S T A T E O F N E W Y O R K

2992

2009-2010 Regular Sessions

I N A S S E M B L Y

January 22, 2009

Introduced by M. of A. PHEFFER, ENGLEBRIGHT -- Multi-Sponsored by -- M. of A. TOWNS -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property law, in relation to requiring sellers of residential real property to disclose radon test results for all houses offered for sale, exchange or for lease with option to buy

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

Section 1. The real property law is amended by adding a new section 443-b to read as follows:

S 443-B. RADON TEST RESULTS DISCLOSURE NOTICE. 1. EACH PERSON WHO OFFERS RESIDENTIAL REAL PROPERTY IN NEW YORK STATE FOR SALE, EXCHANGE, OR FOR LEASE WITH OPTION OR OBLIGATION TO PURCHASE, MUST PROVIDE THE PURCHASER, PRIOR TO THE EXECUTION OF ANY CONTRACT TO PURCHASE, OPTION, OR LEASE (WITH OPTION OR OBLIGATION TO PURCHASE) WITH PRE-MITIGATION AND, WHERE APPLICABLE, POST-MITIGATION RESULTS OF THE MOST RECENT RADON MEASUREMENT TEST PERFORMED WITHIN THE PREVIOUS SIX MONTHS BY A RADON MEASUREMENT BUSINESS CERTIFIED BY THE DEPARTMENT OF HEALTH.

(A) EACH PAGE OF SUCH REPORT SHALL BE SIGNED AND DATED BY THE SELLER AND, UPON RECEIPT, THE PROSPECTIVE PURCHASER. A COPY OF THE SIGNED REPORT SHALL BE ATTACHED TO ANY AGREEMENT TO SELL, EXCHANGE, OR LEAVE (WITH OPTION OR OBLIGATION TO PURCHASE) THE PROPERTY ENTERED INTO BETWEEN THE TWO PARTIES. THE SELLER SHALL SIMULTANEOUSLY PROVIDE THE PURCHASER WITH AN INFORMATIONAL PAMPHLET APPROVED AND SUPPLIED BY THE DEPARTMENT OF HEALTH. THE PURCHASER SHALL BE GRANTED A TEN DAY PERIOD TO CONDUCT A FOLLOW-UP RADON TEST, IF DESIRED BEFORE BECOMING OBLIGATED TO A CONTRACT.

(B) THE FOLLOWING ARE EXEMPT FROM THE PROVISIONS OF THIS SECTION:

(1) ANY TRANSFER FROM ONE OR MORE CO-OWNERS SOLELY TO ONE OR MORE OF THE OTHER CO-OWNERS;

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

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(2) TRANSFERS MADE TO THE SPOUSE, MOTHER, FATHER, BROTHER, SISTER, CHILD, GRANDPARENT, OR GRANDCHILD OF THE TRANSFEROR WHERE NO CONSIDERATION IS PAID;
(3) TRANSFERS PURSUANT TO AN ORDER OF A COURT;
(4) TRANSFERS OF NEWLY CONSTRUCTED RESIDENTIAL REAL PROPERTY FOR WHICH AN IMPLIED WARRANTY IS PROVIDED;
(5) TRANSFERS MADE BY EXECUTORS, ADMINISTRATORS, TRUSTEES, OR CONSERVATORS;
(6) TRANSFERS BY THE FEDERAL GOVERNMENT, OR ANY POLITICAL SUBDIVISION THEREOF, OR ANY CORPORATION, INSTITUTION, OR QUASI-GOVERNMENTAL AGENCY CHARTERED BY THE FEDERAL GOVERNMENT;
(7) TRANSFERS BY DEED IN LIEU OF FORECLOSURE;
(8) TRANSFERS BY THE STATE OF NEW YORK OR ANY POLITICAL SUBDIVISION THEREOF;
(9) TRANSFERS OF PROPERTY WHICH WERE THE SUBJECT OF A CONTRACT OR OPTION ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THIS SECTION; AND
(10) ANY TRANSFER OF PROPERTY ACQUIRED BY A JUDGMENT OF FORECLOSURE BY SALE OR BY A DEED IN LIEU OF FORECLOSURE.

(C) THE PROVISIONS OF THIS SECTION APPLY ONLY TO TRANSFERS BY SALE, EXCHANGE, OR LEASE WITH OPTION OR OBLIGATION TO PURCHASE, OF RESIDENTIAL REAL PROPERTY CONSISTING OF NOT LESS THAN ONE NOR MORE THAN FOUR DWELLING UNITS AND APPLY TO ALL TRANSFERS, WITH OR WITHOUT THE ASSISTANCE OF A LICENSED REAL ESTATE BROKER OR SALESMAN.

2. EACH PRE-MITIGATION AND POST-MITIGATION REPORT OF A RADON MEASUREMENT TEST PROVIDED TO THE PROSPECTIVE PURCHASER OF PROPERTY FOR SALE, EXCHANGE, OR LEASE WITH OPTION OR OBLIGATION TO PURCHASE SHALL INCLUDE, BUT NOT NECESSARILY BE LIMITED TO, THE FOLLOWING INFORMATION:
(A) THE NAME OF THE OWNER AND RESIDENT, STREET ADDRESS, MUNICIPALITY, COUNTY, AND ZIP CODE OF LOCATION WHERE TESTING WAS PERFORMED;
(B) THE TYPE OF EQUIPMENT USED FOR RADON AND RADON DECAY PRODUCT TESTING ACCORDING TO THE AUTHORIZED MEASUREMENT PROTOCOLS, MEDIA TESTED, AND CONDITIONS UNDER WHICH TESTING WAS PERFORMED;
(C) THE LEVEL OR FLOOR OF THE BUILDING WHERE TESTS WERE CONDUCTED;
(D) THE RESULTS OF THE TEST IN PICOCURIES/LITER (PCI/L) OF RADON GAS OR WORKING LEVEL (WL) OF RADON DECAY PRODUCTS;
(E) THE DATE OF START AND COMPLETION TIMES WHEN THE TEST WAS CONDUCTED;
(F) THE PURPOSE OF THE TEST, SUCH AS SCREENING, FOLLOW-UP, DIAGNOSTIC, PRE-MITIGATION, OR POST-MITIGATION;
(G) THE CERTIFIED RADON LABORATORY PERFORMING ANALYSIS OF THE SAMPLE DEVICES;
(H) THE TYPE OF BUILDING THE TEST WAS PERFORMED IN: RESIDENTIAL OR NON-RESIDENTIAL;
(I) WHETHER THE SAMPLING WAS PERFORMED BY THE BUILDING OWNER OR A CERTIFIED RADON PROFESSIONAL; AND
(J) WHETHER OR NOT THE TEST WAS CONDUCTED AS PART OF A REAL ESTATE TRANSACTION.

3. RADON MEASUREMENT BUSINESSES CERTIFIED BY THE DEPARTMENT OF HEALTH SHALL SUBMIT TO THE DEPARTMENT OF HEALTH BY THE FIRST DAY OF THE SECOND MONTH NEXT SUCCEEDING THE MONTH IN WHICH THE RADON AND RADON PROGENY MEASUREMENTS WERE PERFORMED THE RESULTS OF ALL RADON AND RADON PROGENY MEASUREMENTS PERFORMED IN SUCH APPROPRIATE PRECEDING MONTH. THE INFORMATION SHALL BE SUBMITTED IN A FORMAT TO BE PRESCRIBED BY THE DEPARTMENT OF HEALTH AND SHALL INCLUDE, BUT NOT NECESSARILY BE LIMITED TO:
(A) THE NAME OF THE OWNER AND RESIDENT, STREET ADDRESS, MUNICIPALITY, COUNTY, AND ZIP CODE OF LOCATION WHERE TESTING WAS PERFORMED;

(B) THE TYPE OF EQUIPMENT USED FOR RADON AND RADON DECAY PRODUCT TESTING ACCORDING TO THE AUTHORIZED MEASUREMENT PROTOCOLS, MEDIA TESTED, AND CONDITIONS UNDER WHICH TESTING WAS PERFORMED;

(C) THE LEVEL OR FLOOR OF THE BUILDING WHERE TESTS WERE CONDUCTED;

(D) THE RESULTS OF THE TEST IN PICOCURIES/LITER (PCI/L) OF RADON GAS OR WORKING LEVEL (WL) OF RADON DECAY PRODUCTS;

(E) THE DATE OF START AND COMPLETION TIMES WHEN THE TEST WAS CONDUCTED;

(F) THE PURPOSE OF THE TEST, SUCH AS SCREENING, FOLLOW-UP, DIAGNOSTIC, PRE-MITIGATION, OR POST-MITIGATION;

(G) THE CERTIFIED RADON LABORATORY PERFORMING ANALYSIS OF THE SAMPLE DEVICES;

(H) THE TYPE OF BUILDING THE TEST WAS PERFORMED IN: RESIDENTIAL OR NON-RESIDENTIAL;

(I) WHETHER THE SAMPLING WAS PERFORMED BY THE BUILDING OWNER OR A CERTIFIED RADON PROFESSIONAL; AND

(J) WHETHER OR NOT THE TEST WAS CONDUCTED AS PART OF A REAL ESTATE TRANSACTION.

4. RADON MITIGATION BUSINESSES CERTIFIED BY THE DEPARTMENT OF HEALTH SHALL SUBMIT TO THE DEPARTMENT OF HEALTH BY THE FIRST DAY OF THE SECOND MONTH NEXT SUCCEEDING THE MONTH IN WHICH THE MITIGATION WORK WAS PERFORMED A REPORT OF ALL MITIGATION WORK PERFORMED IN SUCH APPROPRIATE PRECEDING MONTH. THE REPORTS SHALL BE SUBMITTED IN A FORMAT TO BE PRESCRIBED BY THE DEPARTMENT OF HEALTH AND SHALL INCLUDE THE FOLLOWING INFORMATION:

(A) THE NAME AND ADDRESS OF THE OWNER AND RESIDENT OF THE BUILDING IN WHICH MITIGATION WORK WAS PERFORMED AND THE TYPE OF BUILDING THAT WAS MITIGATED: RESIDENTIAL OR NON-RESIDENTIAL;

(B) A DESCRIPTION OF THE MITIGATION WORK PERFORMED IN EACH BUILDING, SPECIFYING THE TYPE OF MITIGATION SYSTEMS INSTALLED AND THE DATE OF INSTALLATION; AND

(C) ALL PRE-MITIGATION AND POST-MITIGATION RADON TEST RESULTS, TEST DATES, METHODS OF MEASUREMENT, THE LEVEL OR FLOOR OF BUILDING ON WHICH TESTS WERE PERFORMED, AND THE NAME OF THE CERTIFIED MEASUREMENT BUSINESS PERFORMING THE TESTS.

5. FAILURE OF THE SELLER OF RESIDENTIAL REAL PROPERTY IN NEW YORK STATE OFFERED FOR SALE, EXCHANGE, OR LEASE WITH OPTION OR OBLIGATION TO PURCHASE TO PROVIDE A PURCHASER, PRIOR TO THE EXECUTION OF ANY CONTRACT TO PURCHASE, OPTION, OR LEASE (WITH OPTION OR OBLIGATION TO PURCHASE), WITH PRE-MITIGATION RESULTS OR, WHERE APPLICABLE, POST-MITIGATION RESULTS OF THE MOST RECENT RADON PROGENY MEASUREMENT TEST PERFORMED WITHIN THE PREVIOUS SIX MONTHS BY A RADON MEASUREMENT BUSINESS CERTIFIED BY THE DEPARTMENT OF HEALTH MAKES THE SELLER LIABLE, FOR A PERIOD OF TWELVE MONTHS MEASURED FROM THE DATE OF SUCH EXECUTION, FOR ALL OF THE PURCHASER'S REASONABLE COSTS IN DETECTING AND CORRECTING A RADON PROBLEM. THE SELLER WILL BE SIMILARLY LIABLE FOR SUCH COSTS IF THE SELLER FAILS:

(A) TO PROVIDE THE PURCHASER WITH AN INFORMATIONAL PAMPHLET APPROVED AND SUPPLIED BY THE DEPARTMENT OF HEALTH; OR

(B) TO PROVIDE THE PURCHASER WITH AN OPPORTUNITY TO CONDUCT A FOLLOW-UP RADON TEST, IF DESIRED; OR

(C) TO ATTACH THE SIGNED COPIES OF ALL REAL ESTATE CONTRACTS.

AN ACTION TO RECOVER SUCH COSTS MUST BE COMMENCED WITHIN THREE YEARS AFTER THE DATE ON WHICH THE CLOSING OF THE SALE TAKES PLACE. IN ADDITION, THE COURT MAY ALSO AWARD REASONABLE ATTORNEY'S FEES TO THE

PURCHASER IF THE PURCHASER BRINGS A SUCCESSFUL ACTION AGAINST THE SELLER AS PROVIDED IN THIS SUBDIVISION.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law, and shall apply to all contracts for the purchase of residential real property entered into on or after such date.