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.

after receiving the copy of the septic system inspection report.

(3) The department may adopt rules to administer this section, including rules that exempt areas of this state in which the public health risk from a failed septic system is minimal.

SECTION 4. ORS 105.475 is amended to read:

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

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

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

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

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

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

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

SECTION 5. ORS 105.485 is amended to read:

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

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

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

_____ _____

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

_____ _____

INSTRUCTIONS TO THE SELLER

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

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

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

_____ _____

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

Section 1. EXCLUSION FROM ORS 105.462 TO 105.490:

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

Initial only the exclusion you wish to claim.

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

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

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

_____ This sale or transfer is by a governmental agency.

_____

Signature(s) of Seller claiming exclusion

Date _____

_____

Buyer(s) to acknowledge Seller's claim

Date _____

_____ _____

(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) 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 boundary changes? [ ]Yes [ ]No [ ]Unknown

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

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

*G. Are there any governmental studies, designations, zoning overlays, surveys or notices that would affect the property? [ ]Yes [ ]No [ ]Unknown

*H. Are there any pending or existing governmental assessments against the property? [ ]Yes [ ]No [ ]Unknown

*I. Are there any zoning violations or nonconforming uses? [ ]Yes [ ]No [ ]Unknown

*J. Is there a boundary survey for the property? [ ]Yes [ ]No [ ]Unknown

*K. Are there any covenants, conditions, restrictions or private assessments that affect the property? [ ]Yes [ ]No [ ]Unknown

*L. Is the property subject to any special tax assessment or tax treatment that may result in levy of additional taxes if the property is sold? [ ]Yes [ ]No [ ]Unknown

2. WATER

A. Household water

(1) The source of the water is (check ALL that apply):
[ ]Public [ ]Community [ ]Private
[ ]Other _____

(2) Water source information:

*a. Does the water source require a water permit? [ ]Yes [ ]No [ ]Unknown
If yes, do you have a permit? [ ]Yes [ ]No

b. Is the water source located on the property? [ ]Yes [ ]No [ ]Unknown
*If not, are there any written agreements for a shared water source? [ ]Yes [ ]No [ ]Unknown [ ]NA

*c. Is there an easement (recorded or unrecorded) for your access to or maintenance of the water

	source?	[ ]Yes	[ ]No	[ ]Unknown	
d.	If the source of water is from a well or spring, have you had any of the following in the past 12 months? [ ]Flow test [ ]Bacteria test [ ]Chemical contents test	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
*e.	Are there any water source plumbing problems or needed repairs?	[ ]Yes	[ ]No	[ ]Unknown	
(3)	Are there any water treatment systems for the property? [ ]Leased [ ]Owned	[ ]Yes	[ ]No	[ ]Unknown	
B.	Irrigation				
(1)	Are there any [ ] water rights or [ ] other irrigation rights for the property?	[ ]Yes	[ ]No	[ ]Unknown	
*(2)	If any exist, has the irrigation water been used during the last five-year period?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
*(3)	Is there a water rights certificate or other written evidence available?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
C.	Outdoor sprinkler system				
(1)	Is there an outdoor sprinkler system for the property?	[ ]Yes	[ ]No	[ ]Unknown	
(2)	Has a back flow valve been installed?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
(3)	Is the outdoor sprinkler system operable?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
3.	SEWAGE SYSTEM				
A.	Is the property connected to a public or community sewage system?	[ ]Yes	[ ]No	[ ]Unknown	
B.	Are there any new public or community sewage systems proposed for the property?	[ ]Yes	[ ]No	[ ]Unknown	
C.	Is the property connected to an on-site septic system?	[ ]Yes	[ ]No	[ ]Unknown	
	If yes, was it installed by permit?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
	*Has the system been repaired or altered?	[ ]Yes	[ ]No	[ ]Unknown	
	Has the condition of the system been evaluated and a report issued?	[ ]Yes	[ ]No	[ ]Unknown	
	Has it ever been pumped?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
	If yes, when? _____				
[*D.	*Are there any sewage system problems or needed repairs?*	*[ ] Yes*	*[ ] No*	*[ ] Unknown*]	
[*E.*] **D.**	Does your sewage system require on-site pumping to another level?	[ ]Yes	[ ]No	[ ]Unknown	
E.	**Is the septic system inspection report attached?**	**[ ]Yes**	**[ ]No**	**[ ]Unknown**	**[ ]NA**
	If no, on what date do you expect to provide the septic system inspection report?	_____			

4. DWELLING INSULATION

A. Is there insulation in the:

(1)	Ceiling?	[ ]Yes	[ ]No	[ ]Unknown
(2)	Exterior walls?	[ ]Yes	[ ]No	[ ]Unknown
(3)	Floors?	[ ]Yes	[ ]No	[ ]Unknown
B.	Are there any defective insulated doors or windows?	[ ]Yes	[ ]No	[ ]Unknown

5. DWELLING STRUCTURE

*A.	Has the roof leaked?	[ ]Yes	[ ]No	[ ]Unknown	
	If yes, has it been repaired?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
B.	Are there any additions, conversions or remodeling?	[ ]Yes	[ ]No	[ ]Unknown	
	If yes, was a building permit required?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
	If yes, was a building permit obtained?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
	If yes, was final inspection obtained?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
C.	Are there smoke alarms or detectors?	[ ]Yes	[ ]No	[ ]Unknown	
D.	Are there carbon monoxide alarms?	[ ]Yes	[ ]No	[ ]Unknown	
E.	Is there a woodstove or fireplace insert included in the sale?	[ ]Yes	[ ]No	[ ]Unknown	
	*If yes, what is the make? _____				
	*If yes, was it installed with a permit?	[ ]Yes	[ ]No	[ ]Unknown	
	*If yes, is a certification label issued by the United States Environmental Protection Agency (EPA) or the Department of Environmental Quality (DEQ) affixed to it?	[ ]Yes	[ ]No	[ ]Unknown	
*F.	Has pest and dry rot, structural or "whole house" inspection been done within the last three years?	[ ]Yes	[ ]No	[ ]Unknown	
*G.	Are there any moisture problems, areas of water penetration, mildew odors or other moisture conditions (especially in the basement)?	[ ]Yes	[ ]No	[ ]Unknown	
	*If yes, explain on attached sheet the frequency and extent of problem and any insurance claims, repairs or remediation done.				
H.	Is there a sump pump on the property?	[ ]Yes	[ ]No	[ ]Unknown	
I.	Are there any materials used in the construction of the structure that are or have been the subject of a recall, class action suit, settlement or litigation?	[ ]Yes	[ ]No	[ ]Unknown	
	If yes, what are the materials? _____				
(1)	Are there problems with the materials?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
(2)	Are the materials covered by a warranty?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
(3)	Have the materials been inspected?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
(4)	Have there ever been claims filed for these				

	materials by you or by previous owners?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
	If yes, when? _____				
(5)	Was money received?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
(6)	Were any of the materials repaired or replaced?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA

6. DWELLING SYSTEMS AND FIXTURES

If the following systems or fixtures are included in the purchase price, are they in good working order on the date this form is signed?

A.	Electrical system, including wiring, switches, outlets and service	[ ]Yes	[ ]No	[ ]Unknown	
B.	Plumbing system, including pipes, faucets, fixtures and toilets	[ ]Yes	[ ]No	[ ]Unknown	
C.	Water heater tank	[ ]Yes	[ ]No	[ ]Unknown	
D.	Garbage disposal	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
E.	Built-in range and oven	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
F.	Built-in dishwasher	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
G.	Sump pump	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
H.	Heating and cooling systems	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
I.	Security system [ ]Owned [ ]Leased	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
J.	Are there any materials or products used in the systems and fixtures that are or have been the subject of a recall, class action settlement or other litigations?	[ ]Yes	[ ]No	[ ]Unknown	
	If yes, what product? _____				
(1)	Are there problems with the product?	[ ]Yes	[ ]No	[ ]Unknown	
(2)	Is the product covered by a warranty?	[ ]Yes	[ ]No	[ ]Unknown	
(3)	Has the product been inspected?	[ ]Yes	[ ]No	[ ]Unknown	
(4)	Have claims been filed for this product by you or by previous owners?	[ ]Yes	[ ]No	[ ]Unknown	
	If yes, when? _____				
(5)	Was money received?	[ ]Yes	[ ]No	[ ]Unknown	
(6)	Were any of the materials or products repaired or replaced?	[ ]Yes	[ ]No	[ ]Unknown	

7. COMMON INTEREST

A.	Is there a Home Owners' Association or other governing entity?	[ ]Yes	[ ]No	[ ]Unknown
	Name of Association or Other Governing Entity _____			
	Contact Person _____			
	Address _____			
	Phone Number _____			
B.	Regular periodic assessments: $_____			

per [ ]Month [ ]Year [ ]Other _____

*C. Are there any pending or proposed special assessments? [ ]Yes [ ]No [ ]Unknown

D. Are there shared 'common areas' or joint maintenance agreements for facilities like walls, fences, pools, tennis courts, walkways or other areas co-owned in undivided interest with others? [ ]Yes [ ]No [ ]Unknown

E. Is the Home Owners' Association or other governing entity a party to pending litigation or subject to an unsatisfied judgment? [ ]Yes [ ]No [ ]Unknown [ ]NA

F. Is the property in violation of recorded covenants, conditions and restrictions or in violation of other bylaws or governing rules, whether recorded or not? [ ]Yes [ ]No [ ]Unknown [ ]NA

8. GENERAL

A. Are there problems with settling, soil, standing water or drainage on the property or in the immediate area? [ ]Yes [ ]No [ ]Unknown

B. Does the property contain fill? [ ]Yes [ ]No [ ]Unknown

C. Is there any material damage to the property or any of the structure(s) from fire, wind, floods, beach movements, earthquake, expansive soils or landslides? [ ]Yes [ ]No [ ]Unknown

D. Is the property in a designated floodplain? [ ]Yes [ ]No [ ]Unknown

E. Is the property in a designated slide or other geologic hazard zone? [ ]Yes [ ]No [ ]Unknown

*F. Has any portion of the property been tested or treated for asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks or contaminated soil or water? [ ]Yes [ ]No [ ]Unknown

G. Are there any tanks or underground storage tanks (e.g., septic, chemical, fuel, etc.) on the property? [ ]Yes [ ]No [ ]Unknown

H. Has the property ever been used as an illegal drug manufacturing or distribution site? [ ]Yes [ ]No [ ]Unknown

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

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

9. FULL DISCLOSURE BY SELLERS

*A. Are there any other material defects affecting this property or its value that a prospective 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.

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 _____

_____ _____

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

_____