

NEW YORK TRUTH IN HEATING LAW

New York's Utility Project Law Manual
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New York's Utility Project
P.O. Box 10787
Albany, NY 12201
1-877-669-257

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NEW YORK TRUTH IN HEATING LAW

I. Introduction

The Truth in Heating law was enacted by the New York Legislature in 1980 and became effective January 1, 1981.¹ It was intended to encourage sellers of residential properties and landlords whose tenants pay directly for heating and cooling expenses to make their buildings more energy efficient, and to provide prospective buyers and tenants information that would allow them to more accurately estimate energy costs.²

Generally, the law requires sellers and landlords to furnish prospective buyers and tenants of residential structures with either a complete set of heating and/or cooling bills,³ or a summary of the bills, for the life of the residential structure⁴ or for the preceding two years, whichever is shorter.⁵ The specific provisions of the Truth in Heating law are the subject of this chapter.

¹ NY Energy Law § 17-103.

² 9 NYCRR § 7835.1(b).

³ The regulations define “heating and/or cooling bills” as “all bills rendered by a retail vendor for energy used for space heating and/or air conditioning in a residential structure, including any bills where the cost of energy used for space heating and/or air conditioning is not differentiated from the costs of energy used for any other purpose.” 9 NYCRR § 7835.2(b).

⁴ The “life of the structure” is “the period of time, beginning on the first day that utility services were provided to the residential structure for initial occupancy, to the time that a prospective purchaser or lessee requests the heating and/or cooling bills.” 9 NYCRR § 7835.2(d).

⁵ Energy Law § 17-103(1)(a) & (c); 9 NYCRR § 7835.3(a); 7835.4(a). A “residential structure” is “a one- or two-family dwelling or a single unit of a multiple dwelling, including an individual condominium unit or cooperative unit, which is offered for sale or rental on or after January 1, 1981, by any person; provided, however, that any such dwelling or unit shall not be considered a residential structure if the dwelling has never been occupied; and provided further, that a single unit of a multiple dwelling shall not be considered a residential structure if the owner or lessee thereof is not responsible for the direct payment of both heating and cooling bills.” 9 NYCRR § 7835.2(i). Under this definition, it is likely that the seller or lessor of a cooperative or condominium apartment, where heating and cooling costs are part of a monthly “maintenance” payment, would not be required to furnish bills for heating and/or cooling costs to prospective buyers or tenants.

II. Truth in Heating for Prospective Tenants

The Truth in Heating law requires landlords to furnish heating and cooling bills only to *prospective lessees* (tenants).⁶ The regulations implementing the law define a “prospective lessee” as “any person who inquires about renting a residential structure which has been offered for lease, sublease or assignment to the general public.”⁷ Therefore, landlords have no obligation under the Truth in Heating law to furnish such information to current tenants. Prospective tenants should therefore request heating and cooling cost information *before* they sign a lease or orally agree to lease an apartment.⁸

Landlords who rent residential dwellings where the tenant is responsible for paying the heating and/or cooling bills are required to furnish prospective tenants immediately, upon oral or written request,⁹ “a complete set of heating and/or cooling bills, or a summary of heating and/or cooling bills, for the life of the structure or for the preceding two years, whichever is shorter.”¹⁰ The heating and/or cooling bills, or a summary of them, must contain the following information:

1. address of the residential structure;¹¹
2. name and address of retail fuel vendor and/or utility services;¹²
3. time period covered;¹³

⁶ Energy Law § 17-103(1)(a).

⁷ 9 NYCRR § 7835.2(f).

⁸ Current tenants may be able to obtain records of their billing history from the utility or other fuel vendor. Utilities make such data available on their websites. Thus, prospective tenants might compare energy costs of a new apartment with costs of their current apartments.

⁹ Energy Law § 17-103(c); 9 NYCRR § 7835.4(a). The law contains no requirement that the landlord offer this information voluntarily; the prospective tenant must request it.

¹⁰ Energy Law § 17-103(1)(c)/ 9 NYCRR § 7835.4(a).

¹¹ 9 NYCRR § 7835.4(d)(1).

¹² 9 NYCRR § 7835.4(d)(2).

¹³ 9 NYCRR § 7835.4(d)(3).

4. type, quantity and cost of all fuel¹⁴ and/or utility services consumed during the period reported. When summary information is provided in lieu of actual bills, the summaries must supply, in the case of fuel, the per-unit cost and, in the case of utilities, the quantity consumed and the total cost for the most recent billing period;¹⁵
5. A statement indicating whether the fuel and/or utility services were used for purposes other than heating and/or cooling;¹⁶
6. A statement indicating whether additional sources of energy, such as solar, wind or wood, contributed to the heating and/or cooling needs of the residential structure;¹⁷
7. A statement of when the residential structure was unoccupied, if it was unoccupied for any period of time encompassed by the bills being provided for 30 days or longer;¹⁸ and
8. Where a summary instead of actual heating and/or cooling bills is provided, the landlord must sign the summary and indicate whether it is based on retail vendor records or records of the former tenant.¹⁹

Landlords may not charge any fee to prospective tenants for providing the above information,²⁰ nor may they disclose, without consent, the names of former tenants who may be listed on the bills.²¹ Cooling bills need only be furnished where the cooling equipment will remain with the residential structure.²²

¹⁴ “Fuel” is defined in the regulations as “any grade of oil, coal, propane, bottled gas, or other fossil fuel.” Therefore, these regulations would not apply to renewable fuels such as wood or pellets.

¹⁵ 9 NYCRR § 7835.4(d)(4).

¹⁶ 9 NYCRR § 7835.4(d)(5).

¹⁷ 9 NYCRR § 7835.4(d)(6).

¹⁸ Energy Law § 17-103(d); 9 NYCRR § 7835.4(d)(7).

¹⁹ 9 NYCRR § 7835.4(e).

²⁰ Energy Law § 17-103(1)(f); 9 NYCRR § 7835.4(f).

²¹ Energy Law § 17-103(1)(f).

²² 9 NYCRR § 7835.4(a). Cooling bill availability may be limited, in instances where window air conditioners that remain in a dwelling unit were powered by electricity from a utility account in the former tenant’s name. In such event, retail vendors have an obligation to supply records of the cost and quantity of utility services delivered to the structure (9 NYCRR § 7835.5, discussed *infra*), but such costs may vary widely from tenant to tenant depending upon energy efficiency of appliances, family size and lifestyle, and conservation measures.

When landlords do not have complete sets of heating and/or cooling bills, they must furnish prospective tenants all available records, indicating which time periods and/or fuel or utility vendors are not covered by the incomplete records.²³ Landlords must also make a written request to the retail fuel vendors or utilities that served the building for a complete set of the bills or a summary of them, and provide these to the prospective tenant.²⁴ *See*, “Responsibilities of Retail Fuel Vendors and Utilities,” *infra*.

III. Truth in Heating for Prospective Buyers

The Truth in Heating law requires sellers of residential structures, within fifteen (15) days of a written request from a prospective buyer, to furnish the prospective buyer with:

1. A complete set of heating and/or cooling bills, or a summary of them, for the life of the structure or for the preceding two years, whichever is shorter;²⁵
2. A statement of the type and areas of insulation installed by the seller;²⁶ and,
3. A statement of the type and areas of insulation installed by any previous owner, if known.²⁷

However, sellers need not honor a prospective buyer’s request if the request is first made *after* the purchase contract is signed, or if, during the fifteen day period, the seller signs a purchase contract with another person.²⁸ Prospective buyers should therefore request heating and cooling cost information *before* they sign a purchase contract.

²³ 9 NYCRR § 7835.4(c).

²⁴ 9 NYCRR § 7835.4(b).

²⁵ Energy Law § 17-103(1)(a); 9 NYCRR § 7835.3(a).

²⁶ Energy Law § 17-103(1)(b)(1)(i). “Insulation” includes, but is not limited to “any type of material permanently placed within or contiguous to a wall, ceiling or floor of a room or building for the purpose of reducing heat transfer and thus the energy requirements for heating and cooling the building.” Energy Law § 17-103(1)(b)(1)(iii).

²⁷ Energy Law § 17-103(1)(b)(1)(ii).

²⁸ Energy Law § 17-103(1)(a) & (b)(2); 9 NYCRR § 7835.3(b)(1) & (2).

The heating and/or cooling bills, or a summary of them, furnished by sellers to prospective buyers must contain the following information and be provided to prospective buyers without cost:²⁹

1. address of the residential structure;³⁰
2. name and address of retail fuel vendor and/or utility services;³¹
3. time period covered;³²
4. type, quantity and cost of all fuel and/or utility services consumed during the period reported. When summary information is provided in lieu of actual bills, the summaries must supply, in the case of fuel, the per-unit cost and, in the case of utilities, the quantity consumed and the total cost for the most recent billing period.³³
5. A statement indicating whether the fuel and/or utility services were used for purposes other than heating and/or cooling;³⁴
6. A statement indicating whether additional sources of energy, such as solar, wind or wood, contributed to the heating and/or cooling needs of the residential structure;³⁵
7. A statement of when the residential structure was unoccupied, if it was unoccupied for any period of time encompassed by the bills being provided for 30 days or longer;³⁶ and
8. Where a summary instead of actual heating and/or cooling bills is provided, the seller must sign the summary and indicate whether it is based on retail vendor records or on the seller's records. Upon prospective buyer's request, seller must make available for inspection both types of records.³⁷

When sellers do not have complete sets of heating and/or cooling bills, they must furnish all available records, indicating which time periods and/or fuel or utility vendors are not covered

²⁹ Energy Law § 17-103(1)(f); 9 NYCRR § 7835.3(g).

³⁰ 9 NYCRR § 7835.3(e)(1).

³¹ 9 NYCRR § 7835.3(e)(2).

³² 9 NYCRR § 7835.3(e)(3).

³³ 9 NYCRR § 7835.3(e)(4).

³⁴ 9 NYCRR § 7835.3(e)(5).

³⁵ 9 NYCRR § 7835.3(e)(6).

³⁶ Energy Law § 17-103(d); 9 NYCRR § 7835.3(e)(7).

³⁷ 9 NYCRR § 7835.3(f).

by the incomplete records.³⁸ Sellers must also make a written or oral request³⁹ to the retail fuel vendor or utility for a complete set of the bills or a summary of them, and provide these to the prospective buyer.⁴⁰ See, “Responsibilities of Retail Fuel Vendors and Utilities,” *infra*.

IV. Responsibilities of Retail Fuel Vendors

Retail fuel vendors, including utilities, must maintain records of the cost and quantity of fuel or utility services delivered to residential structures in New York for at least two years.⁴¹ They are required to furnish complete sets of heating and/or cooling bills, or a summary of them, for the two preceding years (or shorter time during which fuel or utilities were provided) within 10 days of a seller’s or landlord’s request.⁴² The retail vendor does not need the consent of current or former tenants or prior owners to deliver copies of the bills or summaries of them, provided that the documents contain no information regarding the tenants’ or owners’ account.⁴³

Retail vendors may charge the seller a \$5 fee for providing duplicate copies of heating and/or cooling bills or summaries thereof.⁴⁴ The information provided must include:

1. address of the residential structure;⁴⁵
2. name and address of retail fuel vendor and/or utility services;⁴⁶
3. time period covered;⁴⁷ and,

³⁸ Energy Law § 17-103(1)(e); 9 NYCRR § 7835.3(d).

³⁹ If the seller must request records on accounts not titled in seller’s name, a written request may be required by the retail fuel vendor or utility. 9 NYCRR § 7835.3(c).

⁴⁰ Energy Law § 17-103(1)(e); 9 NYCRR § 7835.3(c).

⁴¹ Energy Law § 17-103(2)(a); 9 NYCRR § 7835.5(a).

⁴² Energy Law § 17-103(2)(b); 9 NYCRR § 7835.5(b).

⁴³ Energy Law § 17-103(2)(b).

⁴⁴ Energy Law § 17-103(2)(c); 9 NYCRR § 7835.5(e).

⁴⁵ 9 NYCRR § 7835.5(c)(1).

⁴⁶ 9 NYCRR § 7835.3(c)(2).

⁴⁷ 9 NYCRR § 7835.5(c)(3).

4. type, quantity and cost of all fuel and/or utility services consumed during the period reported. When summary information is provided in lieu of actual bills, the summaries must supply, in the case of fuel, the per-unit cost and, in the case of utilities, the quantity consumed and the total cost for the most recent billing period.⁴⁸

V. Penalties for Violations

The Energy Law chapter to New York state statutes, which contains the Truth in Heating law, was enacted by the Legislature in 1976 and created the State Energy Office (“SEO”).⁴⁹ In 1981, the SEO enacted regulations implementing the Truth in Heating law,⁵⁰ which were enforced by the SEO Commissioner. In 1995, the Legislature abolished the SEO and transferred its functions to the New York State Energy Research and Development Authority (“NYSERDA”)⁵¹ and to the New York State Consumer Protection Board (“CPB”).⁵²

Prospective buyers or tenants who are unable to obtain Truth in Heating information may complain to the CPB. The CPB has offices in Albany at 5 Empire State Plaza, Suite 2101, Albany, NY 12223-1556, and in New York City at 1740 Broadway, 15th Floor, New York, NY 10019. The toll-free number is 800-697-1220. Complaints may also be filed on-line at the CPB website: www.nysconsumer.gov. The CPB has no express authority to make administrative adjudications of Truth in Heating law disputes. Compliance with the Truth in Heating law is enforced by the New York Attorney General, upon referral from the CPB.⁵³

Civil penalties imposed upon sellers, landlords or retail vendors for noncompliance with the Truth in Heating law are forfeited to the People of the State of New York, and cannot exceed

⁴⁸ 9 NYCRR § 7835.5(c)(4).

⁴⁹ New York Consolidated Law Service, Energy Note (2008).

⁵⁰ 9 NYCRR § 7835.1, *et seq.*

⁵¹ Energy Law § 67 *et seq.*

⁵² Ch. 83 §§ 50 – 53, 1995 N.Y. Laws, LEXIS 1995 N.Y. ALS 83.

⁵³ Energy Law § 5-119(2).

\$100 per violation.⁵⁴ A seller or landlord who knowingly provides false or inaccurate information to prospective buyers or tenants will be deemed in violation of the law.⁵⁵ Sellers and landlords will not be in violation of the law if they are unable to provide the required information due to the retail vendor's failure to supply the necessary records.⁵⁶ A seller or landlord's failure to furnish heating and/or cooling bills or a summary of them, as required by the law, will not affect legal title to or possession of any residential structure, nor will it permit any buyer or tenant to avoid any obligations he or she may have under a purchase contract or lease.⁵⁷ A prospective buyer's claim for penalties against a seller is not permitted in a small claims court action brought by a prospective buyer against a seller for damages and penalties arising out of a cancelled purchase contract.⁵⁸

⁵⁴ Energy Law § 17-103(3)(a); 9 NYCRR § 7835.6(a).

⁵⁵ 9 NYCRR § 7835.6(g).

⁵⁶ Energy Law § 17-103(3)(a); 9 NYCRR § 7835.6(b) & (c). Sellers will not be in violation provided they requested the records from the retail vendor or utility within five days of prospective buyers' requests. Landlords will not be in violation provided they requested the records from the retail vendor or utility within five days of being notified that the structure was to be vacated.

⁵⁷ Energy Law § 17-103(3)(b); 9 NYCRR § 7835.6(f).

⁵⁸ *VanDeCarr v. Hahn*, 16 Misc. 3d 1135A (Clifton Park J. Ct. 2007).