

# focus on: Legal Affairs

BY: RICHELLE COHEN MOSSLER, IAR GENERAL COUNSEL

## Revised IREC Seller Disclosure Form—July 2014



The Indiana Real Estate Commission has now posted a revised version of the Seller's Residential Real Estate Sales Disclosure form. The Real Estate Commission added language specifically dealing with Meth contaminated properties. This revised form is now available in your statewide transactional forms (zipForm®) and the Legal Library at [IndianaRealtors.com](http://IndianaRealtors.com). The new language is bolded and highlighted below in the Hazardous Conditions Section of this form:

3. HAZARDOUS CONDITIONS	YES	NO	DO NOT KNOW
Have there been or are there any hazardous conditions on the property, such as methane gas, lead paint, radon gas in house or well, radioactive material, landfill, mineshaft, expansive soil, toxic materials, mold, other biological contaminants, asbestos insulation, or PCB's?			
<b>Is there contamination caused by the manufacture of a controlled substance on the property that has not been certified as decontaminated by an inspector approved under IC 13-14-1-15?</b>			
<b>Has there been manufacture of methamphetamine or dumping of waste from the manufacture of methamphetamine in a residential structure on the property?</b>			

Per the new language, property owners must specifically disclose a known Meth contaminated property during a real estate transaction and advise whether the property is contaminated at the present time or has been contaminated in the past. A property owner should explain if it has been decontaminated and provide the certification to interested buyers. Disclosure is required if the home has **ever** been used to manufacture Meth in the second added question above.

### Was disclosure of Meth contamination required on the prior form?

Yes, under Hazardous Conditions, the existing question "Have there been or are there any hazardous conditions on the property, ...." would have required the disclosure of the manufacture of methamphetamine and/or waste products from the manufacture of methamphetamine in a residential structure, regardless of the two new questions added to the seller disclosure form. I do not see this as a new requirement only a clarification making prior language more specific to make sure homeowners disclose the manufacture of methamphetamine as a hazardous condition when completing this form.

### What do we do with existing listings? Do we need to have the homeowner complete a new seller disclosure form?

Although this information, if answered in the affirmative, should have already been included in the prior form, it would be prudent to use the new form prepared by the Real Estate Commission. Indiana law does require an amendment of the existing disclosure form if new facts make the form inaccurate. I.C.32-21-5-12. An owner does not violate this statute if the owner subsequently discovers that the disclosure form is inaccurate as a result of any act, circumstance, information received, or agreement subsequent to the delivery of the disclosure form. At or before closing, the owner is required to disclose any material change in the physical condition of the property or certify to the purchaser that the condition of the property is substantially the same as when the disclosure form was provided.

This revised seller disclosure form should be used with listings beginning July 1<sup>st</sup> and thereafter. If the listing was prior to that date, IAR Legal would still suggest that the revised form replace the prior seller disclosure form to be certain that the two added questions are answered correctly, even if there is no material change in the property. Of course, if a property is exempt from the seller disclosure form, the contamination of a property by meth or manufacture of meth on a property would still require disclosure as a "material fact" pursuant to I.C. 25-34.1-10-10(d). This disclosure must be provided by the real estate licensee if there is actual knowledge by the licensee that the residential structure was used as a place to manufacture Meth. Liability not only rests on the homeowner, but the real estate agent as well.

**Please contact the IAR Legal Hotline if you have any questions or comments regarding the revised IREC Seller Disclosure form at 1-800-444-5472.**