

Friday Fast Facts

Property Condition Disclosure Statement Q&A

March 15, 2024

In an effort to provide value to our clients, Abstracts, Incorporated is pleased to provide the below from **Stewart Title Insurance Company** regarding the **NEW Property Condition Disclosure Statement** requirements.



PROPERTY CONDITION DISCLOSURE STATEMENT Amendments effective March 20, 2024

This is a reminder to all real estate practitioners that the amendments to the Property Condition Disclosure Act go into effect March 20, 2024. While it has little to do with the issuance of title insurance, we hope the below offers some guidance in your real estate transactions.

What is the governing statute? Where do I find these changes?

On September 22, 2023, the Governor signed into law [A01967/S5400](#) which amends the existing Article 14 of the Real Property Law as it relates to the Property Condition Disclosure Act. The changes go into effect March 20, 2024. Your attention is called specifically to [Real Property Law](#)

What is the Property Condition Disclosure Act?

The Property Condition Disclosure Act is intended to help real estate consumers make informed choices when purchasing a home. Through a uniform document called the Property Condition Disclosure Statement (“PCDS”), the legislature intended this disclosure supplement information provided by professional inspections and tests to provide sellers and buyers with a better basis for negotiating a contract of sale and alert both parties to aspects of the property which may require attention, particularly those not readily observable by a visual inspection.

The new PCDS consists of 56 questions to be answered by the seller based on the seller’s actual knowledge and covers a variety of subjects ranging from general information about the home’s history, from ownership and occupancy of the property, to structural, mechanical and environmental issues.

What is changing as of March 20, 2024?

As of March 20, 2024, the \$500 credit set forth in current Section 465(1) will no longer be an option for sellers in lieu of providing the PCDS.

The revised PCDS effective March 20, 2024 includes added questions intended to provide homebuyers with better information about the property’s flood status. The PCDS now asks the seller to disclose whether the property is in a FEMA-designated 100-year or 500-year floodplain, whether it must comply with federal flood insurance requirements, including whether the seller has made any claims for flood damage and/or received disaster assistance from FEMA or the SBA. See, Real Property Law § 462

Is there a new Property Condition Disclosure Statement form?

Yes. The statutory form of PCDS is set forth in Real Property Law § 462(2). This version of the form should be utilized on and after March 20, 2024, in connection with binding real estate contracts dated on or after March 20, 2024.

The NYS Department of State, Division of Licensing has issued a new 7-page PCDS form revised 01/24 incorporating the March 20, 2024 revisions. The new PCDS form can be found on the NYS Department of State website at

https://dos.ny.gov/system/files/documents/2024/03/dos-1614-f-property-condition-disclosure-statement_01.2024.pdf

You may also click [here](#) for the new PCDS form issued by NYS DOS.

Is the Property Condition Disclosure Statement required when conveying all types of real property?

No. The PCDS only applies to transactions conveying residential real property. Section 461(5) defines residential real property as “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 homeowners’ association that is not owned in fee simple by the seller.”

Mixed use properties, a part of which includes 1-4 family residential real property, is a covered transaction requiring the PCDS.

If there are multiple sellers, does each seller have to provide a separate Property Condition Disclosure Statement?

Real Property Law § 462 states that “every seller of residential real property pursuant to a real estate purchase contract shall complete and sign a property condition disclosure statement...” The statute does not distinguish whether each seller must deliver its own PCDS or if all sellers may complete and execute the same PCDS. However, it seems safe to assume a married couple or related parties all residing at the same property need only sign and provide one PCDS.

What if the seller has no knowledge of the premises? Are there transactions that do not require the seller provide a Property Condition Disclosure Statement?

Yes. Real Property Law § 463 details fourteen (14) transfers of residential real property that are exempt from the PCDS requirement. The exemptions cover scenarios where the seller does not

have the requisite knowledge to provide the disclosure, or the disclosure requirement seems inappropriate given the nature of the transaction.

1. A transfer pursuant to a court order, including, but not limited to, a transfer order by a probate court during the administration of a decedent's estate, a transfer pursuant to a writ of execution, a transfer by a trustee in bankruptcy or debtor-in-possession, a transfer as a result of the exercise of the power of eminent domain, and a transfer that results from a decree for specific performance of a contract or other agreement between two or more persons;
2. A transfer to mortgagee or an affiliate or agent thereof by a mortgagor by deed in lieu of foreclosure or in satisfaction of the mortgage debt;
3. A transfer to a beneficiary of a deed of trust;
4. A transfer pursuant to a foreclosure sale that follows a default in the satisfaction of an obligation that is secured by a mortgage;
5. A transfer by a sale under a power of sale that follows a default in the satisfaction of an obligation that is secured by a mortgage;
6. A transfer by a mortgagee, or a beneficiary under a mortgage, or an affiliate or agent thereof, who has acquired the residential real property at a sale under a mortgage or who has acquired the residential real property by a deed in lieu of foreclosure;
7. A transfer by a fiduciary in the course of the administration of a decedent's estate, a guardianship, a conservatorship, or a trust;
8. A transfer from one co-owner to one or more other co-owners;
9. A transfer made to the transferor's spouse or to one or more persons in the lineal consanguinity of one or more of the transferors;
10. A transfer between spouses or former spouses as a result of a decree of divorce, dissolution of marriage, annulment, or legal separation or as a result of property settlement, agreement incidental to a decree of divorce, dissolution of marriage, annulment or legal separation;
11. A transfer to or from the state, a political subdivision of the state, or another governmental entity;
12. A transfer that involves newly constructed residential real property that previously had not been inhabited;
13. A transfer by a sheriff; or
14. A transfer pursuant to a partition action.

What if only part of my transaction is exempt under Real Property Law § 463?

For example, one seller is the Executor of a deceased tenant-in-common's Last Will and Testament and resides out of state. The second tenant-in-common seller resides at the property. Following the intent of the statute, the tenant-in-common who resides at the property should deliver a PCDS. The Executor, who essentially has zero knowledge of the premises, is exempt from delivering a PCDS under Real Property Law § 463(7).

At what point in the transaction must the seller provide the Property Condition Disclosure Statement?

The purpose of the Property Condition Disclosure Act is to require delivery of the PCDS before the buyer binds itself, so the buyer has the information available to make an informed decision. Pursuant to Section 462, the seller must complete and deliver the PCDS prior to the buyer's acceptance of the real estate purchase contract. The statute also requires the completed PCDS be attached to the contract. See, Real Property Law § 462

Pursuant to Real Property Law § 461(4), a "[r]eal estate purchase contract" means:

- (a) a contract which provides for the purchase and sale or exchange of residential real property;
- (b) a lease with an option to purchase residential real property;
- (c) a lease-with-obligation-to-purchase agreement for residential real property; or
- (d) an installment land sale contract for residential real property.

Can a residential 1-4 family dwelling still be sold "as is"?

Yes. Nothing contained in the Property Condition Disclosure Act "is intended to prevent the parties to a contract of sale from entering into agreements of any kind or nature with respect to the physical condition of the property to be sold, including, but not limited to, agreements for the sale of real property "as is"." See, Real Property Law § 461(1)

What if the seller learns of a property condition after delivery of the disclosure statement?

If the seller acquires knowledge which renders a previously provided PCDS materially inaccurate, the seller must deliver a revised PCDS to the buyer as soon as practicable. However, the statute provides that "[i]n 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.” See, Real Property Law § 464

Must the seller answer all questions contained in the Property Condition Disclosure Statement?

Yes. The seller is required to answer each question in the PCDS by either responding “Yes”, “No”, “Unkn” (unknown) or “NA” (non-applicable), with the opportunity to provide additional written explanation of any response.

Checking “Unkn” will not protect the seller if it can be proven that the seller did actually know the answer.

What is the basis of seller’s knowledge to answer questions? What if the seller does not know if the condition exists or not?

Real Property Law §461(3) requires the seller to complete the PCDS based upon the seller’s “actual knowledge” at the time of signing the PCDS. Seller does not need to seek out professionals to investigate or inspect for potential unknown issues to facilitate completion of the PCDS. See, Real Property Law § 462(2)

Again, the standard is seller’s “actual” knowledge; not those conditions the seller “should have been aware of” through due investigation. Thus, a buyer’s attorney would have to prove in a lawsuit that the seller actually knew about a defect, not that the seller should have known about it because it was in a public record or otherwise.

The seller should truthfully complete the PCDS to the best of their knowledge. Truthful answers will prevent the seller from being held liable for actual damages suffered by a buyer in connection with any disclosed item on a PCDS.

What if the seller refuses to complete the Property Condition Disclosure Statement or provides false information?

Failure to complete a PCDS or knowingly providing false information will prevent a seller from the statutory protections granted by the Property Condition Disclosure Act and make the seller liable for actual damages suffered by a buyer in connection with damages that were withheld by either failing to deliver or were falsely disclosed on a PCDS. See, Real Property Law § 465

Does the Property Condition Disclosure Statement replace the buyer’s own due diligence?

Absolutely not. The PCDS is not a warranty of any kind by the seller or by any agent representing the seller. It is not a substitute for any inspections or tests that the buyer may want to conduct on its own or by hiring an independent professional. While the burden has shifted to the seller, this in no way eliminates the longstanding principle of caveat emptor...“let the buyer beware”.

Can the seller’s agent or real estate broker complete the Property Condition Disclosure Statement?

No. The seller is required to complete the PCDS based on the seller’s actual knowledge.

Under Section 466, a licensed real estate broker/salesperson acting in a fiduciary capacity on behalf of seller is required to inform the seller of its obligations under the Property Condition Disclosure Act. The buyer’s agent has the same duty and obligation to inform its buyer prior to signing the contract, but if the buyer is not represented by a broker/salesperson, that duty to inform also falls upon the seller’s agent.

Does the seller’s attorney have an obligation to ensure all statements made by seller are truthful and accurate?

There is no specific obligation in Article 14 requiring the seller’s attorney to ensure that the PCDS is accurately completed. An “agent” under this Article is limited to a person who is licensed as a real estate broker or a real estate salesperson and is acting in a fiduciary capacity. See, Real Property Law § 461(1). However, it is always good practice for real estate practitioners to clearly advise and guide their clients accordingly.

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