

## **Exemptions to Seller's Property Condition Disclosure Law**

- Transfer pursuant to a court order, including a transfer in administering a decedent's estate; a writ of execution; a transfer to a trustee in bankruptcy or debtor-in-possession, a transfer as a result of eminent domain or a transfer from a decree for specific performance;
- transfer to a mortgagee by a mortgagor by deed in lieu of foreclosure or in satisfaction of the mortgage debt;
- transfer to a beneficiary of a deed or trust;
- transfer pursuant to a foreclosure sale;
- transfer by a sale under a power of sale that follows a default in payment;
- transfer by a mortgagee who has acquired the residence at a sale under a mortgage or who has acquired the residence by a deed in lieu of foreclosure;
- transfer by a fiduciary in the administration of a descendant's estate or trust;
- transfer from one co-owner to one or more co-owners;
- transfer within family;
- transfer between spouses or former spouses as a decree of divorce, annulment or legal separation;
- transfer to or from the state, other political body or another governmental entity;
- transfer of newly constructed residential property that has not been inhabited;
- transfer by a sheriff;
- transfer pursuant to a partition action.

## **Seller's Property Condition Disclosure FAQs**

Q. Why does NAR, NYSAR and my local board support this program?

A. Plain and simple, up-front disclosure helps eliminate disputes between buyers and sellers that all too often result in costly and time consuming litigation. REALTORS® in states with mandatory disclosure laws say they work. New York REALTORS® who have used similar form voluntarily for many years agree.

Q. When must sellers begin providing the form to buyers?

A. The new law will apply to most real estate purchase contracts entered into on or after March 1, 2002

Q. Should I help my seller client fill out the form?

A. No. The law specifically directs the seller to complete the form himself or herself

Q. Does this change my licensing obligation to disclose known material defects to prospective buyers?

A. No. The disclosure obligations for real estate licensees is unchanged.

Q. Is New York the only state with mandatory seller's disclosure?

A. No. New York is the 35<sup>th</sup> state to require sellers to disclose property conditions to prospective buyers.

Q. Does this program apply to FSBOs too?

A. Yes. The law applies to every seller of a one to four family residential property regardless of whether or not a real estate agent or broker is involved.

Q. Are condos, co-ops and/or new construction included in the program?

A. No. The law specifically exempts condos, co-ops and new construction.

Q. What if the seller finds a problem with the property after both the seller and buyer sign a contract of sale?

A. Sellers are obligated under the law to provide the buyer with a revised property condition disclosure statement if the seller "acquires knowledge which renders materially inaccurate a property condition disclosure statement provided previously". The revised disclosure statement must be delivered to the buyer "as soon as practicable", but in no event after the earlier of transfer of title or occupancy by the buyer.

Q. New York State law now requires the seller to disclose the absence of utility service, any special utility assessments and if the property lies within an agricultural district. Are these separate disclosures still needed?

A. The form created by the new law requires the seller to disclose these matters to the buyer. However, if the seller discloses that the property is subject to a utility surcharge or lies within an agricultural district, the seller remains obligated to inform the buyer using statements established in separate laws (see Real Property Law sections 333-c and 242 (2) (a)).

Q. What happens if the seller fails to provide a completed disclosure form to the buyer or buyer's agent prior to the signing by the buyer of a binding contract of sale?

A. The buyer shall receive a credit of \$500 against the purchase price from the seller at closing.

Q. Does the disclosure statement constitute a warranty?

A. No. The law clearly states that the disclosure statement is not a warranty of any kind by the seller or any agent representing the seller. In fact, the buyer is encouraged to obtain his or her own independent professional inspections and environmental tests and is also encouraged to check public records pertaining to the property.

Q. I understand that the new Property Condition Disclosure Act will take effect on March 1, 2002. Does this mean that all of my pending listings on March 1, 2002 will be affected?

A. The Property Condition Disclosure Act will take effect on March 1, 2002 and will require a seller of covered residential real property who enters into a contract of sale on or after March 1, 2002 to provide their purchaser with a Property Condition Disclosure Statement prior to their purchaser being bound by the purchase contract. For all of your listings where a contract of sale was entered into by your clients and their purchasers prior to March 1, 2002, the mandates of the Property Condition Disclosure Act will not be applicable. For all of your listings where your clients have not entered into a contract of sale with a purchaser prior to March 1, 2002, your clients will be required to complete and timely provide their purchasers with a Property Condition Disclosure Statement.