

**The Newly Revised Arizona Association of REALTORS®
Residential Seller's Property Disclosure Statement
K. Michelle Lind**

The Arizona Association of REALTORS® (“AAR”) Residential Seller’s Property Disclosure Statement (“SPDS”) Work Group, chaired by Trudy Moore, recently completed the revision of the SPDS form. The new SPDS should be available by January 2002 and will replace the current form.

The SPDS has been expanded from three pages to six, although notably, some of the additional length is due to the increase in font size. Because the questions were reformulated to ask only for information of which the seller is aware, the “unknown” box has been eliminated. Additionally, many specific disclosure issues are now listed on the form, and additional information is provided to assist the seller in making all required disclosures and the buyer in obtaining all desired information. This article highlights some of the important revisions to the SPDS.

Message and Instruction to the Seller

The message to the seller explains that sellers are obligated by law to disclose all known material (important) facts about the property and the SPDS is designed to assist in making these disclosures.

Sellers are instructed to complete the form by answering all questions as truthfully and as fully as possible, to attach any available supporting documentation, and to use the explanation lines as necessary. If the seller does not have the personal knowledge to answer a question, the seller is instructed to use the explanation lines to explain.

Message and Instruction to the Buyer

The message to the buyer explains that although sellers are obligated to disclose all known (important) facts about the property, that there are likely facts about the property of which the seller is unaware. Therefore, the buyer is told of the importance of taking an active role in obtaining information about the property.

The buyer is instructed to review the SPDS and any attachments carefully and to verify all important information. The buyer is also instructed to ask about any incomplete or inadequate responses and inquire about any concerns not addressed on the SPDS. Finally, the buyer is instructed to review all other applicable documents, such as the CC&R’s and the title report, obtain professional inspections of the property, and investigate the area surrounding the property.

Ownership and Property

This section prompts for a variety of general information about the property, such as location, ownership and occupancy. Any seller, whether or not that seller has actually lived in the property, should be able to answer most, if not all, the questions in this section.

The SPDS informs the parties that an Affidavit of Disclosure is required by law if the property is in an unincorporated area and five or fewer parcels of land, other than subdivided land, are being transferred. Additionally, the parties are advised that if the owner is a foreign person or non-resident alien, a tax advisor should be consulted about possible mandatory FIRPTA withholding of funds. If the property was built prior the 1978, the parties are informed that a lead-based paint disclosure is required.

Building and Safety Information

This section provides for information regarding the structural integrity of the property. A notice to the buyer to contact a professional to verify the condition of the roof was added to the form as a result of numerous claims from buyers alleging an undisclosed defective roof.

Additional questions regarding wood infestation were added to the SPDS. The seller is asked about any past or current presence of termites or other wood destroying organisms on the property. The treatment history of the property is requested, along with the name of any treatment provider and any warranty information. The buyer is also notified to contact the Structural Pest Control Commission for past reports or treatment history concerning the property.

Heating, cooling, plumbing, and electrical information is requested on the form. The seller is prompted to disclose any swimming pool, spa, hot tub, sauna or other water feature on the property and any problems with any of these items, as well as whether they are heated, and if so, the type of heat.

The seller is also asked specifically to disclose any knowledge of scorpions, rabid animals, bee swarms, rodents, owls or reptiles ever having been present on the property. This question was necessitated by numerous lawsuits, primarily involving the alleged non-disclosure of the presence of scorpions on the property. Although most sellers will answer affirmatively to the question, the buyer will be unable to claim ignorance of these natural inhabitants of our desert environment after close of escrow.

Finally, this section prompts for information about any work or improvements to the property, whether permits were obtained, and other miscellaneous items.

Utilities

The seller is asked whether the property currently receives the listed utilities, and if so, to name the provider. The water source and any known information about drinking water problems are also requested.

Environmental Information

A variety of environmental information is requested. For example, the seller is prompted to disclose any issues relating to: soil settlement/expansion, drainage/grade, erosion or open mine shafts/tunnels or wells, noise from the surrounding area including airports and traffic noise, any odors or other nuisances. The seller is asked to disclose any past or

present asbestos, radon, lead-based paint, pesticides, underground storage tanks or fuel/chemical storage on the property. If the property is located within a Superfund, WQARF, CERCLA or wetlands area, that information is required as well.

One subject that has been added to the form is the issue of mold. Mold spores are everywhere and when mold spores drop in places where there is excessive moisture or where there has been flooding, mold will grow. The seller is asked specifically if the seller is aware of any past or present mold growth on the property. Additionally, the seller is prompted to disclose any conditions conducive to mold growth, such as dampness/moisture, flooding, water damage or water leaks of any kind. If mold is an issue, the Arizona Department of Health Services has an excellent brochure, *Indoor Air Quality Info Sheet, Mold in My Home: What do I do?* that provides a wealth of information on the subject, which can be provided to the buyer and seller. The brochure and other good resources on mold may be obtained from aaronline.com.

Sewer/Waste Water Treatment

The topic of sewer or wastewater treatment has been expanded as a result of numerous claims and lawsuits filed involving alleged misrepresentations that the property was connected to a sewer, when in fact it was not. The seller is asked if the entire property is connected to a sewer and if so, whether the sewer connection has been verified by a professional. Additionally, the buyer is advised to contact a professional to conduct a sewer verification test. If the property is served by an on-site wastewater treatment facility, i.e., a septic or alternative wastewater system, a variety of additional information is elicited. The parties are also notified that the Arizona Department of Environmental Quality will require a pre-transfer inspection of on-site wastewater treatment facilities on resale properties.

Other Conditions and Factors – Additional Explanations

These blank lines provide space for the seller to disclose any other important information concerning the property that might affect the buyer's decision making process, the value of the property, or its use. The additional explanation lines can be used for any other necessary explanations.

Seller Certification

The seller's signature certifies that the information in the SPDS is true and complete and that the seller will disclose any changes in the information in writing prior to close of escrow. A box has been added to allow the seller to indicate by initialing that the SDPS has been reviewed and updated as of a specified date.

Buyer's Acknowledgement

The buyer acknowledges by signing that the information contained in the SPDS is based only on the seller's actual knowledge and is not a warranty. The buyer also acknowledges the obligation to investigate any material (important) facts in regard to the property. The buyer is encouraged to obtain professional inspections and to consider a home warranty. A notice has also been added to the SPDS form to advise the buyer that sellers and brokers are not obligated to disclose certain information, such as the fact that

the property has been the site of a death or felony, owned or occupied by a person with HIV/AIDS or located in the vicinity of a sex offender. Finally, if the buyer reasonably disapproves of any items contained in the SPDS, the buyer must deliver written notice of the items disapproved as provided in the contract.

Conclusion

The SPDS should be utilized in every residential transaction. (Note: For information about the use of the SPDS if the seller refuses to provide a completed form, see *Every Buyer is Entitled to an SPDS* on aaronline.com.) The SPDS was revised to assist the seller in making the legally required disclosures and avoid inadvertent nondisclosures of material facts. The SPDS will also assist the buyer in the inspection and investigation of the property. The proper use of the SPDS will result in well informed buyers and reduce liability claims against sellers and the brokers involved in the transaction.

Michelle is General Counsel to the Arizona Association of REALTORS® (“AAR”) and a State Bar of Arizona board certified real estate specialist.

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