

# ISTS UPGRADE ON CONVEYANCE OF PROPERTY

## CASS COUNTY ENVIRONMENTAL SERVICES

**Individual Sewage Treatment System (ISTS)** A sewage treatment system, or part thereof, serving a dwelling, or other establishment, or group thereof, and using sewage tanks or advanced treatment followed by soil treatment and disposal as described and regulated by the Cass County Individual Sewage Treatment System Ordinance. Individual sewage treatment system includes holding tanks and privies.

### *303 ISTS UPGRADE ON CONVEYANCE OF PROPERTY*

- A. Any individual sewage treatment system located on real property lying within Cass County shall be brought into compliance with the requirements of the current individual sewage treatment systems(ISTS) standard promulgated by the Minnesota Pollution Control Agency (MPCA) in Minn. Rules, Chapter 7080, hereinafter known as "Chapter 7080", or the Cass County Individual Sewage Treatment System Ordinance, hereinafter known as "the Ordinance", whichever is most restrictive, upon conveyance of said real property.
- B. Prior to the conveyance of any real property, the seller shall disclose in writing to the buyer information about the status and location of all known ISTS on the property by delivering to the buyer either a sworn affidavit by the seller that no ISTS exists on the property to the best of their knowledge after diligent investigation, or a certificate of compliance or notice of non-compliance meeting all provisions of Chapter 7080 being the result of a compliance inspection conducted by a Minnesota state registered inspector holding a Designer I or Inspector certification. A certificate of compliance (certificate of compliance) or notice of noncompliance (notice of noncompliance) meeting all provisions of Chapter 7080 shall be submitted to the Cass County Environmental Services Department and the seller within 30 days after the compliance inspection.
- C. If the seller fails to provide a Certificate of Compliance, the seller shall provide the buyer sufficient security in the form of an escrow agreement to assure the installation of a complying ISTS. The security shall be placed in an escrow with the Department. The amount escrowed shall be equal to 125% of a written estimate to install a complying ISTS provided by a licensed and certified installer. The buyer may, by mutual written agreement with the seller, assume the responsibility to fund the escrow. The seller or buyer may, by written agreement, assign a third party to receive the disbursement from the escrow account. After a complying ISTS has been installed and a certificate of compliance issued, the Cass County Environmental Services Department shall cause the escrow to be released to the maker of the escrow or their assigns.
- D. At the time of recording the conveyance of any real property within the unincorporated areas of Cass County, the seller shall provide to the Department or the County Recorder one of the following: (1) a sworn affidavit by the seller certifying that no individual sewage treatment system exists on said property to the best of their knowledge after diligent investigation (affidavit), or (2) a Certificate of Compliance on forms approved by the Environmental Services Department (certificate), or (3) a packet consisting of the following documents to be referred to as an escrow packet: a) an escrow agreement as provided by subdivision "C" of this section, b) an attached written estimate to install a complying ISTS provided by a licensed and certified installer ; and, c) an attached ISTS permit for the installation of the ISTS (packet), or (4) an ISTS permit application and ISTS Compliance Inspection Agreement for conveyances which take place between November 15th and April 15th when compliance cannot be determined (winter agreement). Failure to comply with a requirement of this subdivision does not impair the validity of the deed. Failure to present to the Department or County Recorder an affidavit, certificate of compliance, escrow packet, or a winter agreement as outlined in this subdivision shall constitute a misdemeanor and shall be punishable as defined by Minnesota State Statutes.

- E. Liability for Failure to Disclose: Unless the buyer and seller agree to the contrary in writing before the closing of the sale, a seller who fails to disclose the existence of an individual sewage treatment system at the time of sale and knew or had reason to know of the existence of an individual sewage treatment system is liable to the buyer for costs relating to bringing the individual sewage treatment system into compliance with the Cass County Individual Sewage Treatment System Ordinance, and reasonable attorney's fees for collection of costs from the seller, if the action is commenced within two (2) years after the date the buyer closed the purchase of the real property where the individual sewage treatment system is located. Said civil liability shall in no way impair a criminal prosecution for the same violation.
- F. In accordance with section D, (4) above, all property conveyances subject to this ordinance occurring during the period between November 15th and April 15th when ISTS compliance cannot be determined due to frozen soil conditions shall require a winter agreement, which includes an application for an ISTS permit and an ISTS Compliance Inspection Agreement. The compliance inspection shall be completed by following June 1st by a state-licensed compliance inspector. If upon inspection the ISTS is found to be in compliance, the permit fee will be refunded. If upon inspection the system is found to be failed, an escrow agreement shall be established in accordance with section C, above, and the system shall be upgraded.