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

3716

2009-2010 Regular Sessions

I N S E N A T E

March 30, 2009

Introduced by Sen. PARKER -- (at request of the Consumer Protection Board) -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the energy law, in relation to increasing truth in heating penalties; and to amend the real property law, in relation to amending the enhanced property disclosure statement

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

Section 1. Paragraph (a) of subdivision 3 of section 17-103 of the energy law, as amended by chapter 19 of the laws of 1990, is amended to read as follows:

(a) The maximum penalty which may be recovered pursuant to section 5-119 of this chapter, for a violation of this section by any seller, lessor or vendor shall be [one] FIVE hundred dollars for each separate and distinct violation; provided, however, that (i) a seller shall not be in violation of this section due to the failure by a vendor to furnish heating and/or cooling bills upon receipt of such a request by the seller, and (ii) a lessor shall not be in violation of this section if the lessor commenced an act to obtain immediately the heating and/or cooling bills upon receiving notice that the structure was to be vacated and had not yet received such bills from the vendor.

S 2. Section 462 of the real property law, as added by chapter 456 of the laws of 2001, is amended to read as follows:

S 462. Property condition disclosure statement. 1. Except as is provided in section four hundred sixty-three of this article, every seller of residential real property pursuant to a real estate purchase contract shall complete and sign a property condition disclosure statement 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 to the signing by the buyer of a binding contract of sale. A copy of the property condition disclosure statement containing the signatures of both

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

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seller and buyer shall be attached to the real estate purchase contract. Nothing contained in this article or this disclosure statement is intended to prevent the parties to a contract of sale from entering into agreements of any kind or nature with respect to the physical condition of the property to be sold, including, but not limited to, agreements for the sale of real property "as is".

2. The following shall be the disclosure form:

PROPERTY CONDITION DISCLOSURE STATEMENT

NAME OF SELLER OR SELLERS:

PROPERTY ADDRESS:

THE PROPERTY CONDITION DISCLOSURE ACT 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 CERTAIN CONDITIONS AND INFORMATION CONCERNING THE PROPERTY 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 PROFESSIONAL INSPECTIONS AND ENVIRONMENTAL TESTS AND ALSO IS ENCOURAGED TO CHECK PUBLIC RECORDS PERTAINING TO THE PROPERTY.

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. IN THE EVENT A SELLER FAILS TO PERFORM THE DUTY PRESCRIBED IN THIS ARTICLE TO DELIVER A DISCLOSURE STATEMENT PRIOR TO THE SIGNING BY THE BUYER OF A BINDING CONTRACT OF SALE, THE BUYER SHALL RECEIVE UPON THE TRANSFER OF TITLE A CREDIT OF FIVE HUNDRED DOLLARS AGAINST THE AGREED UPON PURCHASE PRICE OF THE RESIDENTIAL REAL PROPERTY.

"RESIDENTIAL REAL PROPERTY" MEANS REAL PROPERTY IMPROVED BY A ONE TO FOUR FAMILY DWELLING USED OR OCCUPIED, OR INTENDED TO BE USED OR OCCUPIED, WHOLLY OR PARTLY, AS THE HOME OR RESIDENCE OF ONE OR MORE PERSONS, BUT SHALL NOT REFER TO (A) UNIMPROVED REAL PROPERTY UPON WHICH SUCH DWELLINGS ARE TO BE CONSTRUCTED OR (B) CONDOMINIUM UNITS OR COOPERATIVE APARTMENTS OR (C) PROPERTY ON A HOMEOWNERS' ASSOCIATION THAT IS NOT OWNED IN FEE SIMPLE BY THE SELLER.

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.

GENERAL INFORMATION

1. HOW LONG HAVE YOU OWNED THE PROPERTY?
2. HOW LONG HAVE YOU OCCUPIED THE PROPERTY?
3. WHAT IS THE AGE OF THE STRUCTURE OR STRUCTURES? NOTE TO BUYER--IF THE STRUCTURE WAS BUILT BEFORE 1978 YOU ARE ENCOURAGED TO INVESTIGATE FOR THE PRESENCE OF LEAD BASED PAINT.
4. DOES ANYBODY OTHER THAN YOURSELF HAVE A LEASE, EASEMENT OR ANY OTHER RIGHT TO USE OR OCCUPY ANY PART OF YOUR PROPERTY OTHER THAN THOSE STATED IN DOCUMENTS AVAILABLE IN THE PUBLIC RECORD, SUCH AS RIGHTS TO USE A ROAD OR PATH OR CUT TREES OR CROPS. YES NO UNKN NA
5. DOES ANYBODY ELSE CLAIM TO OWN ANY PART OF YOUR PROPERTY? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
6. HAS ANYONE DENIED YOU ACCESS TO THE PROPERTY OR MADE A FORMAL LEGAL CLAIM CHALLENGING YOUR TITLE TO THE PROPERTY? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
7. ARE THERE ANY FEATURES OF THE PROPERTY SHARED IN COMMON WITH ADJOINING LAND OWNERS OR A HOMEOWNERS ASSOCIATION, SUCH AS WALLS, FENCES OR DRIVEWAYS? YES NO UNKN NA (IF YES DESCRIBE BELOW)
8. ARE THERE ANY ELECTRIC OR GAS UTILITY SURCHARGES FOR LINE EXTENSIONS, SPECIAL ASSESSMENTS OR HOMEOWNER OR OTHER ASSOCIATION FEES THAT APPLY TO THE PROPERTY? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
9. ARE THERE CERTIFICATES OF OCCUPANCY RELATED TO THE PROPERTY? YES NO UNKN NA (IF NO, EXPLAIN BELOW)

ENVIRONMENTAL

NOTE TO SELLER - IN THIS SECTION, YOU WILL BE ASKED QUESTIONS REGARDING PETROLEUM PRODUCTS AND HAZARDOUS OR TOXIC SUBSTANCES THAT YOU KNOW TO HAVE BEEN SPILLED, LEAKED OR OTHERWISE BEEN RELEASED ON THE PROPERTY OR FROM THE PROPERTY ONTO ANY OTHER PROPERTY. PETROLEUM PRODUCTS MAY INCLUDE, BUT ARE NOT LIMITED TO, GASOLINE, DIESEL FUEL, HOME HEATING FUEL, AND LUBRICANTS. HAZARDOUS OR TOXIC SUBSTANCES ARE PRODUCTS THAT COULD POSE SHORT- OR LONG-TERM DANGER TO PERSONAL HEALTH OR THE ENVIRONMENT IF THEY ARE NOT PROPERLY DISPOSED OF, APPLIED OR STORED. THESE INCLUDE, BUT ARE NOT LIMITED TO, FERTILIZERS, PESTICIDES AND INSECTICIDES, PAINT INCLUDING PAINT THINNER, VARNISH REMOVER AND WOOD PRESERVATIVES, TREATED WOOD, CONSTRUCTION MATERIALS SUCH AS ASPHALT AND ROOFING MATERIALS, ANTIFREEZE AND OTHER AUTOMOTIVE PRODUCTS, BATTERIES, CLEANING SOLVENTS INCLUDING SEPTIC TANK CLEANERS, HOUSEHOLD CLEANERS AND POOL CHEMICALS AND PRODUCTS CONTAINING MERCURY AND LEAD.

NOTE TO BUYER - IF CONTAMINATION OF THIS PROPERTY FROM PETROLEUM PRODUCTS AND/OR HAZARDOUS OR TOXIC SUBSTANCES IS A CONCERN TO YOU, YOU ARE URGED TO CONSIDER SOIL AND GROUNDWATER TESTING OF THIS PROPERTY.

10. IS ANY OR ALL OF THE PROPERTY LOCATED IN A DESIGNATED FLOODPLAIN? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
11. IS ANY OR ALL OF THE PROPERTY LOCATED IN A DESIGNATED WETLAND? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
12. IS THE PROPERTY LOCATED IN AN AGRICULTURAL DISTRICT? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
13. WAS THE PROPERTY EVER THE SITE OF A LANDFILL? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
14. ARE THERE OR HAVE THERE EVER BEEN FUEL STORAGE TANKS ABOVE OR BELOW THE GROUND ON THE PROPERTY? YES NO UNKN NA IF YES, ARE THEY CURRENTLY IN USE? YES NO UNKN NA LOCATION(S) ARE THEY LEAKING OR HAVE THEY EVER LEAKED? YES NO UNKN NA (IF YES, EXPLAIN BELOW)

15. IS THERE ASBESTOS IN THE STRUCTURE? YES NO UNKN NA (IF YES, STATE LOCATION OR LOCATIONS BELOW)
16. IS LEAD PLUMBING PRESENT? YES NO UNKN NA (IF YES, STATE LOCATION OR LOCATIONS BELOW)
17. HAS A RADON TEST BEEN DONE? YES NO UNKN NA (IF YES, ATTACH A COPY OF THE REPORT)
18. HAS MOTOR FUEL, MOTOR OIL, HOME HEATING FUEL, LUBRICATING OIL OR ANY OTHER PETROLEUM PRODUCT, METHANE GAS, OR ANY HAZARDOUS OR TOXIC SUBSTANCE SPILLED, LEAKED OR OTHERWISE BEEN RELEASED ON THE PROPERTY OR FROM THE PROPERTY ONTO ANY OTHER PROPERTY? YES NO UNKN NA (IF YES, DESCRIBE BELOW)
19. HAS THE PROPERTY BEEN TESTED FOR THE PRESENCE OF MOTOR FUEL, MOTOR OIL, HOME HEATING FUEL, LUBRICATING OIL, OR ANY OTHER PETROLEUM PRODUCT, METHANE GAS, OR ANY HAZARDOUS OR TOXIC SUBSTANCE? YES NO UNKN NA (IF YES, ATTACH REPORT(S))

STRUCTURAL

20. IS THERE ANY ROT OR WATER DAMAGE TO THE STRUCTURE OR STRUCTURES? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
21. IS THERE ANY FIRE OR SMOKE DAMAGE TO THE STRUCTURE OR STRUCTURES? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
22. IS THERE ANY TERMITE, INSECT, RODENT OR PEST INFESTATION OR DAMAGE? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
23. HAS THE PROPERTY BEEN TESTED FOR TERMITE, INSECT, RODENT OR PEST INFESTATION OR DAMAGE? YES NO UNKN NA (IF YES, PLEASE ATTACH REPORT(S))
24. WHAT IS THE TYPE OF ROOF/ROOF COVERING (SLATE, ASPHALT, OTHER.)? ANY KNOWN MATERIAL DEFECTS? HOW OLD IS THE ROOF? IS THERE A TRANSFERABLE WARRANTEE ON THE ROOF IN EFFECT NOW? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
25. ARE THERE ANY KNOWN MATERIAL DEFECTS IN ANY OF THE FOLLOWING STRUCTURAL SYSTEMS: FOOTINGS, BEAMS, GIRDERS, LINTELS, COLUMNS OR PARTITIONS[.]? YES NO UNKN NA (IF YES, EXPLAIN BELOW)

MECHANICAL SYSTEMS & SERVICES

26. WHAT IS THE WATER SOURCE (CIRCLE ALL THAT APPLY - WELL, PRIVATE, MUNICIPAL, OTHER)? IF MUNICIPAL, IS IT METERED? YES NO UNKN NA
27. HAS THE WATER QUALITY AND/OR FLOW RATE BEEN TESTED? YES NO UNKN NA (IF YES, DESCRIBE BELOW)
28. WHAT IS THE TYPE OF SEWAGE SYSTEM (CIRCLE ALL THAT APPLY - PUBLIC SEWER, PRIVATE SEWER, SEPTIC OR CESSPOOL)? IF SEPTIC OR CESSPOOL, AGE? _____ DATE LAST PUMPED? _____ FREQUENCY OF PUMPING? _____ ANY KNOWN MATERIAL DEFECTS? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
29. WHO IS YOUR ELECTRIC SERVICE PROVIDER? _____ WHAT IS THE AMPERAGE? _____ DOES IT HAVE CIRCUIT BREAKERS OR FUSES? _____ PRIVATE OR PUBLIC POLES? _____ ANY KNOWN MATERIAL DEFECTS? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
30. ARE THERE ANY FLOODING, DRAINAGE OR GRADING PROBLEMS THAT RESULTED IN STANDING WATER ON ANY PORTION OF THE PROPERTY? YES NO UNKN NA (IF YES, STATE LOCATIONS AND EXPLAIN BELOW)
31. DOES THE BASEMENT HAVE SEEPAGE THAT RESULTS IN STANDING WATER? YES NO UNKN NA (IF YES, EXPLAIN BELOW)
32. ARE APPLIANCES INCLUDED IN THE SALE OF THE PROPERTY? YES NO UNKN NA (IF YES, IDENTIFY SUCH APPLIANCES AND PROVIDE ITS ENERGY EFFICIENCY STATUS, IF KNOWN, BELOW)

ARE THERE ANY KNOWN MATERIAL DEFECTS IN ANY OF THE FOLLOWING (IF YES, EXPLAIN BELOW. USE ADDITIONAL SHEETS IF NECESSARY.):

[32.]	33. PLUMBING SYSTEM?	YES	NO	UNKN	NA
[33.]	34. SECURITY SYSTEM?	YES	NO	UNKN	NA
[34.]	35. CARBON MONOXIDE DETECTOR?	YES	NO	UNKN	NA
[35.]	36. SMOKE DETECTOR?	YES	NO	UNKN	NA
[36.]	37. FIRE SPRINKLER SYSTEM?	YES	NO	UNKN	NA
[37.]	38. SUMP PUMP?	YES	NO	UNKN	NA
[38.]	39. FOUNDATION/SLAB?	YES	NO	UNKN	NA
[39.]	40. INTERIOR WALLS/CEILINGS?	YES	NO	UNKN	NA
[40.]	41. EXTERIOR WALLS OR SIDING?	YES	NO	UNKN	NA
[41.]	42. FLOORS?	YES	NO	UNKN	NA
[42.]	43. CHIMNEY/FIREPLACE OR STOVE?	YES	NO	UNKN	NA
[43.]	44. PATIO/DECK?	YES	NO	UNKN	NA
[44.]	45. DRIVEWAY?	YES	NO	UNKN	NA
[45.]	46. AIR CONDITIONER?	YES	NO	UNKN	NA
[46.]	47. HEATING SYSTEM?	YES	NO	UNKN	NA
[47.]	48. HOT WATER HEATER?	YES	NO	UNKN	NA
[48.]	49. THE PROPERTY IS LOCATED IN THE FOLLOWING SCHOOL DISTRICT			UNKN	

NOTE: UNDER THE TRUTH IN HEATING LAW, AS PROVIDED IN S 17-103 OF THE ENERGY LAW, PRIOR TO ENTERING INTO A PURCHASING CONTRACT, A BUYER IS ENTITLED UPON WRITTEN REQUEST TO RECEIVE (1) ALL FUEL AND/OR UTILITY BILLS ASSOCIATED WITH THE PROPERTY FOR THE PREVIOUS TWO YEARS AND (2) ANY AVAILABLE INFORMATION ON THE TYPE AND AREAS OF INSULATION CONTAINED WITHIN THE STRUCTURE. IF THE SELLER DOES NOT HAVE SUCH BILL HISTORY AVAILABLE, THE PROPERTY'S RETAIL FUEL VENDOR AND/OR UTILITY SERVICE PROVIDER MUST PROVIDE THE RECORDS UPON THE SELLER'S REQUEST, AS PROVIDED IN S 17-103 OF THE ENERGY LAW. BUYER IS ENCOURAGED TO CHECK PUBLIC RECORDS CONCERNING THE PROPERTY (E.G. TAX RECORDS AND WETLAND AND FLOOD PLAIN MAPS)

THE SELLER SHOULD USE THIS AREA TO FURTHER EXPLAIN ANY ITEM ABOVE. IF NECESSARY, ATTACH ADDITIONAL PAGES AND INDICATE HERE THE NUMBER OF ADDITIONAL PAGES ATTACHED.

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SELLER'S CERTIFICATION: SELLER CERTIFIES THAT THE INFORMATION IN THIS PROPERTY CONDITION DISCLOSURE STATEMENT IS TRUE AND COMPLETE TO THE SELLER'S ACTUAL KNOWLEDGE AS OF THE DATE SIGNED BY THE SELLER. IF A SELLER OF RESIDENTIAL REAL PROPERTY ACQUIRES KNOWLEDGE WHICH RENDERS MATERIALLY INACCURATE A PROPERTY CONDITION DISCLOSURE STATEMENT PROVIDED PREVIOUSLY, THE SELLER SHALL DELIVER A REVISED PROPERTY CONDITION DISCLOSURE STATEMENT TO THE BUYER AS SOON AS PRACTICABLE. IN NO EVENT, HOWEVER, SHALL A SELLER BE REQUIRED TO PROVIDE A REVISED PROPERTY CONDITION DISCLOSURE STATEMENT AFTER THE TRANSFER OF TITLE FROM THE SELLER TO THE BUYER OR OCCUPANCY BY THE BUYER, WHICHEVER IS EARLIER.

SELLER _____ DATE _____

SELLER _____ DATE _____

BUYER'S ACKNOWLEDGMENT: BUYER ACKNOWLEDGES RECEIPT OF A COPY OF THIS STATEMENT AND BUYER UNDERSTANDS THAT THIS INFORMATION IS A STATEMENT OF CERTAIN CONDITIONS AND INFORMATION CONCERNING THE PROPERTY KNOWN TO THE SELLER. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR SELLER'S AGENT AND IS NOT A SUBSTITUTE FOR ANY HOME, PEST, RADON OR OTHER INSPECTIONS OR TESTING OF THE PROPERTY OR INSPECTION OF THE PUBLIC RECORDS.

BUYER _____ DATE _____
BUYER _____ DATE _____

3. Nothing in this article shall require a seller to undertake or provide for any investigation or inspection of his or her residential real property or to check any public records.

S 3. This act shall take effect immediately; provided, however, that section two of this act shall take effect on the one hundred twentieth day after it shall have become a law.