

# **New Methamphetamine Law Affects Residential Contracts January 1, 2007**

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**Affected Persons: Sellers and Buyers of Residential Real Estate in Colorado starting January 1, 2006**

## **Key Points:**

- 1) New Colorado meth reporting obligations by sellers of residential property January 1, 2007**
- 2) Buyers have right to test for meth and to rescind purchase or may assume cleanup obligations**
- 3) Seller continues to have obligation to cleanup meth contamination or demolish property under prior CO. law**

Sellers and buyers of residential real estate will be affected by the new Colorado methamphetamine law that applies to contracts for the purchase and sale of residential property that are offered or entered into beginning January 1, 2007.

Methamphetamine laboratories in homes, apartments and other locations are used to create methamphetamine, a highly addictive substance that can damage the brain and cause violent and psychotic behavior and mood disturbances. Meth was the top drug problem in 2006, ahead of cocaine, heroin and marijuana. In 2004, there were more than 10,000 meth lab cleanups and in 2002, more than 3000 children were contaminated, neglected, injured or killed because of illegal meth production.<sup>i</sup> Meth contamination materials can be airborne and a person can become contaminated without touching or handling chemicals in the meth lab. Symptoms include eye and skin irritation breathing difficulty and sometimes permanent lung damage.<sup>ii</sup> People such as real estate agents who frequently enter other peoples' dwellings are at risk. Real estate agents have been warned against trying to clean up or even touch elements of a meth lab because, they are not only toxic, but also flammable or even explosive.<sup>iii</sup>

The new Colorado law is intended to protect potential and actual buyers of residential property that has been contaminated by meth, including by its manufacture, processing, cooking, disposal, or storage.

The new law defines residential real property to include manufactured homes, mobile homes, condos, townhomes, rental property, as well as homes sold by the owners, financial institutions or HUD.

As of January 1, a buyer has the right to have the property tested to determine if it has been used as a meth lab. An initial screening test costs about \$800 to \$1000. While the results are immediate, this test does not meet state requirements and could miss detecting meth. A full preliminary assessment test meeting State requirements costs between \$2500 to \$3000, and includes sampling, analysis and a report. If contamination is detected, additional sampling and reports would be required at additional costs. If the test results using state approved methods indicate the property has been so used, and the property has not been cleaned up to state standards, the buyer SHALL tell the seller of the results and the buyer MAY terminate the contract. The seller has 30 days to conduct a second test, and if the test shows the property has been used as a meth lab and not remediated to state standards, the tester will notify the seller. (If remediated to the cleanup standards, the seller need not notify the buyer.) With these test results, an illegal drug lab will be deemed to have been discovered and the owner will be deemed to have received notice. The seller is then required to either meet the cleanup standards or demolish the contaminated property. The buyer can still purchase the contaminated property and assume the cleanup obligations, and the remediation must be completed within 90 days after closing.

Once the property owner has met the cleanup standards or demolished the property as required, the owner is immune from health-based lawsuits brought by future owners, renters or neighbors, but is not immune from property damage claims.

If the seller knows the property had been used as a meth lab, such as notification by police, and the property has not been remediated, the seller is obligated to disclose in writing that fact to the buyer at or before the time of sale. Without that disclosure, the seller is liable to the buyer for remediation costs, injuries and attorney fees within three years from the closing date.

The SELLER'S PROPERTY DISCLOSURE (ALL TYPES OF PROPERTY) of the Colorado Real Estate Commission (SPD 19-10-06) mandatory in January 2007 includes as Section K. Environmental Conditions, statement 18: "Property previously used as a methamphetamine laboratory Yes No Do Not Know COMMENTS." This form is to be completed by the seller, but often the seller's broker will assist the seller in completing it.

In addition, real estate agents have been sued in Utah for allegedly concealing meth contamination.<sup>iv</sup>

Buyers and sellers, and their real estate agents, need to be aware of the new meth lab law and its requirements in order to help protect the buyers from meth contamination and adverse health effects, and to help protect the seller from violation of the law and exposure to remediation costs, etc..

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*Note: The above information is for education purposes only and does not constitute legal advice nor create any attorney client relationship.*

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<sup>i</sup> The Coloradoan, November 30, 2006

<sup>ii</sup> METH LABS: NEW COLORADO CLEANUP MANDATE AND REGULATION, T. Gablehouse, D. Grossman, 34 Colorado Lawyer 105, Dec. 2005

<sup>iii</sup> [www.drug-rehabs.org](http://www.drug-rehabs.org), New Hampshire.

<sup>iv</sup> Deseret News, September 18, 2006