

## Speed Kills:

### Buyers Risk Liability and Physical Harm for Former Meth Labs

By Marlene S. Gomez<sup>1</sup>

The contamination left over from former methamphetamine laboratories (“meth labs”) can wreak havoc on unsuspecting home buyers. Widespread and numerous meth lab seizures in areas not usually associated with drug activity have led to an increasingly familiar story: after being plagued by mysterious illnesses ranging from nausea and dizziness to chemical burns, severe migraines and respiratory ailments, the unwary homeowners discover that their family has been living in a house that was a former meth lab.<sup>2</sup> The acids, solvents, volatile organic compounds and other toxic chemicals that were used to “cook” the meth have been lurking in the walls, carpets, counters, air ducts and appliances that surround them. The hazardous wastes produced from the manufacturing process were poured down drains or directly onto the ground and may persist for years in the soil and groundwater. These are not the threats that most people think of when they think of meth labs – such as fires and explosions. Rather, the invisible contamination left over from a former meth lab can be just as harmful. Adding insult to injury, the affected homeowners are financially responsible for the remediation of the contamination at their home which will carry the stigma of being a former “meth house.”

The federal government defers meth lab cleanup to the states. Pursuant to the Methamphetamine Research and Remediation Act of 2007, however, the Environmental Protection Agency (EPA) has been working on model, health-based clean-up guidelines for states and localities with the goal of ensuring former meth lab sites are safe and livable. EPA is still revising a draft version of the guidelines. Because each state has been affected by meth use to different extents, a myriad of different approaches has developed. Western states, such as Washington and Oregon, tend to have the most comprehensive programs requiring cleanup of contaminated property, establishing cleanup standards and mandating disclosure to prospective purchasers. But a growing number of meth lab incidents in the South and Midwest,<sup>3</sup>

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<sup>2</sup> Take a look at websites like [www.methlabhomes.com](http://www.methlabhomes.com) for examples of the increasing frequency with which meth contamination has brought physical and financial ruin to innocent homebuyers.

<sup>3</sup> Missouri State Highway Patrol, *2009 Meth Lab Incidents*, at <http://www.mshp.dps.mo.gov/MSHPWeb/DevelopersPages/DDCC/methLabDisclaimer.html>. Missouri far

have prompted a number of states to begin enacting laws to address the problem. Nationally, meth lab seizures reached a high in 2003 and 2004 when there were over 17,000 meth lab incidents in the U.S. for two years in a row.<sup>4</sup> The number of incidents fell steadily after that due to the enactment of federal legislation, but the number of incidents rose again in 2008. Despite the high numbers of meth lab seizures over the past few years and the fact that many labs are often found in dwellings like houses or apartments, almost half of the states do not have any meth cleanup or disclosure laws in place.

Washington was one of the first states to have a comprehensive meth cleanup program in place and enacted legislation in 1989.<sup>5</sup> The Washington initiative has since been used as a model by a number of other states that have created their own programs. Some key provisions of Washington's program are as follows:

- The current owner of the contaminated property is held financially liable.
- The responsible health official must determine whether property containing an illegal drug lab is "fit for use" or "unfit for use." Any property deemed "unfit for use" will be reported to the state health division and a copy of the "unfit for use" order will be filed with the county auditor meaning that anyone who conducts a title search on the property will find a notice that the property was used as a meth lab in the land records. The decision may be appealed or the owner may choose to decontaminate the property and seek certification that the property has been properly decontaminated.<sup>6</sup>
- Regulations and guidelines have established decontamination standards. These include numeric remediation levels for hazardous chemicals.<sup>7</sup>
- The seller always retains the option not to decontaminate the property, but the property may only be sold with full written disclosure to the prospective buyers. Even if the property is decontaminated, sellers must still disclose to potential buyers that the property was once used as an illegal drug-manufacturing site.<sup>8</sup>

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surpasses any other state for meth lab incidents in 2009. "Incidents" include labs, dumpsites and chemical and glassware seizures.

<sup>4</sup> U.S. Drug Enforcement Agency, *Maps of Methamphetamine Lab Incidents*, at [http://www.usdoj.gov/dea/concern/map\\_lab\\_seizures.html](http://www.usdoj.gov/dea/concern/map_lab_seizures.html).

<sup>5</sup> *See* WASH. REV. CODE § 64.44 (2009).

<sup>6</sup> *Id.* § 64.44.030.

<sup>7</sup> WASH. ADMIN. CODE § 246-205-541 (2009).

<sup>8</sup> WASH. REV. CODE § 64.46.020 (2009).

The cleanup standards that states have put in place throughout the U.S. range from enforceable regulations to more general guidelines that do not have numeric remediation levels. Some states have cleanup guidelines but do not have any laws requiring disclosure of the property's use as an illegal drug manufacturing site. The absence of meth cleanup or disclosure laws in many states does not mean that those states are necessarily insulated from the meth problem. For example, Nebraska does not have cleanup standards in place or meth disclosure laws, despite the fact that meth lab incidents, after dropping sharply in 2007, doubled from 2007 to 2008.<sup>9</sup> Reasons for the delay by states appear to include questions about the legality of requiring home owners to disclose the history of their home to a potential buyer. There are also concerns in a number of states with the lack of data analyzing the effects of long-term exposure to meth contamination and the resulting inability to devise health-based standards.

In the absence of meth cleanup standards, the presumption should be that the environmental laws of the state control. In addition to providing cleanup standards (although maybe not meth-specific) some states have environmental laws with deed notification requirements that are triggered when hazardous substances have been released into the environment. Depending on the particular substances and quantities involved, meth lab contamination may constitute a release under state laws, which raises a broader question: does the failure to disclose meth contamination in the deed constitute a defect in title and implicate a claim against the title insurer? But it may not be true in all states or under federal environmental laws that a spill inside a building would be subject to the same environmental regulations as a spill in the yard or a release to groundwater. Environmental laws have been developed to address different types of threats and are not typically set up to address indoor pollution. And even if meth contamination would technically qualify as a release under federal or state environmental laws, it is also unlikely that smaller operations typically found in homes would receive any enforcement action under those laws.

Some states have chosen to take an approach that uses real estate disclosure laws to put prospective buyers on notice before sale. Most states already have laws that require disclosure of everything from water in the basement to environmental contamination. In such cases, it would be quite simple to add a provision that alerts sellers that environmental contamination includes meth labs or to create a separate provision for illegal drug manufacturing. Illinois is an example of one state that has taken this route. It has thus far declined to devise clean up standards, but just recently amended its Residential Real Property Disclosure Act to require the disclosure by a seller of real property if the property is "known" to be used for the manufacture of methamphetamine. The Illinois legislation, Public Act 96-232, was signed and became effective on August 11, 2009.

Nevertheless, the "disclosure-law-only" approach suffers from the glaring defect that it relies on the knowledge and honesty of those making the disclosures.

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<sup>9</sup> U.S. Drug Enforcement Agency, *supra* note 4.

Depending on the language of the statute, the responsibility to disclose the property's history may fall on the seller and the realtor, or just the seller, who may have incentive to lie or may not have known the extent of the activities conducted on the property (for example – the activities of former tenants). Of course, this is always the case with disclosure forms, which is why testing or a comprehensive program like Washington's which raises red flags in the land records, may be the way to go. Even more troubling is that disclosure laws may be rendered practically worthless without cleanup standards in place. States may choose to exempt from disclosure properties that have been "cleaned up," but without enforceable standards and certification methods, how does one know what is "clean"?

Questions may then arise if misrepresentations are made in the disclosure statement, the answers to which will depend on the particular real estate laws of individual states. Is it possible that a misrepresentation could render the transaction voidable? Or will the only recourse be trying to recover through the legal process cleanup costs from the seller, who may or may not have any assets?

The risks of severe health effects from exposure to residual contamination from meth labs are serious enough to warrant state laws that are designed to protect the public from exposure to meth contamination. States have taken a variety of approaches, ranging from establishing comprehensive cleanup programs to doing nothing. If the country really is facing a "meth epidemic", is doing nothing the right policy?