

QUESTIONS/ANSWERS CONCERNING A NEWLY DESIGNED PCDS

1. What is the history, background and original purpose in the implementation of the PCDS?

The Seller's Disclosure Statement was implemented by the state legislature and became effective on July 1, 1993. There were legislative amendments to the original statute in 1997, 1999, 2000 and 2005. The primary purpose of the legislation is the protection of the public when they are involved as sellers/buyers in a residential real estate transaction.

2. How do revisions to the PCDS typically come about?

The Legislature created the original PCDS but in 1997 the Real Estate Commission was given the statutory authority to promulgate the structure and composition of the actual Property Condition Disclosure Form. A new Form will be introduced during the first half of 2023.

3. Are there any changes being made to the existing PCDS form?

Every question on the current PCDS and its format was recently examined by a work group of real estate licensees for clarity and completeness and the entire form is being rewritten with a format and questions to allow for greater explanations of the condition of a residential property.

4. What are the main responsibilities of a listing agent when using the PCDS?

Statutorily, a licensee is required to "explain" to the seller(s) that a PCDS is required by state law and explain the consequences of failing to complete the form and/or completing the form without the proper information. The licensee will assist the seller(s) in determining IF, in fact, a PCDS is necessary based on the seller's ownership/title and knowledge of the property. The licensee should carefully explain that information about the condition of the property may "change" during the purchasing process and it is possible that the "new information" may allow the buyer to rescind the contract and have the Earnest Money deposit returned (without penalty). The listing agent MUST keep in mind that they (the Licensee) are required to disclose any information about the condition of the property **IF they have actual knowledge** of items which appear on the PCDS. **Failure to disclose creates actual financial liability.**

5. What are the main responsibilities of a buyer's agent regarding the PCDS?

PRIOR to an individual making an offer on a residential property the buyer's agent is statutorily charged with the actual delivery of the PCDS to the buyer and, if they are unable to secure the PCDS from the seller/seller's agent, the buyer's agent MUST detail (in writing) every effort which was made to secure the documents for their clients. The buyer's agent MUST disclose to their clients that there is a provision which might allow them to withdraw from a contract based on misinformation on the PCDS, the buyers must sign the "Informational Statement" and the buyer's agent should review the PCDS with their clients PRIOR to any offer being made so that the licensee can determine that the document is complete and no items have been omitted.

6. Is a licensee liable for inaccuracies or omissions by the seller on the PCDS?

The seller's agent is **not liable for any inaccuracies/omissions** UNLESS the licensee has actual knowledge of some information which is addressed on the form.

7. What are the main compliance issues MREC sees regarding the PCDS?

Licensees do not get the sellers to complete the PCDS at the time of listing the residence and/or the licensees fail to deliver a completed PCDS in a timely manner to buyer's agents who need it to allow their clients to make an offer. By not delivering the PCDS to a buyer/buyer's agent, the seller's agent is placing their client in a very bad position because it allows for a "voidable" contract.

8. What best practices should Mississippi licensees adopt in handling the PCDS?

Each Brokerage should make a decision based on their day-to-day operations but the National Association of Realtors® has a list of "best practices" which are practically identical to the MREC interpretations and are used in all of the states.