

NEW YORK TRUTH IN HEATING LAW

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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 and lessors of residential properties whose tenants pay directly for heating and/or cooling expenses to make their buildings more energy efficient, and to provide prospective buyers and tenants with historical billing information that would allow them to more accurately estimate future energy costs and the need for energy conservation measures prior to purchase or lease of that property.²

Generally, the law requires sellers and landlords to furnish prospective buyers and tenants of residential properties with either a complete set of heating and/or cooling bills, or a summary of the bills for the life of the residential structure or for the preceding two years, whichever is shorter.³ 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.”⁴ 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

¹ NY Energy Law § 17-103.

² 9 NYCRR § 7835.1(b).

³ Energy Law § 17-103(1)(a) & (c); 9 NYCRR § 7835.3(a); 7835.4(a). This general rule does not apply to sellers of property if a request by the purchaser is initially made *after* the signing of a purchase contract.

⁴ 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.

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.”⁵ 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.”⁶ The specific provisions of the Truth in Heating law are explained further below.

II. Truth in Heating for Prospective Tenants

A “prospective lessee” (ie: tenant) is “any person who inquires about renting a residential structure which has been offered for lease, sublease or assignment to the general public.” The Truth in Heating law requires landlords to provide heating and cooling bills to prospective lessees (tenants) upon request if the lessee would be responsible for paying heat and/or cooling bills during the duration of the lease.⁷ It is important to clarify that the law does not require landlords to furnish historical billing information to current tenants. Therefore, prospective tenants should request heating and cooling cost information *before* they sign a lease or orally agree to lease an apartment.⁸

If a prospective tenant makes a request for the historical heating and/or cooling information, landlords are required to provide that information immediately.⁹ The heating and/or cooling bills, or a summary of them, should cover at least the preceding two years, or the life of the structure, whichever is shorter, and must contain the following information¹⁰:

⁵ 9 NYCRR § 7835.2(b).

⁶ 9 NYCRR § 7835.2(d).

⁷ Energy Law § 17-103(1)(c); and see, 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(1)(c); and see, 9 NYCRR § 7835.4(a).

¹⁰ 9 NYCRR § 7835.4(d)(1)-(7).

1. Address of the residential structure;
2. Name and address of retail fuel vendor and/or utility services;
3. Time period covered;
4. Type, quantity and cost of all fuel¹¹ 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;
5. A statement indicating whether the fuel and/or utility services were used for purposes other than heating and/or cooling;
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;
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; 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.¹²

Landlords may not charge any fee to prospective tenants for providing the above information,¹³ nor may they disclose, without consent, the names of former tenants who may be listed on the bills.¹⁴ Cooling bills need only be furnished where the cooling equipment will remain with the residential structure.¹⁵

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

¹¹ “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.

¹² 9 NYCRR § 7835.4(e).

¹³ Energy Law § 17-103(1)(f); 9 NYCRR § 7835.4(f).

¹⁴ Energy Law § 17-103(1)(f).

¹⁵ 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.

utility vendors are not covered by the incomplete records.¹⁶ Or, landlords must 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.¹⁷

III. Truth in Heating for Prospective Buyers

The Truth in Heating law requires sellers of residential properties, within fifteen (15) days from receipt 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;¹⁸
2. A statement of the type and areas of insulation installed by the seller;¹⁹ and
3. A statement of the type and areas of insulation installed by any previous owner, if known.²⁰

However, sellers do not need to provide this information to 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.²¹ Prospective buyers should therefore request heating and cooling cost information *before* they sign a purchase contract.

The heating and/or cooling bills, or a summary of them, furnished by sellers to prospective buyers must contain the following information:²²

1. Address of the residential structure;²³
2. Name and address of retail fuel vendor and/or utility services;²⁴

¹⁶ 9 NYCRR § 7835.4(c).

¹⁷ 9 NYCRR § 7835.4(b).

¹⁸ Energy Law § 17-103(1)(a); 9 NYCRR § 7835.3(a).

¹⁹ 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).

²⁰ Energy Law § 17-103(1)(b)(1)(ii).

²¹ Energy Law § 17-103 (b)(2); 9 NYCRR § 7835.3(b)(1) & (2).

²² Energy Law § 17-103(1)(f); 9 NYCRR § 7835.3(g).

²³ 9 NYCRR § 7835.3(e)(1).

²⁴ 9 NYCRR § 7835.3(e)(2).

3. Time period covered;²⁵
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;²⁶
5. A statement indicating whether the fuel and/or utility services were used for purposes other than heating and/or cooling;²⁷
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;²⁸
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;²⁹ 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.³⁰

Sellers may not charge any fee to prospective buyers for providing the above information, nor may they disclose, without consent, the names of former tenants who may be listed on the bills.³¹ 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 by the incomplete records.³² Or, sellers must make a written or oral request³³ 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.³⁴

²⁵ 9 NYCRR § 7835.3(e)(3).

²⁶ 9 NYCRR § 7835.3(e)(4).

²⁷ 9 NYCRR § 7835.3(e)(5).

²⁸ 9 NYCRR § 7835.3(e)(6).

²⁹ Energy Law § 17-103(d); 9 NYCRR § 7835.3(e)(7).

³⁰ 9 NYCRR § 7835.3(f).

³¹ Energy Law § 17-103(1)(f).

³² Energy Law § 17-103(1)(e); 9 NYCRR § 7835.3(d).

³³ 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).

³⁴ Energy Law § 17-103(1)(e); 9 NYCRR § 7835.3(c).

IV. Responsibilities of Retail Fuel Vendors

A “retail vendor” is “any person in the business of selling fuel or utility services directly to the owner or occupant of a residential structure.”³⁵ 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.³⁶ Upon request³⁷ from a seller or lessor of a residential property, the retail vendor is required to provide 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.³⁸ 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.³⁹

Retail vendors may charge the seller or lessor, or his designated agent, a maximum \$5 fee for providing copies of heating and/or cooling bills or summaries thereof.⁴⁰ The information provided must include⁴¹:

1. Address of the residential structure;
2. Name and address of retail fuel vendor and/or utility services;
3. Time period covered; and
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

³⁵ 9 NYCRR § 7835.2(h). Utility services means the delivery of electricity, natural gas, or steam. 9 NYCRR § 7835.2(k).

³⁶ Energy Law § 17-103(2)(a); 9 NYCRR § 7835.5(a).

³⁷ The request may be written or oral if made by the person with whom the retail vendor has the account for which the information is being requested. Where the request is made by a person for an account other than his own, the request must be in writing, unless otherwise authorized by the retail vendor. 9 NYCRR §7835.5(b)

³⁸ Energy Law § 17-103(2)(b); 9 NYCRR § 7835.5(b).

³⁹ Energy Law § 17-103(2)(b).

⁴⁰ Energy Law § 17-103(2)(c); 9 NYCRR § 7835.5(e).

⁴¹ 9 NYCRR § 7835.5(c)(1)-(4).

of utilities, the quantity consumed and the total cost for the most recent billing period.

V. Penalties for Violations

The penalty for a violation of the Truth in Heating law by any seller, lessor or retail vendor is \$100 for each separate and distinct violation.⁴² Any person who knowingly provides false or inaccurate information to prospective buyers or tenants will be deemed in violation of the law.⁴³ In the following limited instances, sellers and lessors will not be in violation of the law.

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, and the seller or landlord can show that he requested the information from the retail vendor within five days from receipt of a written request for such bills from a prospective purchaser.⁴⁴

A seller or lessor will not be in violation of the law if he was not the occupant of the residential structure being offered for sale or lease during all or part of the preceding two-year period, or the life of the structure, whichever is less, and he has made reasonable attempts to obtain the heating and/or cooling bills or the name of the retail vendor or fuel or utility services from the occupant of the residential structure, and has been unsuccessful in obtaining the information.⁴⁵

⁴² Energy Law § 17-103(3)(a); 9 NYCRR § 7835.6(a). Additionally, sellers who fail to honor a request for information will be considered in violation of Energy Law § 5-119 which means that the attorney general may bring an action or special proceeding to recover civil penalties from violators. Energy Law § 17-103(1)(b)(3).

⁴³ 9 NYCRR § 7835.6(g).

⁴⁴ 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.

⁴⁵ 9 NYCRR § 7835.6(d).

A retail vendor will not be in violation of the law for failing to keep historical billing records on properties beyond the date September 1, 1980.

Finally, a seller or lessor'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 property, nor will it permit any buyer or tenant to avoid any obligations he or she may have under a purchase contract or lease.⁴⁶

Since the Truth in Heating Law refers to Section 5-119 of the Energy Law, which indicates that penalties are recovered by the Attorney General's office, then, a private claim for penalties under a provision of the Energy Law is not permitted in a small claims action.⁴⁷

⁴⁶ Energy Law § 17-103(3)(b); 9 NYCRR § 7835.6(f).

⁴⁷ See, *VanDeCarr v. Hahn*, 16 Misc. 3d 1135A (Clifton Park J. Ct. 2007), holding that "It is the finding of the Court that a claim for penalties under a provision of the Energy Law is not permitted in a Small Claims action."