF: [https://www.stats.indiana.edu/sdf/r2/sdfEnter\\_07\\_09.aspx](https://www.stats.indiana.edu/sdf/r2/sdfEnter_07_09.aspx)