

# PROPERTY CONDITION DISCLOSURE STATEMENTS AND YOU

## WHAT IS A PROPERTY CONDITION DISCLOSURE STATEMENT?

- A property condition disclosure statement is a six page form which corresponds to The Property Condition Disclosure Act (the "PCDA"), which requires sellers of residential real property (excluding condominiums and cooperatives) containing up to 4 dwelling units to provide a disclosure statement to prospective purchasers detailing all known defects relating to the property. Sellers must complete and deliver this disclosure statement prior to a purchaser's acceptance of the contract of sale.
- Enacted in 2001, with effect starting 2002, this law pushed the responsibility of disclosure onto Sellers, a distinct and large step away from "as-is" and "buyer beware" type deals. An original version of the law was even stricter, encompassing "constructive knowledge" of defects AKA anything that a diligent inspection could reveal. Under the law passed, Sellers had to disclose what the Seller had "actual knowledge" about regarding defects with the structure of the home and without stricture upon liability. However, there was a carve out.
- The PCDA allowed for the Seller to provide Purchaser with a \$500.00 credit at Closing which would relieve the Seller from future liability. This has been THE standard in New York across all practice types. Sellers provide the \$500.00 credit and both parties walk away.

## WHAT CHANGED?

- Gov. Kathy Hochul has signed an amendment to the PCDA which effectively removes the \$500.00 credit remedy, now requiring all Sellers to provide the completed PCDA prior to signing.
- The amendment also adds an additional seven questions regarding flood risks and history of floods.
- This move is being billed as an effort “to protect New Yorkers from the impacts of climate change and extreme weather events”.
- The amendment is effective March 20, 2024.

## WHAT NEEDS TO BE DONE?

- Moving forward, all Sellers of homes with 4 or less dwelling units will need to complete a property condition disclosure statement and provide it to the Purchaser prior to the signing of the Contract.
- This will become an additional step in getting any house deal into contract in New York State.

## HOW CAN IT AFFECT SELLERS AND PURCHASERS IF NOT DONE CORRECTLY?

- If Sellers fail to provide accurate information, they will be liable for the foreseeable future for any misrepresentation made on the property condition disclosure statement.
- It also means that Purchasers need clear answers to all disclosures as to protect them when they become Sellers.
- Without clear limitation on liability, this could become an issue with litigious parties where lawsuits are filed 5 years or farther out after the end of closing, implicating all parties in the transaction.
- The Statute of Limitations for lawsuits depends on the cause of action but a few likely causes of action will be: 6 years for deliberate/fraudulent misrepresentation and 3 years for negligent misrepresentation. We anticipate litigation on “actual knowledge” vs. “constructive knowledge” and the disclaimer that the form isn’t a substitute for a home inspection.

