



South Dakota Codified Laws [Currentness](#)

Title 43. Property

Chapter 43-4. Transfer of Property ([Refs & Annos](#))

→ **43-4-44. Property condition disclosure statement**

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; or have any materials or services been provided in the past one hundred twenty days that would create a lien against the property under chapter 44-9?

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 10-13-39](#)?

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?

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: \_\_\_\_\_

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: \_\_\_\_\_

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)

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 \_\_\_\_\_

CREDIT(S)

**Source:** [SL 1993, ch 325, § 8](#); [SL 1994, ch 337, § 4](#); [SL 2005, ch 230, § 1](#); [SL 2007, ch 250, § 1](#); [SL 2008, ch 224, § 1](#).

HISTORICAL AND STATUTORY NOTES

SL 2005, ch 230, § 1, rewrote the section, which read:

“The following form shall be used for the property condition disclosure statement:

“SELLER'S PROPERTY CONDITION DISCLOSURE STATEMENT

“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 COMES TO THE ATTENTION OF THE SELLER WHICH WOULD AFFECT ANY STATEMENT MADE BY THE SELLER FOLLOWING THE SIGNING OF THIS STATEMENT AND BEFORE THE TIME OF SETTLEMENT, THE SELLER SHALL NOTIFY THE BUYER AND ANY AGENT REPRESENTING ANY PARTY TO THIS TRANSACTION IN WRITING OF SUCH MATERIAL FACT OR OTHER INFORMATION.

“I. LOT OR TITLE INFORMATION

“1. When did you purchase or build the home?

“ \_\_\_\_\_

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

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

“If yes, describe: \_\_\_\_\_

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

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

“If yes, explain: \_\_\_\_\_

“4. 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 \_\_\_\_

“If yes, explain on separate page and attach hereto.

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

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

“Do you have a location survey in your possession or a copy of the recorded plat?

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

“If yes, attach a copy of same.

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

“Yes \_\_\_\_ No \_\_\_\_

“If yes, explain: \_\_\_\_\_

“7. Are you aware of any covenants or restrictions affecting the use of the property in accordance with local law?

“Yes \_\_\_\_ No \_\_\_\_

“If yes, attach a copy of the covenants and restrictions, if available.

“8. 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 \_\_\_\_ Unknown \_\_\_\_

“If yes, explain: \_\_\_\_\_

“\_\_\_\_\_

“9. Is the property currently occupied by the owner?

“Yes \_\_\_\_ No \_\_\_\_

“If no, is the property leased? Yes \_\_\_\_ No \_\_\_\_

“If yes, please attach a copy of any written lease or a statement as to the terms and conditions of the lease.

“10. If leased, does the property use comply with local zoning laws, if any?

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

“11. Is there ground rent? Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

“If so, what is the ground rent payment (i.e. annually, semi-annually, monthly)? \$\_\_\_\_\_ per \_\_\_\_\_

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

“Yes \_\_\_\_ No \_\_\_\_

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

“Payable to whom: \_\_\_\_\_

“For what purpose: \_\_\_\_\_

“13. Does the property ever have standing water in either the front, rear or side yard more than forty-eight hours after heavy rain? Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

“If yes, describe: \_\_\_\_\_

“14. Are wetlands located upon any part of the property?

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

“If yes, describe: \_\_\_\_\_

“15. Are any features of the property (i.e. walls, fences, roads, or driveways) shared in common with adjoining landowners whose use or responsibility for maintenance may have an effect on the property?

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

“If yes, describe: \_\_\_\_\_

“II. STRUCTURAL INFORMATION

“1. Have you experienced any water penetration problems in the walls, windows, doors, basement, or crawl space?

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

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

“If so, when? \_\_\_\_\_

“Is drain tile installed on the property? Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

“2. Are there any interior cracked walls or floors, or cracks or defects in exterior driveways, sidewalks, patios, or other hard surface areas?

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

“If yes, explain: \_\_\_\_\_

“3. Have you ever experienced roof leakage?

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

“Type of roof covering: \_\_\_\_\_

“Age: \_\_\_\_\_

“What roof repairs, if any, have been made? \_\_\_\_\_

“If so, when? \_\_\_\_\_

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

“4. Have you received notice that fire retardant treated plywood may have been used during roof construction of the property?

“Yes \_\_\_\_ No \_\_\_\_

“If yes, has an inspection of the roof been performed?

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

“If yes, explain results: \_\_\_\_\_

“5. Is there insulation in:

“the ceiling/attic? Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

“the walls? Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

“the floors? Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

“6. Are you aware of any termite or wood boring infestation or damage, either past or present?

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

“If yes, explain: \_\_\_\_\_

“Has the property been treated for any termite or wood boring infestation or damage? Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

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

“7. Have you performed any work upon the property within the last five years which required a building, plumbing, electrical, or any other permit?

“Yes \_\_\_\_ No \_\_\_\_

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

“Was a permit obtained? Yes \_\_\_\_ No \_\_\_\_

“Was the work approved by an inspector? Yes \_\_\_\_ No \_\_\_\_

“Explain: \_\_\_\_\_

“8. Has the property, structures, or improvements thereon ever been damaged? (i.e. fire, smoke, wind, floods, hail, or snow)

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

“If yes, has the damage been repaired? Yes \_\_\_\_ No \_\_\_\_

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

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

“III. SYSTEMS/UTILITIES INFORMATION

None/Not		Not	
Included	Working	Working	Unknown

“A. Electrical System

Burglar Alarm and/or Security System \_\_\_\_\_

Ceiling Fan \_\_\_\_\_

Garage Wiring \_\_\_\_\_

Garage Door/ Opener Control(s) \_\_\_\_\_

Doorbell \_\_\_\_\_

Intercom

Light Fixtures

Sauna

Smoke and/or Fire Alarm

Switches & Outlets

Vent Fan

220 Volt Service

“B. Heating and Cooling System

Air Exchanger

Attic Fan

Air Purifier

Central Air-- Electric

Central Air-- Water Cooled

Fireplace

Fireplace Insert

Furnace/Heat--Electric or Gas

Humidifier

Propane Tank--Leased or Owned

Solar House--Heating

Woodburning Stove

“C. Water/Sewer Systems

Cistern

Hot Tub, Whirlpool, and Controls

Plumbing and Fixtures

Pool & Equipment

Septic/Leaching Field

Sump Pump

Underground Sprinkler & Heads

Water Heater--Electric or Gas

Water Purifier

Water Softener--Leased or Owned

Well & Pump

Sewer Systems/ Drains

“D. HAZARDOUS CONDITIONS

“Are there any existing hazardous conditions of the property such as methane gas, lead paint, radon gas in the house or well, radioactive material, a landfill mineshaft, expansive soil, toxic materials, ureaformaldehyde foam insulation, asbestos insulation, or buried fuel or chemical storage tanks?

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

“Have any tests been performed? Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

“Explain: \_\_\_\_\_

“IV. MISCELLANEOUS INFORMATION

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

“Public \_\_\_\_ Private \_\_\_\_ Unknown \_\_\_\_

“If private, is there a written road maintenance agreement?

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

“If yes, attach a copy of the maintenance agreement, if available.

“2. Is this property located in or near a flood plain?

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

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

“Date: \_\_\_\_\_

“4. In the twelve months prior to the date of signing this document, did any of the following occur on the subject property:

		Yes	No	Unknown
a.	A human death by homicide	_____	_____	_____

b. Other felony committed against the property \_\_\_\_\_  
or a person on the property \_\_\_\_\_

"If yes to any of the above explain:

" \_\_\_\_\_

"5. Are the improvements connected to a public or private water system?

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

" \_\_\_\_\_

"7. Are the improvements connected to a public or private sewer system?

" \_\_\_\_\_

"8. Are there broken window panes or seals?

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

"If so, specify: \_\_\_\_\_

"9. 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. \_\_\_\_\_

"10. Are there any other problems that have not been disclosed above?

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

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

"CLOSING SECTION

"The Seller hereby certifies that the information contained herein is true and correct to the best of the Seller's informa-

tion, 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 \_\_\_\_\_”

SL 2007, ch 250, § 1, in part II, added question 12.

SL 2008, ch 224, § 1, in part I question 4, added “; or have any materials or services been provided in the past one hundred twenty days that would create a lien against the property under chapter 44-9” and, in part I question 12, substituted “[SDCL 10-13-39](#)” for “[SDCL 32-3-1](#)”.

#### LIBRARY REFERENCES

Consumer [Protection](#)  8.

Westlaw Key Number Search: 92Hk8.

[C.J.S. Consumer Protection §§ 40 to 51, 64.](#)

#### RESEARCH REFERENCES

Treatises and Practice Aids

[BNA Corporate Practice Series No. 57-2 § X.](#)

[Corp. Compl. Series: Env'tl. § 4:40.](#)

[Fed. Reg. Real Estate & Mortgage Lending 4th § 13:45.](#)

[State Environmental Law § 9:48.](#)

## UNITED STATES CODE ANNOTATED

Propane education, research and development, see [15 U.S.C.A. § 6401 et seq.](#)

Radon abatement, toxic substances control, see [15 U.S.C.A. § 2661 et seq.](#)

## NOTES OF DECISIONS

Defects requiring disclosure [1.5](#)

Good faith [1](#)


Oral disclosures [3](#)


Purpose [1/2](#)


Remedies for defects [2](#)

Summary judgment [4](#)


[1/2](#). Purpose


One obvious purpose of the home seller disclosure statutes is to provide prospective buyers with information about material defects known to the seller concerning the property. [McCollam v. Cahill, 766 N.W.2d 171, 2009 SD 34. Antitrust And Trade Regulation](#)  [199](#)

A purpose of statutes governing property condition disclosure statements is to get vendors to give purchasers the written disclosure statement. [Fuller v. Croston, 725 N.W.2d 600, 2006 SD 110. Antitrust And Trade Regulation](#)  [199](#)

One obvious purpose of the statutes governing property condition disclosure statements is to provide prospective purchasers with information about material defects known to the vendor concerning the property. [Fuller v. Croston, 725 N.W.2d 600, 2006 SD 110. Antitrust And Trade Regulation](#)  [199](#)

[1](#). Good faith

Home seller disclosure statute requires a seller of residential real property to provide to the purchaser, in good faith, a complete and truthful disclosure of any property conditions prior to sale, and not a disclosure simply sufficient to put the buyer on notice of the defects. [McCollam v. Cahill, 766 N.W.2d 171, 2009 SD 34. Antitrust And Trade Regulation](#)  [199](#)

Vendor's good faith in completely and truthfully disclosing defects in residential property in a property condition disclosure statement is determined under a reasonable-person standard. [Fuller v. Croston, 725 N.W.2d 600, 2006 SD 110. Antitrust And Trade Regulation](#)  [199](#)

Statutes governing property condition disclosure statements of vendors of residential property require a complete and truthful disclosure made in good faith, not a disclosure simply sufficient to put the buyer on notice of the defects. [Fuller](#)

[v. Croston, 725 N.W.2d 600, 2006 SD 110. Antitrust And Trade Regulation](#) 🔑 199

Seller's "good faith" in disclosing defects under residential real estate disclosure statement statutes is determined under reasonable person standard. [SDCL 43-4-41, 43-4-44. Engelhart v. Kramer, 570 N.W.2d 550, 1997 SD 124, rehearing denied. Antitrust And Trade Regulation](#) 🔑 199

### 1.5. Defects requiring disclosure

Infrequent presence of bull snakes in and around the home did not constitute a defect or problem of the sort requiring vendor to disclose the matter to purchaser in disclosure statement prior to sale, thus precluding rescission of contract for deed and entitling vendor to specific performance; based on all the testimony, trial court determined vendor saw few snakes on the property over the course of 30 years and only one snake inside the house. [McCollam v. Cahill, 766 N.W.2d 171, 2009 SD 34. Antitrust And Trade Regulation](#) 🔑 199

### 2. Remedies for defects

While vendors are required by residential sales statutes to disclose the condition of the property, there is no statutory authority to further require them to disclose possible remedies to those defects. [SDCL 43-4-38, 43-4-44. Parmely v. Hildebrand, 630 N.W.2d 509, 2001 SD 83. Antitrust And Trade Regulation](#) 🔑 199

### 3. Oral disclosures

Oral disclosures are insufficient to fulfill disclosure requirements of statutes governing property condition disclosure statements. [Fuller v. Croston, 725 N.W.2d 600, 2006 SD 110. Antitrust And Trade Regulation](#) 🔑 162

### 4. Summary judgment

Genuine issue of material fact as to extent of damages resulting from vendors' alleged violation of statutes governing property condition disclosure statements precluded summary judgment in favor of vendors in purchaser's action for violation of statutes. [Fuller v. Croston, 725 N.W.2d 600, 2006 SD 110. Judgment](#) 🔑 181(29)

Genuine issue of material fact as to whether vendors completed property condition disclosure statement truthfully, completely, and in good faith precluded summary judgment in favor of vendors in purchaser's action for alleged violation of statutes governing disclosure of home's defects. [Fuller v. Croston, 725 N.W.2d 600, 2006 SD 110. Judgment](#) 🔑 181(29)

Genuine issue of material fact as to licensed real estate agent's knowledge of vendor's claimed misrepresentation in property condition disclosure statement concerning no prior water damage precluded summary judgment in favor of agent and agent's employer in purchaser's action for violation of statute providing that no real estate agent is liable for client's misrepresentation unless agent knew of misrepresentation. [Fuller v. Croston, 725 N.W.2d 600, 2006 SD 110. Judgment](#) 🔑

181(18)

S D C L § 43-4-44, SD ST § 43-4-44

Current through the 2009 Regular Session and Supreme Court Rule 09-06

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