



Good afternoon.

I am attaching a memo from the Law Firm regarding a new inspection law in Iowa. It goes into effect on July 1, 2009.

MRES recommends the following:

1. If the ee has not accepted a buyout as of yet, the ee should make arrangements to have this inspection completed with the associated certificate received and given to relocation.
2. If the property is an inventory property, MRES recommends that the property be inspected now. It is our understanding that the certificate is good for 2 years. There are also a limited number of state approved inspectors to do this inspection and it could take a bit to get an inspection scheduled.

If you have any questions, please don't hesitate to contact me.

Regards,

Laura J. Henneberry CRP, GMS
Executive Vice President



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June 2009

To: Morreale Real Estate Services, Inc.

From: Joan Brady
Morreale & Brady, P.C.

Re: Iowa State Mandated Septic Inspections

The Iowa legislature has adopted Senate File 261, which amends Section 455B.172, Iowa Code 2007, which becomes effective July 1, 2009, and which provides that any residential structure served by a private sewage disposal system must be inspected prior to any transfer of ownership. A deed for such a property will not be recorded until and unless a certificate of inspections is provided. The only exclusion that may apply would involve weather prohibited inspections. In such a case where weather conditions prohibited the mandated septic inspection, a buyer would have to sign a statement that they are assuming liability to have inspection done as soon as weather permits, and buyer shall be responsible for any resulting repairs or maintenance required.

These inspections can only be done by State certified septic inspectors, and the Department of Natural Resources is currently building the list of acceptable certified inspectors.

Additionally, the statute provides that at the time of inspection, any such septic tank must be pumped out unless the owner can demonstrate that the tank has been pumped out within the last 3 yrs by a commercial tank cleaner, licensed by the Department of Natural Resources.

Our local in Iowa, Gerald P. Schutte, has asked the legal counsel for the Department of Natural Resources whether a deed signed prior to the July 1, 2009 effective date, but not previously recorded, would need to have the inspection certificate. Luckily, it appears that the date of the deed is controlling, not when the deed is presented for recording. So, whether a one-deed or two-deed transaction, if the deeds are dated prior to July 1, 2009, they do not require a septic inspection certification.

Once an inspection is completed and the system certified, the certification is valid for 2 years. This will help when there is a 2-deed file. Two inspection certifications will not be necessary.

Additionally, an amended Groundwater Hazard Statement (copy follows) will have to be provided for on each property. A copy of the Groundwater Hazard Statement, as well as its instructions, follows this Memo.

Going forward, on any residential transaction in which the property is served by a private sewage disposal, where deed is dated on or after July 1, 2009, will require inspection to be completed and Groundwater Hazard Statement should be obtained from transferee in residence.

Copy of Iowa Senate File 261 is also attached.

If you have any questions, please do not hesitate to contact me. Also, please feel free to share this with your clients, if you believe it will be helpful to them.

JMB

4. Underground Storage Tanks (check one)

- There are no known underground storage tanks on this property. (Note exclusions such as small farm and residential motor fuel tanks, most heating oil tanks, cisterns and septic tanks, in instructions.)
- There is an underground storage tank on this property. The type(s), size(s) and any known substance(s) contained are listed below or on an attached separate sheet, as necessary.

5. Private Burial Site (check one)

- There are no known private burial sites on this property.
- There is a private burial site on this property. The location(s) of the site(s) and known identifying information of the decedent(s) is stated below or on an attached separate sheet, as necessary.

6. Private Sewage Disposal System (check one)

- There are no known private sewage disposal systems on this property.
- There is a private sewage disposal system on this property. A certified inspector's report is provided which documents the condition of the private sewage disposal system and whether any modifications are required to conform to standards adopted by the Department of Natural Resources.
- There is a private sewage disposal system on this property. Weather or other temporary physical conditions prevent the certified inspection of the private sewage disposal system from being conducted. The buyer has executed a binding acknowledgment with the county board of health to conduct a certified inspection of the private sewage disposal system at the earliest practicable time and to be responsible for any required modifications to the private sewage disposal system as identified by the certified inspection. A copy of the binding acknowledgment is provided with this form.
- There is a private sewage disposal system on this property. The building to which the sewage disposal system is connected will be demolished without being occupied. The buyer has executed a binding acknowledgment with the county board of health to demolish the building within an agreed upon time period. A copy of the binding acknowledgment is provided with this form.

Information required by statements checked above should be provided here or on separate sheets attached hereto:

**I HEREBY DECLARE THAT I HAVE REVIEWED THE INSTRUCTIONS FOR THIS
FORM
AND THAT THE INFORMATION STATED ABOVE IS TRUE AND CORRECT.**

Signature: _____ Telephone No.: (____) _____
(Transferor or Agent)

INSTRUCTIONS FOR COMPLETING GROUNDWATER HAZARD STATEMENT

The transferor of real property is required to complete this form. The purpose of the statement is to satisfy legal requirements for filing instruments of conveyance of real property with the county recorder (Iowa Code Section 558.69). The Department of Natural Resources does not approve or disapprove of property transfers based on these statements. The statement must be signed by one of the persons transferring the property interest or that person's agent. An agent signing this form represents the information from transferor to be correct.

For the most part the information requested is clear (name, address, etc.). One statement under each of the numbered items (1, 2, 3, 4, 5 and 6) must be checked, and if one or more of the statements checked requires the transferor to provide additional information, that information is to be provided on a separate sheet. Relate the additional information to the specific category of facility (well, etc.) by numbering it with the corresponding number (1, 2, 3, 4, 5, or 6). When describing the location of a facility on the property, be reasonably precise, such as a specific distance and general direction from a landmark or corner of the property. A professional survey is not necessary. The following definitions are for use in completing the form.

1. Wells -- A "well" is any excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted or otherwise constructed for accessing groundwater or for diverting surface water into the ground, including abandoned wells. "Well" does not include an open ditch or drainage tiles which discharge to the surface.

If a well is an "abandoned well" or an "agricultural drainage well," this must be identified and the status of the well with respect to Iowa Code sections 455B.190 and 159.29, respectively, must be stated. An "abandoned well" is a well no longer in use or in such state of disrepair that continued use is unsafe or impracticable. Abandoned wells are to be properly plugged in accordance with chapter 39 of the rules of the Department of Natural Resources. (567 Iowa Administrative Code, Chapter 39)

An "agricultural drainage well" is a well constructed for the purpose of draining, or which drains, water from agricultural land to an aquifer (underground), excluding drainage tile intakes which outlet to the surface. Agricultural drainage wells are required to be registered with the department by September 30, 1988, and the owner of the well and of the land drained by the well are to develop a plan proposing alternatives to the use of the well by July 1, 1998 (See Iowa Code Section 159.29.)

2. Solid Waste - "Solid waste" means garbage, refuse, rubbish and other similar discarded solid or semisolid material. It does not include dirt, stone, brick, or similar inorganic material used for fill, as long as no other solid waste is included. See 567--100.2(455B), Iowa Administrative Code (I.A.C.) for further definitions. A "disposal site" is any area on the property on, in, or under which solid waste has been disposed, whether or not the disposal is or was regulated by the department.

If the transferor or agent has not received notice from the Department of Natural Resources that the disposal site has been deemed to be potentially hazardous, there is no duty to inquire to the department.

***Note** The land application of sludges or soils resulting from the remediation of underground storage tank releases accomplished in compliance with Department of Natural Resources rules

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without a permit is not required to be reported as the disposal of solid waste or hazardous waste. (See Iowa Code Section 558.69)

3. Hazardous Wastes - "Hazardous waste" is defined in Iowa Code section 455B.411, 567—141.2 (455B), I.A.C., and federal regulations referenced therein. It is generally defined as waste that poses a threat to human health or the environment. It includes wastes which are ignitable, corrosive, toxic, explosive, violently reactive, or specifically listed as hazardous in the Code of Federal Regulations (40 CFR 261). EXCLUDED are household wastes, agricultural wastes returned to the soil as fertilizers or soil conditioners, agricultural chemicals applied or disposed of by a farmer in accordance with the manufacturer's instructions, triple-rinsed agricultural chemical containers disposed of by farmers (where the rinsate is used as makeup water in the tankmix and applied at appropriate rates), and other specific materials. Persons are legally required to be aware of hazardous waste laws.

4. Underground Storage Tanks - "Underground storage tank" means one or a combination of tanks, including underground piping connected to the tanks, used to contain an accumulation of regulated substances, and the volume of which is 10 percent or more beneath the surface of the ground. "Regulated substances" include petroleum products and hazardous or toxic materials identified in 567--135.2(455B), I.A.C. Underground storage tank does not include:

- a. Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes. But See 455B.473(4))
- b. Tanks used for storing heating oil for consumptive use on the premises where stored.
- c. Residential septic tanks.
- d. Pipeline facilities regulated by state or federal law.
- e. A surface impoundment, pit pond, or lagoon.
- f. A storm water or wastewater collection system.
- g. A flow-through process tank.
- h. A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.
- i. A tank in an underground area such as a basement or mine, if the tank is on or above the surface of the floor.
- j. Pipes connected to the above exclusions.

"Tank type" means the material of construction (steel, fiberglass reinforced plastic [FRP], or other [specify]), and any internal or external protection such as a protective coating or wrapping, or cathodic protection.

Identify the capacity in gallons and the substance stored in each tank.

5. Private Burial Sites - "Private Burial Site" means one or more graves containing human remains. For each site the transferor shall state the location of the site. For each decedent buried on the property the transferor shall state all known identifying information of that decedent including name, date of death, and date of birth.

6. Private Sewage Disposal Systems - Beginning July 1, 2009, prior to any transfer of ownership of a building where a person resides, congregates, or is employed that is served by a private sewage disposal system, the sewage disposal system serving the building shall be inspected. A building that will be demolished without being occupied does not require an

INSTRUCTIONS FOR COMPLETING GROUNDWATER HAZARD STATEMENT

inspection. A legally binding document verifying that the building will be demolished shall be provided to the county and to the department for record. In the event that weather or other temporary physical conditions prevent the certified inspection from being conducted, the buyer shall execute and submit a binding acknowledgment with the county board of health to conduct a certified inspection of the private sewage disposal system at the earliest practicable time and to be responsible for any required modifications to the private sewage disposal system as identified by the certified inspection. For the purposes of this subsection, "transfer" means the transfer or conveyance by sale, exchange, real estate contract, or any other method by which real estate and improvements are purchased, if the property includes at least one but not more than four dwelling units.

However, "transfer" does not include any of the following:

- (1) A transfer made pursuant to a court order, including but not limited to a transfer under chapter 633 or 633A, the execution of a judgment, the foreclosure of a real estate mortgage pursuant to chapter 654, the forfeiture of a real estate contract under chapter 656, a transfer by a trustee in bankruptcy, a transfer by eminent domain, or a transfer resulting from a decree for specific performance.
- (2) A transfer to a mortgagee by a mortgagor or successor in interest who is in default, or a transfer by a mortgagee who has acquired real property at a sale conducted pursuant to chapter 654, a transfer back to a mortgagor exercising a right of first refusal pursuant to section 654.16A, a nonjudicial voluntary foreclosure procedure under section 654.18 or chapter 655A, or a deed in lieu of foreclosure under section 654.19.
- (3) A transfer by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.
- (4) A transfer between joint tenants or tenants in common.
- (5) A transfer made to a spouse, or to a person in the lineal line of consanguinity of a person making the transfer.
- (6) A transfer between spouses resulting from a decree of dissolution of marriage, a decree of legal separation, or a property settlement agreement which is incidental to the decree, including a decree ordered pursuant to chapter 598.
- (7) A transfer for which consideration is five hundred dollars or less.
- (8) A deed between a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company as defined in section 428A.2, subsection 15, and its stockholders, partners, or members for the purpose of transferring real property in an incorporation or corporate dissolution or in the organization or dissolution of a partnership, limited partnership, limited liability partnership, or limited liability company under the laws of this state, where the deed is given for no actual consideration other than for shares or for debt securities of the family corporation, partnership, limited partnership, limited liability partnership, or limited liability company.

7. **Filing** - This form must be presented to the county recorder when the document to be recorded is filed. The Recorder shall forward the original to the transferee when the recorded instrument is returned. The Recorder is not required to keep any copies.

1 25 For the purposes of this subsection, "transfer" means the
1 26 transfer or conveyance by sale, exchange, real estate
1 27 contract, or any other method by which real estate and
1 28 improvements are purchased, if the property includes at least
1 29 one but not more than four dwelling units. However,
1 30 "transfer" does not include any of the following:

1 31 (1) A transfer made pursuant to a court order, including
1 32 but not limited to a transfer under chapter 633 or 633A, the
1 33 execution of a judgment, the foreclosure of a real estate
1 34 mortgage pursuant to chapter 654, the forfeiture of a real
1 35 estate contract under chapter 656, a transfer by a trustee in
2 1 bankruptcy, a transfer by eminent domain, or a transfer
2 2 resulting from a decree for specific performance.

2 3 (2) A transfer to a mortgagee by a mortgagor or successor
2 4 in interest who is in default, or a transfer by a mortgagee
2 5 who has acquired real property at a sale conducted pursuant to
2 6 chapter 654, a transfer back to a mortgagor exercising a right
2 7 of first refusal pursuant to section 654.16A, a nonjudicial
2 8 voluntary foreclosure procedure under section 654.18 or
2 9 chapter 655A, or a deed in lieu of foreclosure under section
2 10 654.19.

2 11 (3) A transfer by a fiduciary in the course of the
2 12 administration of a decedent's estate, guardianship,
2 13 conservatorship, or trust.

2 14 (4) A transfer between joint tenants or tenants in common.

2 15 (5) A transfer made to a spouse, or to a person in the
2 16 lineal line of consanguinity of a person making the transfer.

2 17 (6) A transfer between spouses resulting from a decree of
2 18 dissolution of marriage, a decree of legal separation, or a
2 19 property settlement agreement which is incidental to the
2 20 decree, including a decree ordered pursuant to chapter 598.

2 21 b. The inspection requirement of paragraph "a" does not
2 22 apply to a transfer in which the transferee intends to
2 23 demolish or raze the building. The department shall adopt
2 24 rules pertaining to such transfers.

2 25 c. At the time of inspection, any septic tank existing as
2 26 part of the sewage disposal system shall be opened and have
2 27 the contents pumped out and disposed of as provided for by
2 28 rule. In the alternative, the owner may provide evidence of
2 29 the septic tank being properly pumped out within three years
2 30 prior to the inspection by a commercial septic tank cleaner
2 31 licensed by the department which shall include documentation
2 32 of the size and condition of the tank and its components at
2 33 the time of such occurrence.

2 34 d. If a private sewage disposal system is failing to
2 35 ensure effective wastewater treatment or is otherwise
3 1 improperly functioning, the private sewage disposal system
3 2 shall be renovated to meet current construction standards, as
3 3 adopted by the department, either by the seller or, by
3 4 agreement, within a reasonable time period as determined by
3 5 the county or the department, by the buyer. If the private
3 6 sewage disposal system is properly treating the wastewater and
3 7 not creating an unsanitary condition in the environment at the
3 8 time of inspection, the system is not required to meet current
3 9 construction standards.

3 10 e. Inspections shall be conducted by an inspector
3 11 certified by the department.

3 12 f. Pursuant to chapter 17A, the department shall adopt
3 13 certification requirements for inspectors including training,
3 14 testing, and fees, and shall establish uniform statewide

3 15 inspection criteria and an inspection form. The inspector
3 16 certification training shall include use of the criteria and
3 17 form. The department shall maintain a list of certified
3 18 inspectors.

3 19 g. County personnel are eligible to become certified
3 20 inspectors. A county may set an inspection fee for
3 21 inspections conducted by certified county personnel. A county
3 22 shall allow any department certified inspector to provide
3 23 inspection services under this subsection within the county's
3 24 jurisdiction.

3 25 h. Following an inspection, the inspection form and any
3 26 related reports shall be provided to the county for
3 27 enforcement of any follow-up mandatory system improvement and
3 28 to the department for record.

3 29 i. An inspection is valid for a period of two years for
3 30 any ownership transfers during that period. Title abstracts
3 31 to property with private sewage disposal systems shall include
3 32 documentation of the requirements in this subsection.

3 33 Sec. 2. EFFECTIVE DATE. This Act takes effect July 1,
3 34 2009.

3 35 SF 261

4 1 tm:nh/cc/26

Text: SF260

Text: SF262 Complete Bill History