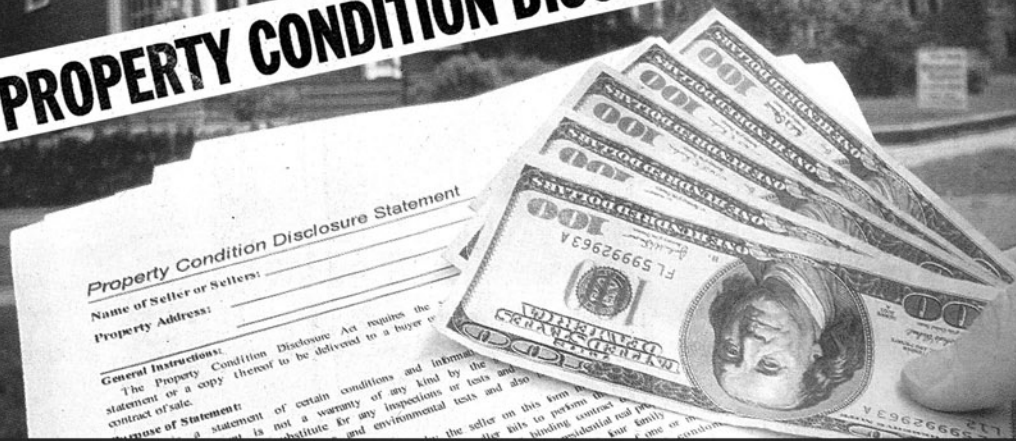


## PROPERTY CONDITION DISCLOSURE



Karl Rabe photo illustration/Poughkeepsie Journal

New York state law requires a seller to provide a property disclosure form to the buyer at the time of purchase.

# Check out before checking in

## Seek details about property you are looking to buy

By **Kim Corriher**  
For the Poughkeepsie Journal

**I**magine moving into a home only to find there is no septic system, only a small connected tank which has to be cleaned and maintained every month.

Or what if you spent money to buy, excavate and build on a picture-perfect piece of property only to find that you are land-locked by neighbors unwilling to allow power lines to cross their property to connect your dream home to 21st century technology?

They are home-owner horror stories, but not even the most outrageous when it comes to home buyers not knowing exactly what they are getting in return for their money.

In an effort to extend a helping hand to prospective home buyers, more than half the states across the country have passed legislation requiring sellers to complete a property condition disclosure (also known as a seller's disclosure) at closing.

Statistics from the National Association of Realtors show that in 2005, only 30 percent of home sales nationally were accompanied by the required form. In New York, where a property condition form has been required for more than four years, the numbers might be lower because the law allows sellers to opt for a \$500 credit to the buyer at closing rather than filling out the form.

"I would guess that it was actually closer to zero percent," said Peter Klose, a real estate attorney who works out of Red Hook and Nyack, Rockland County. "The law is too unclear and the potential for litigation is too much of a risk."

"It really still comes back to the buyer to do due diligence," Klose said.

The premise of a property condition disclosure is simple: to provide the buyer of a previously owned home with a written statement at the point of purchase documenting the condition of the house and its major systems, as well as any out-buildings and surrounding lands.

Such disclosures are required by law in 32 states and the state-issued disclosure forms differ as much as the states themselves.

### Range of issues covered

Questions can range from damage caused by natural disasters — earthquakes (California), avalanches (Alaska) and volcanic activity (Hawaii) — to the presence of noises, odors and other nuisances which a buyer might not be aware of prior to purchase.

Other regulations focus more on the history of a property rather than its condition. In Tennessee, law requires disclosure of a home's previous use as a methamphetamine laboratory and two

states — Alaska and South Dakota — require sellers to provide information about whether a home has ever been the site of a murder, suicide or other felony.

While the forms may differ from state to state, the preponderance contains basic questions regarding the structure of the home and the condition of the major systems of the house: heating and cooling, septic, plumbing and electric.

Testing and identifying the presence of radon, asbestos and lead paint/pipes are other common areas of concern.

In New York, the four-page required questionnaire also asks for information regarding the location of the home and property with regard to wetlands and flood plains, the presence of rot or mold damage and any past disposal of waste, chemical or petroleum products.

New York's mandate for the information, the New York State Property Condition Disclosure Act (Real Estate Law Article 14), came into effect in March 2002. Four years later, the seller's disclosure remains an infrequent part of real estate transactions. That's because many states do as New York, and provide exceptions to the mandates.

"In Westchester, it's just a drop in the million-dollar bucket," Klose said about the disclosure form. He said a majority of sellers opt to pay the credit at closing rather than sign the form.

The central concern for sellers is the liability which comes with signing any legal document, including the mandated disclosure form.

"It creates another level of responsibility that didn't exist before and another

Please see **Form, 2C**

The law is too unclear and the potential for litigation is too much of a risk.  
Peter Klose  
real estate attorney

# Form: Disclosure may not provide full picture

Continued from 1C

level of litigation that a seller opens themselves up to," Klose said.

"Once you sign that form, you are responsible for what is on it," Rhinebeck broker Paul Hallenbeck said. "Even though you may have been completely honest to the best of your knowledge regarding the condition of your home, once you sign, you are legally responsible."

Even for the things there is no way to know.

"You may have never had a problem with the furnace, so when you check the box that says there is nothing wrong with the furnace, you believe there is nothing wrong with the furnace," Hallenbeck said. "That doesn't mean it is not going to fail next week."

Klose warns buyers should be cautious of a signed disclosure form and avoid being lulled into a "sense of security that doesn't exist."

Many of the state-issued disclosure forms, New York's included, offer "unknown" as an acceptable answer to most questions.

"A signed form might not really give you any information," Klose said. "Or if a previous owner says that he or she 'doesn't know' of any other buried oil tanks, are you going to take the time to go and check?"

## Inspections suggested

Possibly the most important step a prospective buyer can take when seriously considering a property is to hire a qualified home inspector or engineer to provide the most complete and objective evaluation of the home's condition.

"A smart buyer is going to ask many of these questions prior to closing anyway," said Harvey Brown, owner of Dirt Road Realty, who works exclusively as a buyer's agent. "And a really smart buyer is going to hire a professional home inspector to make sure those answers are accurate."

In the fall, Brown worked with Ken Hoagland and his nephew Art Zeller on the purchase of a second home in Hyde Park.

Because the property was fairly new, Hoagland and Zeller initially were reticent about conducting an official inspection.

"We could tell that the home was well built and had been beautifully maintained by the previous owner," Zeller said.

When the previous owner did not offer the property condition disclosure, Hoagland and Zeller followed their broker's advice and consented to an inspection.

"In retrospect, it was simple prudence," Zeller said. "It really is wise to ensure that you look the property over and are aware of what you may be getting into."

In addition to other minor issues, a problematic bacteria level in ground water resulted in the installation of an irradiation system for water supply — a cost picked up by the previous owners.

"What was a \$700 home inspection turned into \$4,000 or \$5,000 in savings for them," Brown said.

Brown suggests in addition to pursuing a property condition disclosure and conducting a home inspection, a prospective buyer should start asking questions about the condition of the house's major "systems" (heat, electric, plumbing, septic) and the general structure of the home as soon as he or she is interested in the property.

"It is easy to fall in love with a house and be blind to some of the things that are wrong," Brown said. "The sooner you ask the questions, the sooner you know the answers."

When you love a house, you are willing to overlook a lot of things, but some of those things might end up costing you a lot more than that \$500 you'd be getting back."

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