



## **New York Property Condition Disclosure Statement Frequently Asked Questions**

Effective March 20, 2024, an amendment to New York Real Property Law Chapter 50, Article 14 (the “Property Condition Disclosure Act”) will make two key changes to the law in New York regarding the Property Condition Disclosure Statement (“PCDS”).

### **What are the new changes being made to the Property Condition Disclosure Act?**

Effective March 20, 2024, the law’s current option for sellers of residential property to provide buyers with a \$500 credit at closing in lieu of delivering a signed and completed PCDS will be eliminated.

In addition, seven new flood related questions will be added to the PCDS so sellers must now disclose flood risk information to potential buyers.

### **Where can I get a copy of the amended PCDS?**

The amended PCDS can be downloaded [here](#) from the Department of State’s website. It is also available on [LIBOR’s Documents on Demand](#) page. Do not begin using the new form until March 20, 2024.

### **Who needs to fill out the PCDS?**

A seller of “residential real property” must complete and deliver a PCDS to a buyer before the buyer signs a contract of sale. “Residential real property” means real property improved by a 1 to 4 family dwellings, but does not include vacant land, condos or co-ops.

### **Are there any other exemptions to the PCDS?**

In addition to the exemptions for vacant land, condos and co-ops, sellers engaged in the following transactions do not need to complete and deliver a PCDS to a buyer:

1. Transfers pursuant to a court order,
2. Transfers due to a mortgagee or agent of mortgagor due to a foreclosure,
3. Transfers to a beneficiary of a trust,
4. Transfers pursuant to foreclosure sale,
5. Transfers 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. Transfers by a mortgagee, beneficiary under a mortgage or an affiliate or agent thereof, who acquired the property at a sale under a residential foreclosure,
7. Transfers by a fiduciary in the course of administration of an estate, guardianship, conservatorship or trust,
8. Transfers from one co-owner to another co-owner or co-owners,
9. Transfers to a spouse or lineal descendant,
10. Transfers between spouses or former spouses as a result of a dissolution of a marriage,
11. Transfers to or from a governmental entity,
12. Transfers of a new construction,
13. Transfers by a sheriff, or
14. Transfers pursuant to a partition action.

Licenseses **must not** advise sellers whether a transfer qualifies for an exemption. The determination as to whether a seller qualifies for an exemption is a legal opinion and the seller must speak with their attorney to determine if any exemptions apply.

### **What are the real estate licensees' obligations regarding the PCDS?**

The amendment does not change the licensees' obligations regarding the PCDS. The listing broker must timely inform the seller of the seller's obligation to complete and sign the PCDS and cause it to be delivered to a buyer or buyer's agent before the signing by the buyer of a binding contract of sale. **As of March 20, 2024, licensees should no longer advise sellers they have the option of providing a \$500 credit to buyers at closing in lieu of delivering a completed PCDS.**

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, the seller's agent must inform the buyer of buyer's right to receive the disclosure statement before buyer enters a purchase and sale contract.

The seller and buyer must be informed they are required to sign the disclosure statement, and a copy of the disclosure statement must be attached to the purchase and sale contract.

### **How can real estate licensees document that they fulfilled their obligations regarding the PCDS?**

You should document you delivered the PCDS to a seller at the time you take a listing and that you informed sellers and buyers of their rights and obligations under the law.

It is best practice for the listing agent to receive some type of written acknowledgement from the seller that the listing agent informed the seller of such obligations. An updated version of the One Key Exclusive Right to Sell Agreement that informs the seller of their obligations and removes reference to the seller's right to provide a \$500 credit to a buyer at closing in lieu of delivering a completed PCDS is now available on Documents on Demand. An updated version of the Property Condition Buyer's Rights & Seller's Obligations form, which a buyer or seller can sign to document the licensee made them aware of their rights and obligations, is also available on Documents on Demand. The updated versions of these documents are labeled (Effective Starting 3/20/24 – DO NOT USE BEFORE), and should not be used until March 20, 2024.

### **How will my active and pending listings on March 20, 2024 be affected?**

For all of your listings where a contract of sale was entered into by your clients and their buyers prior to March 20, 2024, the Property Condition Disclosure Act amendments will not be applicable. The amended PCDS form is not required, and the seller may elect to give the \$500 credit in lieu of the PCDS.

A seller of covered residential real property who enters into a contract of sale on or after March 20, 2024 must provide their buyers with a signed and completed copy of the new PCDS form prior to their buyer being bound by the purchase contract, and the seller will not have the option of providing the buyer a \$500 credit at closing in lieu of a completed PCDS.

On March 20, 2024, if you have active listings where your clients have not yet entered into a contract of sale with a buyer, you should provide your clients with the new PCDS form and the updated Property Condition Buyer's Rights & Seller's Obligations form.

**Do I need to provide a blank copy of the PCDS to the seller?**

It is recommended that you provide a copy of the PCDS to the seller at the time the listing agreement is signed. The PCDS may be provided electronically or by hard copy.

**Should licensees help the seller fill out the PCDS?**

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

**Does the PCDS need to be uploaded to the MLS?**

No. The completed PCDS does not need to be uploaded to the MLS. The listing agent is not required to take possession of the PCDS. If you are going to upload the PCDS to the MLS, you should only do so with the seller's consent.

**Who is responsible for delivering the PCDS to the buyer or buyer's agent?**

The seller is ultimately responsible for delivering the PCDS to the buyer or buyer's agent. You should recommend that sellers speak with their attorney about when delivery of the PCDS will be made. A licensee is only responsible for delivering the PCDS to the buyer or buyer's agent if they assume or accept the responsibility on behalf of the seller. Licensees should make it clear to the seller if they are assuming the responsibility.

**What should licensees do if their clients have questions about the PCDS?**

Licensees should recommend that clients seek the advice of their attorney regarding the filling out and exchange of the PCDS or questions as to their rights and obligations under the law.

**What happens if a seller fails to provide the form?**

It is unclear what liability a seller may be subject to for failing to provide the form. Sellers who do not provide the form should only do so under the advice of their attorney. Likewise, a buyer or buyer's agent that does not receive a PCDS from the seller should speak with the buyer's attorney as to what remedies the buyer may have. Licensees **must not** advise sellers whether they should or should not fill out the PCDS, or advise buyers about what the impact is if they do not receive a PCDS from the seller. It is likely this question will be answered through litigation or the legislature amending the law.

**Do I need to keep a copy of the fully signed PCDS in my file for record keeping purposes?**

There is no requirement that a licensee take possession of or keep copies of the PCDS. However, as a best practice, if you accept responsibility for providing a copy of the PCDS to a buyer or buyer's agent, you should retain a copy of the completed PCDS for your records.

**Does the amendment change my licensing obligation to disclose known material defects to prospective buyers?**

No. The disclosure obligations for real estate licensees are unchanged.

**Should the PCDS take the place of a home inspection or other testing?**

Absolutely not. The PCDS itself states it is not a substitute for any inspections or tests and the buyer is encouraged to obtain their own independent professional inspections and environmental tests and also is encouraged to check public records pertaining to the property.

**Does the disclosure statement constitute a warranty?**

No. The PCDS states it is not a warranty of any kind by the seller or by any agent representing the seller in this transaction.

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

Sellers are required 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.

**What if I have further questions?**

If you have any questions, please contact the LIBOR Legal Support Center. The Legal Support Center is available Monday-Friday from 9:00am-5:00pm at 631-661-4800 x 335.