

# Protecting the Home Buyer's Interests

The Residential Offer to Purchase form is a legal document prescribed under The Real Estate Brokers Act for the purchase of a single-family residential house.

Recent changes made to the Offer to Purchase form, effective August 1, 2011, give buyers an opportunity to make more informed decisions based on the condition of a property before they finalize a purchase. This form is required to be used by real estate agents. It is not required to be used in private deals.

The new Offer to Purchase now includes a Property Disclosure Statement (PDS), to be signed by the seller, which deals with various areas of concern in a residential property. While this Property Disclosure Statement has been available in the past, it has not been widely used. By including it with the Residential Offer to Purchase form and including a clause that automatically asks for a PDS, we believe it will become a more widely used tool for buyers. Through the use of the Property Disclosure Statement, a prospective buyer can have a much more comprehensive understanding of the condition of the home before he or she finalizes a purchase.

The new Offer to Purchase form also includes a provision that a potential buyer obtain a Home Inspection within a reasonable time frame. The inclusion of this provides the buyer with another way to get disclosure about the condition of a property without relying on the seller for this information.



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## Making an Informed Home Buying Investment Decision

The intent of the Property Disclosure Statement is to give buyers of homes an opportunity to get more detailed information about the condition of a property before they finalize a purchase. Without completion of the Property Disclosure Statement, you may be surprised to find out that a seller does not have to tell a prospective buyer about all of the defects in a property that he or she knows about.

In fact, the seller only has to disclose the most serious defects – material defects – and only if they are not visible or apparent on a reasonable inspection of the home. A material defect is a problem with the property that makes it dangerous, unfit for human habitation or unsuitable for its intended purposes. This can include a severe mould problem that amounts to a health concern, a foundation so damaged that water pours into the basement when it rains, or other serious conditions.

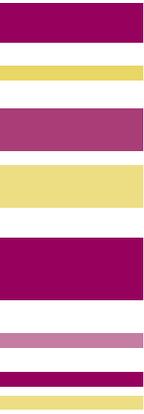
*Through the use of the Property Disclosure Statement, a prospective buyer can have a much more comprehensive understanding of the condition of the home before he or she finalizes a purchase.*

Without the completion of a PDS, other lesser defects of which a seller is aware do not have to be disclosed. The seller can remain silent. These aren't the type of defects that will make a home unsafe to live in but they can be defects that will sooner or later require repair and which could have affected a buyer's decision to buy or the price he or she would be willing to pay. This can include any problems with the foundation, roof, wiring, plumbing and heating as well as work that has been completed on the property and whether there are issues in the yard like drainage problems.

Of course, the seller of a home is not legally allowed to take steps to purposely hide visible defects of any kind, and, if asked, a seller has to be truthful about his knowledge of the condition of any part of the property. The Property Disclosure Statement (PDS) is a tool that is available to buyers to protect their interests. This statement is signed by the sellers and in it they advise that they have disclosed any defects or problems of which they are aware. If a seller is not aware of a problem it won't be noted in the PDS.

The reasons for not completing the PDS over the last few years are varied – some buyers simply are not aware they can ask for a PDS or that they can make completion of the PDS a condition of the Offer to Purchase. And in a hot real estate market, potential buyers have often been reluctant to ask the seller to provide a completed PDS in case that takes their offer out of the running.

With the change to the Offer to Purchase form that automatically asks for a PDS, we believe more buyers will in fact ask for them and more sellers will provide them. All the buyer has to do is fill in how long the seller has to present the completed PDS once he accepts the offer.

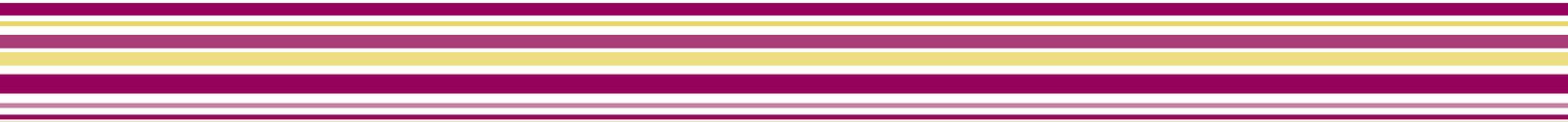


Your own agent should be able to tell you before you go to see a property if a PDS will be available for the asking. It may even help a house hunter to decide what properties to view. If the answer is “no,” some buyers may wonder what the seller doesn’t want to tell them about the condition of the property. And of course, a buyer doesn’t have to ask for a PDS. You can just stroke that condition out before you submit your offer. If that happens a seller won’t have to provide you with a PDS, even if it shows on the listing document that he is willing to provide one. While getting a PDS protects your interests, the decision to do so is up to you. With these changes, more house buyers will be asking for a completed PDS and we’re pretty sure that most sellers will be quite willing to provide them. Why wouldn’t they?

After receiving the completed PDS, as long as the buyer is satisfied with what it shows, the contract is complete. By adding the PDS as a schedule or attachment to the Offer to Purchase, prospective buyers will be aware of the type of information they can get from a seller before they make an offer.

While the seller can still refuse to provide a PDS, even if you ask for one in your Offer to Purchase, you will know that in advance, at least if the house is listed or advertised for sale by a registered real estate agent.

***Without completion of the PDS, you may be surprised to find out that a seller does not have to tell a prospective buyer about all of the defects in a property that he or she knows about.***



## Home Inspections

The Residential Offer to Purchase form now includes a provision that a potential buyer can obtain, at the buyer's expense, an inspection of the property within a reasonable time. If you complete that term in the Offer and it is accepted by the seller, you will have to arrange for an independent property inspector to check out the property and get back to you with their findings within the time limit agreed.

A Home Inspection is another way a buyer can get disclosure about the condition of a property without getting the information from the seller. That is where an "inspector" inspects the property and reports back on its condition and any apparent problems. The "inspector" can be a friend or relative or someone who has some background in construction. There are also people who inspect homes for a living. If you hire a professional property inspector, this service generally runs between \$300 and \$400.

In some sales, the seller collects offers and sets a date when they will be opened. Buyers who want to get a property inspection report will often use the days leading up to the date for the opening of the Offers to get an inspection done. That way, as a buyer you can have the inspection report in your possession when you make the offer.

Things to consider before you order a property inspection report:

- 1. Cost** – At \$300 to \$400/inspection it could get expensive if you end up bidding on a number of houses.
- 2. They are not fool proof** – An inspector can only see what is visible. They can't go behind walls or see if there is a mould problem or if drywall is covering up a crack in a basement wall. The idea is that the inspectors are better than you are at checking out the things that are visible.
- 3. There are no required standards** – Property inspectors are not regulated in Manitoba and there is no single set of educational or performance standards that cover all of them. You should ask for an inspector's educational credentials and professional affiliations. In addition, while many property inspectors carry liability insurance for errors they may make, their contract documents tend to limit their responsibility for mistakes. If a property inspector misses something in making his inspection, you may not be able to sue for damages.
- 4. They are not available everywhere** – While it should not be a problem arranging a property inspection in Winnipeg or Brandon, there aren't many inspectors in rural and northern communities and arranging an inspection may be more difficult.