



# RESIDENTIAL SELLER'S PROPERTY DISCLOSURE STATEMENT (SPDS) RELEASE

BY SCOTT M. DRUCKER, ESQ., GENERAL COUNSEL TO THE ARIZONA ASSOCIATION OF REALTORS®

*The Arizona Association of REALTORS®, by way of a workgroup chaired by Trudy Moore GRI, CRS, CRB, has revised the Residential Seller's Property Disclosure Statement effective June 2014. <sup>1</sup> The following is an outline summary of the more critical revisions made to the 2014 SPDS.*

## RESIDENTIAL SELLER DISCLOSURE ADVISORY

The Advisory cover page now contains far less text as the workgroup removed previous language that described the six general sections contained within the SPDS. Although still recognizable by its "WHEN IN DOUBT – DISCLOSE" message that remains prominently displayed at the top of the page, the workgroup elected to use the Residential Seller Disclosure Advisory page solely as a vehicle to express to the seller the importance of fulfilling their disclosure obligations. The page now emphasizes that sellers are legally obligated to disclose important facts about the property and that these disclosure obligations remain even if the parties agree that no SPDS will be provided. As was previously the case, the Advisory page continues to warn sellers that a failure to make the legally required disclosures may subject them to civil liability.

## PROPERTY AND OWNERSHIP

Lines 44-46 pose the question: "Are you aware if the Property is located within the boundaries of a Community Facilities District (CFD)?" Although a relatively new phenomenon in Arizona, CFDs are increasing in popularity since they serve as special taxing districts that

developers and municipalities can use to finance the cost of infrastructure improvements, which are ultimately paid by homeowners within the district. If the property is subject to a CFD, the seller is asked to identify the name of the CFD so that the buyer can research their obligations, if any, via the repayment of bonds in the form of an addition to their annual property tax bill.

## BUILDING AND SAFETY INFORMATION

Lines 97 and 99 have been added to ask the seller to disclose the approximate ages of the property's heating and cooling systems. While buyers obviously desire to ensure that the heating and cooling systems are functioning as intended, the expected lifespan of the system based on its age at the time of sale may also be of importance.

Based on an increased number of pet stain and odor claims being reported across Arizona, questions have been posed on lines 137-138 asking "Are you aware of any animals/pets that have resided in the Property?" and "If yes, what kind?". With notice of the number and types of animals/pets that previously resided in the property, buyers will be better positioned to conduct whatever types of inspections they deem appropriate.

# “WHEN IN DOUBT – DISCLOSE... a failure to make the legally required disclosures may subject them to civil liability”

A box has been added on line 140 asking the seller if they have observed bed bugs on the Property.

## UTILITIES

If the property receives internet service, the seller is now asked on line 166 to disclose that fact and identify the name of the internet provider. Similarly, if the property receives satellite service, the seller is now asked on line 165 to disclose that fact and identify the name of the satellite provider.

Line 180 now asks the seller to identify whether the United States Postal Service delivers mail to the property, a cluster mailbox, the post office or another location.

With an increase in the number of alternate power systems serving residential properties, lines 186-189 were added to ask whether any alternate power systems serving the property are leased. If so, the seller is asked to provide the name and phone number of the leasing company and attach a copy of the lease, if available.

## ENVIRONMENTAL INFORMATION

In addition to Superfund/WQARF/CERCLA and Wetlands, line 220 now includes a box for “Natural Area Open Spaces” so that the seller can disclose whether the property is located within such an area or subject to applicable ordinances. Disclosure of this classification can prove important in areas that have been deemed environmentally sensitive as developers and homeowners will be required to leave certain portions of the land in a natural state.

On March 13, 2014, Congress amended the 2012 Biggert-Waters law with the “Homeowner Flood Insurance Affordability Act.” Nonetheless, flood insurance premiums

are likely to increase and, in some instances, may be substantially higher than premiums paid for flood insurance prior to the time of sale. As a result, a flood insurance “Notice to Buyer” has been added to lines 225-238 advising buyers not to rely on the premiums previously paid for flood insurance as an indicator of the premiums that will apply after completion of the purchase.

## SEWER/WASTEWATER TREATMENT

Previously, the SPDS asked if the “entire Property” is connected to a sewer. However, with an increase in the number of properties partially attached to a sewer, lines 246-247 now ask: “is a portion of the Property connected to a sewer? [and] Explain.”

## SELLER CERTIFICATION

By way of the Seller Certification found on lines 280-283, the seller acknowledges receipt of the Residential Seller Disclosure Advisory titled “When in Doubt – Disclose.” Agents should therefore ensure that the Residential Seller Disclosure Advisory is timely provided to the seller. ❄

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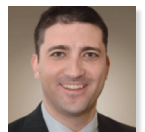
### ABOUT THE AUTHOR

#### Scott M. Drucker, Esq.

Scott M. Drucker, Esq. is General Counsel to the Arizona Association of REALTORS® (AAR). He serves as the primary legal advisor to the Association and oversees AAR's Risk Management Committee, which includes development of standard real estate forms and professional standards administration for twenty of the state's local REALTOR® associations.

This post reflects only the opinion of the author, is not intended to be definitive legal advice and you should not act upon it without seeking independent legal counsel.

1. Valuable contributions to the workgroup were also made by REALTOR® members Martha Appel, Bill Ashker, Jan Green, Nicole Hamming, Pat Kelly, Michelle LaBlonde and Kerry Melcher. The workgroup was assisted by AAR staff members Scott Drucker, Jan Steward and Cynthia Frey.



CONTINUES WITH FAQs —

## FREQUENTLY ASKED QUESTIONS



**Q1: Does Arizona law require sellers to deliver to buyers a completed SPDS?**

**A1:** No. Although the seller is legally obligated to disclose all material facts to the buyer, the seller is not required by Arizona law to make these disclosures via the SPDS. NOTE – If the parties are using AAR's Residential Resale Real Estate Purchase Contract, the seller is required to deliver a completed SPDS to the buyer within five days after contract acceptance.

**Q2: If the seller's assistive service dog lived in the home, should that be disclosed on line 137 of the SPDS?**

**A2:** Yes. Although not a pet, an assistive service dog constitutes an animal that resided in the property. There is no violation of fair housing laws in having the seller disclose the fact that the dog resided in the home.

**Q3: Line 28 asks "Are you aware of any association fees payable upon transfer of the Property?". What types of fees could constitute "association fees" of this nature?**

**A3:** "Association fees" of this nature would typically include transfer fees and disclosure statement fees.

**Q4: Why does it matter if an alternate power system serving the property is leased?**

**A4:** If an alternate power system serving the property is leased, it is not owned by the seller and may not

convey to the buyer. If the leased system is to convey, the conveyance will likely need to be approved by the company that owns the system, meaning that the company can require the buyer to meet its credit standards. If the buyer cannot qualify to assume the lease, they may not wish to complete the purchase.

**Q5: If there are no alternate power systems serving the property, is the seller obligated to answer the questions posed on lines 182-189?**

**A5:** No. If the answer to the question posed on line 181 is "NO," the seller should skip to line 190 and is not obligated to address lines 182-189.

**Q6: Have the questions asking whether the property is currently owner-occupied or leased been eliminated?**

**A6:** No. Formerly found on lines 16-19, they now begin on line nine. The workgroup concentrated on the flow of the document as well as the content within the SPDS.

**Q7: If the property is served by leased pool equipment, should that be disclosed on the SPDS?**

**A7:** Yes. Leased pool equipment should be identified by the seller on lines 159-161.

**Q8: If the property is served by a public water company, a private water company or receives hauled water, should the seller disclose the name of the water provider?**

**A8:** Yes. If the property is served by a public water company, a private water company or receives hauled water, the seller should identify the name of the water provider on line 172.

**Q9: If the property receives satellite service but not cable service, should the seller mark the "YES" box found on line 165?**

**A9:** Yes. If the property receives satellite service but not cable service, the seller should still mark the "YES" box found on line 165 and proceed to identify the name of the satellite service provider.

**Q10: The Residential Seller Disclosure Advisory warns the seller that if they fail to provide the SPDS as the Purchase Contract requires, they may potentially be in breach of contract, thereby enabling the buyer to cancel the transaction and receive the earnest money. Is this the buyer's sole remedy?**

**A10:** No. In the event of a breach of contract, the non-breaching party may cancel the contract and/or proceed against the breaching party in any claim or remedy the non-breaching party may have in law or equity, subject to the alternative dispute resolution obligations set forth in the Purchase Contract. ❄