

Memorandum

Date: 19 October 2006

To: Faculty of Environmental Law Practicum Course

From: Gino D'Angelo

Subject: Legal requirements for home sales: disclosure of information
about wastewater management systems

Abstract This report describes a survey of state-specific requirements of home seller disclosure regarding wastewater management systems. Most states (37 of 50) had enacted some form of legislation requiring such disclosures.

Methods

I conducted a systematic internet search for information about requirements by individual states regarding home seller disclosure of information about residential wastewater management systems. I primarily used the the www.google.com search engine with the following search phrases: “state name” septic disclosure, “state name” septic seller disclosure, septic disclosure law, “state name” wastewater disclosure, “state name” wastewater seller disclosure, wastewater disclosure law. If the first twenty results for each of these searches yielded no useable information, I conducted similar searches on www.yahoo.com, and www.lexisnexis.com. As a final strategy for those states which I could not locate information about, I searched the state legislative site-if such a site was available. I concluded that an individual state possessed a seller disclosure policy specific to wastewater management only if I located an actual disclosure form referencing the associated law or act, or in some cases, if a popular press article referenced a specific state policy number.

Results

I concluded that a minimum of 37 of 50 U.S. states had enacted laws specifically requiring sellers of homes to disclose information to buyers regarding wastewater management systems (Table 1). Most states simply required the seller to indicate what type of wastewater management system was utilized for their residence, and whether the seller was aware of any recent malfunctions or problems. Other information in the disclosures sometimes included the location of on-site systems, and last known inspection or maintenance. New York required the listing of all septic pumping, maintenance, and inspection events during the seller’s time of ownership. New Hampshire required home sellers with waterfront properties to provide documentation of an inspection of on-site septic systems before the closing of every sale. Of special interest-I found no information indicating that the state of Georgia has enacted or is in the process of enacting legislation on home seller disclosure requirements. Additionally, I contacted the

Athens Area Association of Realtors (706-353-1126), and they were not aware of any such law. I also contacted persons from the offices of governmental and political affairs at the Georgia Association of Realtors, but I had not received any responses from them at the time of this report (It was Friday at 4:30 PM when I left messages on their voicemail, so that's no surprise).

Discussion

Although the majority of states require that home sellers disclose information on their properties to buyers, there appears to be little repercussion for sellers who omit or lie about pertinent information on disclosures. Many states included disclaimers on their official disclosure forms indicating that the information contained within was "to the best of the seller's knowledge", and "does not constitute a warranty". Further, states suggested that buyers hire a building professional to inspect infrastructure, including septic systems. Likewise, most question and answer forums on law websites that I examined, indicated that buyer's must beware, and should enlist the expertise of a professional with experience inspecting wastewater management systems since court costs would likely exceed costs of fixing wastewater problems found post-sale.

Table 1. Listing of state requirements for disclosure by home sellers of information about wastewater management systems.

X = yes, laws enacted; ? = no laws found during internet search

	State	Wastewater Disclosure Law
1	Alabama	?
2	Alaska	X
3	Arizona	X
4	Arkansas	?
5	California	X
6	Colorado	X
7	Connecticut	X
8	Delaware	X
9	Florida	X
10	Georgia	?
11	Hawaii	X
12	Idaho	X
13	Illinois	?
14	Indiana	X
15	Iowa	X
16	Kansas	?
17	Kentucky	X
18	Louisiana	?
19	Maine	X
20	Maryland	X
21	Massachusetts	?
22	Michigan	X
23	Minnesota	X
24	Mississippi	X
25	Missouri	?

	State	Wastewater Disclosure Law
26	Montana	?
27	Nebraska	X
28	Nevada	X
29	New Hampshire	X
30	New Jersey	X
31	New Mexico	?
32	New York	X
33	North Carolina	X
34	North Dakota	?
35	Ohio	X
36	Oklahoma	X
37	Oregon	X
38	Pennsylvania	X
39	Rhode Island	X
40	South Carolina	X
41	South Dakota	X
42	Tennessee	X
43	Texas	X
44	Utah	?
45	Vermont	X
46	Virginia	X
47	Washington	X
48	West Virginia	X
49	Wisconsin	X
50	Wyoming	?