



PA 18-179—HB 5321
General Law Committee

AN ACT CONCERNING THE WRITTEN RESIDENTIAL DISCLOSURE REPORT, THE CAPTIVE INSURANCE COMPANY ESTABLISHED FOR ASSISTING WITH CRUMBLING FOUNDATIONS AND FUNDING FOR LEAD REMOVAL, REMEDIATION AND ABATEMENT

SUMMARY: This act codifies the residential disclosure report home sellers must provide to purchasers and expands what must be included in it. Prior law required the Department of Consumer Protection (DCP) to prescribe the form, with certain minimum information, through regulations. Under the act, the new residential disclosure report is effective for new listings 30 days after DCP posts notice of the new report on its website (i.e., beginning August 10, 2018). As under existing law, a seller is required to credit the purchaser \$500 at closing if the seller fails to provide the written residential condition report (CGS § 20-327c).

The act also makes changes to the enabling legislation for the Connecticut Foundation Solutions Indemnity Company, LLC (CFSIC), the captive insurance company created to assist homeowners with concrete foundations damaged due to the presence of pyrrhotite. Under the act, CFSIC is not considered a state agency for any purpose other than the state ethics provisions applicable to its employees, agents, directors, consultants, and contractors. It also deems CFSIC as not performing a governmental function for Freedom of Information Act (FOIA) purposes (see BACKGROUND).

Under the act, members of CFSIC's board of directors and their spouses or dependent children may apply for and receive aid from CFSIC without it constituting a conflict of interest, provided they do not influence their own applications.

Finally, the act limits certain Department of Housing (DOH) contaminant abatement activities included in PA 18-160 to lead removal, remediation, and abatement.

EFFECTIVE DATE: Upon passage for the captive insurer provisions; July 1, 2018 for the residential disclosure report provisions; and January 1, 2019 for the DOH lead abatement provisions.

RESIDENTIAL DISCLOSURE REPORT

Under prior law, the DCP commissioner prescribed the content of the residential disclosure report by adopting regulations that required the form to include certain information. The act removes the requirement to adopt regulations but similarly requires the commissioner to prescribe the content of the residential disclosure report and a template for it.

OLR PUBLIC ACT SUMMARY

Under the act, such template must:

1. fit on pages that are no larger than 8-1/2" x 11";
2. have at least a nine-point type size (other than checkboxes or section headers, which may be smaller);
3. include page numbers and the property's address on each page;
4. include section headings in bold type; and
5. include space for the buyer's and seller's initials on each page, except the signature page.

The act includes all the requirements under prior law and expands the information that must be provided. Prior law set the minimum information that had to be on the form, but in practice, DCP included more disclosure information on the prescribed report. The new information the act requires includes:

1. general information, including the seller's name, address, year the structure was built, how long the seller occupied the property, any known encroachments, and if anyone has an easement or right-of-way;
2. whether the property is located in a special tax district or subject to any type of land use restrictions;
3. specific questions on whether there are problems with the hot water heater, heating system, air conditioning, plumbing, electrical, electronic security system, and fire sprinkler system;
4. specific questions on the heating system, including the fuel type; hot water heater, including the type and age; air conditioning, including the type (e.g., central air); and water system type, broken down by public supply or private well;
5. specific questions on asbestos and lead;
6. disclosures on the building's structure and any improvements made to it, including questions on, among other things, the roof, exterior, driveway, and the types of testing, inspection, or repairs done to the foundation;
7. a statement that information about the residence address of a person convicted of a crime may be available from law enforcement agencies or the Department of Public Safety (presumably the Department of Emergency Services and Public Protection); and
8. a new statement on concrete foundations that suggests prospective buyers have the foundation inspected by a licensed structural engineer for deterioration due to the presence of pyrrhotite.

CRUMBLING CONCRETE CAPTIVE INSURANCE COMPANY

Board of Directors' Conflicts of Interest

By law, CFSIC directors are subject to certain state ethics provisions, including conflict of interest requirements. The act allows a member of the board of directors who owns a residential property with a crumbling foundation, or his or her spouse or dependent child, to apply for and receive CFSIC assistance if the board member abstains from deliberating, voting, or acting on such application.

DOH LEAD ABATEMENT ACTIVITIES

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PA 18-160 establishes the Healthy Homes Fund to, among other things, fund a DOH program, including necessary administrative expenses, to reduce residential health and safety hazards from lead, radon, and other contaminants and conditions, including removal, remediation, and abatement.

The act limits the scope of the program by requiring that all funds spent on it be used for lead removal, remediation, and abatement.

BACKGROUND

FOIA Governmental Function

Performing a governmental function is one component considered by the Connecticut Supreme Court to determine if FOIA applies to a nonpublic agency.

Generally, the Court recognizes a four-part “functional equivalency” test to determine when a nonpublic agency is subject to FOIA because it is functionally equivalent to a public agency. The other three factors considered are: (1) the level of government funding, (2) the extent of government involvement or regulation, and (3) whether the entity was created by government. All factors must be considered cumulatively, with no single factor being essential or conclusive (see *Board of Trustees of Woodstock Academy v. FOI Commission*, 181 Conn. 544, 554 (1980) and *Connecticut Humane Society v. Freedom of Information Commission*, 281 Conn. 757, 761 (1991)).