

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

812L0477

SENATE COMMERCE COMMITTEE ENGROSSED NO.

SB 83 - 01/25/2005

Introduced by: Senators Kelly, Abdallah, Broderick, Dempster, Gant, Hundstad, McCracken, McNenny, Moore, and Olson (Ed) and Representatives Michels, Bradford, Cutler, Dadrick, Dykstra, Faehn, Frost, Garnos, Hargens, Hennies, Howie, Kraus, Krebs, McCoy, O'Brien, Rave, Rhoden, Sebert, Valandra, Weems, and Willadsen

1 FOR AN ACT ENTITLED, An Act to revise the seller's property condition disclosure
2 statement.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 43-4-44 be amended to read as follows:

5 43-4-44. The following form shall be used for the property condition disclosure statement:

6 SELLER'S PROPERTY CONDITION DISCLOSURE STATEMENT

7 (This disclosure shall be completed by the seller. This is a disclosure required by law. If you do
8 not understand this form, seek legal advice.)

9 Seller _____

10 Property Address _____

11 _____

12 This Disclosure Statement concerns the real property identified above situated in the City of

13 _____ County of _____, State of South Dakota.



1 THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE
 2 DESCRIBED PROPERTY IN COMPLIANCE WITH § 43-4-38. IT IS NOT A WARRANTY
 3 OF ANY KIND BY THE SELLER OR ANY AGENT REPRESENTING ANY PARTY IN
 4 THIS TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR
 5 WARRANTIES THE PARTIES MAY WISH TO OBTAIN. Seller hereby authorizes any agent
 6 representing any party in this transaction to provide a copy of this statement to any person or
 7 entity in connection with any actual or anticipated sale of the property.

8 ~~IF ANY MATERIAL FACT COMES TO THE ATTENTION OF THE SELLER WHICH~~
 9 ~~WOULD AFFECT ANY STATEMENT MADE BY THE SELLER FOLLOWING THE~~
 10 ~~SIGNING OF THIS STATEMENT AND BEFORE THE TIME OF SETTLEMENT, THE~~
 11 ~~SELLER SHALL NOTIFY THE BUYER AND ANY AGENT REPRESENTING ANY~~
 12 ~~PARTY TO THIS TRANSACTION IN WRITING OF SUCH MATERIAL FACT OR OTHER~~
 13 ~~INFORMATION~~ CHANGES BEFORE CONVEYANCE OF TITLE TO THIS PROPERTY,
 14 THE SELLER MUST DISCLOSE SUCH MATERIAL FACT WITH A WRITTEN
 15 AMENDMENT TO THIS DISCLOSURE STATEMENT.

16 I. LOT OR TITLE INFORMATION

17 1. When did you purchase or build the home? _____

18 If the answer is yes to any of the following, please explain under additional comments or on an
 19 attached separate sheet.

20 2. Were there any title problems when you purchased the property?

21 Yes ____ No ____ ~~Unknown~~ ____

22 If yes, describe: _____

23 3. Are there any ~~unrecorded~~ or recorded liens or financial instruments against the property, other
 24 than a first mortgage?

1 Yes ____ No ____ ~~Unknown ____~~

2 ~~If yes, explain: _____~~

3 4. Are there any unrecorded liens or financial instruments against the property, other than a first
4 mortgage?

5 Yes ____ No ____ ~~Unknown ____~~

6 5. Are there any easements which have been granted in connection with the property (other than
7 normal utility easements for public water and sewer, gas and electric service, telephone service,
8 cable television service, drainage, and sidewalks)?

9 Yes ____ No ____ ~~Unknown ____~~

10 ~~If yes, explain on separate page and attach hereto.~~

11 56. Are there any problems related to establishing the lot lines/boundaries?

12 Yes ____ No ____ ~~Unknown ____~~

13 7. Do you have a location survey in your possession or a copy of the recorded plat? If yes, attach
14 a copy.

15 Yes ____ No ____ ~~Unknown ____~~

16 ~~If yes, attach a copy of same.~~

17 68. Are you aware of any encroachments or shared features, from or on adjoining property (i.e.
18 fences, driveway, sheds, outbuildings, or other improvements)?

19 Yes ____ No ____

20 ~~If yes, explain: _____~~

21 79. Are you aware of any covenants or restrictions affecting the use of the property in
22 accordance with local law? If yes, attach a copy of the covenants and restrictions.

23 Yes ____ No ____

24 ~~If yes, attach a copy of the covenants and restrictions, if available.~~

1 810. Are you aware of any current or pending litigation, foreclosure, zoning, building code or
 2 restrictive covenant violation notices, mechanic's liens, judgments, special assessments, zoning
 3 changes, or changes that could affect your property?

4 Yes ____ No ____ Unknown ____

5 If yes, explain: _____
 6 _____

7 911. Is the property currently occupied by the owner?

8 Yes ____ No ____

9 12. Does the property currently receive the owner occupied tax reduction pursuant to SDCL 32-
 10 3-1?

11 Yes ____ No ____

12 13. Is the property currently part of a property tax freeze for any reason?

13 Yes ____ No ____ Unknown ____

14 14. If no, is Is the property leased?

15 Yes ____ No ____

16 If yes, please attach a copy of any written lease or a statement as to the terms and conditions of
 17 the lease.

18 ~~1015~~. If leased, does the property use comply with local zoning laws, if any?

19 Yes ____ No ____ Unknown ____

20 ~~11. Is there ground rent? Yes ____ No ____ Unknown ____~~

21 If so, what is the ground rent payment (i.e. annually, semi-annually, monthly)? \$ _____
 22 per _____

23 16. Does this property or any portion of this property receive rent? If yes, how much \$ _____ and
 24 how often _____?

1 Yes _____ No _____

2 ~~17~~. Do you pay any mandatory fees or special assessments to a homeowners' or condominium
3 association?

4 Yes _____ No _____

5 If ~~so~~ yes, what are the fees or assessments? \$ _____ per _____ (i.e. annually, semi-annually,
6 monthly)

7 Payable to whom: _____

8 For what purpose?: _____

9 ~~13. Does~~ 18. Are you aware if the property has ever have had standing water in either the front,
10 rear, or side yard more than forty-eight hours after heavy rain?

11 Yes _____ No _____ ~~Unknown~~ _____

12 If yes, describe: _____

13 19. Is the property located in or near a flood plain?

14 Yes _____ No _____ Unknown _____

15 ~~14~~20. Are wetlands located upon any part of the property?

16 Yes _____ No _____ Unknown _____

17 If yes, describe: _____

18 ~~15. Are any features of the property (i.e. walls, fences, roads or driveways) shared in common
19 with adjoining landowners whose use or responsibility for maintenance may have an effect on
20 the property?~~

21 ~~Yes~~ _____ ~~No~~ _____ ~~Unknown~~ _____

22 If yes, describe: _____

23 II. STRUCTURAL INFORMATION

24 If the answer is yes to any of the following, please explain under additional comments or on an

1 attached separate sheet.

2 1. ~~Have you experienced~~ Are you aware of any water penetration problems in the walls,
3 windows, doors, basement, or crawl space?

4 Yes ____ No ____ ~~Unknown~~ ____

5 2. What water damage related repairs, if any, have been made?

6 ~~If so~~ any, when? _____

7 ~~Is~~ 3. Are you aware if drain tile is installed on the property?

8 Yes ____ No ____ ~~Unknown~~ ____

9 24. ~~Are there~~ you aware of any interior cracked walls or floors, or cracks or defects in exterior
10 driveways, sidewalks, patios, or other hard surface areas?

11 Yes ____ No ____ ~~Unknown~~ ____

12 ~~If yes, explain:~~ What related repairs, if any, have been made?

13 _____

14 ~~35. Have you ever experienced~~ Are you aware of any roof leakage, past or present?

15 Yes ____ No ____ ~~Unknown~~ ____

16 Type of roof covering: _____

17 Age: _____

18 What roof repairs, if any, have been made, when and by whom?

19 _____

20 ~~If so~~, when? _____

21 Describe any existing unrepaired damage to the roof: _____

22 ~~4. Have you received notice that fire retardant treated plywood may have been used during roof~~
23 ~~construction of the property?~~

24 ~~Yes~~ ____ ~~No~~ ____

1 ~~If yes, has an inspection of the roof been performed?~~

2 ~~Yes _____ No _____ Unknown _____~~

3 ~~If yes, explain results: _____~~

4 ~~56. Is there~~ Are you aware of insulation in:

5 the ceiling/attic? Yes _____ No _____ ~~Unknown _____~~

6 the walls? Yes _____ No _____ ~~Unknown _____~~

7 the floors? Yes _____ No _____ ~~Unknown _____~~

8 ~~67. Are you aware of any termite or wood boring pest~~ infestation or damage, either past or
9 present?

10 Yes _____ No _____ ~~Unknown _____~~

11 ~~If yes, explain: _____~~

12 ~~Has~~ 8. Are you aware of the property having been treated for any ~~termite or wood boring pest~~
13 infestation or damage?

14 Yes _____ No _____ ~~Unknown _____~~

15 If yes, who treated it and when? _____

16 ~~79. Have~~ Are you performed aware of any work upon the property ~~within the last five years~~
17 which required a building, plumbing, electrical, or any other permit?

18 Yes _____ No _____

19 If yes, describe the work: _____

20 Was a permit obtained? Yes _____ No _____

21 Was the work approved by an inspector? Yes _____ No _____

22 Explain: _____

23 ~~8. Has~~ 10. Are you aware of any past or present damage to the property, structures, or
24 ~~improvements thereon ever been damaged?~~ (i.e. fire, smoke, wind, floods, hail, or snow)?

1 Yes ____ No ____ ~~Unknown ____~~

2 ~~If yes, describe~~ _____

3 ~~Have any insurance claims been made?~~

4 ~~Yes ____ No ____ Unknown ____~~

5 ~~Was an insurance payment received?~~

6 ~~Yes ____ No ____ Unknown ____~~

7 ~~If yes, has~~ Has the damage been repaired?

8 Yes ____ No ____

9 ~~If yes, describe in detail:~~ _____

10 _____

11 ~~911.~~ Are you aware of any problems with sewer blockage or backup, past or present?

12 Yes ____ No ____ ~~Unknown ____~~

13 III. SYSTEMS/UTILITIES INFORMATION

14 _____ ~~NONE/NOT~~ _____ ~~NOT~~ _____

15 _____ ~~INCLUDED WORKING WORKING UNKNOWN~~ _____

16 ~~A. ELECTRICAL SYSTEM~~

17 ~~Burglar Alarm and/or Security~~

18 ~~System~~

19 ~~Ceiling Fan~~

20 ~~Garage Wiring~~

21 ~~Garage Door/Opener Control(s)~~

22 ~~Doorbell~~

23 ~~Intercom~~

24 ~~Light Fixtures~~

- 1 Sauna
- 2 ~~Smoke and/or Fire Alarm~~
- 3 ~~Switches & Outlets~~
- 4 ~~Vent Fan~~
- 5 ~~220 Volt Service~~
- 6 ~~B. HEATING AND COOLING SYSTEM~~
- 7 ~~Air Exchanger~~
- 8 ~~Attic Fan~~
- 9 ~~Air Purifier~~
- 10 ~~Central Air -- Electric~~
- 11 ~~Central Air -- Water Cooled~~
- 12 ~~Fireplace~~
- 13 ~~Fireplace Insert~~
- 14 ~~Furnace/Heat -- Electric or Gas~~
- 15 ~~Humidifier~~
- 16 ~~Propane Tank -- Leased or Owned~~
- 17 ~~Solar House -- Heating~~
- 18 ~~Woodburning Stove~~
- 19 ~~C. WATER/SEWER SYSTEMS~~
- 20 ~~Cistern~~
- 21 ~~Hot Tub, Whirlpool, and Controls~~
- 22 ~~Plumbing and Fixtures~~
- 23 ~~Pool & Equipment~~
- 24 ~~Septic/Leaching Field~~

- 1 ~~Sump Pump~~
- 2 ~~Underground Sprinkler & Heads~~
- 3 ~~Water Heater -- Electric or Gas~~
- 4 ~~Water Purifier~~
- 5 ~~Water Softener -- Leased or Owned~~
- 6 ~~Well & Pump~~
- 7 ~~Sewer Systems/Drains~~

8	<u>NONE/NOT</u>		<u>NOT</u>
9	<u>INCLUDED</u>	<u>WORKING</u>	<u>WORKING</u>
10	<u>1. 220 Volt Service</u>	_____	_____
11	<u>2. Air Exchanger</u>	_____	_____
12	<u>3. Air Purifier</u>	_____	_____
13	<u>4. Attic Fan</u>	_____	_____
14	<u>5. Burglar Alarm and Security System</u>	_____	_____
15	<u>6. Ceiling Fan</u>	_____	_____
16	<u>7. Central Air - Electric</u>	_____	_____
17	<u>8. Central Air - Water Cooled</u>	_____	_____
18	<u>9. Cistern</u>	_____	_____
19	<u>10. Dishwasher</u>	_____	_____
20	<u>11. Disposal</u>	_____	_____
21	<u>12. Doorbell</u>	_____	_____
22	<u>13. Fireplace</u>	_____	_____
23	<u>14. Fireplace Insert</u>	_____	_____
24	<u>15. Garage Door/Opener Control(s)</u>	_____	_____
25	<u>16. Garage Wiring</u>	_____	_____
26	<u>17. Heating System</u>	_____	_____
27	<u>18. Hot Tub, Whirlpool, and Controls</u>	_____	_____

1	<u>19. Humidifier</u>	_____	_____	_____
2	<u>20. Intercom</u>	_____	_____	_____
3	<u>21. Light Fixtures</u>	_____	_____	_____
4	<u>22. Microwave/Hood</u>	_____	_____	_____
5	<u>23. Plumbing and Fixtures</u>	_____	_____	_____
6	<u>24. Pool and Equipment</u>	_____	_____	_____
7	<u>25. Propane Tank</u>	_____	_____	_____
8	<u>26. Radon System</u>	_____	_____	_____
9	<u>27. Sauna</u>	_____	_____	_____
10	<u>28. Septic/Leaching Field</u>	_____	_____	_____
11	<u>29. Sewer Systems/Drains</u>	_____	_____	_____
12	<u>30. Smoke/Fire Alarm</u>	_____	_____	_____
13	<u>31. Solar House - Heating</u>	_____	_____	_____
14	<u>32. Sump Pump(s)</u>	_____	_____	_____
15	<u>33. Switches and Outlets</u>	_____	_____	_____
16	<u>34. Underground Sprinkler and Heads</u>	_____	_____	_____
17	<u>35. Vent Fan</u>	_____	_____	_____
18	<u>36. Water Heater - Electric or Gas</u>	_____	_____	_____
19	<u>37. Water Purifier</u>	_____	_____	_____
20	<u>38. Water Softener - Leased or Owned</u>	_____	_____	_____
21	<u>39. Well and Pump</u>	_____	_____	_____
22	<u>40. Wood Burning Stove</u>	_____	_____	_____

IV. HAZARDOUS CONDITIONS

24 ~~Are there any existing hazardous conditions of the property such as methane gas, lead paint,~~
25 ~~radon gas in the house or well, radioactive material, a landfill mineshaft, expansive soil, toxic~~
26 ~~materials, ureaformaldehyde foam insulation, asbestos insulation, or buried fuel or chemical~~
27 ~~storage tanks?~~

28 Yes _____ No _____ Unknown _____

1 Have any tests been performed? Yes _____ No _____ Unknown _____

2 Explain: _____

3 Are you aware of any existing hazardous conditions of the property and are you aware of any
4 tests having been performed?

5 EXISTING CONDITIONS TESTS PERFORMED

	<u>YES</u>	<u>NO</u>	<u>YES</u>	<u>NO</u>
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22 If the answer is yes to any of the questions above, please explain in additional comments or on
23 an attached separate sheet.

24 IV. MISCELLANEOUS INFORMATION

25 1. Is the street or road located at the end of the driveway to the property public or private?

26 Public _____ Private _____ Unknown _____

27 2. If private, is there a written road maintenance agreement?

1 If yes, attach a copy of the maintenance agreement.

2 Yes ____ No ____ ~~Unknown ____~~

3 ~~If yes, attach a copy of the maintenance agreement, if available.~~

4 ~~2. Is this property located in or near a flood plain?~~

5 ~~Yes ____ No ____ Unknown ____~~

6 3. When was the fireplace/wood stove/chimney flue last cleaned?

7 ~~Date: _____~~

8 4. ~~In~~ Within the previous twelve months prior to ~~the date of signing this document, did~~ are you
9 aware of any of the following occur occurring on the subject property:?

10 _____ ~~YES NO UNKNOWN~~

11 a. ~~A human death by homicide~~ _____

12 b. ~~Other felony committed against the~~
13 ~~property or a person on the property~~ _____

14 ~~If yes to any of the above explain:~~

15 _____

16 a. A human death by homicide or suicide? If yes, explain:

17 _____

18 Yes _____ No _____

19 b. Other felony committed against the property or a person on the property? If yes, explain:

20 _____

21 Yes _____ No _____

22 5. ~~Are the improvements connected to a~~ Is the water source public or private ~~water system~~
23 (select one)?

24 6. If private, what is the date and result of the last water test?

1 _____

2 7. ~~Are the improvements connected to a public or private~~ Is the sewer system public or
3 private (select one)?

4 _____

5 8. If private, what is the date of the last time the septic tank was pumped? _____

6 89. Are there broken window panes or seals?

7 Yes ____ No ____ ~~Unknown~~ ____

8 If ~~so~~ yes, specify: _____

9 910. Are there any items attached to the property that will not be left, such as: towel bars,
10 mirrors, swag lamps and hooks, curtain rods, window coverings, light fixtures, clothes lines,
11 swing sets, storage sheds, ceiling fans, basketball hoops, mail boxes, etc.

12 Yes ____ No ____

13 If yes, please list _____

14 ~~10~~11. Are ~~there~~ you aware of any other material facts or problems that have not been disclosed
15 above on this form?

16 Yes ____ No ____

17 If yes, explain: _____

18 VI. ADDITIONAL COMMENTS (ATTACH ADDITIONAL PAGES IF NECESSARY)

19 _____

20 _____

21 CLOSING SECTION

22 The Seller hereby certifies that the information contained herein is true and correct to the best
23 of the Seller's information, knowledge, and belief as of the date of the Seller's signature below.

24 If any of these conditions change before conveyance of title to this property, the change will be

1 disclosed in a written amendment to this disclosure statement.

2 SELLER _____ DATE _____

3 SELLER _____ DATE _____

4 THE SELLER AND THE BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE
5 AND INSPECTIONS OF THE PROPERTY TO OBTAIN A TRUE REPORT AS TO THE
6 CONDITION OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS
7 IN ANY CONTRACT OF SALE AS NEGOTIATED BETWEEN THE SELLER AND THE
8 BUYER WITH RESPECT TO SUCH PROFESSIONAL ADVICE AND INSPECTIONS.

9 I/We acknowledge receipt of a copy of this statement on the date appearing beside my/our
10 signature(s) below. Any agent representing any party to this transaction makes no
11 representations and is not responsible for any conditions existing in the property.

12 BUYER _____ DATE _____

13 BUYER _____ DATE _____

14 Section 2. That § 43-4-45 be repealed.

15 ~~43-4-45. In any selling of a residential premises, any seller who has actual knowledge of the~~
16 ~~existence of any prior manufacturing of methamphetamines on the premises shall disclose that~~
17 ~~information to any purchaser or any person who may become a purchaser.~~

18 Section 3. That § 36-21A-89.1 be repealed.

19 ~~36-21A-89.1. The commission shall develop a disclosure form, to be filled out by the seller,~~
20 ~~regarding a purchaser's knowledge of the existence of any prior manufacturing of~~
21 ~~methamphetamines.~~