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2011-2012 Regular Sessions

I N   S E N A T E

(PREFILED)

January 5, 2011

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Introduced by Sen. SALAND -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the real property law, in relation to requiring a disclosure statement with regards to water testing

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The real property law is amended by adding a new section  
2     462-a to read as follows:  
3     S 462-A. REQUIRED DISCLOSURE OF WATER TESTING. 1. EXCEPT AS IS  
4     PROVIDED IN SECTION FOUR HUNDRED SIXTY-THREE OF THIS ARTICLE, EVERY  
5     SELLER OF RESIDENTIAL REAL PROPERTY PURSUANT TO A REAL ESTATE PURCHASE  
6     CONTRACT SHALL COMPLETE AND SIGN A DISCLOSURE STATEMENT WITH REGARDS TO  
7     WATER TESTING AS PRESCRIBED BY SUBDIVISION TWO OF THIS SECTION AND CAUSE  
8     IT, OR A COPY THEREOF, TO BE DELIVERED TO A BUYER OR BUYER'S AGENT PRIOR  
9     TO THE SIGNING BY THE BUYER OF A BINDING CONTRACT OF SALE. A COPY OF  
10    SUCH DISCLOSURE STATEMENT CONTAINING THE SIGNATURES OF BOTH SELLER AND  
11    BUYER SHALL BE ATTACHED TO THE REAL ESTATE PURCHASE CONTRACT. FAILURE  
12    TO MAKE SUCH DISCLOSURE SHALL SUBJECT THE SELLER TO CONSEQUENTIAL AND  
13    INCIDENTAL DAMAGES. IN ADDITION, THE BUYER MAY SEEK RECISION OF THE  
14    CONTRACT AND THE RETURN OF ALL SUMS PAID TO THE SELLER. NO AGENT OF  
15    EITHER THE BUYER OR THE SELLER TO A REAL ESTATE TRANSACTION SUBJECT TO  
16    THIS SECTION SHALL BE LIABLE FOR A FAILURE TO DISCLOSE AS REQUIRED BY  
17    THIS SUBDIVISION UNLESS SUCH AGENT HAS ACTUAL KNOWLEDGE.  
18    2. THE FOLLOWING SHALL BE THE WATER TEST DISCLOSURE FORM:

19                               WATER TEST DISCLOSURE STATEMENT

20   NAME OF SELLER OR SELLERS:

21   PROPERTY ADDRESS:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD03602-01-1

REAL PROPERTY LAW SECTION 462-A REQUIRES THE SELLER OF RESIDENTIAL REAL PROPERTY TO CAUSE THIS DISCLOSURE STATEMENT OR A COPY THEREOF TO BE DELIVERED TO A BUYER OR BUYER'S AGENT PRIOR TO THE SIGNING BY THE BUYER OF A BINDING CONTRACT OF SALE.

PURPOSE OF STATEMENT: THIS IS A STATEMENT OF INFORMATION CONCERNING, WHERE APPLICABLE, THE OCCURRENCE AND RESULTS OF ANY WATER TESTS KNOWN TO THE SELLER. THIS DISCLOSURE STATEMENT IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR BY ANY AGENT REPRESENTING THE SELLER IN THIS TRANSACTION. IT IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR TESTS AND THE BUYER IS ENCOURAGED TO OBTAIN HIS OR HER OWN INDEPENDENT WATER TESTS.

A KNOWINGLY FALSE OR INCOMPLETE STATEMENT BY THE SELLER ON THIS FORM MAY SUBJECT THE SELLER TO CLAIMS BY THE BUYER PRIOR TO OR AFTER THE TRANSFER OF TITLE.

#### INSTRUCTIONS TO THE SELLER:

(A) ANSWER ALL QUESTIONS BASED UPON YOUR ACTUAL KNOWLEDGE.

(B) ATTACH ADDITIONAL PAGES WITH YOUR SIGNATURE IF ADDITIONAL SPACE IS REQUIRED.

(C) COMPLETE THIS FORM YOURSELF.

(D) IF SOME ITEMS DO NOT APPLY TO YOUR PROPERTY, CHECK "NA" (NON-APPLICABLE). IF YOU DO NOT KNOW THE ANSWER CHECK "UNKN" (UNKNOWN).

SELLER'S STATEMENT: THE SELLER MAKES THE FOLLOWING REPRESENTATIONS TO THE BUYER BASED UPON THE SELLER'S ACTUAL KNOWLEDGE AT THE TIME OF SIGNING THIS DOCUMENT. THE SELLER AUTHORIZES HIS OR HER AGENT, IF ANY, TO PROVIDE A COPY OF THIS STATEMENT TO A PROSPECTIVE BUYER OF THE RESIDENTIAL REAL PROPERTY. THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER AND ARE NOT THE REPRESENTATIONS OF THE SELLER'S AGENT.

#### WATER TEST DISCLOSURE

1. WHAT IS THE WATER SOURCE (CIRCLE ALL THAT APPLY - WELL, PRIVATE, MUNICIPAL, OTHER)? IF MUNICIPAL, IS IT METERED? YES NO UNKN NA
2. HAS THE WATER QUALITY AND/OR FLOW RATE BEEN TESTED? YES NO UNKN NA  
(IF YES, DESCRIBE BELOW)
3. HAVE ANY WATER TESTS BEEN PERFORMED? YES NO UNKN NA
4. WHAT IS THE DATE OF SUCH WATER TESTS? UNKN NA
5. ATTACH WELL TEST RESULTS. NA
6. DID THE TEST REVEAL ANY FAILURES? YES NO UNKN NA
7. WHICH PARAMETERS FAILED? UNKN NA
8. WAS REMEDIATION DONE? YES NO UNKN NA
9. WHAT TYPE OF REMEDIATION? UNKN NA
10. WAS THE WELL RETESTED? YES NO UNKN NA
11. WHEN WAS THE RETESTING PERFORMED? UNKN NA
12. ATTACH COPY OF NEW TEST. NA
13. ANY FURTHER COMMENTS OR INFORMATION RELATING TO YOUR WELL. NA

S 2. The opening paragraph of section 463 of the real property law, as added by chapter 456 of the laws of 2001, is amended to read as follows:

[A] THE property condition disclosure statement SET FORTH IN SECTION FOUR HUNDRED SIXTY-TWO OF THIS ARTICLE AND THE WATER TEST DISCLOSURE STATEMENT SET FORTH IN SECTION FOUR HUNDRED SIXTY-TWO-A OF THIS ARTICLE

1 shall not be required in connection with any of the following transfers  
2 of residential real property:  
3 S 3. This act shall take effect on the one hundred eightieth day after  
4 it shall have become a law.