Truth in heating law is a 'trap' for consumers

By BRUCE J. BERGMAN

With little fanfare, the New York State Legislature passed Chapter 555 of the Laws of 1980 adding a new Section 17-103 to the Energy Law entitled "Truth in Heating." Effective as of January 1, 1981, this statute provides in essence that a seller or lessor of a residential structure, upon written request of a "prospective" purchaser or lessee, must provide a complete set of heating and/or cooling bills or a summary thereof for the life of the structure or the preceding two years - whichever is shorter - all under penalty of a one hundred dollar fine for each violation.

Although the request need not be honored once a contract is signed, even a cursory analysis of the law reveals very serious problems, not only for sellers and lessors, but for their attorneys as well. It is, as a practical matter, unworkable and dangerous and, to a significant extent, unenforceable.

Conceptually, this statute appears to be an attempt to protect consumers from themselves. Prospective house purchasers (or lessees) should and do know that the costs of heating and cooling are a significant factor in the purchase (or lease) of a home. They can, and do, often ask for the appropriate records to help them make a decision. If they do not, it is a matter an attorney will frequently raise. Therefore, it would seem that the statute is unnecessary in the first instance.

The law speaks of a "prospective purchaser." Who is a prospective purchaser? How serious does a buyer have to be? Must an owner of a house give copies of heating bills upon written request to every single person who walks through the house to take a look? This creates a huge burden and a patent am-

selling homeowner and every lessor go to the trouble and expense of obtaining and transmitting this information to each and every person who in any form expresses any interest in possibly purchasing or renting? Any owner or lessor who questions the seriousness of a prospective purchaser or lessee and declines to waste time futilely submitting the heating information exposes himself to fine.

No exception is made in the statute for someone who has taken title to a dwelling by foreclosure, through an estate, at a sheriff's sale or by other legal action. In each of those instances, the owner of the house might very well be unable to obtain records of heating costs and could therefore not comply with the statute, even though a complaint could - as the statute is now written - be lodged against him.

The inclusion in the statute of a requirement to give copies of "cooling bills" would also appear to be an impossibility. Air conditioning is run by electricity and there is no separate meter for air conditioning. How then could an owner of a house separate out the specific cost of cooling? Clearly he could not.

As the New York State Department of Commerce had noted in opposing this legislation, it increases the cost of doing business in New York - particularly egregious when it really serves no useful purpose. In this day of attempting to roll back burdensome bureaucratic meddling, it seems still more inappropriate to impose such a formulation.

The information to be disclosed is not that useful in any event since energy costs are a function not only of the cost of fuel and/or utilities, but personal habits of occupants as well. In many instances, segregating heating and cooling costs from overall utility bills will be impossible, particularly in structures employing electric heat exclusively. In the situation of multiple dwellings, a landlord knows that rent for a particular unit was paid, but he won't necessarily know how often the particular tenants were in a unit turning heat up or down - thus making the information of questionable value at best.

The argument advanced in the Legislature that this law will encourage owners to insulate for higher efficiency is ludicrous. What more incentive does an owner need than a desire to reduce his own astronomical costs?

On balance, it seems apparent that the statute is fraught with insurmountable difficulties - at least in its present form. Consumers are conscious enough of heating and cooling costs to make that a

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consideration when purchasing or renting. They can, should and do ask an owner or lessor for past bills. If such records are not forthcoming, they are free to suspect or infer something untoward and refuse to go forward until satisfied. Why then have this law on the books?

Finally, we have the position of the lawyer in the middle. There is a possibility that every lawyer who ever represents a purchaser or lessee may be deemed responsible to know of the existence and import of this obscure statute. Even assuming everyone in the profession learns of it, there may be considerable risk in neglecting to mention to the client the rights available under this arcane section. In the heat of a hurriedly arranged contract session, truth in heating may be forgotten or offhandedly dismissed by all parties.

But even careful counsel may be at the mercy of a forgetful and purposefully aggrieved client. Suppose a purchaser or lessor was advised by counsel prior to contract (remember, after contract is too late) of his rights under the law - together with all the other matters which so perplex the layman in a real estate transaction. The purchaser moves into the house and because the heating and cooling costs are so high, faces a tenuous financial position, perhaps a foreclosure or bankruptcy. He then is told by a friend that his lawyer certainly should have advised the purchaser in advance that heating and cooling bills were available. Failing to recall that counsel did advise him, he complains to the grievance committee, or worse, sues for malpractice. Farfetched? One would hope so, but we can hardly be certain.

With the foregoing in mind, some attorneys have prepared a letter to be signed by the client at contract acknowledging that his rights under the "Truth in Heating" law were explained and that he declined to take advantage thereof. It is certainly something to consider.

At the very least, attorneys do their clients and themselves a considerable service in becoming familiar with "Truth in Heating."