

A-Engrossed House Bill 3172

Ordered by the House April 23
Including House Amendments dated April 23

Sponsored by Representative HOLVEY

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.

[Requires seller of real property to obtain septic system evaluation 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 seven days after receiving septic system evaluation report or to revoke offer anytime before closing for failure or refusal of seller to provide septic system evaluation report with seller's disclosure document.]

Modifies provisions related to septic systems of disclosure statement required of seller of real property.

A BILL FOR AN ACT

1
2 Relating to evaluation of residential septic systems; creating new provisions; and amending ORS
3 105.464.

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

5 **SECTION 1.** ORS 105.464 is amended to read:

6 105.464. A seller's property disclosure statement must be in substantially the following form:
7 _____
8
9

10 If required under ORS 105.465, a seller shall deliver in substantially the following form the seller's
11 property disclosure statement to each buyer who makes a written offer to purchase real property
12 in this state:
13 _____
14

INSTRUCTIONS TO THE SELLER

15
16
17 Please complete the following form. Do not leave any spaces blank. Please refer to the line
18 number(s) of the question(s) when you provide your explanation(s). If you are not claiming an ex-
19 clusion or refusing to provide the form under ORS 105.475 (4), you should date and sign each page
20 of this disclosure statement and each attachment.
21

22 Each seller of residential property described in ORS 105.465 must deliver this form to each buyer
23 who makes a written offer to purchase. Under ORS 105.475 (4), refusal to provide this form gives the
24 buyer the right to revoke their offer at any time prior to closing the transaction. Use only the
25 section(s) of the form that apply to the transaction for which the form is used. If you are claiming

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 an exclusion under ORS 105.470, fill out only Section 1.

2
3 An exclusion may be claimed only if the seller qualifies for the exclusion under the law. If not ex-
4 cluded, the seller must disclose the condition of the property or the buyer may revoke their offer
5 to purchase anytime prior to closing the transaction. Questions regarding the legal consequences
6 of the seller's choice should be directed to a qualified attorney.

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

11
12 **Section 1. EXCLUSION FROM ORS 105.462 TO 105.490:**

13
14 You may claim an exclusion under ORS 105.470 only if you qualify under the statute. If you are not
15 claiming an exclusion, you must fill out Section 2 of this form completely.

16
17 Initial only the exclusion you wish to claim.

18
19 _____ This is the first sale of a dwelling never occupied. The dwelling is constructed or installed
20 under building or installation permit(s) #_____, issued by _____.

21
22 _____ This sale is by a financial institution that acquired the property as custodian, agent or
23 trustee, or by foreclosure or deed in lieu of foreclosure.

24
25 _____ The seller is a court appointed receiver, personal representative, trustee, conservator or
26 guardian.

27
28 _____ This sale or transfer is by a governmental agency.

29
30 _____
31 Signature(s) of Seller claiming exclusion
32 Date _____

33
34 _____
35 Buyer(s) to acknowledge Seller's claim
36 Date _____

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

42
43 **Section 2. SELLER'S PROPERTY DISCLOSURE STATEMENT**

44
45 **(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 agreements, boundary disputes or recent

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

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

- 1 *If yes, explain on attached sheet the frequency
 2 and extent of problem and any insurance claims,
 3 repairs or remediation done.
- 4 H. Is there a sump pump on the property? []Yes []No []Unknown
- 5 I. Are there any materials used in the
 6 construction of the structure that are or
 7 have been the subject of a recall, class
 8 action suit, settlement or litigation? []Yes []No []Unknown
 9 If yes, what are the materials? _____
- 10 (1) Are there problems with the materials? []Yes []No []Unknown []NA
 11 (2) Are the materials covered by a warranty? []Yes []No []Unknown []NA
 12 (3) Have the materials been inspected? []Yes []No []Unknown []NA
 13 (4) Have there ever been claims filed for these
 14 materials by you or by previous owners? []Yes []No []Unknown []NA
 15 If yes, when? _____
- 16 (5) Was money received? []Yes []No []Unknown []NA
 17 (6) Were any of the materials repaired or
 18 replaced? []Yes []No []Unknown []NA
 19
- 20 6. DWELLING SYSTEMS AND FIXTURES
 21 If the following systems or fixtures are included
 22 in the purchase price, are they in good working
 23 order on the date this form is signed?
- 24 A. Electrical system, including wiring, switches,
 25 outlets and service []Yes []No []Unknown
 26 B. Plumbing system, including pipes, faucets,
 27 fixtures and toilets []Yes []No []Unknown
 28 C. Water heater tank []Yes []No []Unknown
 29 D. Garbage disposal []Yes []No []Unknown []NA
 30 E. Built-in range and oven []Yes []No []Unknown []NA
 31 F. Built-in dishwasher []Yes []No []Unknown []NA
 32 G. Sump pump []Yes []No []Unknown []NA
 33 H. Heating and cooling systems []Yes []No []Unknown []NA
 34 I. Security system []Owned []Leased []Yes []No []Unknown []NA
 35 J. Are there any materials or products used in
 36 the systems and fixtures that are or have
 37 been the subject of a recall, class action
 38 settlement or other litigations? []Yes []No []Unknown
 39 If yes, what product? _____
- 40 (1) Are there problems with the product? []Yes []No []Unknown
 41 (2) Is the product covered by a warranty? []Yes []No []Unknown
 42 (3) Has the product been inspected? []Yes []No []Unknown
 43 (4) Have claims been filed for this product
 44 by you or by previous owners? []Yes []No []Unknown
 45 If yes, when? _____

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

- 1 G. Are there any tanks or underground storage
- 2 tanks (e.g., septic, chemical, fuel, etc.)
- 3 on the property?]Yes]No]Unknown
- 4 H. Has the property ever been used as an illegal
- 5 drug manufacturing or distribution site?]Yes]No]Unknown
- 6 *If yes, was a Certificate of Fitness issued?]Yes]No]Unknown
- 7 *I. Has the property been classified as
- 8 forestland-urban interface?]Yes]No]Unknown

9

10 9. FULL DISCLOSURE BY SELLERS

- 11 *A. Are there any other material defects affecting
- 12 this property or its value that a prospective
- 13 buyer should know about?]Yes]No
- 14 *If yes, describe the defect on attached sheet and
- 15 explain the frequency and extent of the problem
- 16 and any insurance claims, repairs or remediation.

17 B. Verification:

18 The foregoing answers and attached explanations (if any) are complete and correct to

19 the best of my/our knowledge and I/we have received a copy of this disclosure statement.

20 I/we authorize my/our agents to deliver a copy of this disclosure statement to all

21 prospective buyers of the property or their agents.

22

23 Seller(s) signature:

24

25 SELLER _____ DATE _____

26

27 SELLER _____ DATE _____

28

29

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31 II. BUYER'S ACKNOWLEDGMENT

32

33 A. As buyer(s), I/we acknowledge the duty to pay diligent attention to any material defects that are

34 known to me/us or can be known by me/us by utilizing diligent attention and observation.

35

36 B. Each buyer acknowledges and understands that the disclosures set forth in this statement and in

37 any amendments to this statement are made only by the seller and are not the representations of

38 any financial institution that may have made or may make a loan pertaining to the property, or that

39 may have or take a security interest in the property, or of any real estate licensee engaged by the

40 seller or buyer. A financial institution or real estate licensee is not bound by and has no liability

41 with respect to any representation, misrepresentation, omission, error or inaccuracy contained in

42 another party's disclosure statement required by this section or any amendment to the disclosure

43 statement.

44

45 C. Buyer (which term includes all persons signing the 'buyer's acknowledgment' portion of this dis-

1 closure statement below) hereby acknowledges receipt of a copy of this disclosure statement (in-
2 cluding attachments, if any) bearing seller's signature(s).

3

4 DISCLOSURES, IF ANY, CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON
5 THE BASIS OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF DIS-
6 CLOSURE. IF THE SELLER HAS FILLED OUT SECTION 2 OF THIS FORM, YOU, THE BUYER,
7 HAVE FIVE DAYS FROM THE SELLER'S DELIVERY OF THIS DISCLOSURE STATEMENT TO
8 REVOKE YOUR OFFER BY DELIVERING YOUR SEPARATE SIGNED WRITTEN STATEMENT
9 OF REVOCATION TO THE SELLER DISAPPROVING THE SELLER'S DISCLOSURE UNLESS
10 YOU WAIVE THIS RIGHT AT OR PRIOR TO ENTERING INTO A SALE AGREEMENT.

11

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

14

15 BUYER _____ DATE _____

16

17 BUYER _____ DATE _____

18

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

20

21 _____ Real Estate Licensee

22

23 _____ Real Estate Firm

24

25 Date received by agent _____

26

27

28 **SECTION 2. The amendments to ORS 105.464 by section 1 of this 2013 Act apply to writ-**
29 **ten offers to purchase real property tendered on or after the effective date of this 2013 Act.**

30