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Insights

Energy Efficiency Ratings for Buildings

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If you have bought or sold property recently, you may recall seeing a provision in the contract for sale and purchase relating to the Florida Building Energy-Efficiency Rating Act, which became law in 1993 and can be found in Section 553.996, Florida Statutes. However, chances are that you did not pay much attention to it.

The purpose of this statute is to identify systems for rating the energy-efficiency of buildings. The Florida legislature determined that it is in the best interest of consumers "to encourage the consideration of energy-efficiency rating systems in the market so as to provide market rewards for energy-efficient buildings and to those persons or companies designing, building, or selling energy-efficient buildings."

According to the statute, energy-efficiency rating systems for buildings must, at a minimum:

(i) Take into account local climate conditions, construction practices, and building use;

(ii) Be compatible with standard federal rating systems and state building codes and standards, where applicable; and

(iii) Provide a means of analyzing the relative energy efficiency of buildings upon the sale of new or existing residential, public, or commercial buildings.

The statute charges energy-efficiency rating system providers to prepare rating information relevant to various types of building that must include (without limitation):

(i) How to analyze the building's energy-efficiency rating;

(ii) Comparisons to statewide averages for new and existing construction of that class;

(iii) Information concerning methods to improve the building's energy-efficiency rating; and

(iv) A notice to residential purchasers that the energy-efficiency rating may qualify the purchaser for an energy-efficient mortgage from lending institutions.

Energy raters are certified by the state and can be hired to perform ratings on buildings that do not already have them. If the building was constructed after the statute was passed in 1993, it is likely that a rating was already performed, and may have been the subject of sticker posted in the building. You may have seen similar stickers on hot water heaters and air conditioning units to rate their energy efficiency. If you need a rating performed, many real estate brokers can provide referrals to licensed providers.

Per this statute, a prospective purchaser of a building for occupancy must be given "information" at the time of or before the purchaser's execution of the contract for sale and purchase "which notifies the purchaser of the option for an energy-efficiency rating on the building." The nature of the "information" is not clear, but to evidence compliance with the statute it is not unusual for drafters to include a notice in the contract that the purchaser can obtain an energy-efficiency rating on the building, presumably at the purchaser's expense, if desired.

A sample clause that a party can put in that contract may read as follows:

BUYER HAS BEEN NOTIFIED OF ITS RIGHT TO HAVE THE ENERGY EFFICIENCY RATING OF THE PROPERTY DETERMINED PURSUANT TO SECTION 553.996, FLORIDA STATUTES.

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