

House Bill 3299

Sponsored by Representative BARNHART, Senator PROZANSKI

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 residential real property to disclose, if known, whether property is located within one mile of land included in inventory of significant mineral and aggregate resources pursuant to statewide land use planning goal.

A BILL FOR AN ACT

1
2 Relating to seller's property disclosures; creating new provisions; and amending ORS 105.464.

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

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

5 105.464. A seller's property disclosure statement must be in substantially the following form:
6
7
8

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

14 INSTRUCTIONS TO THE SELLER

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

21 Each seller of residential property described in ORS 105.465 must deliver this form to each buyer
22 who makes a written offer to purchase. Under ORS 105.475 (4), refusal to provide this form gives the
23 buyer the right to revoke their offer at any time prior to closing the transaction. Use only the
24 section(s) of the form that apply to the transaction for which the form is used. If you are claiming
25 an exclusion under ORS 105.470, fill out only Section 1.
26

27 An exclusion may be claimed only if the seller qualifies for the exclusion under the law. If not ex-
28 cluded, the seller must disclose the condition of the property or the buyer may revoke their offer
29 to purchase anytime prior to closing the transaction. Questions regarding the legal consequences
30 of the seller's choice should be directed to a qualified attorney.
31

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
2 (DO NOT FILL OUT THIS SECTION UNLESS YOU ARE CLAIMING AN EXCLUSION
3 UNDER ORS 105.470)

4
5 Section 1. EXCLUSION FROM ORS 105.462 TO 105.490:

6
7 You may claim an exclusion under ORS 105.470 only if you qualify under the statute. If you are not
8 claiming an exclusion, you must fill out Section 2 of this form completely.

9
10 Initial only the exclusion you wish to claim.

11
12 _____ This is the first sale of a dwelling never occupied. The dwelling is constructed or installed
13 under building or installation permit(s) #_____, issued by _____.

14
15 _____ This sale is by a financial institution that acquired the property as custodian, agent or
16 trustee, or by foreclosure or deed in lieu of foreclosure.

17
18 _____ The seller is a court appointed receiver, personal representative, trustee, conservator or
19 guardian.

20
21 _____ This sale or transfer is by a governmental agency.

22
23 _____
24 Signature(s) of Seller claiming exclusion
25 Date _____

26
27 _____
28 Buyer(s) to acknowledge Seller's claim
29 Date _____

30
31
32
33 (IF YOU DID NOT CLAIM AN EXCLUSION IN SECTION 1, YOU MUST FILL OUT THIS SEC-
34 TION.)

35
36 Section 2. SELLER'S PROPERTY DISCLOSURE STATEMENT

37
38 (NOT A WARRANTY)
39 (ORS 105.464)

40
41 NOTICE TO THE BUYER: THE FOLLOWING REPRESENTATIONS ARE MADE BY THE
42 SELLER(S) CONCERNING THE CONDITION OF THE PROPERTY LOCATED
43 AT _____ ("THE PROPERTY").

44
45 DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS

1 OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF DISCLOSURE.
2 BUYER HAS FIVE DAYS FROM THE SELLER'S DELIVERY OF THIS SELLER'S DISCLOSURE
3 STATEMENT TO REVOKE BUYER'S OFFER BY DELIVERING BUYER'S SEPARATE SIGNED
4 WRITTEN STATEMENT OF REVOCATION TO THE SELLER DISAPPROVING THE SELLER'S
5 DISCLOSURE STATEMENT, UNLESS BUYER WAIVES THIS RIGHT AT OR PRIOR TO ENTER-
6 ING INTO A SALE AGREEMENT.

7
8 FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS
9 PROPERTY, BUYER IS ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF A QUALIFIED
10 SPECIALIST TO INSPECT THE PROPERTY ON BUYER'S BEHALF INCLUDING, FOR EXAM-
11 PLE, ONE OR MORE OF THE FOLLOWING: ARCHITECTS, ENGINEERS, PLUMBERS,
12 ELECTRICIANS, ROOFERS, ENVIRONMENTAL INSPECTORS, BUILDING INSPECTORS, CER-
13 TIFIED HOME INSPECTORS, OR PEST AND DRY ROT INSPECTORS.

14
15 Seller _____ is/ _____ is not occupying the property.

16
17 I. SELLER'S REPRESENTATIONS:

18
19 The following are representations made by the seller and are not the representations of any finan-
20 cial institution that may have made or may make a loan pertaining to the property, or that may
21 have or take a security interest in the property, or any real estate licensee engaged by the seller
22 or the buyer.

23
24 *If you mark yes on items with *, attach a copy or explain on an attached sheet.

25
26 1. TITLE

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

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

30 (1) First right of refusal

31 (2) Option

32 (3) Lease or rental agreement

33 (4) Other listing

34 (5) Life estate?

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

37 *D. Are there any encroachments, boundary
38 agreements, boundary disputes or recent
39 boundary changes? []Yes []No []Unknown

40 *E. Are there any rights of way, easements,
41 licenses, access limitations or claims that
42 may affect your interest in the property? []Yes []No []Unknown

43 *F. Are there any agreements for joint
44 maintenance of an easement or right of way? []Yes []No []Unknown

45 *G. Are there any governmental studies, designations,

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

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

- 1 *If yes, what is the make? _____
- 2 *If yes, was it installed with a permit?]Yes]No]Unknown
- 3 *If yes, is a certification label issued by the
- 4 United States Environmental Protection
- 5 Agency (EPA) or the Department of
- 6 Environmental Quality (DEQ) affixed to it?]Yes]No]Unknown
- 7 *F. Has pest and dry rot, structural or
- 8 “whole house” inspection been done
- 9 within the last three years?]Yes]No]Unknown
- 10 *G. Are there any moisture problems, areas of water
- 11 penetration, mildew odors or other moisture
- 12 conditions (especially in the basement)?]Yes]No]Unknown
- 13 *If yes, explain on attached sheet the frequency
- 14 and extent of problem and any insurance claims,
- 15 repairs or remediation done.
- 16 H. Is there a sump pump on the property?]Yes]No]Unknown
- 17 I. Are there any materials used in the
- 18 construction of the structure that are or
- 19 have been the subject of a recall, class
- 20 action suit[,] **or** settlement or **other**
- 21 litigation?]Yes]No]Unknown
- 22 If yes, what are the materials? _____
- 23 (1) Are there problems with the materials?]Yes]No]Unknown]NA
- 24 (2) Are the materials covered by a warranty?]Yes]No]Unknown]NA
- 25 (3) Have the materials been inspected?]Yes]No]Unknown]NA
- 26 (4) Have there ever been claims filed for these
- 27 materials by you or by previous owners?]Yes]No]Unknown]NA
- 28 If yes, when? _____
- 29 (5) Was money received?]Yes]No]Unknown]NA
- 30 (6) Were any of the materials repaired or
- 31 replaced?]Yes]No]Unknown]NA
- 32
- 33 6. DWELLING SYSTEMS AND FIXTURES
- 34 If the following systems or fixtures are included
- 35 in the purchase price, are they in good working
- 36 order on the date this form is signed?
- 37 A. Electrical system, including wiring, switches,
- 38 outlets and service]Yes]No]Unknown
- 39 B. Plumbing system, including pipes, faucets,
- 40 fixtures and toilets]Yes]No]Unknown
- 41 C. Water heater tank]Yes]No]Unknown
- 42 D. Garbage disposal]Yes]No]Unknown]NA
- 43 E. Built-in range and oven]Yes]No]Unknown]NA
- 44 F. Built-in dishwasher]Yes]No]Unknown]NA
- 45 G. Sump pump]Yes]No]Unknown]NA

- 1 H. Heating and cooling systems []Yes []No []Unknown []NA
 2 I. Security system []Owned []Leased []Yes []No []Unknown []NA
 3 J. Are there any materials or products used in
 4 the systems and fixtures that are or have
 5 been the subject of a recall, class action
 6 **suit or** settlement or other [*litigations*]
 7 **litigation?** []Yes []No []Unknown
 8 If yes, what product? _____
 9 (1) Are there problems with the product? []Yes []No []Unknown
 10 (2) Is the product covered by a warranty? []Yes []No []Unknown
 11 (3) Has the product been inspected? []Yes []No []Unknown
 12 (4) Have claims been filed for this product
 13 by you or by previous owners? []Yes []No []Unknown
 14 If yes, when? _____
 15 (5) Was money received? []Yes []No []Unknown
 16 (6) Were any of the materials or products repaired
 17 or replaced? []Yes []No []Unknown
 18
 19 7. COMMON INTEREST
 20 A. Is there a Home Owners' Association
 21 or other governing entity? []Yes []No []Unknown
 22 Name of Association or Other Governing
 23 Entity _____
 24 Contact Person _____
 25 Address _____
 26 Phone Number _____
 27 B. Regular periodic assessments: \$_____
 28 per []Month []Year []Other _____
 29 *C. Are there any pending or proposed special
 30 assessments? []Yes []No []Unknown
 31 D. Are there shared 'common areas' or joint
 32 maintenance agreements for facilities like
 33 walls, fences, pools, tennis courts, walkways
 34 or other areas co-owned in undivided interest
 35 with others? []Yes []No []Unknown
 36 E. Is the Home Owners' Association or other
 37 governing entity a party to pending litigation
 38 or subject to an unsatisfied judgment? []Yes []No []Unknown []NA
 39 F. Is the property in violation of recorded
 40 covenants, conditions and restrictions or in
 41 violation of other bylaws or governing rules,
 42 whether recorded or not? []Yes []No []Unknown []NA
 43
 44 8. GENERAL
 45 A. Are there problems with settling, soil,

- 1 standing water or drainage on the property
- 2 or in the immediate area?]Yes]No]Unknown
- 3 B. Does the property contain fill?]Yes]No]Unknown
- 4 C. Is there any material damage to the property or
- 5 any of the structure(s) from fire, wind, floods,
- 6 beach movements, earthquake, expansive soils
- 7 or landslides?]Yes]No]Unknown
- 8 D. Is the property in a designated floodplain?]Yes]No]Unknown
- 9 E. Is the property in a designated slide or other
- 10 geologic hazard zone?]Yes]No]Unknown
- 11 *F. Has any portion of the property been tested
- 12 or treated for asbestos, formaldehyde, radon
- 13 gas, lead-based paint, mold, fuel or chemical
- 14 storage tanks or contaminated soil or water?]Yes]No]Unknown
- 15 G. Are there any tanks or underground storage
- 16 tanks (e.g., septic, chemical, fuel, etc.)
- 17 on the property?]Yes]No]Unknown
- 18 H. Has the property ever been used as an illegal
- 19 drug manufacturing or distribution site?]Yes]No]Unknown
- 20 *If yes, was a Certificate of Fitness issued?]Yes]No]Unknown
- 21 *I. Has the property been classified as
- 22 forestland-urban interface?]Yes]No]Unknown
- 23 **J. Is the property located within one mile of**
- 24 **land included in an inventory of significant**
- 25 **mineral and aggregate resources pursuant**
- 26 **to a statewide land use planning goal?**]Yes]No]Unknown

27

28 9. FULL DISCLOSURE BY SELLERS

- 29 *A. Are there any other material defects affecting
- 30 this property or its value that a prospective
- 31 buyer should know about?]Yes]No

32 *If yes, describe the defect on attached sheet and

33 explain the frequency and extent of the problem

34 and any insurance claims, repairs or remediation.

35 B. Verification:

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

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

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

39 prospective buyers of the property or their agents.

40

41 Seller(s) signature:

42

43 SELLER _____ DATE _____

44

45 SELLER _____ DATE _____

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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.

BUYER _____ DATE _____

BUYER _____ DATE _____

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

_____ Real Estate Licensee

_____ Real Estate Firm

Date received by agent _____

1 **SECTION 2.** The amendments to ORS 105.464 by section 1 of this 2013 Act apply to a
2 **property disclosure statement delivered in response to a written offer to purchase real**
3 **property tendered on or after the effective date of this 2013 Act.**

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