



## OTTEN JOHNSON ALERT

# New Metropolitan District Disclosure Requirements for Sales Contracts for Newly Constructed Homes

January 2022 • [Allison Altaras](#) and [Jed Sonnenshein](#)

As of January 1, 2022, in addition to the district disclosures already required under [C.R.S. 38-35.7-101](#), sellers of newly constructed homes within Colorado metropolitan districts are now required to deliver to each of their buyers a new set of disclosures. These disclosure requirements were adopted by the Colorado legislature in 2021 as part of a larger [metropolitan district reform bill](#) designed to increase transparency around district governance, disclosure, costs, and other matters.

Metropolitan districts play an important role in financing infrastructure for new development, but have at times faced criticism from homebuyers who purchased homes unaware of the taxes, fees, and other costs that might accrue to their property over time as a result of their inclusion in a district. Sellers of newly constructed residences within districts—from townhome developers to single lot custom builders to master community builders—should familiarize themselves with and ensure their contracts comply with these new requirements.

## Intent

The intent of the new disclosure requirement is to provide a buyer of a newly constructed residence with information regarding the taxing ability of the district within which the residence is located, and an estimate of the buyer's property tax burden as imposed by the district and other taxing authorities.

## Timing and Applicability of Disclosure

This new disclosure must be delivered before or concurrently with the execution of a sales contract for a “newly constructed residence.” The definition of the term “newly constructed residence” includes any single-family detached or attached, townhome, multi-family, modular, or manufactured unit, so long as it is for sale and constructed within a metropolitan district.

It is important to note that sellers of individual residential lots that do not yet contain residences, even those lots improved with horizontal infrastructure, are not subject to the new disclosure requirement. In addition, subsequent sales of homes from one residential homeowner to another are not subject to the new disclosure requirement.

## Specific Disclosure Requirements

Among other requirements, the statute requires that sellers disclose the following information,

- (a) the bonding capacity of the district;
- (b) the maximum mill levy the district may impose for debt service (or a statement that there is no limit on such mill levy);
- (c) that the district may also impose a mill levy for operations and maintenance or that the district may impose an aggregate mill levy cap for debt service and for operations and maintenance, as applicable;
- (d) whether any mill levy can be adjusted due to the changes in the constitutional or statutory method of assessing property tax or in the assessment ratio, or by amendments to the service plan or voter authorizations;
- (e) that the district also has the right to impose fees, rates, penalties and other charges; and
- (f) that a current fee schedule of the district (as applicable) is available from the district.

Home builders that are not familiar with their district’s service plan, the structure of and any caps on the district’s debt service and operations and maintenance mills, and any recent or future anticipated adjustments to the district’s mills should consult with counsel and the district to assist with disclosing the foregoing items. This information may not be apparent from review of the property’s tax bill alone.

In addition to the foregoing disclosures regarding the district’s bonding capacity and mill levy amounts, sellers are also required to provide home buyers with an estimate of

the newly constructed residence's property taxes for the year in which the home sale closing occurs, based upon (1) the total mills imposed by the district (and as also provided in the statute, the mills of the other applicable taxing authorities); (2) the purchase price for the home as set forth in the contract; and (3) the current residential property assessment ratio for the property (regardless of the property's classification at the time of the disclosure). Preparation of this estimate may involve coordination with the district and counsel.

Sellers should be mindful that their district may intend to increase its mill levy in the following year. Sellers with actual knowledge of such situations (such as those sellers that serve as board members on their district) are required to use the following year's anticipated mill levy, if expected to change, in providing the required district property tax estimate.

## Tax Certificates

The statute also require sellers to provide their buyers with "a copy of the most current county assessor's property tax certificate applicable to the property," so that buyers can evaluate the entire property tax liability for the property—whether imposed by a metropolitan district or other taxing authorities—that buyers will have as new homeowners. The tax certificate must be current as of the date that the seller delivers the disclosure to the buyer, which can be no later than the date of contract execution. Sellers should take care to ensure they are providing the most up-to-date tax certificate, and should communicate the need for a current tax certificate with their title company.

## Conclusion

These new disclosure requirements add to the list and complexity of disclosure requirements in residential sales contracts in Colorado. Unlike other statutory disclosure requirements, for which standard text is often provided, these additional disclosures will require sellers to carefully review their districts' service plans and current mill levy (and as applicable, proposed mill levy increases). Home builders should also be aware of the requirement to provide a good faith estimate of the tax burden created by the districts and other taxing authorities in their communities, regardless of whether home builders are active on district boards or otherwise involved in the district's governance or infrastructure financing processes.

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