

AN ACT

ENTITLED, An Act to require the disclosure of known contamination of waterways on property condition disclosure statements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 43-4-44 be amended to read as follows:

43-4-44. The following form shall be used for the property condition disclosure statement:

**SELLER'S PROPERTY CONDITION DISCLOSURE STATEMENT**

(This disclosure shall be completed by the seller. This is a disclosure required by law. If you do not understand this form, seek legal advice.)

Seller \_\_\_\_\_

Property Address \_\_\_\_\_

This Disclosure Statement concerns the real property identified above situated in the City of \_\_\_\_\_ County of \_\_\_\_\_, State of South Dakota.

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH § 43-4-38. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR ANY AGENT REPRESENTING ANY PARTY IN THIS TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PARTIES MAY WISH TO OBTAIN. Seller hereby authorizes any agent representing any party in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

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

## I. LOT OR TITLE INFORMATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Is the property currently occupied by the owner?

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

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

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

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

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

14. Is the property leased?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## II. STRUCTURAL INFORMATION

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

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

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

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

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

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

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

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

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

What related repairs, if any, have been made?

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

Yes  No

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

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

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

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

6. Are you aware of insulation in:

the ceiling/attic? Yes  No

the walls? Yes  No

the floors? Yes  No

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

Yes  No

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

Yes  No

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

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

Yes  No

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

Was a permit obtained? Yes

Was the work approved by an inspector? Yes  No

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

Yes  No

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

Have any insurance claims been made?

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

Was an insurance payment received?

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

Has the damage been repaired?

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

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

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

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

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

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

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

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### III. SYSTEMS/UTILITIES INFORMATION

	NONE/NOT INCLUDED	WORKING	NOT WORKING
1. 220 Volt Service	_____	_____	_____
2. Air Exchanger	_____	_____	_____
3. Air Purifier	_____	_____	_____
4. Attic Fan	_____	_____	_____
5. Burglar Alarm and Security System	_____	_____	_____
6. Ceiling Fan	_____	_____	_____

7. Central Air - Electric	_____	_____	_____
8. Central Air - Water Cooled	_____	_____	_____
9. Cistern	_____	_____	_____
10. Dishwasher	_____	_____	_____
11. Disposal	_____	_____	_____
12. Doorbell	_____	_____	_____
13. Fireplace	_____	_____	_____
14. Fireplace Insert	_____	_____	_____
15. Garage Door/Opener Control(s)	_____	_____	_____
16. Garage Wiring	_____	_____	_____
17. Heating System	_____	_____	_____
18. Hot Tub, Whirlpool, and Controls	_____	_____	_____
19. Humidifier	_____	_____	_____
20. Intercom	_____	_____	_____
21. Light Fixtures	_____	_____	_____
22. Microwave/Hood	_____	_____	_____
23. Plumbing and Fixtures	_____	_____	_____
24. Pool and Equipment	_____	_____	_____
25. Propane Tank	_____	_____	_____
26. Radon System	_____	_____	_____
27. Sauna	_____	_____	_____
28. Septic/Leaching Field	_____	_____	_____
29. Sewer Systems/Drains	_____	_____	_____
30. Smoke/Fire Alarm	_____	_____	_____
31. Solar House - Heating	_____	_____	_____
32. Sump Pump(s)	_____	_____	_____
33. Switches and Outlets	_____	_____	_____
34. Underground Sprinkler and Heads	_____	_____	_____
35. Vent Fan	_____	_____	_____

36. Water Heater - Electric or Gas	_____	_____	_____
37. Water Purifier	_____	_____	_____
38. Water Softener - Leased or Owned	_____	_____	_____
39. Well and Pump	_____	_____	_____
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
1. Methane Gas	_____	_____	_____	_____
2. Lead Paint	_____	_____	_____	_____
3. Radon Gas (House)	_____	_____	_____	_____
4. Radon Gas (Well)	_____	_____	_____	_____
5. Radioactive Materials	_____	_____	_____	_____
6. Landfill, Mineshaft	_____	_____	_____	_____
7. Expansive Soil	_____	_____	_____	_____
8. Mold	_____	_____	_____	_____
9. Toxic Materials	_____	_____	_____	_____
10. Urea Formaldehyde Foam Insulations	_____	_____	_____	_____
11. Asbestos Insulation	_____	_____	_____	_____
12. Buried Fuel Tanks	_____	_____	_____	_____
13. Chemical Storage Tanks	_____	_____	_____	_____
14. Fire Retardant Treated Plywood	_____	_____	_____	_____
15. Production of Methamphetamines	_____	_____	_____	_____

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

## V. MISCELLANEOUS INFORMATION

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

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

2. Is there a written road maintenance agreement?

If yes, attach a copy of the maintenance agreement.

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

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

\_\_\_\_\_

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

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

\_\_\_\_\_

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

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

\_\_\_\_\_

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

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

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

\_\_\_\_\_

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

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

9. Are there broken window panes or seals?

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

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

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

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

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

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

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

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

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

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**CLOSING SECTION**

The Seller hereby certifies that the information contained herein is true and correct to the best of the Seller's information, knowledge, and belief as of the date of the Seller's signature below. If any of these conditions change before conveyance of title to this property, the change will be disclosed in a written amendment to this disclosure statement.

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

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

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

I/We acknowledge receipt of a copy of this statement on the date appearing beside my/our

signature(s) below. Any agent representing any party to this transaction makes no representations and is not responsible for any conditions existing in the property.

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

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

An Act to require the disclosure of known contamination of waterways on property condition disclosure statements.

I certify that the attached Act originated in the

SENATE as Bill No. 127

Secretary of the Senate

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 127  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

Received at this Executive Office this \_\_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

The attached Act is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_ , A.D., 20\_\_\_\_

Governor

STATE OF SOUTH DAKOTA,  
ss.  
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State