

5978

2009-2010 Regular Sessions

I N S E N A T E

June 19, 2009

Introduced by Sens. PARKER, HASSELL-THOMPSON, THOMPSON -- (at request of the Consumer Protection Board) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

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

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

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

16 S 462. Property condition disclosure statement. 1. Except as is  
17 provided in section four hundred sixty-three of this article, every  
18 seller of residential real property pursuant to a real estate purchase  
19 contract shall complete and sign a property condition disclosure state-  
20 ment as prescribed by subdivision two of this section and cause it, or a  
21 copy thereof, to be delivered to a buyer or buyer's agent prior to the  
22 signing by the buyer of a binding contract of sale. A copy of the prop-  
23 erty 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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1 seller and buyer shall be attached to the real estate purchase contract.  
2 Nothing contained in this article or this disclosure statement is  
3 intended to prevent the parties to a contract of sale from entering into  
4 agreements of any kind or nature with respect to the physical condition  
5 of the property to be sold, including, but not limited to, agreements  
6 for the sale of real property "as is".

7 2. The following shall be the disclosure form:

8 PROPERTY CONDITION DISCLOSURE STATEMENT

9 NAME OF SELLER OR SELLERS:

10 PROPERTY ADDRESS:

11 THE PROPERTY CONDITION DISCLOSURE ACT REQUIRES THE SELLER OF RESIDEN-  
12 TIAL REAL PROPERTY TO CAUSE THIS DISCLOSURE STATEMENT OR A COPY THEREOF  
13 TO BE DELIVERED TO A BUYER OR BUYER'S AGENT PRIOR TO THE SIGNING BY THE  
14 BUYER OF A BINDING CONTRACT OF SALE.

15 PURPOSE OF STATEMENT: THIS IS A STATEMENT OF CERTAIN CONDITIONS AND  
16 INFORMATION CONCERNING THE PROPERTY KNOWN TO THE SELLER. THIS DISCLOSURE  
17 STATEMENT IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR BY ANY AGENT  
18 REPRESENTING THE SELLER IN THIS TRANSACTION. IT IS NOT A SUBSTITUTE FOR  
19 ANY INSPECTIONS OR TESTS AND THE BUYER IS ENCOURAGED TO OBTAIN HIS OR  
20 HER OWN INDEPENDENT PROFESSIONAL INSPECTIONS AND ENVIRONMENTAL TESTS AND  
21 ALSO IS ENCOURAGED TO CHECK PUBLIC RECORDS PERTAINING TO THE PROPERTY.

22 A KNOWINGLY FALSE OR INCOMPLETE STATEMENT BY THE SELLER ON THIS FORM  
23 MAY SUBJECT THE SELLER TO CLAIMS BY THE BUYER PRIOR TO OR AFTER THE  
24 TRANSFER OF TITLE. IN THE EVENT A SELLER FAILS TO PERFORM THE DUTY  
25 PRESCRIBED IN THIS ARTICLE TO DELIVER A DISCLOSURE STATEMENT PRIOR TO  
26 THE SIGNING BY THE BUYER OF A BINDING CONTRACT OF SALE, THE BUYER SHALL  
27 RECEIVE UPON THE TRANSFER OF TITLE A CREDIT OF FIVE HUNDRED DOLLARS  
28 AGAINST THE AGREED UPON PURCHASE PRICE OF THE RESIDENTIAL REAL PROPERTY.

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

36 INSTRUCTIONS TO THE SELLER:

- 37 (a) ANSWER ALL QUESTIONS BASED UPON YOUR ACTUAL KNOWLEDGE.
- 38 (b) ATTACH ADDITIONAL PAGES WITH YOUR SIGNATURE IF ADDITIONAL SPACE IS  
39 REQUIRED.
- 40 (c) COMPLETE THIS FORM YOURSELF.
- 41 (d) IF SOME ITEMS DO NOT APPLY TO YOUR PROPERTY, CHECK "NA" (NON-AP-  
42 PPLICABLE). IF YOU DO NOT KNOW THE ANSWER CHECK "UNKN" (UNKNOWN).

43 SELLER'S STATEMENT: THE SELLER MAKES THE FOLLOWING REPRESENTATIONS TO  
44 THE BUYER BASED UPON THE SELLER'S ACTUAL KNOWLEDGE AT THE TIME OF SIGN-  
45 ING THIS DOCUMENT. THE SELLER AUTHORIZES HIS OR HER AGENT, IF ANY, TO  
46 PROVIDE A COPY OF THIS STATEMENT TO A PROSPECTIVE BUYER OF THE RESIDEN-  
47 TIAL REAL PROPERTY. THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER  
48 AND ARE NOT THE REPRESENTATIONS OF THE SELLER'S AGENT.

49 GENERAL INFORMATION

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

23 ENVIRONMENTAL

24 NOTE TO SELLER - IN THIS SECTION, YOU WILL BE ASKED QUESTIONS REGARD-

25 ING PETROLEUM PRODUCTS AND HAZARDOUS OR TOXIC SUBSTANCES THAT YOU KNOW

26 TO HAVE BEEN SPILLED, LEAKED OR OTHERWISE BEEN RELEASED ON THE PROPERTY

27 OR FROM THE PROPERTY ONTO ANY OTHER PROPERTY. PETROLEUM PRODUCTS MAY

28 INCLUDE, BUT ARE NOT LIMITED TO, GASOLINE, DIESEL FUEL, HOME HEATING

29 FUEL, AND LUBRICANTS. HAZARDOUS OR TOXIC SUBSTANCES ARE PRODUCTS THAT

30 COULD POSE SHORT- OR LONG-TERM DANGER TO PERSONAL HEALTH OR THE ENVIRON-

31 MENT IF THEY ARE NOT PROPERLY DISPOSED OF, APPLIED OR STORED. THESE

32 INCLUDE, BUT ARE NOT LIMITED TO, FERTILIZERS, PESTICIDES AND INSECTI-

33 CIDES, PAINT INCLUDING PAINT THINNER, VARNISH REMOVER AND WOOD PRESERVA-

34 TIVES, TREATED WOOD, CONSTRUCTION MATERIALS SUCH AS ASPHALT AND ROOFING

35 MATERIALS, ANTIFREEZE AND OTHER AUTOMOTIVE PRODUCTS, BATTERIES, CLEANING

36 SOLVENTS INCLUDING SEPTIC TANK CLEANERS, HOUSEHOLD CLEANERS AND POOL

37 CHEMICALS AND PRODUCTS CONTAINING MERCURY AND LEAD.

38 NOTE TO BUYER - IF CONTAMINATION OF THIS PROPERTY FROM PETROLEUM

39 PRODUCTS AND/OR HAZARDOUS OR TOXIC SUBSTANCES IS A CONCERN TO YOU, YOU

40 ARE URGED TO CONSIDER SOIL AND GROUNDWATER TESTING OF THIS PROPERTY.

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

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

## 16 STRUCTURAL

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

## 33 MECHANICAL SYSTEMS &amp; SERVICES

- 34 26. WHAT IS THE WATER SOURCE (CIRCLE ALL THAT APPLY - WELL, PRIVATE,  
35 MUNICIPAL, OTHER)? IF MUNICIPAL, IS IT METERED? YES NO UNKN NA
- 36 27. HAS THE WATER QUALITY AND/OR FLOW RATE BEEN TESTED? YES NO UNKN NA  
37 (IF YES, DESCRIBE BELOW)
- 38 28. WHAT IS THE TYPE OF SEWAGE SYSTEM (CIRCLE ALL THAT APPLY - PUBLIC  
39 SEWER, PRIVATE SEWER, SEPTIC OR CESSPOOL)? IF SEPTIC OR CESSPOOL,  
40 AGE? \_\_\_\_\_ DATE LAST PUMPED? \_\_\_\_\_ FREQUENCY OF PUMPING?  
41 \_\_\_\_\_ ANY KNOWN MATERIAL DEFECTS? YES NO UNKN NA (IF YES,  
42 EXPLAIN BELOW)
- 43 29. WHO IS YOUR ELECTRIC SERVICE PROVIDER? \_\_\_\_\_ WHAT IS THE AMPER-  
44 AGE? \_\_\_\_\_ DOES IT HAVE CIRCUIT BREAKERS OR FUSES? \_\_\_\_\_  
45 PRIVATE OR PUBLIC POLES? \_\_\_\_\_ ANY KNOWN MATERIAL DEFECTS? YES  
46 NO UNKN NA (IF YES, EXPLAIN BELOW)
- 47 30. ARE THERE ANY FLOODING, DRAINAGE OR GRADING PROBLEMS THAT RESULTED  
48 IN STANDING WATER ON ANY PORTION OF THE PROPERTY? YES NO UNKN NA  
49 (IF YES, STATE LOCATIONS AND EXPLAIN BELOW)
- 50 31. DOES THE BASEMENT HAVE SEEPAGE THAT RESULTS IN STANDING WATER? YES  
51 NO UNKN NA (IF YES, EXPLAIN BELOW)
- 52 32. ARE APPLIANCES INCLUDED IN THE SALE OF THE PROPERTY? YES NO UNKN  
53 NA (IF YES, IDENTIFY SUCH APPLIANCES AND PROVIDE ITS ENERGY EFFI-  
54 CIENCY STATUS, IF KNOWN, BELOW)

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

3	[32.]	33. PLUMBING SYSTEM?	YES	NO	UNKN	NA
4	[33.]	34. SECURITY SYSTEM?	YES	NO	UNKN	NA
5	[34.]	35. CARBON MONOXIDE DETECTOR?	YES	NO	UNKN	NA
6	[35.]	36. SMOKE DETECTOR?	YES	NO	UNKN	NA
7	[36.]	37. FIRE SPRINKLER SYSTEM?	YES	NO	UNKN	NA
8	[37.]	38. SUMP PUMP?	YES	NO	UNKN	NA
9	[38.]	39. FOUNDATION/SLAB?	YES	NO	UNKN	NA
10	[39.]	40. INTERIOR WALLS/CEILINGS?	YES	NO	UNKN	NA
11	[40.]	41. EXTERIOR WALLS OR SIDING?	YES	NO	UNKN	NA
12	[41.]	42. FLOORS?	YES	NO	UNKN	NA
13	[42.]	43. CHIMNEY/FIREPLACE OR STOVE?	YES	NO	UNKN	NA
14	[43.]	44. PATIO/DECK?	YES	NO	UNKN	NA
15	[44.]	45. DRIVEWAY?	YES	NO	UNKN	NA
16	[45.]	46. AIR CONDITIONER?	YES	NO	UNKN	NA
17	[46.]	47. HEATING SYSTEM?	YES	NO	UNKN	NA
18	[47.]	48. HOT WATER HEATER?	YES	NO	UNKN	NA
19	[48.]	49. THE PROPERTY IS LOCATED IN THE				
20		FOLLOWING SCHOOL DISTRICT			UNKN	

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

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

35 \_\_\_\_\_  
36 \_\_\_\_\_  
37 \_\_\_\_\_  
38 \_\_\_\_\_

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

49 SELLER \_\_\_\_\_ DATE \_\_\_\_\_  
50 SELLER \_\_\_\_\_ DATE \_\_\_\_\_

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

7 BUYER \_\_\_\_\_ DATE \_\_\_\_\_  
 8 BUYER \_\_\_\_\_ DATE \_\_\_\_\_

9 3. Nothing in this article shall require a seller to undertake or  
 10 provide for any investigation or inspection of his or her residential  
 11 real property or to check any public records.  
 12 S 3. This act shall take effect immediately; provided, however, that  
 13 section two of this act shall take effect on the one hundred twentieth  
 14 day after it shall have become a law.