

# Senate Bill 729

Sponsored by COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION (at the request of Senator Kim Thatcher)

## 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 property to include in disclosure statement whether property has been used for, or investigated or inspected for use of, manufacturing, distribution or disposal of illegal drugs.

## A BILL FOR AN ACT

1  
2 Relating to seller's property disclosure statement; 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 If required under ORS 105.465, a seller shall deliver in substantially the following form the seller's  
9 property disclosure statement to each buyer who makes a written offer to purchase real property  
10 in this state:  
11

## INSTRUCTIONS TO THE SELLER

12  
13  
14  
15 Please complete the following form. Do not leave any spaces blank. Please refer to the line  
16 number(s) of the question(s) when you provide your explanation(s). If you are not claiming an ex-  
17 clusion or refusing to provide the form under ORS 105.475 (4), you should date and sign each page  
18 of this disclosure statement and each attachment.  
19

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

26 An exclusion may be claimed only if the seller qualifies for the exclusion under the law. If not ex-  
27 cluded, the seller must disclose the condition of the property or the buyer may revoke their offer  
28 to purchase anytime prior to closing the transaction. Questions regarding the legal consequences  
29 of the seller's choice should be directed to a qualified attorney.  
30  
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 (DO NOT FILL OUT THIS SECTION UNLESS YOU ARE CLAIMING AN EXCLUSION  
2 UNDER ORS 105.470)

3  
4 Section 1. EXCLUSION FROM ORS 105.462 TO 105.490:

5  
6 You may claim an exclusion under ORS 105.470 only if you qualify under the statute. If you are not  
7 claiming an exclusion, you must fill out Section 2 of this form completely.

8  
9 Initial only the exclusion you wish to claim.

10  
11 \_\_\_\_\_ This is the first sale of a dwelling never occupied. The dwelling is constructed or installed  
12 under building or installation permit(s) #\_\_\_\_\_, issued by \_\_\_\_\_.

13  
14 \_\_\_\_\_ This sale is by a financial institution that acquired the property as custodian, agent or  
15 trustee, or by foreclosure or deed in lieu of foreclosure.

16  
17 \_\_\_\_\_ The seller is a court appointed receiver, personal representative, trustee, conservator or  
18 guardian.

19  
20 \_\_\_\_\_ This sale or transfer is by a governmental agency.

21  
22 \_\_\_\_\_  
23 Signature(s) of Seller claiming exclusion  
24 Date \_\_\_\_\_

25  
26 \_\_\_\_\_  
27 Buyer(s) to acknowledge Seller's claim  
28 Date \_\_\_\_\_

29  
30  
31 (IF YOU DID NOT CLAIM AN EXCLUSION IN SECTION 1, YOU MUST FILL OUT THIS SEC-  
32 TION.)

33  
34 Section 2. SELLER'S PROPERTY DISCLOSURE STATEMENT

35  
36 (NOT A WARRANTY)  
37 (ORS 105.464)

38  
39 NOTICE TO THE BUYER: THE FOLLOWING REPRESENTATIONS ARE MADE BY THE  
40 SELLER(S) CONCERNING THE CONDITION OF THE PROPERTY LOCATED  
41 AT \_\_\_\_\_ ("THE PROPERTY").

42  
43 DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS  
44 OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF DISCLOSURE.  
45 BUYER HAS FIVE DAYS FROM THE SELLER'S DELIVERY OF THIS SELLER'S DISCLOSURE

1 STATEMENT TO REVOKE BUYER'S OFFER BY DELIVERING BUYER'S SEPARATE SIGNED  
 2 WRITTEN STATEMENT OF REVOCATION TO THE SELLER DISAPPROVING THE SELLER'S  
 3 DISCLOSURE STATEMENT, UNLESS BUYER WAIVES THIS RIGHT AT OR PRIOR TO ENTER-  
 4 ING INTO A SALE AGREEMENT.

5  
 6 FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS  
 7 PROPERTY, BUYER IS ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF A QUALIFIED  
 8 SPECIALIST TO INSPECT THE PROPERTY ON BUYER'S BEHALF INCLUDING, FOR EXAM-  
 9 PLE, ONE OR MORE OF THE FOLLOWING: ARCHITECTS, ENGINEERS, PLUMBERS,  
 10 ELECTRICIANS, ROOFERS, ENVIRONMENTAL INSPECTORS, BUILDING INSPECTORS, CER-  
 11 TIFIED HOME INSPECTORS, OR PEST AND DRY ROT INSPECTORS.

12  
 13 Seller \_\_\_\_\_ is/ \_\_\_\_\_ is not occupying the property.

14  
 15 I. SELLER'S REPRESENTATIONS:

16  
 17 The following are representations made by the seller and are not the representations of any finan-  
 18 cial institution that may have made or may make a loan pertaining to the property, or that may  
 19 have or take a security interest in the property, or any real estate licensee engaged by the seller  
 20 or the buyer.

21  
 22 \*If you mark yes on items with \*, attach a copy or explain on an attached sheet.

23  
 24 1. TITLE

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

26 \*B. Is title to the property subject to any of the  
 27 following: [ ]Yes [ ]No [ ]Unknown

28 (1) First right of refusal

29 (2) Option

30 (3) Lease or rental agreement

31 (4) Other listing

32 (5) Life estate?

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

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

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

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

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

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

- 1 (1) Is there an outdoor sprinkler system for the  
 2 property? [ ]Yes [ ]No [ ]Unknown
- 3 (2) Has a back flow valve been installed? [ ]Yes [ ]No [ ]Unknown [ ]NA
- 4 (3) Is the outdoor sprinkler system operable? [ ]Yes [ ]No [ ]Unknown [ ]NA
- 5
- 6 3. SEWAGE SYSTEM
- 7 A. Is the property connected to a public or  
 8 community sewage system? [ ]Yes [ ]No [ ]Unknown
- 9 B. Are there any new public or community sewage  
 10 systems proposed for the property? [ ]Yes [ ]No [ ]Unknown
- 11 C. Is the property connected to an on-site septic  
 12 system? [ ]Yes [ ]No [ ]Unknown
- 13 (1) If yes, when was the system installed? \_\_\_\_\_ [ ]Unknown [ ]NA
- 14 (2) \*If yes, was the system installed by permit? [ ]Yes [ ]No [ ]Unknown [ ]NA
- 15 (3) \*Has the system been repaired or altered? [ ]Yes [ ]No [ ]Unknown
- 16 (4) \*Has the condition of the system been  
 17 evaluated and a report issued? [ ]Yes [ ]No [ ]Unknown
- 18 (5) Has the septic tank ever been pumped?  
 19 If yes, when? \_\_\_\_\_ [ ]NA
- 20 (6) Does the system have a pump? [ ]Yes [ ]No [ ]Unknown
- 21 (7) Does the system have a treatment unit such  
 22 as a sand filter or an aerobic unit? [ ]Yes [ ]No [ ]Unknown
- 23 (8) \*Is a service contract for routine  
 24 maintenance required for the system? [ ]Yes [ ]No [ ]Unknown
- 25 (9) Are all components of the system located on  
 26 the property? [ ]Yes [ ]No [ ]Unknown
- 27 D. \*Are there any sewage system problems or  
 28 needed repairs? [ ]Yes [ ]No [ ]Unknown
- 29 E. Does your sewage system require on-site  
 30 pumping to another level? [ ]Yes [ ]No [ ]Unknown
- 31
- 32 4. DWELLING INSULATION
- 33 A. Is there insulation in the:
- 34 (1) Ceiling? [ ]Yes [ ]No [ ]Unknown
- 35 (2) Exterior walls? [ ]Yes [ ]No [ ]Unknown
- 36 (3) Floors? [ ]Yes [ ]No [ ]Unknown
- 37 B. Are there any defective insulated doors or  
 38 windows? [ ]Yes [ ]No [ ]Unknown
- 39
- 40 5. DWELLING STRUCTURE
- 41 \*A. Has the roof leaked? [ ]Yes [ ]No [ ]Unknown  
 42 If yes, has it been repaired? [ ]Yes [ ]No [ ]Unknown [ ]NA
- 43 B. Are there any additions, conversions or  
 44 remodeling? [ ]Yes [ ]No [ ]Unknown  
 45 If yes, was a building permit required? [ ]Yes [ ]No [ ]Unknown [ ]NA

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

- 1 C. Water heater tank [ ]Yes [ ]No [ ]Unknown  
 2 D. Garbage disposal [ ]Yes [ ]No [ ]Unknown [ ]NA  
 3 E. Built-in range and oven [ ]Yes [ ]No [ ]Unknown [ ]NA  
 4 F. Built-in dishwasher [ ]Yes [ ]No [ ]Unknown [ ]NA  
 5 G. Sump pump [ ]Yes [ ]No [ ]Unknown [ ]NA  
 6 H. Heating and cooling systems [ ]Yes [ ]No [ ]Unknown [ ]NA  
 7 I. Security system [ ]Owned [ ]Leased [ ]Yes [ ]No [ ]Unknown [ ]NA  
 8 J. Are there any materials or products used in  
 9 the systems and fixtures that are or have  
 10 been the subject of a recall, class action  
 11 suit settlement or litigation? [ ]Yes [ ]No [ ]Unknown  
 12 If yes, what product? \_\_\_\_\_  
 13 (1) Are there problems with the product? [ ]Yes [ ]No [ ]Unknown  
 14 (2) Is the product covered by a warranty? [ ]Yes [ ]No [ ]Unknown  
 15 (3) Has the product been inspected? [ ]Yes [ ]No [ ]Unknown  
 16 (4) Have claims been filed for this product  
 17 by you or by previous owners? [ ]Yes [ ]No [ ]Unknown  
 18 If yes, when? \_\_\_\_\_  
 19 (5) Was money received? [ ]Yes [ ]No [ ]Unknown  
 20 (6) Were any of the materials or products repaired  
 21 or replaced? [ ]Yes [ ]No [ ]Unknown  
 22  
 23 7. COMMON INTEREST  
 24 A. Is there a Home Owners' Association  
 25 or other governing entity? [ ]Yes [ ]No [ ]Unknown  
 26 Name of Association or Other Governing  
 27 Entity \_\_\_\_\_  
 28 Contact Person \_\_\_\_\_  
 29 Address \_\_\_\_\_  
 30 Phone Number \_\_\_\_\_  
 31 B. Regular periodic assessments: \$\_\_\_\_\_   
 32 per [ ]Month [ ]Year [ ]Other \_\_\_\_\_  
 33 \*C. Are there any pending or proposed special  
 34 assessments? [ ]Yes [ ]No [ ]Unknown  
 35 D. Are there shared "common areas" or joint  
 36 maintenance agreements for facilities like  
 37 walls, fences, pools, tennis courts, walkways  
 38 or other areas co-owned in undivided interest  
 39 with others? [ ]Yes [ ]No [ ]Unknown  
 40 E. Is the Home Owners' Association or other  
 41 governing entity a party to pending litigation  
 42 or subject to an unsatisfied judgment? [ ]Yes [ ]No [ ]Unknown [ ]NA  
 43 F. Is the property in violation of recorded  
 44 covenants, conditions and restrictions or in  
 45 violation of other bylaws or governing rules,

1           whether recorded or not?    ]Yes    ]No    ]Unknown    ]NA  
 2  
 3    8.   SEISMIC  
 4           Was the house constructed before 1974?                    ]Yes    ]No    ]Unknown  
 5           If yes, has the house been bolted to its  
 6           foundation?    ]Yes    ]No    ]Unknown  
 7  
 8    9.   GENERAL  
 9    A.   Are there problems with settling, soil,  
 10           standing water or drainage on the property  
 11           or in the immediate area?                                    ]Yes    ]No    ]Unknown  
 12    B.   Does the property contain fill?                                ]Yes    ]No    ]Unknown  
 13    C.   Is there any material damage to the property or  
 14           any of the structure(s) from fire, wind, floods,  
 15           beach movements, earthquake, expansive soils  
 16           or landslides?    ]Yes    ]No    ]Unknown  
 17    D.   Is the property in a designated floodplain?                ]Yes    ]No    ]Unknown  
 18           Note: Flood insurance may be required for  
 19           homes in a floodplain.  
 20    E.   Is the property in a designated slide or  
 21           other geologic hazard zone?                                ]Yes    ]No    ]Unknown  
 22    \*F.   Has any portion of the property been tested  
 23           or treated for asbestos, formaldehyde, radon  
 24           gas, lead-based paint, mold, fuel or chemical  
 25           storage tanks, [or] contaminated soil or  
 26           water **or the manufacture or disposal of**  
 27           **illegal drugs?**    ]Yes    ]No    ]Unknown  
 28    G.   Are there any tanks or underground storage  
 29           tanks (e.g., septic, chemical, fuel, etc.)  
 30           on the property?    ]Yes    ]No    ]Unknown  
 31    H.   Has the property ever been used **or investigated**  
 32           **by law enforcement for use** as an illegal  
 33           drug manufacturing, [or] distribution **or**  
 34           **disposal** site?    ]Yes    ]No    ]Unknown  
 35           \*If yes, was a Certificate of Fitness issued?            ]Yes    ]No    ]Unknown  
 36    \*I.   Has the property been classified as  
 37           forestland-urban interface?                                ]Yes    ]No    ]Unknown  
 38  
 39    10.   FULL DISCLOSURE BY SELLERS  
 40    \*A.   Are there any other material defects affecting  
 41           this property or its value that a prospective  
 42           buyer should know about?                                    ]Yes    ]No  
 43           \*If yes, describe the defect on attached sheet and  
 44           explain the frequency and extent of the problem  
 45           and any insurance claims, repairs or remediation.



1 B. Verification:

2 The foregoing answers and attached explanations (if any) are complete and correct to  
3 the best of my/our knowledge and I/we have received a copy of this disclosure statement.

4 I/we authorize my/our agents to deliver a copy of this disclosure statement to all  
5 prospective buyers of the property or their agents.

6

7 Seller(s) signature:

8

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

10

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

12

13

14

15 II. BUYER'S ACKNOWLEDGMENT

16

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

19

20 B. Each buyer acknowledges and understands that the disclosures set forth in this statement and in  
21 any amendments to this statement are made only by the seller and are not the representations of  
22 any financial institution that may have made or may make a loan pertaining to the property, or that  
23 may have or take a security interest in the property, or of any real estate licensee engaged by the  
24 seller or buyer. A financial institution or real estate licensee is not bound by and has no liability  
25 with respect to any representation, misrepresentation, omission, error or inaccuracy contained in  
26 another party's disclosure statement required by this section or any amendment to the disclosure  
27 statement.

28

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

32

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

40

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

43

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

45

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

2

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

4

5 \_\_\_\_\_ Real Estate Licensee

6

7 \_\_\_\_\_ Real Estate Firm

8

9 Date received by agent \_\_\_\_\_

10 \_\_\_\_\_

11

12 \_\_\_\_\_