

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

376N0517

## SENATE ENGROSSED NO. **SB 127** - 02/05/2007

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  
15 DESCRIBED PROPERTY IN COMPLIANCE WITH § 43-4-38. IT IS NOT A WARRANTY



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

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

9 I. LOT OR TITLE INFORMATION

10 1. When did you purchase or build the home? \_\_\_\_\_

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

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

14 Yes \_\_\_\_ No \_\_\_\_

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

17 Yes \_\_\_\_ No \_\_\_\_

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

20 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

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

24 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

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

2 Yes \_\_\_ No \_\_\_ Unknown \_\_\_

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

5 Yes \_\_\_ No \_\_\_ Unknown \_\_\_

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

8 Yes \_\_\_ No \_\_\_

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

11 Yes \_\_\_ No \_\_\_

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

15 Yes \_\_\_ No \_\_\_

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

17 Yes \_\_\_ No \_\_\_

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

20 Yes \_\_\_ No \_\_\_

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

22 Yes \_\_\_ No \_\_\_ Unknown \_\_\_

23 14. Is the property leased?

24 Yes \_\_\_ No \_\_\_

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

2 Yes \_\_\_\_ No \_\_\_\_

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

5 Yes \_\_\_\_ No \_\_\_\_

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

8 Yes \_\_\_\_ No \_\_\_\_

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

10 Payable to whom: \_\_\_\_\_

11 For what purpose? \_\_\_\_\_

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

14 Yes \_\_\_\_ No \_\_\_\_

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

16 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

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

18 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

19 II. STRUCTURAL INFORMATION

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

22 1. Are you aware of any water penetration problems in the walls, windows, doors, basement,  
23 or crawl space?

24 Yes \_\_\_\_ No \_\_\_\_

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

2 If any, when? \_\_\_\_\_

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

4 Yes \_\_\_\_ No \_\_\_\_

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

7 Yes \_\_\_\_ No \_\_\_\_

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

9 \_\_\_\_\_

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

11 Yes \_\_\_\_ No \_\_\_\_

12 Type of roof covering: \_\_\_\_\_

13 Age: \_\_\_\_\_

14 What roof repairs, if any, have been made, when and by whom? \_\_\_\_\_

15 Describe any existing unrepaired damage to the roof: \_\_\_\_\_

16 6. Are you aware of insulation in:

17 the ceiling/attic? Yes \_\_\_\_ No \_\_\_\_

18 the walls? Yes \_\_\_\_ No \_\_\_\_

19 the floors? Yes \_\_\_\_ No \_\_\_\_

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

21 Yes \_\_\_\_ No \_\_\_\_

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

23 Yes \_\_\_\_ No \_\_\_\_

24 If yes, who treated it and when? \_\_\_\_\_

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

3 Yes \_\_\_\_ No \_\_\_\_

4 If yes, describe the work: \_\_\_\_\_

5 Was a permit obtained? Yes \_\_\_\_\_

6 Was the work approved by an inspector? Yes \_\_\_\_ No \_\_\_\_

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

9 Yes \_\_\_\_ No \_\_\_\_

10 If yes, describe \_\_\_\_\_

11 Have any insurance claims been made?

12 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

13 Was an insurance payment received?

14 Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

15 Has the damage been repaired?

16 Yes \_\_\_\_ No \_\_\_\_

17 If yes, describe in detail: \_\_\_\_\_

18 \_\_\_\_\_

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

20 Yes \_\_\_\_ No \_\_\_\_

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

23 Yes \_\_\_\_ No \_\_\_\_

24 III. SYSTEMS/UTILITIES INFORMATION

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

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

IV. HAZARDOUS CONDITIONS

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

	EXISTING CONDITIONS		TESTS PERFORMED	
	YES	NO	YES	NO
19	1. Methane Gas	_____	_____	_____
20	2. Lead Paint	_____	_____	_____
21	3. Radon Gas (House)	_____	_____	_____
22	4. Radon Gas (Well)	_____	_____	_____
23	5. Radioactive Materials	_____	_____	_____
24	6. Landfill, Mineshaft	_____	_____	_____
25	7. Expansive Soil	_____	_____	_____
26	8. Mold	_____	_____	_____
27	9. Toxic Materials	_____	_____	_____
28	10. Urea Formaldehyde Foam Insulations	_____	_____	_____

- 1 11. Asbestos Insulation \_\_\_\_\_
- 2 12. Buried Fuel Tanks \_\_\_\_\_
- 3 13. Chemical Storage Tanks \_\_\_\_\_
- 4 14. Fire Retardant Treated Plywood \_\_\_\_\_
- 5 15. Production of Methamphetamines \_\_\_\_\_

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

8 V. MISCELLANEOUS INFORMATION

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

10 Public \_\_\_\_\_ Private \_\_\_\_\_

11 2. Is there a written road maintenance agreement?

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

13 Yes \_\_\_\_\_ No \_\_\_\_\_

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

15 \_\_\_\_\_

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

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

19 \_\_\_\_\_

20 Yes \_\_\_\_\_ No \_\_\_\_\_

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

22 \_\_\_\_\_

23 Yes \_\_\_\_\_ No \_\_\_\_\_

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

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

1 \_\_\_\_\_

2 7. Is the sewer system public \_\_\_\_\_ or private \_\_\_\_\_ (select one)?

3 8. If private, what is the date of the last time the septic tank was pumped? \_\_\_\_\_

4 9. Are there broken window panes or seals?

5 Yes \_\_\_\_\_ No \_\_\_\_\_

6 If yes, specify: \_\_\_\_\_

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

10 Yes \_\_\_\_\_ No \_\_\_\_\_

11 If yes, please list \_\_\_\_\_

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

14 Yes \_\_\_\_\_ No \_\_\_\_\_

15 If yes, explain: \_\_\_\_\_

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

17 \_\_\_\_\_

18 \_\_\_\_\_

19 CLOSING SECTION

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

22 If any of these conditions change before conveyance of title to this property, the change will be  
23 disclosed in a written amendment to this disclosure statement.

24 SELLER \_\_\_\_\_ DATE \_\_\_\_\_

1 SELLER \_\_\_\_\_ DATE \_\_\_\_\_

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

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

10 BUYER \_\_\_\_\_ DATE \_\_\_\_\_

11 BUYER \_\_\_\_\_ DATE \_\_\_\_\_