

Senate Bill 707

Sponsored by COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

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 septic system inspection report and provide copies to Department of Environmental Quality and to each buyer that makes written offer to purchase. Allows buyer to withdraw buyer's offer within three days after receiving septic system inspection report or to revoke offer anytime before closing for failure or refusal of seller to provide septic system inspection report with seller's disclosure document.

A BILL FOR AN ACT

Relating to inspection of residential septic systems; creating new provisions; and amending ORS 105.462, 105.464, 105.475 and 105.485.

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

SECTION 1. ORS 105.462 is amended to read:

105.462. For purposes of ORS 105.462 to 105.490:

(1) "Financial institution" has the meaning given that term in ORS 706.008. "Financial institution" includes a:

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

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

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

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

(2) "Real estate licensee" has the meaning given that term in ORS 696.010.

(3) "Seller's disclosure document" means:

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

(b) A septic system inspection report required by section 3 of this 2011 Act.

(4) "Septic system" means a domestic septage treatment component or system, as described in ORS 454.782 (3), or a component or system that is similar to components or systems described in ORS 454.782 (3).

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

SECTION 3. (1) Except as provided in ORS 105.475 (4), when real property described in ORS 105.465 (1) has a septic system, the seller shall:

(a) Obtain a septic system inspection by a person licensed or permitted under the program established under ORS 454.792 before selling the real property;

(b) Provide a copy of the septic system inspection report to each buyer that makes a written offer to purchase the real property; and

(c) Provide a copy of the septic system inspection report to the Department of Environmental Quality.

(2) A buyer may withdraw the buyer's offer to purchase real property within three days

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 after receiving the copy of the septic system inspection report.

2 (3) The department may adopt rules to administer this section, including rules that ex-
3 empt areas of this state in which the public health risk from a failed septic system is mini-
4 mal.

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

6 105.475. (1) If a seller issues a seller's [*property disclosure statement*] **disclosure document** and
7 a buyer has not then delivered to the seller a written statement waiving the buyer's right to revoke
8 the buyer's offer, the buyer shall have five business days after delivery of the seller's [*property dis-*
9 *closure statement*] **disclosure document** to revoke the buyer's offer by delivering to the seller a
10 separate signed written statement of revocation disapproving the seller's disclosure.

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

13 (3) If a buyer closes the transaction, the buyer's right to revoke based on ORS 105.462 to
14 105.490, 696.301 and 696.870 is terminated.

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

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

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

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

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

27 105.485. The burden of proof of lawful delivery of a [*seller's property disclosure statement*]
28 **seller's disclosure document**, and any amendment [*thereto*] **to the seller's disclosure document**,
29 is on the seller. The burden of proof of lawful delivery of a notice of revocation of a buyer's offer
30 is on the buyer.

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

33 105.464. A seller's property disclosure statement must be in substantially the following form:
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35

36
37
38 If required under ORS 105.465, a seller shall deliver in substantially the following form the seller's
39 property disclosure statement to each buyer who makes a written offer to purchase real property
40 in this state:
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42
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44 INSTRUCTIONS TO THE SELLER
45

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

5
6 Each seller of residential property described in ORS 105.465 must deliver this form to each buyer
7 who makes a written offer to purchase. Under ORS 105.475 (4), refusal to provide this form gives the
8 buyer the right to revoke their offer at any time prior to closing the transaction. Use only the
9 section(s) of the form that apply to the transaction for which the form is used. If you are claiming
10 an exclusion under ORS 105.470, fill out only Section 1.

11
12 An exclusion may be claimed only if the seller qualifies for the exclusion under the law. If not ex-
13 cluded, the seller must disclose the condition of the property or the buyer may revoke their offer
14 to purchase anytime prior to closing the transaction. Questions regarding the legal consequences
15 of the seller's choice should be directed to a qualified attorney.

16 _____
17
18 **(DO NOT FILL OUT THIS SECTION UNLESS YOU ARE CLAIMING AN EXCLUSION**
19 **UNDER ORS 105.470)**

20
21 Section 1. EXCLUSION FROM ORS 105.462 TO 105.490:

22
23 You may claim an exclusion under ORS 105.470 only if you qualify under the statute. If you are not
24 claiming an exclusion, you must fill out Section 2 of this form completely.

25
26 Initial only the exclusion you wish to claim.

27
28 _____ This is the first sale of a dwelling never occupied. The dwelling is constructed or installed
29 under building or installation permit(s) #_____, issued by _____.

30
31 _____ This sale is by a financial institution that acquired the property as custodian, agent or
32 trustee, or by foreclosure or deed in lieu of foreclosure.

33
34 _____ The seller is a court appointed receiver, personal representative, trustee, conservator or
35 guardian.

36
37 _____ This sale or transfer is by a governmental agency.

38
39 _____
40 Signature(s) of Seller claiming exclusion
41 Date _____

42
43 _____
44 Buyer(s) to acknowledge Seller's claim
45 Date _____

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(IF YOU DID NOT CLAIM AN EXCLUSION IN SECTION 1, YOU MUST FILL OUT THIS SECTION.)

Section 2. SELLER’S PROPERTY DISCLOSURE STATEMENT

(NOT A WARRANTY)
(ORS 105.464)

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

- 1 source? []Yes []No []Unknown
- 2 d. If the source of water is from a well or spring,
 3 have you had any of the following in the past
 4 12 months? []Flow test []Bacteria test
 5 []Chemical contents test []Yes []No []Unknown []NA
- 6 *e. Are there any water source plumbing problems
 7 or needed repairs? []Yes []No []Unknown
- 8 (3) Are there any water treatment systems for
 9 the property? []Yes []No []Unknown
 10 []Leased []Owned
- 11 B. Irrigation
- 12 (1) Are there any [] water rights or [] other
 13 irrigation rights for the property? []Yes []No []Unknown
- 14 *(2) If any exist, has the irrigation water been
 15 used during the last five-year period? []Yes []No []Unknown []NA
- 16 *(3) Is there a water rights certificate or other
 17 written evidence available? []Yes []No []Unknown []NA
- 18 C. Outdoor sprinkler system
- 19 (1) Is there an outdoor sprinkler system for the
 20 property? []Yes []No []Unknown
- 21 (2) Has a back flow valve been installed? []Yes []No []Unknown []NA
- 22 (3) Is the outdoor sprinkler system operable? []Yes []No []Unknown []NA
- 23
- 24 3. SEWAGE SYSTEM
- 25 A. Is the property connected to a public or
 26 community sewage system? []Yes []No []Unknown
- 27 B. Are there any new public or community sewage
 28 systems proposed for the property? []Yes []No []Unknown
- 29 C. Is the property connected to an on-site septic
 30 system? []Yes []No []Unknown
 31 If yes, was it installed by permit? []Yes []No []Unknown []NA
 32 *Has the system been repaired or altered? []Yes []No []Unknown
 33 Has the condition of the system been
 34 evaluated and a report issued? []Yes []No []Unknown
 35 Has it ever been pumped? []Yes []No []Unknown []NA
 36 If yes, when? _____
- 37 [*D. Are there any sewage system problems or
 38 needed repairs? [] Yes [] No [] Unknown]
- 39 [E.] D. Does your sewage system require on-site
 40 pumping to another level? []Yes []No []Unknown
- 41 E. Is the septic system inspection report
 42 attached? []Yes []No []Unknown []NA
 43 If no, on what date do you expect to provide
 44 the septic system inspection report? _____
 45

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

- 1 materials by you or by previous owners?]Yes]No]Unknown]NA
 2 If yes, when? _____
- 3 (5) Was money received?]Yes]No]Unknown]NA
 4 (6) Were any of the materials repaired or
 5 replaced?]Yes]No]Unknown]NA
 6
- 7 6. DWELLING SYSTEMS AND FIXTURES
 8 If the following systems or fixtures are included
 9 in the purchase price, are they in good working
 10 order on the date this form is signed?
- 11 A. Electrical system, including wiring, switches,
 12 outlets and service]Yes]No]Unknown
 13 B. Plumbing system, including pipes, faucets,
 14 fixtures and toilets]Yes]No]Unknown
 15 C. Water heater tank]Yes]No]Unknown
 16 D. Garbage disposal]Yes]No]Unknown]NA
 17 E. Built-in range and oven]Yes]No]Unknown]NA
 18 F. Built-in dishwasher]Yes]No]Unknown]NA
 19 G. Sump pump]Yes]No]Unknown]NA
 20 H. Heating and cooling systems]Yes]No]Unknown]NA
 21 I. Security system]Owned]Leased]Yes]No]Unknown]NA
 22 J. Are there any materials or products used in
 23 the systems and fixtures that are or have
 24 been the subject of a recall, class action
 25 settlement or other litigations?]Yes]No]Unknown
 26 If yes, what product? _____
- 27 (1) Are there problems with the product?]Yes]No]Unknown
 28 (2) Is the product covered by a warranty?]Yes]No]Unknown
 29 (3) Has the product been inspected?]Yes]No]Unknown
 30 (4) Have claims been filed for this product
 31 by you or by previous owners?]Yes]No]Unknown
 32 If yes, when? _____
- 33 (5) Was money received?]Yes]No]Unknown
 34 (6) Were any of the materials or products repaired
 35 or replaced?]Yes]No]Unknown
 36
- 37 7. COMMON INTEREST
 38 A. Is there a Home Owners' Association
 39 or other governing entity?]Yes]No]Unknown
 40 Name of Association or Other Governing
 41 Entity _____
 42 Contact Person _____
 43 Address _____
 44 Phone Number _____
- 45 B. Regular periodic assessments: \$_____

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

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

B. Verification:

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

Seller(s) signature:

SELLER _____ DATE _____

SELLER _____ DATE _____

II. BUYER'S ACKNOWLEDGMENT

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

B. Each buyer acknowledges and understands that the disclosures set forth in this statement and in any amendments to this statement are made only 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 of any real estate licensee engaged by the seller or buyer. A financial institution or real estate licensee is not bound by and has no liability with respect to any representation, misrepresentation, omission, error or inaccuracy contained in another party's disclosure statement required by this section or any amendment to the disclosure statement.

C. Buyer (which term includes all persons signing the 'buyer's acknowledgment' portion of this disclosure statement below) hereby acknowledges receipt of a copy of this disclosure statement (including attachments, if any) bearing seller's signature(s).

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

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

1 BUYER _____ DATE _____

2

3 BUYER _____ DATE _____

4

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

6

7 _____ Real Estate Licensee

8

9 _____ Real Estate Firm

10

11 Date received by agent _____

12

13

14 **SECTION 7. Section 3 of this 2011 Act and the amendments to ORS 105.462, 105.464,**
15 **105.475 and 105.485 by sections 1, 4, 5 and 6 of this 2011 Act apply to written offers to pur-**
16 **chase real property tendered on or after the effective date of this 2011 Act.**

17
