

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

376N0517

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

SB 127 - 02/28/2007

Introduced by: Senators Hanson (Gary), Heidepriem, Lintz, McNenny, Nesselhuf, and Peterson (Jim) and Representatives Halverson, Hargens, Lucas, Moore, Pitts, Rhoden, Sigdestad, Street, and Vehle

1 FOR AN ACT ENTITLED, An Act to require the disclosure of known contamination of
2 waterways on property condition disclosure statements.

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.

14 THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE



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

7 IF ANY MATERIAL FACT CHANGES BEFORE CONVEYANCE OF TITLE TO THIS
 8 PROPERTY, THE SELLER MUST DISCLOSE SUCH MATERIAL FACT WITH A
 9 WRITTEN AMENDMENT TO THIS DISCLOSURE STATEMENT.

10 I. LOT OR TITLE INFORMATION

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

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

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

15 Yes ____ No ____

16 3. Are there any recorded liens or financial instruments against the property, other than a first
 17 mortgage?

18 Yes ____ No ____

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

21 Yes ____ No ____ Unknown ____

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

1 Yes ____ No ____ Unknown ____

2 6. Are there any problems related to establishing the lot lines/boundaries?

3 Yes ____ No ____ Unknown ____

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

6 Yes ____ No ____ Unknown ____

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

9 Yes ____ No ____

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

12 Yes ____ No ____

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

16 Yes ____ No ____

17 11. Is the property currently occupied by the owner?

18 Yes ____ No ____

19 12. Does the property currently receive the owner occupied tax reduction pursuant to SDCL 32-
20 3-1?

21 Yes ____ No ____

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

23 Yes ____ No ____ Unknown ____

24 14. Is the property leased?

1 Yes ____ No ____

2 15. If leased, does the property use comply with local zoning laws?

3 Yes ____ No ____

4 16. Does this property or any portion of this property receive rent? If yes, how much \$ ____ and

5 how often ____?

6 Yes ____ No ____

7 17. Do you pay any mandatory fees or special assessments to a homeowners' or condominium

8 association?

9 Yes ____ No ____

10 If yes, what are the fees or assessments? \$ ____ per ____ (i.e. annually, semi-annually, monthly)

11 Payable to whom: _____

12 For what purpose? _____

13 18. Are you aware if the property has ever had standing water in either the front, rear, or side

14 yard more than forty-eight hours after heavy rain?

15 Yes ____ No ____

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

17 Yes ____ No ____ Unknown ____

18 20. Are wetlands located upon any part of the property?

19 Yes ____ No ____ Unknown ____

20 II. STRUCTURAL INFORMATION

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

22 attached separate sheet.

23 1. Are you aware of any water penetration problems in the walls, windows, doors, basement,

24 or crawl space?

1 Yes ____ No ____

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

3 If any, when? _____

4 3. Are you aware if drain tile is installed on the property?

5 Yes ____ No ____

6 4. Are you aware of any interior cracked walls or floors, or cracks or defects in exterior
7 driveways, sidewalks, patios, or other hard surface areas?

8 Yes ____ No ____

9 What related repairs, if any, have been made?

10 _____

11 5. Are you aware of any roof leakage, past or present?

12 Yes ____ No ____

13 Type of roof covering: _____

14 Age: _____

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

16 Describe any existing unrepaired damage to the roof: _____

17 6. Are you aware of insulation in:

18 the ceiling/attic? Yes ____ No ____

19 the walls? Yes ____ No ____

20 the floors? Yes ____ No ____

21 7. Are you aware of any pest infestation or damage, either past or present?

22 Yes ____ No ____

23 8. Are you aware of the property having been treated for any pest infestation or damage?

24 Yes ____ No ____

1 If yes, who treated it and when? _____

2 9. Are you aware of any work upon the property which required a building, plumbing,
3 electrical, or any other permit?

4 Yes ____ No ____

5 If yes, describe the work: _____

6 Was a permit obtained? Yes _____

7 Was the work approved by an inspector? Yes ____ No ____

8 10. Are you aware of any past or present damage to the property (i.e. fire, smoke, wind, floods,
9 hail, or snow)?

10 Yes ____ No ____

11 If yes, describe _____

12 Have any insurance claims been made?

13 Yes ____ No ____ Unknown ____

14 Was an insurance payment received?

15 Yes ____ No ____ Unknown ____

16 Has the damage been repaired?

17 Yes ____ No ____

18 If yes, describe in detail: _____

19 _____

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

21 Yes ____ No ____

22 12. Are you aware of any drainage, leakage, or runoff from any sewer, septic tank, storage tank,
23 or drain on the property into any adjoining lake, stream, or waterway?

24 Yes ____ No ____

1 If yes, describe in detail: _____
 2 _____

3 III. SYSTEMS/UTILITIES INFORMATION

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

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

IV. HAZARDOUS CONDITIONS

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

21		EXISTING CONDITIONS		TESTS PERFORMED	
22		YES	NO	YES	NO
23	1. Methane Gas	_____	_____	_____	_____
24	2. Lead Paint	_____	_____	_____	_____
25	3. Radon Gas (House)	_____	_____	_____	_____
26	4. Radon Gas (Well)	_____	_____	_____	_____
27	5. Radioactive Materials	_____	_____	_____	_____
28	6. Landfill, Mineshaft	_____	_____	_____	_____

- 1 7. Expansive Soil _____
- 2 8. Mold _____
- 3 9. Toxic Materials _____
- 4 10. Urea Formaldehyde Foam Insulations _____
- 5 11. Asbestos Insulation _____
- 6 12. Buried Fuel Tanks _____
- 7 13. Chemical Storage Tanks _____
- 8 14. Fire Retardant Treated Plywood _____
- 9 15. Production of Methamphetamines _____

10 If the answer is yes to any of the questions above, please explain in additional comments or on
 11 an attached separate sheet.

12 V. MISCELLANEOUS INFORMATION

13 1. Is the street or road located at the end of the driveway to the property public or private?
 14 Public _____ Private _____

15 2. Is there a written road maintenance agreement?

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

17 Yes _____ No _____

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

19 _____

20 4. Within the previous twelve months prior to signing this document, are you aware of any of
 21 the following occurring on the subject property ?

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

23 _____

24 Yes _____ No _____

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

1 _____

2 Yes _____ No _____

3 5. Is the water source public or private (select one) ?

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

5 _____

6 7. Is the sewer system public _____ or private _____ (select one)?

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

8 9. Are there broken window panes or seals?

9 Yes _____ No _____

10 If yes, specify: _____

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

14 Yes _____ No _____

15 If yes, please list _____

16 11. Are you aware of any other material facts or problems that have not been disclosed on this
17 form?

18 Yes _____ No _____

19 If yes, explain: _____

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

21 _____

22 _____

23 CLOSING SECTION

24 The Seller hereby certifies that the information contained herein is true and correct to the best

1 of the Seller's information, knowledge, and belief as of the date of the Seller's signature below.
2 If any of these conditions change before conveyance of title to this property, the change will be
3 disclosed in a written amendment to this disclosure statement.

4 SELLER _____ DATE _____

5 SELLER _____ DATE _____

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

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

14 BUYER _____ DATE _____

15 BUYER _____ DATE _____