

## **Seller's Mandatory Property Condition Disclosure Frequently Asked Questions**

### **Who fills out the form?**

All sellers of existing 1-4 family homes and town homes must complete and sign the Property Condition Disclosure Statement.

#### **Some exemptions to the rule are:**

- ◆ New construction (never inhabited)
- ◆ Condominium units and cooperative apartments
- ◆ Multi-family dwellings (i.e. 5+ units)
- ◆ Vacant land
- ◆ Transfer due to court order (i.e. estate, bankruptcy, eminent domain, divorce decree)
- ◆ HUD properties or government entities

### **What are the seller's responsibilities?**

The seller must truthfully complete and sign a property condition disclosure statement based on seller's actual knowledge of the condition of the property. The disclosure statement must be delivered to the buyer or buyer's agent before the buyer enters a purchase and sale contract.

### **What is actual knowledge?**

The seller has the option to answer "yes," "no," "not applicable," or "unknown." Sellers must answer the questions based upon their actual knowledge at the time of signing the disclosure statement. The seller is under no obligation to conduct any type of inspection of the property or to check public records in an effort to complete the disclosure statement.

### **What happens if the seller refuses to sign the disclosure statement or does not do so in a timely manner?**

If a seller fails to timely complete and sign the disclosure statement and deliver it to the buyer before the buyer enters a purchase and sale contract, the buyer will receive, upon transfer of the title, a \$500 credit against the agreed upon purchase price, which credit shall not relieve seller of any other obligations to buyer concerning the condition of the property under the purchase and sale contract or applicable law.

### **What are the agent's responsibilities?**

The listing broker must timely inform the seller of the seller's obligation to complete the disclosure statement. An agent representing a buyer must timely inform such buyer of buyer's right to receive the disclosure statement before buyer enters a purchase and sale contract. If a buyer is not represented by an agent, seller's agent must inform buyer of buyer's right to receive the disclosure statement before buyer enters a purchase and sale contract. The seller and buyer must sign the disclosure statement, and a copy of the disclosure statement must be attached to the purchase and sale contract.

### **Should this form take the place of a home inspection or other testing?**

Absolutely not. On the contrary, the disclosure statement strongly urges buyers to have a home inspection performed as well as other professional and environmental tests.

### **Does the disclosure statement create a warranty?**

No. The property condition disclosure statement clearly states that the statement does not serve as any kind of warranty by the seller or by any agent representing the seller in the transaction.

### **What if the seller discovers a defect after the seller has already completed the disclosure statement and has delivered it to the buyer?**

If a seller acquires knowledge that renders inaccurate a previous disclosure statement, the seller must complete and deliver a revised disclosure statement to the buyer as soon as possible. Under no circumstances is the seller required to provide a revised disclosure statement to the buyer after transfer of title or after the buyer takes occupancy of the property, whichever is earlier.

### **Is New York the only state with this requirement?**

On the contrary, nearly 30 states have mandatory seller's property condition disclosure. The general experience in other states has been very positive. The consensus has been that it does not hinder the transaction. Further, all parties report that their level of satisfaction with the transfer process has been enhanced through the use of the disclosure statement.

# PROPERTY CONDITION DISCLOSURE STATEMENT

Seller(s): \_\_\_\_\_

Property Address: \_\_\_\_\_

The Property Condition Disclosure Act requires the seller of residential real property to cause this disclosure statement or a copy thereof to be delivered to a buyer or buyer's agent prior to the signing by the buyer of a binding contract of sale.

<p><b>Purpose of Statement:</b></p> <p>This is a statement of certain conditions and information concerning the property known to the seller. This disclosure statement is not a warranty of any kind by the seller or by any agent representing the seller in this transaction. It is not a substitute for any inspections or tests and the buyer is encouraged to obtain his or her own independent professional inspections and environmental tests and also is encouraged to check public records pertaining to the property.</p> <p>A KNOWINGLY FALSE OR INCOMPLETE STATEMENT BY THE SELLER ON THIS FORM MAY SUBJECT THE SELLER TO CLAIMS BY THE BUYER PRIOR TO OR AFTER THE TRANSFER OF TITLE. IN THE EVENT A SELLER FAILS TO PERFORM THE DUTY PRESCRIBED IN THIS ARTICLE TO DELIVER A DISCLOSURE STATEMENT PRIOR TO THE SIGNING BY THE BUYER OF A BINDING CONTRACT OF SALE, THE BUYER SHALL RECEIVE UPON THE TRANSFER OF TITLE A CREDIT OF FIVE HUNDRED DOLLARS (\$500.00) AGAINST THE AGREED UPON PURCHASE PRICE OF THE RESIDENTIAL REAL PROPERTY.</p>	<p>"Residential real property" means real property improved by a one-to-four family dwelling used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons, but shall not refer to (a) unimproved real property upon which such dwellings are to be constructed or (b) condominium units or cooperative apartments or (c) property in a homeowner's association that is not owned in fee simple by the seller.</p> <p><b>Instructions to the Seller:</b></p> <p>(a) Answer all questions based upon your actual knowledge.</p> <p>(b) Attach additional pages with your signature if additional space is required.</p> <p>(c) Complete this form yourself.</p> <p>(d) If some items do not apply to your property, check "NA" (non-applicable). If you do not know the answer, check "UNKN" (unknown).</p>
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**Seller's Statement:**

The seller makes the following representations to the buyer based upon the seller's actual knowledge at the time of signing this document. The seller authorizes his or her agent, if any, to provide a copy of this statement to a prospective buyer of the residential real property. The following are representations made by the seller and are not the representations of the seller's agent.

**General Information:**

1. How long have you owned the property? \_\_\_\_\_

2. How long have you occupied the property? \_\_\_\_\_

3. What is the age of the structure or structures? \_\_\_\_\_

**Note to buyer** – If the structure was built before 1978 you are encouraged to investigate for the presence of lead based paint.

4. Does anybody other than yourself have a lease, easement or any other right to use or occupy any part of your property other than those stated in documents available in the public record, such as rights to use a road or path or cut trees or crops?  Yes  No  UNKN  N/A (if yes, explain below)

5. Does anybody else claim to own any part of your property?  Yes  No  UNKN  N/A (if yes, explain below)

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

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

6. Has anyone denied you access to the property or made a formal legal claim challenging your title to the property?  
 Yes  No  UNKN  N/A (if yes, explain below)
7. Are there any features of the property shared in common with adjoining land owners or a homeowner's association, such as walls, fences or driveways?  
 Yes  No  UNKN  N/A (if yes, describe below)
8. Are there any electric or gas utility surcharges for line extensions, special assessments or homeowner or other association fees that apply to the property?  
 Yes  No  UNKN  N/A (if yes, explain below)
9. Are there certificates of occupancy related to the property?  Yes  No  UNKN  N/A (if no, explain below)

### Environmental

Note to Seller - In this section, you will be asked questions regarding petroleum products and hazardous or toxic substances that you know to have been spilled, leaked or otherwise been released on the property or from the property onto any other property. Petroleum products may include, but are not limited to, gasoline, diesel fuel, home heating fuel, and lubricants. Hazardous or toxic substances are products that could pose short- or long-term danger to personal health or the environment if they are not properly disposed of, applied or stored. These include, but are not limited to, fertilizers, pesticides and insecticides, paint including paint thinner, varnish remover and wood preservatives, treated wood, construction materials such as asphalt and roofing materials, antifreeze and other automotive products, batteries, cleaning solvents, including septic tank cleaners, household cleaners and pool chemicals and products containing mercury and lead.

Note to Buyer - If contamination of this property from petroleum products and/or hazardous or toxic substances is a concern to you, you are urged to consider soil and groundwater testing of this property.

10. Is any or all of the property located in a designated floodplain?  Yes  No  UNKN  N/A (if yes, explain below)
11. Is any or all of the property located in a designated wetland?  Yes  No  UNKN  N/A (if yes, explain below)
12. Is the property located in an agricultural district?  Yes  No  UNKN  N/A (if yes, explain below)
13. Was the property ever the site of a landfill?  Yes  No  UNKN  N/A (if yes, explain below)
14. Are there or have there ever been fuel storage tanks above or below the ground on the property?  
 Yes  No  UNKN  N/A

If yes, are they currently in use?  Yes  No  UNKN  N/A Location(s) \_\_\_\_\_

Are they leaking or have they ever leaked?  Yes  No  UNKN  N/A (if yes, explain below)

15. Is there asbestos in the structure?  Yes  No  UNKN  N/A (if yes, state location or locations below)
16. Is lead plumbing present?  Yes  No  UNKN  N/A (if yes, state location or locations below)
17. Has a radon test been done?  Yes  No  UNKN  N/A (if yes, attach a copy of the report)
18. Has motor fuel, motor oil, home heating fuel, lubricating oil or any other petroleum product, methane gas, or any hazardous or toxic substance spilled, leaked or otherwise been released on the property or from the property onto any other property?  
 Yes  No  UNKN  N/A (if yes, describe below)
19. Has the property been tested for the presence of motor fuel, motor oil, home heating fuel, lubricating oil, or any other petroleum product, methane gas, or any hazardous or toxic substance?  
 Yes  No  UNKN  N/A (if yes, attach report(s))

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

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

**Structural**

- 20. Is there any rot or water damage to the structure or structures?  Yes  No  UNKN  N/A (if yes, explain below)
- 21. Is there any fire or smoke damage to the structure or structures?  Yes  No  UNKN  N/A (if yes, explain below)
- 22. Is there any termite, insect, rodent or pest infestation or damage?  Yes  No  UNKN  N/A (if yes, explain below)
- 23. Has the property been tested for termite, insect, rodent or pest infestation or damage?  
 Yes  No  UNKN  N/A (if yes, please attach report(s))
- 24. What is the type of roof/roof covering (slate, asphalt, other)? \_\_\_\_\_  
Any known material defects?  Yes  No  UNKN  N/A (if yes, explain below)  
How old is the roof? \_\_\_\_\_  
Is there a transferable warrantee on the roof in effect now?  Yes  No  UNKN  N/A (if yes, explain below)
- 25. Are there any known material defects in any of the following structural systems: footings, beams, girders, lintels, columns or partitions?  Yes  No  UNKN  N/A (if yes, explain below)

**Mechanical Systems & Services**

- 26. What is the water source (circle all that apply – well, private, municipal, other)? If municipal, is it metered?  
 Yes  No  UNKN  N/A
- 27. Has the water quality and/or flow rate been tested?  Yes  No  UNKN  N/A (if yes, describe below)
- 28. What is the type of sewage system (circle all that apply – public sewer, private sewer, septic or cesspool)?  
If septic or cesspool, age? \_\_\_\_\_  
Date last pumped? \_\_\_\_\_  
Frequency of pumping? \_\_\_\_\_  
Any known material defects?  Yes  No  UNKN  N/A (if yes, explain below)
- 29. Who is your electric service provider? \_\_\_\_\_  
What is the amperage? \_\_\_\_\_  
Does it have circuit breakers or fuses? \_\_\_\_\_  
Private or public poles? \_\_\_\_\_  
Any known material defects?  Yes  No  UNKN  N/A (if yes, explain below)
- 30. Are there any flooding, drainage or grading problems that resulted in standing water on any portion of the property?  
 Yes  No  UNKN  N/A (if yes, state locations and explain below)
- 31. Does the basement have seepage that results in standing water?  Yes  No  UNKN  N/A (if yes, explain below)

Are there any known material defects in any of the following (if yes, explain below. Use additional sheets if necessary):

- 32. Plumbing System?  Yes  No  UNKN  N/A
- 33. Security System?  Yes  No  UNKN  N/A
- 34. Carbon Monoxide Detector?  Yes  No  UNKN  N/A
- 35. Smoke Detector?  Yes  No  UNKN  N/A
- 36. Fire Sprinkler System?  Yes  No  UNKN  N/A
- 37. Sump Pump?  Yes  No  UNKN  N/A

- 38. Foundation/Slab?  Yes  No  UNKN  N/A
- 39. Interior Walls/Ceiling?  Yes  No  UNKN  N/A
- 40. Exterior Walls or Siding?  Yes  No  UNKN  N/A
- 41. Floors?  Yes  No  UNKN  N/A
- 42. Chimney/Fireplace or Stove?  Yes  No  UNKN  N/A
- 43. Patio/Deck?  Yes  No  UNKN  N/A
- 44. Driveway?  Yes  No  UNKN  N/A
- 45. Air Conditioner?  Yes  No  UNKN  N/A
- 46. Heating System?  Yes  No  UNKN  N/A
- 47. Hot Water Heater?  Yes  No  UNKN  N/A

48. The property is located in the following school district \_\_\_\_\_  UNKN

**Note:** Buyer is encouraged to check public records concerning the property (e.g. tax records and wetland and flood plain maps)

The seller should use this area to further explain any item above. If necessary, attach additional pages and indicate here the number of additional pages attached.

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**Seller's Certification:**

Seller certifies that the information in this Property Condition Disclosure Statement is true and complete to the seller's actual knowledge as of the date signed by the seller. If a seller of residential real property acquires knowledge which renders materially inaccurate a Property Condition Disclosure Statement provided previously, the seller shall deliver a revised Property Condition Disclosure Statement to the buyer as soon as practicable. In no event, however, shall a seller be required to provide a revised Property Condition Disclosure Statement after the transfer of title from the seller to the buyer or occupancy by the buyer, whichever is earlier.

Seller: \_\_\_\_\_ Date: \_\_\_\_\_  
 Seller: \_\_\_\_\_ Date: \_\_\_\_\_

**Buyer's Acknowledgement:**

Buyer acknowledges receipt of a copy of this statement and Buyer understands that this information is a statement of certain conditions and information concerning the property known to the seller. It is not a warranty of any kind by the Seller or Seller's agent and is not a substitute for any home, pest, radon or other inspections or testing of the property or inspection of the public records.

Buyer: \_\_\_\_\_ Date: \_\_\_\_\_  
 Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

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

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 Buyer's Initials