

**What REALTORS®, Homeowners And Title Insurance Companies Need To Know About
The New 2020 Silver Thread Public Health District
On-Site Wastewater Treatment System Transfer of Title Inspections**

This document is designed to inform Real Estate Brokers, Homeowners and Title Companies about the new septic regulations. It is hoped that it will help make a smooth transition to the new County septic inspection requirements.

What is the new rule? Beginning January 1, 2020, Silver Thread Public Health District (STPHD) which serves Hinsdale and Mineral Counties will require a property owner of a residence or other structure served by an On-Site Wastewater Treatment System (OWTS), to have an inspection of that system to demonstrate that the system is functioning prior to the sale or transfer of the property title.

STPHD has contracted with each county that provides the enforcement and oversight of the OWTS program. In Hinsdale County, the point of contact is the Building Official. In Mineral County, the point of contact is the Land Use Officer. For purposes of this document, those positions will be referred to as County OWTS Staff.

1. Why has STPHD developed a Transfer of Title Inspection Program?

- Discover problems that need to be repaired in order to prevent larger problems or failures
- Assure that properly trained and certified inspectors conduct OWTS inspections
- Establish uniform OWTS inspection criteria and requirements
- Protect groundwater and owners' investments
- Protect purchasers and sellers of affected properties

2. When will the requirement for Transfer of Title Inspections begin?

- An inspection by a National Association of Wastewater Technicians (NAWT) certified OWTS inspector will be required for any sale or transfer that occurs on or after January 1, 2020. If a contract is written in 2019, it will not require an inspection of the OWTS system.

3. Who is required to obtain a Transfer of Title Inspection?

- In most cases the property owner or transferor will be required to have the OWTS inspected and obtain an "Acceptance Document" from County OWTS Staff. The transferor and purchaser can agree between themselves how payment for the inspection and "Acceptance Document" will be handled.
- For properties and situations exempt from the requirement to obtain an "Acceptance Document" please refer to the STPHD OWTS Rules and Regulations VIII [43.4 L].

4. How do I find a certified OWTS inspector?

- A list of certified inspectors will be maintained for Mineral County at <https://mineralcounty.colorado.gov/departments/land-use-office/owts-transfer-of-title>

5. Who can apply for the “Acceptance Document?”

- The owner, transferor, or real estate agent may submit an application after the OWTS has been evaluated by a NAWT certified inspector.
- Payment of the \$50.00 County fee can be paid at the Hinsdale or Mineral County Administration office in cash, or check.

6. How do I obtain an “Acceptance Document?”

- Have the system inspected by an NAWT certified OWTS inspector using the STPHD approved inspection form. These inspectors are independent contractors and do not work for STPHD. Inspectors may be hired by buyers or owners/transferors to do the inspections, and the cost of the inspection is handled between them (in the case of a sale, the cost and responsibility for it will likely be addressed in the purchase contract, but if not the transferor is responsible).
- Complete the “Application for an Acceptance Document” and pay the \$50 administration fee. The application is available at <https://www.mineralcounty.colorado.gov/departments/land-use-office/owts-transfer-of-title>. Submit the application and inspection report to County OWTS Staff for review.

7. What if the inspector finds a deficiency?

- Repairs must be completed within 90 days after submittal of the inspection report unless County OWTS Staff determines that an imminent health hazard (such as surfacing sewage) exists. If an imminent health hazard exists, the time frame for corrective action will be determined by County OWTS Staff to protect public health.
- A repair permit will be required from County OWTS Staff to repair the OWTS (depending on the deficiency).

8. What if the OWTS has a deficiency and/or is malfunctioning and the owner is not able to obtain a repair permit and complete the repairs prior to the closing date?

- County OWTS Staff will not prevent a property from closing. County OWTS Staff will issue a Conditional Acceptance Document, provided that the purchaser of the property agrees to obtain a permit and complete all necessary repairs to the OWTS within 90 days after occupancy of the property. Agreement to make the repairs after transfer of title may be made by the purchaser or the purchaser’s representative, if the representative has legal authority to bind the purchaser to such agreement. The buyer and transferor may choose to amend their purchase contract to reflect such event.

Residential OWTS are sized by the number of bedrooms only. If, during the transfer of title inspection process County OWTS Staff learns that the home has more bedroom(s) than what the

OWTS was sized for, then that "fact" will be noted in the Acceptance Document to be disclosed to the new owner. The County OWTS Staff will not require the OWTS to be increased in size, as long as no major deficiencies (failure) are noted during the inspection.

9. How long is the “Acceptance Document” valid?

- The acceptance document is valid until the date of real estate closing, or for a period of twelve (12) months, whichever comes first. If the property is expected to take more than six months to close, it is probably better to wait to do the inspection until it goes under contract.

10. What does the transfer of title process cost?

- Individual inspectors will establish their own fees for inspection.
- Administration fee for issuing the “Acceptance Document” is currently set at \$50

11. What is the process and how long does it take from inspection to receipt of the “Acceptance Document?”

- Inspectors establish their own schedules. Those requesting inspections should confirm the schedule with the inspector of their choice.
- The “Acceptance Document” will typically be issued within two business days after the County OWTS Staff receives the inspection report if no issues are found.

12. How will the “Acceptance Document” be received?

- The “Acceptance Document” will be emailed and/or mailed to all requestors.

13. What happens if a sale/transfer is done without the required inspection and “Approval Document?”

- A civil penalty is authorized against the transferor. It does not invalidate the sale of the property, nor create a cloud on title.

14. For more information or if you have questions:

Please contact County OWTS Staff: Hinsdale County Building Official (970) 944-2225 ext. 1; or Mineral County Land Use (719) 658-2360

A full copy of the OWTS regulation can be found at

<https://www.silverthreadpublichealth.org/services/consumer-protection-and-environmental-health>

15. ISSUES FOR REAL ESTATE BROKERS AND TITLE COMPANIES:

The following IS NOT language promulgated by STPHD, County OWTS Staff or any Real Estate organization. It is not legal advice. It is intended only to educate those in the real estate community. Brokers and their clients should always consult their employing brokers and/or attorneys for contract assistance.

15.1. Risk Reduction Opportunity: This inspection requirement potentially reduces broker liability by informing buyers about the condition of the OWTS. While the regulation creates an obligation for action only on the owner/transferor of the property, the public relies on brokers to advise them about such matters. Brokers who fail to advise the parties about the regulation may find themselves as defendants later if the OWTS fails or is determined to be substandard and that fact would have been revealed by the inspection. Listing real estate brokers should advise their sellers that a noncompliant transfer may result in a financial civil penalty. Both listing and selling brokers should advise their clients of the risk of litigation to compel repairs or modifications that would have been discovered by an inspection.

15.2. Don't Blame the Closer: Title company closers have no way of knowing whether a property they are closing has an OWTS, so they will not include the inspection or "Acceptance Document" fees on the settlement statement unless the contract discloses and requires it (they have to close to the contract). Brokers are responsible for the accuracy of contracts and settlement statements (the title companies are just the scriveners of the brokers). The best way of informing the closers is to note in the Additional Provisions section of the purchase contract that an OWTS is involved and state how the related costs are to be handled. This includes providing the closer with the proper amounts to charge on the settlement statement. Following is an example of the kind of clause one might use to address the issue:

"The Property utilizes an On-Site Wastewater Treatment System (OWTS) for sewage treatment. The Buyer / Seller (choose one), at Buyer's / Seller's (choose one) expense, will be responsible for having the OWTS inspected by an Silver Thread Public Health District certified inspector and obtaining the required local county "Acceptance Document" from either Mineral County Land Use Officer (Mineral County) or Hinsdale County Building Official (Hinsdale County) The inspection will be ordered by the responsible party on or before ____ days after MEC. The Buyer shall have the right, pursuant to contract Section 10, to object to any adverse information revealed by the inspection on or before the Inspection Objection Deadline or two days after receipt by Buyer of the inspection report and "Acceptance Document," whichever is later."

15.3. Payment Issues: The inspection company may be willing to wait until closing to be paid. If so, brokers should make sure to get the inspection invoice to the closer timely so the cost can be included on the settlement statement and be paid from closing.

- If the inspection fee is prepaid by a party who is expecting reimbursement from the other party, that agreement needs to be spelled out in the contract. Example: "The Buyer will pay for the OWTS inspection local county "Acceptance Document," will provide paid receipts therefor to the Seller and Closing Company prior to closing, and the Seller will reimburse the Buyer for those costs upon closing."

The local county “Acceptance Document” fee must be paid for at time of ordering it, so it will always be prepaid by someone and be treated by the Closing Company as a paid outside of closing (POC) amount. Unless the contract specifies reimbursement to someone (Buyer, broker, etc.) for it, it will not appear on the settlement statement.

- Because the cost of pumping and inspection and the Acceptance document could be hundreds of dollars, buyers may or may not want this to be paid as part of a seller concession, because it might not leave enough credit to cover other closing costs intended to come from the concession.
- Even if no reimbursement is contemplated, it is a good idea to provide the other party, the Closing Company (and any lender, if required) with a paid receipt to prove compliance, and so there is no question of a lien cropping up later. Buyers and Sellers sign affidavits at closing to protect the Closing Company, but some may want proof of payment, as well.

15.4. How should brokers protect themselves against buyers and sellers who choose noncompliant closing? Brokers are required to keep clients fully informed and exercise reasonable skill and care by disclosing to the parties the existence of the STPHD regulation and the risk associated with a noncompliant closing. As with any important disclosure, this should be done in writing so there is proof of disclosure.

Example of a written notice a broker might give in a noncompliant transaction: “Silver Thread Public Health District (STPHD) regulations require the transferor/seller to have the On-Site Wastewater Treatment System (OWTS) inspected by a certified inspector at time of sale. Failure to comply may subject the Seller to a civil penalty and expose the Seller to liability to the buyer if the OWTS is later determined to be defective or substandard and repairs/modifications are required. If the Seller refuses or fails to comply, the Buyer is advised to have the inspection done so that Buyer is informed regarding the condition of the OWTS. If the Transferor/Seller refuses or fails to comply and the Buyer does not have the OWTS inspected, the Buyer may have to pay for repairs or modifications to the OWTS should it be determined to be defective or substandard, and this could lead to litigation over such costs.”

15.4. Should I have my seller get the OWTS inspected when I list the property? Probably not because the Acceptance Document has a limited life span and the property might not sell before it expires. Also, the buyer may want to actually see the pumping/inspection done at time of sale. It would be a good idea, however, to advise sellers at time of listing to locate the septic tank and expose all of the lids (perhaps installing risers to ground level) to minimize searching and excavation costs later (especially in winter).

15.5. Advertising: If the OWTS was approved for, say a two bedroom, two bath home, but it now has four bedrooms and four baths (someone finished the basement, maybe), should we advertise it as a two bedroom, two bath home? No. Advertise what it really has. If the OWTS inspection reveals that the system is deficient and requires modification, then the parties will just have to deal with it.