

OUTLINE FOR MEMBERS OF THE WESTCHESTER COUNTY BOARD OF REALTORS, INC.

PROPERTY CONDITION DISCLOSURE ACT

PROCEDURES AND GUIDELINES

A. DEFINITIONS USED IN ACT

1. **"AGENT"** MEANS A PERSON WHO IS LICENSED AS A REAL ESTATE BROKER OR A REAL ESTATE SALESPERSON PURSUANT TO SECTION FOUR HUNDRED FORTY-A OF THIS CHAPTER (THE REAL PROPERTY LAW OF THE STATE OF NEW YORK) AND IS ACTING IN A FIDUCIARY CAPACITY.

2. **"BINDING CONTRACT OF SALE"** MEANS A REAL ESTATE PURCHASE CONTRACT OR OFFER THAT WOULD, UPON SIGNING BY THE SELLER AND SUBJECT TO SATISFACTION OF ANY CONTINGENCIES, REQUIRE THE BUYER TO ACCEPT A TRANSFER OF TITLE.

3. **"KNOWLEDGE"** MEANS ONLY ACTUAL KNOWLEDGE OF A DEFECT OR CONDITION ON THE PART OF THE SELLER OF RESIDENTIAL REAL PROPERTY.

4. **"REAL ESTATE PURCHASE CONTRACT"** MEANS ANY OF THE FOLLOWING:

(A) A CONTRACT WHICH PROVIDES FOR THE PURCHASE AND SALE OR EXCHANGE OF RESIDENTIAL REAL PROPERTY;

(B) A LEASE WITH AN OPTION TO PURCHASE RESIDENTIAL REAL PROPERTY;

(C) A LEASE-WITH-OBLIGATION-TO-PURCHASE AGREEMENT FOR RESIDENTIAL REAL PROPERTY; OR

(D) AN INSTALLMENT LAND SALE CONTRACT FOR RESIDENTIAL REAL PROPERTY.

5. **"RESIDENTIAL REAL PROPERTY"** MEANS REAL PROPERTY IMPROVED BY A ONE TO FOUR FAMILY DWELLING USED OR OCCUPIED, OR INTENDED TO BE USED OR OCCUPIED, WHOLLY OR PARTLY, AS THE HOME OR RESIDENCE OF ONE OR MORE PERSONS, BUT SHALL NOT REFER TO (A) UNIMPROVED REAL PROPERTY UPON WHICH SUCH DWELLINGS ARE TO BE CONSTRUCTED, OR (B) CONDOMINIUM UNITS OR COOPERATIVE APARTMENTS, OR (C) PROPERTY IN A HOMEOWNERS' ASSOCIATION THAT IS NOT OWNED IN FEE SIMPLE BY THE SELLER.

6. **"TRANSFER OF TITLE"** MEANS DELIVERY OF A PROPERLY EXECUTED INSTRUMENT CONVEYING TITLE TO RESIDENTIAL REAL PROPERTY AND SHALL INCLUDE DELIVERY OF A REAL ESTATE PURCHASE CONTRACT THAT IS A LEASE OR INSTALLMENT LAND SALE CONTRACT.

B. GUIDELINES

1. EVERY SELLER OF RESIDENTIAL REAL PROPERTY PURSUANT TO A REAL ESTATE PURCHASE CONTRACT IS REQUIRED TO COMPLETE AND SIGN A PROPERTY CONDITION DISCLOSURE STATEMENT WHETHER OR NOT A BROKER IS INVOLVED.

2. EVERY SELLER IS REQUIRED TO DELIVER THE PROPERTY CONDITION DISCLOSURE STATEMENT TO THE BUYER OR BUYER'S AGENT PRIOR TO THE SIGNING BY THE BUYER OF A BINDING CONTRACT OF SALE.

3. A COPY OF THE PROPERTY CONDITION DISCLOSURE STATEMENT CONTAINING THE SIGNATURES OF BOTH SELLER AND BUYER MUST BE ATTACHED TO THE REAL ESTATE PURCHASE CONTRACT.

4. THE PARTIES MAY STILL NEGOTIATE AN "AS IS" TRANSACTION AFTER ALL OF THE DISCLOSURES REQUIRED BY THE PROPERTY CONDITION DISCLOSURE ACT IS PROVIDED TO BUYER BY THE SELLER.

5. THE SELLER IS REQUIRED TO COMPLETE AND DELIVER THE PROPERTY CONDITION DISCLOSURE STATEMENT TO THE BUYER OR BUYER'S AGENT [I.E. BUYER'S REAL ESTATE AGENT] BEFORE THE PARTIES SIGN A BINDING CONTRACT OF SALE AND WITHOUT THE ASSISTANCE OF ANYONE.

NOTE: IT IS NOT THE RESPONSIBILITY OF THE SELLER'S REAL ESTATE AGENT TO ASSIST IN THE COMPLETION OF THE STATEMENT OR TO DELIVER THE STATEMENT TO THE SELLER.

6. THE DISCLOSURE STATEMENT IS ONLY REQUIRED FOR REAL PROPERTY IMPROVED BY A ONE TO FOUR FAMILY DWELLING USED OR OCCUPIED, OR INTENDED TO BE USED OR OCCUPIED, WHOLLY OR PARTLY, AS THE HOME OR RESIDENCE OF ONE OR MORE PERSONS.

NOTE: THE DISCLOSURE STATEMENT IS NOT REQUIRED FOR (A) UNIMPROVED REAL PROPERTY UPON WHICH SUCH DWELLINGS ARE TO BE CONSTRUCTED OR (B) CONDOMINIUM UNITS OR COOPERATIVE APARTMENTS OR (C) PROPERTY IN A HOMEOWNERS' ASSOCIATION THAT IS NOT OWNED IN FEE SIMPLE BY THE SELLER.

7. THE SELLER MAKES THE REPRESENTATIONS TO THE BUYER BASED UPON THE SELLER'S ACTUAL KNOWLEDGE AT THE TIME OF SIGNING THE DISCLOSURE FORM.

8. THE SELLER THEN MAY AUTHORIZE HIS OR HER AGENT, IF ANY, TO PROVIDE A COPY OF THE STATEMENT TO THE PROSPECTIVE BUYER OR MAY PERSONALLY PROVIDE THE STATEMENT TO BUYER.

NOTE: REPRESENTATIONS ARE MADE EXCLUSIVELY BY THE SELLER AND ARE NOT THE REPRESENTATIONS OF THE SELLER'S AGENT.

9. IF SELLER FAILS TO PROVIDE THE BUYER WITH THE DISCLOSURE STATEMENT PRIOR TO THE SIGNING OF THE CONTRACT THEN SELLER MUST PROVIDE BUYER WITH A \$500 CREDIT AT CLOSING.

10. SELLER MUST PROVIDE A TRUE AND COMPLETE STATEMENT OF THE CONDITION OF THE PROPERTY. THE SELLER MAY BE LIABLE FOR DAMAGES TO BUYER IF THERE IS A WILLFUL FAILURE TO PROVIDE COMPLETE AND TRUE INFORMATION ON THE DISCLOSURE STATEMENT.

NOTE: ACCORDING TO THE ACT THE SELLER IS ONLY LIABLE FOR ACTUAL DAMAGES INCURRED BY BUYER AS A RESULT OF THE SELLERS WILLFUL BEHAVIOR. SELLER IS NOT LIABLE FOR PUNITIVE DAMAGES.

11. SELLER IS REQUIRED TO PROVIDE BUYER WITH AN UPDATED PROPERTY CONDITION DISCLOSURE STATEMENT PRIOR TO CLOSING, AS SOON AS PRACTICABLE AFTER SELLER ACQUIRES KNOWLEDGE WHICH RENDERS INACCURATE A PREVIOUSLY COMPLETED PROPERTY CONDITION DISCLOSURE STATEMENT.