

Septic System Inspections Mandatory July 1, 2009

By Bob Hartwig & Ronette Schlatter

Governor Culver's May 26th veto of section 23 of SF 467 (the Ag and Department of Natural Resources (DNR) budget bill) is likely to result in at least a temporary slow down of rural property sales. Section 23 of SF 467 would have postponed the effective date of legislation requiring septic inspections prior to any ownership transfer (including a contract for deed) of real property with a private sewage disposal system serving the buildings (including homes, businesses, livestock confinements, etc.) until July 1, 2010. This bill was originally passed during the 2008 legislative session. The delay in the implementation date was supported by the Iowa Bankers Association, Iowa State Bar Association, Iowa Association of Realtors and the Iowa Farm Bureau Federation in order to provide additional time to get more inspectors certified and to resolve several technical issues regarding the bill with the DNR. SF 261 will now be effective as originally scheduled on July 1, 2009.

The law requires a certified inspector's report to be attached to the groundwater hazard statement documenting the condition of the private septic system and whether any modifications are required to conform the system to standards required by the DNR. At the time of inspection, the septic system tank must be opened and have the contents pumped out and disposed of as provided by the DNR rules.

Covered Transactions

The language in the legislation is quite broad and covers any "transfer of ownership of a building where a person resides, congregates, or is employed that is served by a private sewage disposal system." A "transfer" is the transfer or conveyance by sale, exchange, real estate contract, or any other method by which real estate and improvements are purchased.

For deeds in fulfillment of a contract, the groundwater hazard statement is required at the time of the recording of the contract, not the deed. Therefore, if an existing contract is paid off and refinanced by a financial institution, no inspection will be required with the filing of the deed.

Exempt Transactions

There is a series of transfers which are exempt from the new inspection requirement. Transfers pursuant to court orders; foreclosures; transactions by fiduciaries in the course of administration of an estate, guardianship, conservatorship or trust; between joint owners; spouses or lineal descendants; divorce agreements; between family business entities and any transfer where consideration is \$500 or less are all exempt from the legislation.

A building that will be demolished without being occupied also does not require an inspection. However, a legally-binding document must be executed verifying that the building will be demolished and provided to the county recorder and the DNR for recording.

In addition, an inspection is valid for two years for any ownership transfers during that period. Inspections under this new law will also be required to be part of the abstract and land title records for the property. The IBA has requested clarification from the DNR on how exempt transfers are to be documented so county recorders can file the deeds for these exempt transactions.

Implementing Rules

The original legislation required the DNR to write rules to facilitate its implementation. The DNR's rules for this legislation can be found at <http://www.iowadnr.gov/water/npdes/files/final69.pdf>. The original legislation in its entirety can be found at <http://coolice.legis.state.ia.us/Cool-ICE/default.asp?Category=BillInfo&Service=Billbook&ga=82&menu=text&hbill=SF261>.

As stated above, a home or building with a septic system will require an inspection prior to finalizing the sale, transferring the deed in a traditional bank financed purchase, or recording a contract for deed. The Groundwater Hazard Statement has been modified to include a disclosure of septic systems on the property and whether an inspection has been completed. Provisions have been included in the rules for weather-delayed inspections. In such cases, a binding acknowledgement between the buyer and the County Board of Health to conduct the inspection at the first possible opportunity must be attached to the Groundwater Hazard Statement. The buyer would be responsible for any required modifications noted in the inspection. A sample of a "binding acknowledgement" form can be found at: http://iowabankers.com/UserDocs/TimeofTransferBindingAcknowledgement_septic_inspection.pdf. This will likely result in the parties to the transaction to escrow funds for a new septic system—even though the funds would likely be released back to the seller in the spring if the system was in satisfactory working condition.

Septic systems DO NOT have to meet TODAY'S code standards to pass an inspection—they simply need to be in working condition with the contents pumped out and disposed of in compliance with the DNR rules. If the wastewater system is in working condition, properly treating wastewater and not creating an unsanitary condition, the system will not be required to meet current construction standards. For example, a system installed under permit with a 1,000-gallon tank and 200 feet of absorption field will pass if it is properly working the day of the inspection even if current code requires a 1,500-gallon tank and 400 feet of field.

The primary purpose of the new law is to eliminate systems with no secondary treatment (i.e. a tank discharging to the ditch). These systems are illegal and have been for many

years. They are not “grand-fathered” in for compliance purposes. If the system is improperly functioning, it will be required to be renovated to meet current standards prior to closing under DNR rules.

Immediate Challenges

The most immediate concern is the statutory provision stating these inspections are required prior to any nonexempt transfer of ownership of a building served by a private sewage disposal system as of the “effective date.” Therefore, the July 1, 2009 effective date could impact sales contracts currently being executed. For example, a purchase agreement that is signed May 28, with a closing date of Thursday, July 2, would be a covered transaction and require an inspection sometime in June as the deed would be dated after July 1, 2009. It would not be accepted for recording by the county recorder without the inspection certificate attached to the groundwater hazard statement. Existing purchase agreements from groups such as the Iowa State Bar Association or the Iowa Association of Realtors are most likely currently silent on the matter of septic inspections. Therefore, lenders will need to make sure inspections are being completed prior to closing for transactions scheduled to close July 1 or after as these transactions will be subject to the new requirement and deeds will not be recorded without the inspectors report included.

A secondary concern is the number of certified inspectors available. The DNR will maintain a list of certified inspectors on the Onsite Wastewater Training Center of Iowa web site at www.wastewatertraining.com and at www.iowadnr.gov/tot.html. The list will also be available from county sanitarians. There are currently about 160 inspectors certified statewide, and the DNR is continually adding more inspectors to the list. However, there are several counties that do not have a certified inspector available at all in that county. Inspectors are allowed to work across county lines; however, it is likely the cost of inspections will increase with the distance an inspector must travel to conduct the inspection. Inspectors must follow the procedure outlined in the rules and in the inspector training. The rules include a disciplinary procedure for inspectors who violate these procedures.

Finally, there are unanswered questions related to conflicting rules. Twenty-two Iowa counties already have ordinances in place where these inspections are currently required, but this provision, which is regulated by the DNR, will be effective statewide. It is unclear which set of rules would take precedent (state law or county ordinances) when county rules are more restrictive than state rules. The IBA is awaiting additional guidance from the DNR on this matter.

If you have questions related to the septic inspection rules, please call the IBA’s Bob Hartwig at 800-532-1423 or e-mail Bob at rhartwig@iowabankers.com. Questions can also be directed to Dan Olson, Environmental Specialist with the DNR at 515-281-8263 or daniel.olson@dnr.iowa.gov.

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ADDITIONAL INFORMATION (July 6, 2009)

New Groundwater Hazard Statement to Conform to Septic Inspection Law

In response to the new DNR "Time of Transfer" septic inspection requirements that went into effect on July 1, 2009, the department has revised their "Groundwater Hazard Statement" (GHS) to meet the requirements of the new law. Checkboxes are noted on the form with various options regarding whether the transaction:

1. Has a septic system with the certified inspectors report attached. Please note that this covers any inspection completed within the prior two years;
2. Has a septic system but weather or other conditions have delayed an inspection prior to closing. In this instance in order to get the deed filed by the recorder the buyer will need to execute an agreement with the county board of health to have the inspection conducted at the earliest practicable time. As mentioned in the Communiqué sent on May 28, 2009, this will likely require the parties to the transaction to "escrow" funds during this time period;
3. Has a septic system, but the buyer will be demolishing the building to which the system is connected. This will also require a agreement with the county board of health to demolish the building within an agreed upon time period;
4. Has a septic system, but the property is exempt from time of transfer inspection requirements. For a complete list of exempt transactions, please see the instructions for completing the groundwater hazard statement; or
5. Has a septic system, but the system has been installed within the past two years.
6. This updated form may be used immediately, but will be required as of September 1, 2009.

Please call Bob Hartwig at 800-532-1423, rhartwig@iowabankers.com or ask to speak to the Compliance Department for assistance with any questions. Additional questions can be directed to Dan Olson, Environmental Specialist with the DNR at 515-281-8263, daniel.olson@dnr.iowa.gov.

Resources:

[Instructions for Completing Groundwater Hazard Statement](#)
[Real Estate Transfer - Groundwater Hazard Statement](#)