

House Bill 2839

Sponsored by Representative WITT (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires seller of real property to obtain energy audit and provide copy to each buyer that makes written offer to purchase. Allows buyer to withdraw buyer's offer within three days after receiving energy audit or to revoke offer anytime before closing for failure or refusal of seller to provide energy audit.

A BILL FOR AN ACT

1
2 Relating to energy audit of residential dwellings; creating new provisions; and amending ORS
3 105.462, 105.464, 105.475 and 105.485.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 105.462 is amended to read:

6 105.462. For purposes of ORS 105.462 to 105.490:

7 (1) "Financial institution" has the meaning given that term in ORS 706.008. "Financial institu-
8 tion" includes a:

9 (a) Trust company, as that term is defined in ORS 706.008;

10 (b) Mortgage banker, as that term is defined in ORS 86A.100;

11 (c) Mortgage broker, as that term is defined in ORS 86A.100; and

12 (d) Consumer finance company that is licensed under ORS chapter 725.

13 **(2) "Energy audit" has the meaning given that term in ORS 469.631.**

14 [(2)] **(3) "Real estate licensee" has the meaning given that term in ORS 696.010.**

15 **(4) "Seller's disclosure document" means:**

16 **(a) A seller's property disclosure statement required by ORS 105.464; and**

17 **(b) An energy audit required by section 3 of this 2011 Act.**

18 **SECTION 2.** Section 3 of this 2011 Act is added to and made a part of ORS 105.462 to
19 **105.490.**

20 **SECTION 3.** (1) Except as provided in ORS 105.475 (4), the seller shall:

21 **(a) Obtain an energy audit before selling the real property; and**

22 **(b) Provide a copy of the energy audit to each buyer that makes a written offer to pur-**
23 **chase the real property.**

24 **(2) A buyer may withdraw the buyer's offer to purchase real property within three days**
25 **after receiving the copy of the energy audit.**

26 **SECTION 4.** ORS 105.475 is amended to read:

27 105.475. (1) If a seller issues a [*seller's property disclosure statement*] **seller's disclosure docu-**
28 **ment** and a buyer has not then delivered to the seller a written statement waiving the buyer's right
29 to revoke the buyer's offer, the buyer shall have five business days after delivery of the [*seller's*
30 *property disclosure statement*] **seller's disclosure document** to revoke the buyer's offer by deliver-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 ing to the seller a separate signed written statement of revocation disapproving the seller's disclo-
2 sure.

3 (2) If a buyer fails to timely deliver to a seller a written statement revoking the buyer's offer,
4 the buyer's right to revoke the buyer's offer expires.

5 (3) If a buyer closes the transaction, the buyer's right to revoke based on ORS 105.462 to
6 105.490, 696.301 and 696.870 is terminated.

7 (4) If the seller fails or refuses to provide a [*seller's property disclosure statement*] **seller's dis-**
8 **closure document** as required under this section, the buyer shall have a right of revocation until
9 the right is terminated pursuant to subsection (3) of this section.

10 (5) If the buyer revokes the offer pursuant to this section, notwithstanding ORS 696.581, the
11 buyer is entitled to immediate return of all deposits and other considerations delivered to any party
12 or escrow agent with respect to the buyer's offer, and the buyer's offer is void.

13 (6) When the deposits and other considerations have been returned to the buyer, upon the
14 buyer's signed, written release and indemnification of the holders of the deposits and other consid-
15 erations, the holders are released from all liability for the deposits and other considerations.

16 (7) Any [*seller's property disclosure statement*] **seller's disclosure document** issued by the seller
17 is part of and incorporated into the offer and the acceptance.

18 **SECTION 5.** ORS 105.485 is amended to read:

19 105.485. The burden of proof of lawful delivery of a [*seller's property disclosure statement*]
20 **seller's disclosure document**, and any amendment [*thereto*] **to a seller's disclosure document**, is
21 on the seller. The burden of proof of lawful delivery of a notice of revocation of a buyer's offer is
22 on the buyer.

23 **SECTION 6.** ORS 105.464, as amended by section 14a, chapter 591, Oregon Laws 2009, is
24 amended to read:

25 105.464. A seller's property disclosure statement must be in substantially the following form:
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27

28
29
30 If required under ORS 105.465, a seller shall deliver in substantially the following form the seller's
31 property disclosure statement to each buyer who makes a written offer to purchase real property
32 in this state:
33

34
35
36 **INSTRUCTIONS TO THE SELLER**
37

38 Please complete the following form. Do not leave any spaces blank. Please refer to the line
39 number(s) of the question(s) when you provide your explanation(s). If you are not claiming an ex-
40 clusion or refusing to provide the form under ORS 105.475 (4), you should date and sign each page
41 of this disclosure statement and each attachment.
42

43 Each seller of residential property described in ORS 105.465 must deliver this form to each buyer
44 who makes a written offer to purchase. Under ORS 105.475 (4), refusal to provide this form gives the
45 buyer the right to revoke their offer at any time prior to closing the transaction. Use only the

1 section(s) of the form that apply to the transaction for which the form is used. If you are claiming
2 an exclusion under ORS 105.470, fill out only Section 1.

3
4 An exclusion may be claimed only if the seller qualifies for the exclusion under the law. If not ex-
5 cluded, the seller must disclose the condition of the property or the buyer may revoke their offer
6 to purchase anytime prior to closing the transaction. Questions regarding the legal consequences
7 of the seller's choice should be directed to a qualified attorney.

8 _____
9
10 **(DO NOT FILL OUT THIS SECTION UNLESS YOU ARE CLAIMING AN EXCLUSION**
11 **UNDER ORS 105.470)**

12
13 Section 1. EXCLUSION FROM ORS 105.462 TO 105.490:

14
15 You may claim an exclusion under ORS 105.470 only if you qualify under the statute. If you are not
16 claiming an exclusion, you must fill out Section 2 of this form completely.

17
18 Initial only the exclusion you wish to claim.

19
20 _____ This is the first sale of a dwelling never occupied. The dwelling is constructed or installed
21 under building or installation permit(s) #_____, issued by _____.

22
23 _____ This sale is by a financial institution that acquired the property as custodian, agent or
24 trustee, or by foreclosure or deed in lieu of foreclosure.

25
26 _____ The seller is a court appointed receiver, personal representative, trustee, conservator or
27 guardian.

28
29 _____ This sale or transfer is by a governmental agency.

30
31 _____
32 Signature(s) of Seller claiming exclusion
33 Date _____

34
35 _____
36 Buyer(s) to acknowledge Seller's claim
37 Date _____

38 _____
39
40
41 **(IF YOU DID NOT CLAIM AN EXCLUSION IN SECTION 1, YOU MUST FILL OUT THIS SEC-**
42 **TION.)**

43
44 Section 2. SELLER'S PROPERTY DISCLOSURE STATEMENT

(NOT A WARRANTY)

(ORS 105.464)

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NOTICE TO THE BUYER: THE FOLLOWING REPRESENTATIONS ARE MADE BY THE SELLER(S) CONCERNING THE CONDITION OF THE PROPERTY LOCATED AT _____ (“THE PROPERTY”).

DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS OF SELLER’S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF DISCLOSURE. BUYER HAS FIVE DAYS FROM THE SELLER’S DELIVERY OF THIS SELLER’S DISCLOSURE STATEMENT TO REVOKE BUYER’S OFFER BY DELIVERING BUYER’S SEPARATE SIGNED WRITTEN STATEMENT OF REVOCATION TO THE SELLER DISAPPROVING THE SELLER’S DISCLOSURE STATEMENT, UNLESS BUYER WAIVES THIS RIGHT AT OR PRIOR TO ENTERING INTO A SALE AGREEMENT.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY, BUYER IS ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF A QUALIFIED SPECIALIST TO INSPECT THE PROPERTY ON BUYER’S BEHALF INCLUDING, FOR EXAMPLE, ONE OR MORE OF THE FOLLOWING: ARCHITECTS, ENGINEERS, PLUMBERS, ELECTRICIANS, ROOFERS, ENVIRONMENTAL INSPECTORS, BUILDING INSPECTORS, CERTIFIED HOME INSPECTORS, OR PEST AND DRY ROT INSPECTORS.

Seller _____ is/ _____ is not occupying the property.

I. SELLER’S REPRESENTATIONS:

The following are representations made by the seller and are not the representations of any financial institution that may have made or may make a loan pertaining to the property, or that may have or take a security interest in the property, or any real estate licensee engaged by the seller or the buyer.

*If you mark yes on items with *, attach a copy or explain on an attached sheet.

1. TITLE

A. Do you have legal authority to sell the property? []Yes []No []Unknown

*B. Is title to the property subject to any of the following: []Yes []No []Unknown

- (1) First right of refusal
- (2) Option
- (3) Lease or rental agreement
- (4) Other listing
- (5) Life estate?

*C. Is the property being transferred an unlawfully established unit of land? []Yes []No []Unknown

*D. Are there any encroachments, boundary

- 1 agreements, boundary disputes or recent
 2 boundary changes? []Yes []No []Unknown
- 3 *E. Are there any rights of way, easements,
 4 licenses, access limitations or claims that
 5 may affect your interest in the property? []Yes []No []Unknown
- 6 *F. Are there any agreements for joint
 7 maintenance of an easement or right of way? []Yes []No []Unknown
- 8 *G. Are there any governmental studies, designations,
 9 zoning overlays, surveys or notices that would
 10 affect the property? []Yes []No []Unknown
- 11 *H. Are there any pending or existing governmental
 12 assessments against the property? []Yes []No []Unknown
- 13 *I. Are there any zoning violations or
 14 nonconforming uses? []Yes []No []Unknown
- 15 *J. Is there a boundary survey for the
 16 property? []Yes []No []Unknown
- 17 *K. Are there any covenants, conditions,
 18 restrictions or private assessments that
 19 affect the property? []Yes []No []Unknown
- 20 *L. Is the property subject to any special tax
 21 assessment or tax treatment that may result
 22 in levy of additional taxes if the property
 23 is sold? []Yes []No []Unknown
- 24
- 25 2. WATER
- 26 A. Household water
- 27 (1) The source of the water is (check ALL that apply):
 28 []Public []Community []Private
 29 []Other _____
- 30 (2) Water source information:
- 31 *a. Does the water source require a water permit? []Yes []No []Unknown
 32 If yes, do you have a permit? []Yes []No
- 33 b. Is the water source located on the property? []Yes []No []Unknown
 34 *If not, are there any written agreements for
 35 a shared water source? []Yes []No []Unknown []NA
- 36 *c. Is there an easement (recorded or unrecorded)
 37 for your access to or maintenance of the water
 38 source? []Yes []No []Unknown
- 39 d. If the source of water is from a well or spring,
 40 have you had any of the following in the past
 41 12 months? []Flow test []Bacteria test
 42 []Chemical contents test []Yes []No []Unknown []NA
- 43 *e. Are there any water source plumbing problems
 44 or needed repairs? []Yes []No []Unknown
- 45 (3) Are there any water treatment systems for

1 the property? []Yes []No []Unknown
 2 []Leased []Owned
 3 B. Irrigation
 4 (1) Are there any [] water rights or [] other
 5 irrigation rights for the property? []Yes []No []Unknown
 6 *(2) If any exist, has the irrigation water been
 7 used during the last five-year period? []Yes []No []Unknown []NA
 8 *(3) Is there a water rights certificate or other
 9 written evidence available? []Yes []No []Unknown []NA
 10 C. Outdoor sprinkler system
 11 (1) Is there an outdoor sprinkler system for the
 12 property? []Yes []No []Unknown
 13 (2) Has a back flow valve been installed? []Yes []No []Unknown []NA
 14 (3) Is the outdoor sprinkler system operable? []Yes []No []Unknown []NA
 15
 16 3. SEWAGE SYSTEM
 17 A. Is the property connected to a public or
 18 community sewage system? []Yes []No []Unknown
 19 B. Are there any new public or community sewage
 20 systems proposed for the property? []Yes []No []Unknown
 21 C. Is the property connected to an on-site septic
 22 system? []Yes []No []Unknown
 23 If yes, was it installed by permit? []Yes []No []Unknown []NA
 24 *Has the system been repaired or altered? []Yes []No []Unknown
 25 Has the condition of the system been
 26 evaluated and a report issued? []Yes []No []Unknown
 27 Has it ever been pumped? []Yes []No []Unknown []NA
 28 If yes, when? _____
 29 *D. Are there any sewage system problems or
 30 needed repairs? [] Yes [] No [] Unknown]
 31 E. Does your sewage system require on-site
 32 pumping to another level? []Yes []No []Unknown
 33
 34
 35 4. DWELLING INSULATION
 36 A. Is there insulation in the:
 37 (1) Ceiling? []Yes []No []Unknown
 38 (2) Exterior walls? []Yes []No []Unknown
 39 (3) Floors? []Yes []No []Unknown
 40 B. Are there any defective insulated doors or
 41 windows? []Yes []No []Unknown
 42
 43 5. DWELLING STRUCTURE
 44 *A. Has the roof leaked? []Yes []No []Unknown
 45 If yes, has it been repaired? []Yes []No []Unknown []NA

- 1 B. Are there any additions, conversions or
 2 remodeling?]Yes]No]Unknown
 3 If yes, was a building permit required?]Yes]No]Unknown]NA
 4 If yes, was a building permit obtained?]Yes]No]Unknown]NA
 5 If yes, was final inspection obtained?]Yes]No]Unknown]NA
 6 C. Are there smoke alarms or detectors?]Yes]No]Unknown
 7 D. Are there carbon monoxide alarms?]Yes]No]Unknown
 8 E. Is there a woodstove or fireplace
 9 insert included in the sale?]Yes]No]Unknown
 10 *If yes, what is the make? _____
 11 *If yes, was it installed with a permit?]Yes]No]Unknown
 12 *If yes, is a certification label issued by the
 13 United States Environmental Protection
 14 Agency (EPA) or the Department of
 15 Environmental Quality (DEQ) affixed to it?]Yes]No]Unknown
 16 *F. Has pest and dry rot, structural or
 17 "whole house" inspection been done
 18 within the last three years?]Yes]No]Unknown
 19 *G. Are there any moisture problems, areas of water
 20 penetration, mildew odors or other moisture
 21 conditions (especially in the basement)?]Yes]No]Unknown
 22 *If yes, explain on attached sheet the frequency
 23 and extent of problem and any insurance claims,
 24 repairs or remediation done.
 25 H. Is there a sump pump on the property?]Yes]No]Unknown
 26 I. Are there any materials used in the
 27 construction of the structure that are or
 28 have been the subject of a recall, class
 29 action suit, settlement or litigation?]Yes]No]Unknown
 30 If yes, what are the materials? _____
 31 (1) Are there problems with the materials?]Yes]No]Unknown]NA
 32 (2) Are the materials covered by a warranty?]Yes]No]Unknown]NA
 33 (3) Have the materials been inspected?]Yes]No]Unknown]NA
 34 (4) Have there ever been claims filed for these
 35 materials by you or by previous owners?]Yes]No]Unknown]NA
 36 If yes, when? _____
 37 (5) Was money received?]Yes]No]Unknown]NA
 38 (6) Were any of the materials repaired or
 39 replaced?]Yes]No]Unknown]NA
 40
 41 6. DWELLING SYSTEMS AND FIXTURES
 42 **A. Is a copy of the energy audit attached?**]Yes]No]Unknown]NA
 43 **If no, on what date do you expect to provide**
 44 **a copy of the energy audit?** _____
 45 If the following systems or fixtures are included

1 in the purchase price, are they in good working
 2 order on the date this form is signed?

3 [A. *Electrical system, including wiring, switches,*
 4 *outlets and service* Yes No Unknown]

5 [B. *Plumbing system, including pipes, faucets,*
 6 *fixtures and toilets* Yes No Unknown]

7 [C. *Water heater tank* Yes No Unknown]

8 [D. *Garbage disposal* Yes No Unknown NA]

9 [E. *Built-in range and oven* Yes No Unknown NA]

10 [F. *Built-in dishwasher* Yes No Unknown NA]

11 [G. *Sump pump* Yes No Unknown NA]

12 [H. *Heating and cooling systems* Yes No Unknown NA]

13 [I. *Security system Owned Leased* Yes No Unknown NA]

14 [J. *Are there any materials or products used in*
 15 *the systems and fixtures that are or have*
 16 *been the subject of a recall, class action*
 17 *settlement or other litigations?* Yes No Unknown
 18 *If yes, what product? _____]*

19 **B. Electrical system, including wiring, switches,**
 20 **outlets and service** []Yes []No []Unknown

21 **C. Plumbing system, including pipes, faucets,**
 22 **fixtures and toilets** []Yes []No []Unknown

23 **D. Water heater tank** []Yes []No []Unknown

24 **E. Garbage disposal** []Yes []No []Unknown []NA

25 **F. Built-in range and oven** []Yes []No []Unknown []NA

26 **G. Built-in dishwasher** []Yes []No []Unknown []NA

27 **H. Sump pump** []Yes []No []Unknown []NA

28 **I. Heating and cooling systems** []Yes []No []Unknown []NA

29 **J. Security system** []Owned []Leased []Yes []No []Unknown []NA

30 **K. Are there any materials or products used in**
 31 **the systems and fixtures that are or have**
 32 **been the subject of a recall, class action**
 33 **settlement or other litigations?** []Yes []No []Unknown
 34 **If yes, what product? _____**

35 (1) Are there problems with the product? []Yes []No []Unknown

36 (2) Is the product covered by a warranty? []Yes []No []Unknown

37 (3) Has the product been inspected? []Yes []No []Unknown

38 (4) Have claims been filed for this product
 39 by you or by previous owners? []Yes []No []Unknown
 40 If yes, when? _____

41 (5) Was money received? []Yes []No []Unknown

42 (6) Were any of the materials or products repaired
 43 or replaced? []Yes []No []Unknown

44

45 7. COMMON INTEREST

- 1 A. Is there a Home Owners' Association
 2 or other governing entity? []Yes []No []Unknown
 3 Name of Association or Other Governing
 4 Entity _____
 5 Contact Person _____
 6 Address _____
 7 Phone Number _____
- 8 B. Regular periodic assessments: \$_____
- 9 per []Month []Year []Other _____
- 10 *C. Are there any pending or proposed special
 11 assessments? []Yes []No []Unknown
- 12 D. Are there shared 'common areas' or joint
 13 maintenance agreements for facilities like
 14 walls, fences, pools, tennis courts, walkways
 15 or other areas co-owned in undivided interest
 16 with others? []Yes []No []Unknown
- 17 E. Is the Home Owners' Association or other
 18 governing entity a party to pending litigation
 19 or subject to an unsatisfied judgment? []Yes []No []Unknown []NA
- 20 F. Is the property in violation of recorded
 21 covenants, conditions and restrictions or in
 22 violation of other bylaws or governing rules,
 23 whether recorded or not? []Yes []No []Unknown []NA
- 24
- 25 8. GENERAL
- 26 A. Are there problems with settling, soil,
 27 standing water or drainage on the property
 28 or in the immediate area? []Yes []No []Unknown
- 29 B. Does the property contain fill? []Yes []No []Unknown
- 30 C. Is there any material damage to the property or
 31 any of the structure(s) from fire, wind, floods,
 32 beach movements, earthquake, expansive soils
 33 or landslides? []Yes []No []Unknown
- 34 D. Is the property in a designated floodplain? []Yes []No []Unknown
- 35 E. Is the property in a designated slide or other
 36 geologic hazard zone? []Yes []No []Unknown
- 37 *F. Has any portion of the property been tested
 38 or treated for asbestos, formaldehyde, radon
 39 gas, lead-based paint, mold, fuel or chemical
 40 storage tanks or contaminated soil or water? []Yes []No []Unknown
- 41 G. Are there any tanks or underground storage
 42 tanks (e.g., septic, chemical, fuel, etc.)
 43 on the property? []Yes []No []Unknown
- 44 H. Has the property ever been used as an illegal
 45 drug manufacturing or distribution site? []Yes []No []Unknown

1 *If yes, was a Certificate of Fitness issued? Yes No Unknown

2 *I. Has the property been classified as
3 forestland-urban interface? Yes No Unknown

5 9. FULL DISCLOSURE BY SELLERS

6 *A. Are there any other material defects affecting
7 this property or its value that a prospective
8 buyer should know about? Yes No

9 *If yes, describe the defect on attached sheet and
10 explain the frequency and extent of the problem
11 and any insurance claims, repairs or remediation.

12 B. Verification:

13 The foregoing answers and attached explanations (if any) are complete and correct to
14 the best of my/our knowledge and I/we have received a copy of this disclosure statement.
15 I/we authorize my/our agents to deliver a copy of this disclosure statement to all
16 prospective buyers of the property or their agents.

18 Seller(s) signature:

20 SELLER _____ DATE _____

22 SELLER _____ DATE _____

26 II. BUYER'S ACKNOWLEDGMENT

28 A. As buyer(s), I/we acknowledge the duty to pay diligent attention to any material defects that are
29 known to me/us or can be known by me/us by utilizing diligent attention and observation.

31 B. Each buyer acknowledges and understands that the disclosures set forth in this statement and in
32 any amendments to this statement are made only by the seller and are not the representations of
33 any financial institution that may have made or may make a loan pertaining to the property, or that
34 may have or take a security interest in the property, or of any real estate licensee engaged by the
35 seller or buyer. A financial institution or real estate licensee is not bound by and has no liability
36 with respect to any representation, misrepresentation, omission, error or inaccuracy contained in
37 another party's disclosure statement required by this section or any amendment to the disclosure
38 statement.

40 C. Buyer (which term includes all persons signing the 'buyer's acknowledgment' portion of this dis-
41 closure statement below) hereby acknowledges receipt of a copy of this disclosure statement (in-
42 cluding attachments, if any) bearing seller's signature(s).

44 DISCLOSURES, IF ANY, CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON
45 THE BASIS OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF DIS-

1 CLOSURE. IF THE SELLER HAS FILLED OUT SECTION 2 OF THIS FORM, YOU, THE BUYER,
2 HAVE FIVE DAYS FROM THE SELLER'S DELIVERY OF THIS DISCLOSURE STATEMENT TO
3 REVOKE YOUR OFFER BY DELIVERING YOUR SEPARATE SIGNED WRITTEN STATEMENT
4 OF REVOCATION TO THE SELLER DISAPPROVING THE SELLER'S DISCLOSURE UNLESS
5 YOU WAIVE THIS RIGHT AT OR PRIOR TO ENTERING INTO A SALE AGREEMENT.

6

7 BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS SELLER'S PROPERTY
8 DISCLOSURE STATEMENT.

9

10 BUYER _____ DATE _____

11

12 BUYER _____ DATE _____

13

14 Agent receiving disclosure statement on buyer's behalf to sign and date:

15

16 _____ Real Estate Licensee

17

18 _____ Real Estate Firm

19

20 Date received by agent _____

21

22 _____
23 **SECTION 7. Section 3 of this 2011 Act and the amendments to ORS 105.462, 105.464,**
24 **105.475 and 105.485 by sections 1, 4, 5 and 6 of this 2011 Act apply to written offers to pur-**
25 **chase real property tendered on or after the effective date of this 2011 Act.**

26