Healthy Homes Legal Practicum: Clandestine Methamphetamine Laboratories and Residential Hazards in New York State

By Nicole K. Intsichert

There are increasing issues of production and use of methamphetamine (“meth”) in New York State, which in turn lead to Green and Healthy Homes Initiatives issues for homebuyers, landlords, and renters. While much of the general public is aware of the dangers surrounding home hazards like lead and asbestos, clandestine drug activity, particularly methamphetamine production and consumption, has just as devastating and debilitating effects, but not as much public awareness.


However, in other areas of the State, dramatic increases in the prevalence of abuse of meth have been widely reported, though United States Drug Enforcement Agency sources report that meth abuse is a less serious problem when compared to heroin, cocaine, crack, and others. Id.


Thus, concern about methamphetamine in Erie County in particular is not unfounded.

2 The national Green & Healthy Homes Initiative focuses on using federal and other organization’s funds, intelligences, and best practices to aid with weatherization, energy efficiency, health and safety of homes throughout the United States, aiming to set a new standard for policies and practices to create more sustainable, affordable and healthier homes. Green & Healthy Homes Initiative, http://www.greenandhealthyhomes.org/ (last visited Dec. 23, 2012).
“Once law enforcement shuts down an illegal meth lab, hauls away the bulk chemicals, and arrests the suspects, a pressing concern remains. The acids, solvents, and other flammable and toxic chemicals used to manufacture the drug may still lurk in the walls, appliances, and carpets,”³ posing hidden dangers to homebuyers and renters. Further, the lack of mandatory disclosure laws and other express legislation in New York State, lack of federal regulation, haphazard removal and clean up, and typical home inspections’ inability to register whether a property is contaminated by meth or byproducts, all lead to homebuyers and renters looking for homes both unaware of this type of issue and unprotected from meth’s resulting hazards. These toxic leftovers pose health, environmental, and liability risks to property owners. Accordingly, New York State should consider means of communicating these risks to its constituents and methods to mitigate those risks, such as managing a database of former laboratories, legislating for mandatory disclosure of former laboratories in home sales, and setting state standards for remediation of contaminated properties.

**Background: Methamphetamine Production and Related Hazards**

Methamphetamine, or meth, is an addictive stimulant that can be smoked, snorted, ingested, or injected.⁴ Meth can be made in a number of ways, with relative ease, using common or easily procured household chemicals and equipment.⁵ The most common precursor ingredient

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is pseudoephedrine, found in many cold medicines, which is then combined with other chemicals and ingredients, like acids, iodine, drain cleaner, rubbing alcohol and paint thinners.\(^6\)

Currently, most meth is manufactured in small, “mom and pop laboratories,” where small amounts of meth are made for personal use and to sell to friends and family.\(^7\) However, these are not “labs” in the traditional sense of the word, which evokes sterility, white coats, and precision, but are instead mobile, transitory set-ups that can be as simple as a makeshift operation that can be assembled, utilized, and torn down in a couple of days.\(^8\) Further, these labs can be found anywhere: meth is not simply an urban poor problem, but instead has “no social boundaries,”\(^9\) and is often found in rural areas.\(^10\) Unfortunately, the Combat Methamphetamine Epidemic Act of 2006 unintentionally drove production out of industrial spaces and into residential ones.\(^11\)

Thus, other problems, such as explosions and high concentrations of dangerous, volatile chemicals,\(^12\) have been pushed into residential properties as well. However, problems other than these can persist far beyond use and manufacture of meth.\(^13\) Meth use and manufacture poses a serious threat to the environment and the surrounding community. For “every one pound of methamphetamine that is produced, approximately five pounds of toxic and often lethal waste

\(^6\) Grant, supra note 4 at 32; Erica Peterson, Meth Lab Abatement Programs Growing in Popularity, West Virginia Public Broadcasting (Aug. 28, 2009), <http://www.wvpubcast.org/newsarticle.aspx?id=11019>.

\(^7\) Grant, supra note 4, at 32.

\(^8\) Vogt, supra note 3, at 255.


\(^10\) Grant, supra note 4, at 32.


\(^12\) Vogt, supra note 3, at 258-59.

\(^13\) Id.
products may be left behind at the laboratory site.”

Toxic byproducts range from solid waste containers, to chemical residues, to foul odors, to even actual quantities of meth, which can seep into drywall, carpet, wood, and upholstery, among other items. Additionally, residues collect on impermeable surfaces like “glass, stainless steel, and some common household surfaces,” which would include counters, sinks, and mirrors. Further, producers may dump this toxic waste down household drains or bury it in the ground, which can pollute nearby soil and ground water.

Accordingly, these problems harm innocent bystanders as well as those who use and manufacture this dangerous drug. There is a growing awareness of how meth and its byproducts affect law enforcement and other first responder or emergency services people. Further, other uninvolved people are affected as well: there is more awareness of neighbors and local communities existing beyond the confines of the property being harmed as well. A non-exhaustive list of harms include respiratory damage, chemical burns, shortness of breath, headaches, coughing, chest pain, dizziness, lack of coordination, tissue irritation, and the burning

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18 Signe Land Levine, supra note 15, at 1612.
19 Smith, supra note 17, at 631.
of skin, eyes, mouth and nose. Additionally, many of the chemicals used in meth's production are carcinogenic.

**Lack of Protection for Homeowners**

Unfortunately, in New York State, protection from clandestine meth labs for homebuyers is decidedly lacking. Public awareness and education efforts are not as significant as they are for other healthy home hazards like lead or asbestos. Further, a lack of legal remedies provides buyers with no way to be compensated for unwitting exposure to meth and its toxic byproducts.

The New York Real Property Law requires sellers of residential properties to fill out, sign, and deliver to the buyer (or buyer’s agent) a property disclosure statement before the contract of sale of a house is signed. The statement, containing both the buyer and seller’s signatures, must be attached to the sale contract. Whether a home was a site where methamphetamine was manufactured or used is not expressly mentioned as an item requiring disclosure, but there is a question regarding “any hazardous or toxic substance spilled, leaked or otherwise … released on the property or from the property onto any other property,” and meth and its byproducts certainly qualify as hazardous and toxic substances. Accordingly, the presence of meth ought to be disclosed.

However, “[n]othing contained in this article or this disclosure statement is intended to prevent the parties to a contract of sale from entering into agreements of any kind or nature with respect to the physical condition of the property to be sold, including, but not limited to,

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20 Vogt, supra note 3, at 259.
21 Id.
22 N.Y. Real Prop. Law § 462 (McKinney).
23 Id.
24 Id.
agreements for the sale of real property ‘as is.’”

Thus, this statute does not prevent the sale of a former clandestine meth lab, remediated or not, so long as both parties are informed and give signed consent.

If a seller fails to include the signed disclosure statement before the sale contract is signed, the result is merely that the buyer gets a five hundred dollar ($500) credit toward the purchase price of the home. Further, even if the seller is provides a “knowingly false or incomplete statement,” the statute states only that the seller may be subject to claims by the buyer. These claims tend to be for damages for fraud, not for a refund or for rescission of the contract, and because NYS “adheres to the doctrine of caveat emptor and imposes no liability on a seller for failing to disclose information regarding the premises when the parties deal at arms length [sic],” successful fraud claims will only lie where “there is some conduct on the part of the seller which constitutes active concealment.” Thus, mere failure to disclose a home’s history as a meth lab on the mandatory statement is not affirmative conduct that would subject the seller to any liability.

Moreover, though the State requires a home inspection when purchasing a home, current home inspection processes cannot detect former meth labs. Though buyers can employ simple tests, such as, spraying starch on surfaces to see if it turns purple-red, such “high-school science project” methods are neither sensitive nor reliable, says Caoimhín P. Connell, an industrial hygienist who specializes in detecting meth. Instead, buyers can and should elect for someone

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25 Id.
26 Id.
27 Id.
28 Camisa v. Papaleo, 93 A.D.3d 623, 624 (2d Dept. 2012)
to test for meth,\textsuperscript{30} where a contractor wipes small spots on various surfaces in the home (like the walls, ceiling, floors appliances, and furniture), then sends the wipe pads off to testing in certified labs.\textsuperscript{31} These initial tests and consultations usually run at least a few hundred dollars,\textsuperscript{32} and they can become more expensive.

To add to the already high burdens borne by homebuyers, they are saddled with the oftentimes astronomical costs of decontaminating and remediating the property if they want to either buy it or continue living in it safely. There is no public agency or person who is obligated under New York law to take care of the problem, including the seller of the contaminated property. Further, many homeowners’ insurance policies either expressly exclude meth from coverage,\textsuperscript{33} or make it so that meth qualifies under other exceptions to umbrella policies.\textsuperscript{34} While the average cost of remediation comes in ranging from $2,000 to $5,000,\textsuperscript{35} Tennessee, for instance, has seen remediation ranges from $2,000 to $30,000,\textsuperscript{36} and costs can go much higher, up into the $100,000 range, depending on the size of the home.\textsuperscript{37} Lastly, adding insult to injury,

\begin{itemize}
\item \textsuperscript{30} Miller, supra note 11.
\item \textsuperscript{31} Peterson, supra note 6.
\item \textsuperscript{32} Ben Arnoldy, States confront meth-lab threat to environment: Do-it-yourself labs can turn homes into hazmat zones. Some US states have enacted laws to address the risks, Christian Science Monitor. Nov. 8, 2006, 2006 WLNR 19332012 (last visited Oct. 20, 2012).
\item \textsuperscript{35} Smith, supra note 15, at 611 (2008); Vogt, supra note 3, at 273.
\end{itemize}
homebuyers must suffer the social stigma of living in what is known throughout the neighborhood as a former meth house.\textsuperscript{38} 

\textbf{Clean-up and Remediation General Guidelines}

There are no New York State or locally mandated safe levels or exposure limits, nor are there minimum standards or protocols to follow for remediation, even though groups on the ground-level have advocated for them for years.\textsuperscript{39} Pursuant to the Methamphetamine Research and Remediation Act of 2007, the Environmental Protection Agency created federal “model, health-based clean-up guidelines for states and localities [designed] with the goal of ensuring former meth lab sites are safe and livable,” but they are only voluntary, as the federal government “defers meth lab cleanup to the states.”\textsuperscript{40} A fairly common clean up procedure looks like this: “in the room where the meth was made, [clean-up crews] scrub all surfaces, repaint the walls, replace the carpets and air filters, and air out the property.”\textsuperscript{41} Scrubbing often includes pressure washing walls and other surfaces with soapy water and using a scrub brush on the wall, followed by the use of “wet vacs” to remove the contaminated wash water, and then surfaces are rinsed with clean water.\textsuperscript{42} Once everything has been scrubbed down, surfaces are “encapsulated” with fresh paint or polyurethane varnish.\textsuperscript{43} Then surfaces are typically re-tested to make sure the

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\item \textsuperscript{40} Gomez, supra note 11.
\item \textsuperscript{42} Peterson, supra note 6.
\item \textsuperscript{43} Dan Hannan, \textit{Meth Labs}, 50 Professional Safety 24, 31 (June 2005).
\end{itemize}
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contamination, if not completely gone, is down to whatever agency has deemed to be an acceptable level.\textsuperscript{44}

**State and Local Legislative Efforts**

There has been some State-level legislative response to the meth problem, including criminalizing possession and manufacture of meth, as well as making it unlawful to possess manufacturing materials.\textsuperscript{45} Such legislation has included regulating the possession of precursor ingredients such as solvents, reagents and chemicals. To be guilty of this offense, a person must knowingly use or intend to use such materials in the manufacture of meth, or have knowledge of another’s intent to use them in such a way.\textsuperscript{46} Additional legislation regulates the disposal of meth lab materials,\textsuperscript{47} which also requires the knowledge that the materials were used for meth purposes, and were either A) disposed of in ways that “create a substantial risk to human health or safety or a substantial danger to the environment” or B) were intended to be disposed of in such reckless ways.\textsuperscript{48}

There were at least two attempts at local efforts to respond to the meth problem: in the Southern Tier (Broome, Tioga, and Chemung Counties), activists created a group called the “Southern Tier of New York Methamphetamine Prevention Program,” but its website activities

\textsuperscript{44} Peterson, supra note 6.
\textsuperscript{45} See N.Y. Penal Law § 220.70, etc. (McKinney).
\textsuperscript{46} N.Y. Penal Law § 220.72 (McKinney).
\textsuperscript{47} N.Y. Penal Law § 220.76 (McKinney).
\textsuperscript{48} Commentary, N.Y. Penal Law § 220.70 (McKinney).
seem to have dropped off since the 2007 to 2008 timeframe.\textsuperscript{49} This website also has a broken link to a site for a group called the “Central New York Meth Coalition.”\textsuperscript{50}

More broadly, there exists a “Methamphetamine Electronic Clearinghouse” run by the New York State Office of Alcoholism and Substance Abuse Services.\textsuperscript{51} Unfortunately, the site has little information that local New York authorities might want, such as information about meth incidents in the state, broken down by municipality or metropolitan statistical area. Instead, this site directs readers to Federal programs and voluntary guidelines, as well as to Kansas, Minnesota, Oklahoma and Washington state and local websites for guidance.

**Recommendations**

New York needs more effective and efficient ways of communicating to its citizens about the hazards of methamphetamine, particularly in the context of purchasing a home. One way this could be accomplished would be through the use of a state or series of local databases that would provide a comprehensive guide for citizens. For instance, the Tacoma – Pierce County Health Department, out of the State of Washington, has a whole section of its website devoted to contaminated property cleanup.\textsuperscript{52} It directs people to both a locally-maintained map and a locally-maintained list of meth contaminated properties; provides a list of county-approved


\textsuperscript{52} Tacoma-Pierce County Health Department, Methamphetamine Contaminated Property Cleanup, http://www.tpchd.org/environment/investigation/methamphetamine-contaminated-property-clean-up/ (last visited Dec. 23, 2012).
cleanup contractors; and offers factsheets and guidelines about meth labs, how to hire a
contractor, and how to generally decontaminate a property.\(^{53}\)

Presumably, one reason the Tacoma-Pierce County Health Department is so thorough is
that the State of Washington has promulgated statutes and rules pertaining to the
decontamination of former meth sites.\(^{54}\) Chapter 246-205 of the Washington Administrative
Code lays out contractor certification requirements;\(^ {55}\) how to obtain samples from the property;\(^ {56}\)
decontamination standards;\(^ {57}\) and how to report a contaminated property,\(^ {58}\) among other statutes.
The Revised Code of Washington has similar provisions.\(^ {59}\) The Tacoma-Pierce site links directly
to them. New York State should consider adopting similar statutes and regulations.

Another suggestion for the comprehensive database would include some sort of factsheet
that gives clues or guidelines for buyers on how to avoid these issues, or at least educate buyers
so they can be aware of them. Tips like talking to neighbors to get a history for a property,
watching out for foreclosed homes, and looking for evidence of dumping, burning or burial, like
“[d]ead patches of grass or staining in the soil,”\(^ {60}\) strange smells coming from unexpected places
could all help make a difference so that a buyer avoids entanglement with a contaminated
property.

A few other assorted tips include amending the disclosure law and associated form, found
in Section 462 of the New York Real Property Law, so that methamphetamine-related activities
\(^{53}\) Id.
\(^{54}\) See W.A.C. 246-205-001 et seq., http://apps.leg.wa.gov/WAC/default.aspx?cite=246-205; R.C.W. 64.44.005 et
seq., http://apps.leg.wa.gov/RCW/default.aspx?cite=64.44.
\(^{56}\) Id. at 246-205-531
\(^{57}\) Id. at 246-205-541
\(^{58}\) Id. at 246-205-550
\(^{59}\) R.C.W. 64.44.005, et. seq., http://apps.leg.wa.gov/RCW/default.aspx?cite=64.44.
\(^{60}\) Hannan, supra note 43, at 28.
and incidents are expressly mentioned as something that must be disclosed. Another option that would support this effort would require some sort of demarcation when a lab is busted that would affect a property’s title search, so that some sort of flag or alert would pop up when prospective buyers and their attorneys conduct the search. There would also need to be measures that would allow for the removal of an alert once the property is remediated, as well.

**Conclusion**

Although methamphetamine and its related hazards are not as pressing an issue in New York as they may be elsewhere in the United States, clearly the problems they cause homeowners are significant enough to warrant action despite only a relatively small number of incidents. New York has a long way to go before it catches up to states like Washington, but in adopting some of the measures successfully employed there, New York can save itself resources, scrambling legislative reactions, and legal fights by preemptively addressing remediation standards, legislative protections for homebuyers, and a means of monitoring “busted labs” before their prevalence spreads here as well.