



# BUYING OR SELLING REAL PROPERTY IN MINE SUBSIDENCE AREAS



- Mine Subsidence Insurance
  - Required Disclosures
  - Assigning Claim Rights



ILLINOIS MINE  
SUBSIDENCE  
INSURANCE FUND

## OVERVIEW

The information in this brochure is intended to guide both buyers and sellers of homes and other buildings located in areas susceptible to mine subsidence. It includes background information on mine subsidence and the specialized insurance available to Illinois building owners. It also provides more detailed information on disclosures required by law, and an explanation of insurance claim rights.

## MINE SUBSIDENCE: A BRIEF EXPLANATION

**Mine subsidence is defined as lateral or vertical ground movement caused by a failure initiated at the mine level that can directly damage structures.**

Simply stated, when a mine roof or pillar of a subsurface mine collapses, it causes the ground above to sink or subside. A property need not be located directly over a mine to be affected by mine subsidence. Each subsidence event is unique and the range of ground movement is influenced by many factors. If a structure is located in close proximity to underground mining operations, it may be susceptible to damage by mine subsidence.

## HOMES LOCATED IN UNDERMINED AREAS

The Illinois State Geological Survey (ISGS) has estimated that 201,000 acres of urban and built-up lands in Illinois may be in close proximity to underground mines. Their study also estimates as many as 320,000 homes may be undermined. ISGS maintains the state's largest collection of mine maps, and consulting those maps is the best way to determine if a home is undermined. Maps are organized by county and are available on the ISGS website at:

**[www.isgs.illinois.edu/ilmines](http://www.isgs.illinois.edu/ilmines)**

The ISGS has made every effort to ensure the accuracy of these maps, based on available data. However, due to the lack of regulation and documentation until the late 1800's, little or no information exists for a number of older mines. Many of the very early mine maps were sketched by miners from inside the mine, or constructed solely from memory. Still, mine maps are a good source for determining if mines are present in the general area of the property location.

## MINE SUBSIDENCE INSURANCE

The illustration below shows the counties where mining has been most prevalent in Illinois. By statute, in these 34 **“Mandatory Counties”** mine subsidence coverage is automatically included in all property insurance policies, unless waived in writing by the insured. In the remaining counties, coverage is available at the insured’s request.

<b>Bond</b>	<b>Marion</b>
<b>Bureau</b>	<b>Marshall</b>
<b>Christian</b>	<b>Menard</b>
<b>Clinton</b>	<b>Mercer</b>
<b>Douglas</b>	<b>Montgomery</b>
<b>Franklin</b>	<b>Peoria</b>
<b>Fulton</b>	<b>Perry</b>
<b>Gallatin</b>	<b>Putnam</b>
<b>Grundy</b>	<b>Randolph</b>
<b>Jackson</b>	<b>Rock Island</b>
<b>Jefferson</b>	<b>St. Clair</b>
<b>Knox</b>	<b>Saline</b>
<b>LaSalle</b>	<b>Sangamon</b>
<b>Logan</b>	<b>Tazewell</b>
<b>McDonough</b>	<b>Vermilion</b>
<b>Macoupin</b>	<b>Washington</b>
<b>Madison</b>	<b>Williamson</b>



Even in mandatory counties, the statute allows an insurance company to refuse to provide mine subsidence insurance on a property with evidence of unrepaired mine subsidence damage until such damage is repaired.

Mine subsidence insurance is very affordable, especially when compared to the risk of spending thousands of dollars to repair a mine subsidence damaged structure. The maximum mine subsidence limit available is according to statute – consult with your insurance agent.

The rates for mine subsidence coverage for commercial structures are different than those for residential structures. The commercial rates are the same in all counties, and the residential rates are the same in all counties, and the rates do not vary based on construction, age of the structure, or prior claim experience. Mine Subsidence premium is determined solely by the amount of coverage purchased.

## DISCLOSURE LAWS

There are two statutes in Illinois that pertain to disclosure during the sale of residential property with confirmed or suspected mine subsidence damage. Both the seller and buyer should be aware of these requirements, and discuss any mine subsidence related disclosure in detail.

The first, the Residential Real Property Disclosure Act (765 ILCS 77/Art.2), states:

***Sec. 25 (b) The seller shall disclose material defects of which the seller has actual knowledge.***

The Act requires completion of the Residential Real Property Disclosure Report, found in 765ILCS/35, which consists of questions pertaining to material defects in the property, with question 17 specifically addressing mine subsidence. The statute defines “material defect” as a condition that would have a substantial adverse effect on the value of the residential real property or that would significantly impair the health or safety of future occupants of the property, unless the seller reasonably believes that the condition has been corrected.

If the seller believes they have actual knowledge of past or present mine subsidence damage to the property, the seller should consult with an attorney about its obligation to disclose that information to prospective buyers.

The second disclosure law is contained in the Mine Subsidence Disclosure Act (765 ILCS 95/), which states:

***Sec.3 (a) At the time an agreement to transfer real property is made, the transferor shall disclose in writing to the transferee and lender all insurance claims paid to the transferor for mine subsidence on the real property.***

If the seller has received payment from their insurance company on a mine subsidence claim, whether for temporary repairs, an advance payment, or a final settlement payment, the seller should consult with an attorney about its obligation to disclose this information to the buyer and the buyer’s lender.

Since unrepaired damage may make the home ineligible for mine subsidence insurance coverage, the buyer may also wish to request the following from the seller:

- Letter from insurance company stating damaging ground movement has ended.
- Insurance company estimate of repair costs.
- Paid bills documenting repairs have been fully completed.

## TRANSFERRING PROPERTY DURING AN ONGOING MINE SUBSIDENCE CLAIM

Ground movement from mine subsidence can last many years, sometimes a decade or more. By statute, all damage caused by a single mine subsidence event, or several subsidence events which are continuous, constitutes one occurrence. This means that if the insurance claim is still open, the company insuring the property when the occurrence began will continue to service the claim. In many instances homes are bought and sold while an active mine subsidence event is taking place. To facilitate that process, the seller and buyer may consider using an **Assignment of Claim Rights**. This is a legal document, which should be prepared by an attorney, and may be used to accomplish the following:

If, at the time of sale, the seller has not received any insurance payments for mine subsidence damage, the Assignment transfers seller's rights regarding the covered loss to the buyer.

If the seller has received some payment, it may transfer the seller's rights to future claim payments, up to the mine subsidence coverage limit and less any claim payments you have already received, to the buyer.

**However, even after an Assignment of Claim Rights, the total amount payable per mine subsidence occurrence to both seller and buyer is subject to the mine subsidence limit on the insurance policy in force when the damage is first reasonably observable.**

In addition to the Assignment of Claim Rights, the buyer should request the seller to provide the following information about the mine subsidence claim:

- The amount of mine subsidence insurance coverage on the date when the mine subsidence damage was first reasonably observable.
- The insurance company's estimate of cost to repair mine subsidence damage.
- The amount of mine subsidence claim payments already received.

If property is transferred during an ongoing mine subsidence claim, the seller and buyer should notify their respective insurance companies, and provide a copy of any Assignment of Claim Rights.

**TAX TIP** - Some municipalities provide property tax relief on homes that sustain mine subsidence damage during the years of ongoing movement. Consult with the local tax assessor office to determine if the regulations allow for a temporary tax reduction until repairs are completed.

## ASSIGNMENT OF CLAIM RIGHTS

John A. and Jane B. Doe, of Falling, Illinois, ("Assignors") hereby assign to George C. and Mary D. Smith ("Assignees") all claims for damages and rights thereunder payable by Protector Insurance Company upon Policy Number: 12345678, Claim Number: 111-222-333 related to mine subsidence beginning on or about June, 2003 upon those premises described at:

Lot No. 44 of "First addition to Mitchell Place Subdivision, a subdivision of part of lot 4 of the northeast quarter of section 12,T. 1 N. 9 W. 3 P.M. . St Anne County, Illinois in Book of Plats "54" on page 52.

Commonly known as 123 Eileen Place, Falling, Illinois 99999.

Together with all sums of money due or to become due upon said policy and claim in connection with mine subsidence damage to said property, Assignors hereby authorize Protector Insurance Company to deal exclusively with Assignees and Assignors shall be omitted from any future documents related to said claims including claim drafts, etc. This Assignment does not apply to any payments made by Protector Insurance Company to Assignors prior to execution of this Assignment of Claim Rights.

All rights of the Assignees hereunder shall inure to their benefit and to the benefit of their legal representatives and assigns.

In witness whereof, the Assignors have signed and sealed this instrument on the dates indicated hereinbelow.

Dated:	Sellers
Dated:	Buyers

*The Assignment of Claim Rights entitles the buyer to any future loss payments on an open claim. It is often a necessary component of the real estate transaction when a home is being affected by active mine subsidence. However, if the policy limit has been exhausted, or the full amount of damage has previously been paid to the seller, the buyer will not receive any additional payments.*

As previously noted, all damage caused by a single mine subsidence event, or several subsidence events which are continuous, constitutes one occurrence. With the permission of the new owner, the Fund will continue to survey the property annually, and advise when damaging ground movement ceases. When damaging ground movement ends and provided a valid assignment has been secured, a final damage estimate can be made, payment for any additional damage can be requested, and full repairs can begin. After completion of full repairs, in the unlikely event of new mine subsidence damage, such damage would be investigated as a new mine subsidence claim, subject to the limits of the policy in force at the time the new mine subsidence damage was first reasonably observable. For additional information about the mine subsidence claim investigation process, see the Fund's website at [www.imsif.com](http://www.imsif.com).

## ABOUT THE FUND

Prior to 1979, insurance coverage for loss resulting from mine subsidence was not available in Illinois. Through an Act of the Illinois General Assembly, all Insurers licensed in Illinois are required to offer mine subsidence coverage. The statute (215 ILCS 5/801) also created the Illinois Mine Subsidence Insurance Fund to provide reinsurance for primary companies offering the coverage.

The Fund is governed by an independent, eleven-member Board of Directors comprised of insurance industry elected and publicly appointed members. Regulatory oversight is provided by the Illinois Department of Insurance.

### MISSION STATEMENT

*The Illinois Mine Subsidence Insurance Fund is a taxable enterprise created by Statute to operate as a private solution to a public problem. The purpose of the Fund is to assure financial resources are available to owners of property damaged by mine subsidence. The Fund fills a gap in the insurance market for the benefit of Illinois property owners at risk of experiencing mine subsidence damage.*

*The Fund does this by providing reinsurance to insurance companies for damage caused by mine subsidence, conducting geotechnical investigations to determine if mine subsidence caused the damage, supporting and sponsoring mine subsidence related research and initiatives consistent with the public interest, and educating the public and the industry about mine subsidence and related issues.*

**For more information on this topic, not related to a specific property, contact:**

Kathleen A. Moran

Industry Relations & Consumer Education Manager

[kamoran@imsif.com](mailto:kamoran@imsif.com)

(800) 433-6743 ext. 261

Fax (312) 819-0065

IMSIF, 180 N. Stetson, Suite 1735, Chicago, Illinois 60601

