



REAL ESTATE PRACTICE GROUP

The Real Estate Practice Group at Meltzer Lippe is a national commercial transactional practice advising prominent developers, financial institutions, real estate investment firms, real estate investment trusts and private clients in the completion of sophisticated real estate transactions, as well as commercial lending and borrowing.

The group includes all aspects of commercial real estate acquisitions and dispositions; 1031 exchanges, loan assumptions and defeasances; partnership and operating agreements; creating complex organizational structures; and representing lenders and borrowers in all facets of real estate lending and borrowing.

LOCATIONS

Long Island

190 Willis Avenue
Mineola, NY 11501
516.774.0300

New York City

70 East 55th Street
New York, NY 10022
212.201.1720

Boca Raton

2500 N Military Trail
Boca Raton, FL 33431
561.989.1605

New York State Creates New Obligations for Sellers of Residential Real Property Under the Amended Property Condition Disclosure Act

Effective March 20, 2024, the amended New York Real Property Law Chapter 50, Article 14 (the “Property Condition Disclosure Act”) will compel all sellers of residential property to complete and deliver a Property Condition Disclosure Statement (“PCDS”) to a buyer prior to signing a contract of sale. This statute does not apply to sellers of non-residential real property or sellers engaged in one of 14 exempt transactions.

The PCDS requires sellers to answer 56 disclosures to the best of their knowledge at the time of completing the form. Such disclosures address several issues relating to whether the property sustained possible structural, floor or mold damage, title claims and environmental issues, such as whether the property is located in a flood hazard area or has had exposure to petroleum products, lead, radon or asbestos.

The Property Condition Disclosure Act requires sellers to write out an answer or respond “yes”, “no”, “UKN” (unknown) or “NA” (non-applicable) to each question on the PCDS. Truthfully completing a PCDS will prevent a seller from being held liable for the actual damages suffered by a purchaser in connection with any disclosed item on a PCDS.

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

Key Takeaways:

1. All sellers of residential property will either need to:
 - a. Determine whether their real property classifies as residential real property meaning, it is 4 or fewer units and seller is not conveying:
 - i. an unimproved lot,
 - ii. condominium units,
 - iii. apartments in a cooperative building,
 - iv. or real property located in a home owner’s association that is not owned by such seller in fee simple;
 - b. Determine whether their sale qualifies as one of the 14 types of exempt transactions; or
 - c. Complete a PCDS and deliver it to the buyer before signing a contract of sale.

Exempt Transactions:

Sellers engaged in the following transactions do not need to complete and deliver a PCDS to a Purchaser:

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.

Meltzer Lippe can assist you in determining if you are required to comply with and will provide updates concerning the Property Condition Disclosure Act when appropriate. If you have questions relative to the foregoing, please to reach out to your Meltzer Lippe advisor or contact Gary M. Meltzer, Esta Algava-Czik or David S. Koffler at Meltzer, Lippe, Goldstein & Breitstone, LLP.

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