1251

2009-2010 Regular Sessions

IN SENATE

January 28, 2009

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:
 - 462-A. REOUIRED DISCLOSURE OF WATER TESTING. 1. EXCEPT AS IS PROVIDED IN SECTION FOUR HUNDRED SIXTY-THREE OF THIS ARTICLE, SELLER OF RESIDENTIAL REAL PROPERTY PURSUANT TO A REAL ESTATE PURCHASE CONTRACT SHALL COMPLETE AND SIGN A DISCLOSURE STATEMENT WITH REGARDS WATER TESTING AS PRESCRIBED BY SUBDIVISION TWO OF THIS SECTION AND CAUSE IT, OR A COPY THEREOF, TO BE DELIVERED TO A BUYER OR BUYER'S AGENT PRIOR THE SIGNING BY THE BUYER OF A BINDING CONTRACT OF SALE. A COPY OF SUCH DISCLOSURE STATEMENT CONTAINING THE SIGNATURES OF BOTH SELLER AND BUYER SHALL BE ATTACHED TO THE REAL ESTATE PURCHASE CONTRACT. FAILURE TO MAKE SUCH DISCLOSURE SHALL SUBJECT THE SELLER TO CONSEQUENTIAL ADDITION, THE BUYER MAY SEEK RECISION OF THE INCIDENTAL DAMAGES. INCONTRACT AND THE RETURN OF ALL SUMS PAID TO THE SELLER. NO AGENT OF BUYER OR THE SELLER TO A REAL ESTATE TRANSACTION SUBJECT TO THIS SECTION SHALL BE LIABLE FOR A FAILURE TO DISCLOSE AS REQUIRED BY THIS SUBDIVISION UNLESS SUCH AGENT HAS ACTUAL KNOWLEDGE.
 - 2. THE FOLLOWING SHALL BE THE WATER TEST DISCLOSURE FORM:
- 19 WATER TEST DISCLOSURE STATEMENT
- 20 NAME OF SELLER OR SELLERS:
- 21 PROPERTY ADDRESS:

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

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REAL PROPERTY LAW SECTION 462-A REQUIRES THE SELLER OF RESIDENTIAL 1 REAL PROPERTY TO CAUSE THIS DISCLOSURE STATEMENT OR A COPY THEREOF TO BE 3 DELIVERED TO A BUYER OR BUYER'S AGENT PRIOR TO THE SIGNING BY THE BUYER OF A BINDING CONTRACT OF SALE.

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

A KNOWINGLY FALSE OR INCOMPLETE STATEMENT BY THE SELLER ON THIS FORM 11 MAY SUBJECT THE SELLER TO CLAIMS BY THE BUYER PRIOR TO OR AFTER THE 12 TRANSFER OF TITLE. 13

14 INSTRUCTIONS TO THE SELLER:

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- (A) ANSWER ALL QUESTIONS BASED UPON YOUR ACTUAL KNOWLEDGE.
- 16 (B) ATTACH ADDITIONAL PAGES WITH YOUR SIGNATURE IF ADDITIONAL SPACE IS 17 REOUIRED.
 - (C) COMPLETE THIS FORM YOURSELF.
- (D) IF SOME ITEMS DO NOT APPLY TO YOUR PROPERTY, CHECK "NA" (NON-AP-19 20 PLICABLE). IF YOU DO NOT KNOW THE ANSWER CHECK "UNKN" (UNKNOWN).

21 SELLER'S STATEMENT: THE SELLER MAKES THE FOLLOWING REPRESENTATIONS BUYER BASED UPON THE SELLER'S ACTUAL KNOWLEDGE AT THE TIME OF SIGN-22 23 ING THIS DOCUMENT. THE SELLER AUTHORIZES HIS OR HER AGENT, 24 PROVIDE A COPY OF THIS STATEMENT TO A PROSPECTIVE BUYER OF THE RESIDEN-25 TIAL REAL PROPERTY. THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER AND ARE NOT THE REPRESENTATIONS OF THE SELLER'S AGENT. 26

27 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 OUALITY AND/OR FLOW RATE BEEN TESTED? YES NO UNKN NA

30	2.	HAS THE WATER QUALITY AND/(OR FLOW	RATE	BEEN	TESTED?	YES	NO	UNKN	NA
31		(IF YES, DESCRIBE BELOW)								
32	3.	HAVE ANY WATER TESTS BEEN								
33		PERFORMED?	YES		NO	Ţ	JNKN]	NA
34	4.	WHAT IS THE DATE OF SUCH WA	ATER							
35		TESTS?				Ţ	JNKN]	NA
36	5.	ATTACH WELL TEST RESULTS.]	NA
37	6.	DID THE TEST REVEAL ANY								
38		FAILURES?	YES		NO	Ţ	JNKN]	NA
39	7.	WHICH PARAMETERS FAILED?				Ţ	JNKN]	NA
40	8.	WAS REMEDIATION DONE?	YES		NO	Ţ	JNKN]	NA
41	9.	WHAT TYPE OF REMEDIATION?				τ	JNKN]	NA
42	10.	WAS THE WELL RETESTED?	YES		NO	τ	JNKN]	NA
43	11.	WHEN WAS THE RETESTING								
44		PERFORMED?				τ	JNKN]	NA
45	12.	ATTACH COPY OF NEW TEST.]	NA
46	13.	ANY FURTHER COMMENTS OR IN	FORMATIO	N REL	ATING	TO YOU	R WEL	ıL.]	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

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

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shall not be required in connection with any of the following transfers of residential real property:

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.