

GROUNDWATER HAZARD STATEMENT PROCESS

Section 558.69 of the Iowa Code

“with each declaration of value submitted to the county recorder under chapter 428A, there shall be submitted a groundwater hazard statement”. Many properties do not have a reportable hazard such as a well, private burial site, underground storage tank, or other hazardous waste or disposal site. The preparation and submission of a groundwater hazard statement in these cases creates unnecessary work for owners, sellers, agents and public officials. Is there a more efficient way of handling this situation?

ALTERNATIVE OPTIONS

A possible alternative process would remove the requirement for preparing and filing a full groundwater hazard statement report when there is no hazard present. Instead, the conveyance document (deed, instrument, or writing by which any real property in this state shall be granted, assigned, transferred, or otherwise conveyed) would include the following statement on the first page:

“There is no known Groundwater Hazard, and therefore, the parcel is exempt from the Groundwater Hazard Statement pursuant to Iowa Code 558.69”.

The change would have no direct fiscal impact, but it would save time, reduce paperwork, and increase efficiency.

NOTICE SIMILAR TO DOV REQUIREMENTS IN 428A.1

Section 428A.1 provides for a transfer tax associated with the sale of property. Subsection 2 of 428A.1 further requires that a Declaration of Value (DOV) document must accompany the conveyance document when submitted for recording to a County Recorder. However, a DOV is not required for certain types of transfers which are exempt from the tax. In those cases, the filer does not submit a blank or “no tax” DOV form to the County Recorder. In lieu of submitting an “empty” DOV report, Section 428A.4 allows for deeds or other conveyance documents to include a statement that the conveyance is exempt.

IOWA CODE ALLOWS DOV EXEMPTION STATEMENT

Specifically, Section 428A.4 states: “if there is filed with or endorsed on it a statement signed by either the grantor or grantee or an authorized agent, that the instrument or writing is excepted from the tax”, the County Recorder can accept the document for recording.

Here is a common illustration of how this is represented on the first page of a conveyance document.

SPECIAL WARRANTY DEED

This Deed is for consideration less than \$500 and is, therefore, exempt from transfer tax and the requirements of a Declaration of Value and Groundwater Hazard Statement pursuant to Iowa Code Section 428A.2(21).

Sample taken from an actual recorded document.
This same concept could be applied to Groundwater Hazard Statements.

RESPONSIBILITY

SELLER RESPONSIBILITY FOR DOV

Chapter 428A places responsibility for the payment of the tax on “any person, firm or corporation who grants, assigns, transfers, or conveys any land, tenement, or realty by a deed, writing, or instrument subject to the tax imposed by this chapter shall be liable for such tax”.

PENALTIES FOR NONCOMPLIANCE

Sections 428A.10 and 428A.15 provide for penalties for knowingly failing to comply with the requirements.

OWNER RESPONSIBILITY FOR GWH

Section 558.69, Subsection 8 makes a similar statement of responsibility. “The owner of the property is responsible for the accuracy of the information submitted on the groundwater hazard statement.”

STAKEHOLDER REVIEW OF REFORM

This concept summary is intended for consideration by all stakeholders to determine whether the intent and purpose of the Groundwater Hazard Statement requirements are fulfilled.

- 1.** When known groundwater hazards are present, as specified in Section 558.69 of the Iowa Code, are sellers required to disclose them, and are proper reports filed with the County Recorder and the Department of Natural Resources?
- 2.** Are owners and sellers responsible for accurate reporting? The intention of the “No Known Hazard” statement is to effectively hold the party responsible to the same extent as a “no hazard present” groundwater hazard statement does.
- 3.** Are there process improvement benefits by eliminating the Groundwater Hazard Statement filing when there are no hazards to report?
- 4.** Is the inclusion of a statement on the first page of a deed or other conveyance document that “There is No Known Groundwater Hazard and therefore the parcel is exempt from the Groundwater Hazard

All stakeholders are encouraged to review this concept and the associated model legislation.

MODEL LEGISLATIVE CONCEPT

Section 558.69, numbered paragraph 1, is amended to read as follows:

1. With each declaration of value submitted to the county recorder under chapter 428A, except as specified in subsection 9, there shall be submitted a groundwater hazard statement stating all of the following:

- a. Whether any known private burial site is situated on the property, and if a known private burial site is situated on the property, the statement shall state the approximate location of the site.
- b. That no known wells are situated on the property, or if known wells are situated on the property, the statement must state the approximate location of each known well and its status with respect to section 455B.190 or 460.302.
- c. That no known disposal site for solid waste, as defined in section 455B.301, which has been deemed to be potentially hazardous by the department of natural resources, exists on the property, or if such a known disposal site does exist, the location of the site on the property.
- d. That no known underground storage tank, as defined in section 455B.471, subsection 11, exists on the property, or if a known underground storage tank does exist, the type and size of the tank, and any known substance in the tank.
- e. That no known hazardous waste as defined in section 455B.411, subsection 3, exists on the property, or if known hazardous waste does exist, that the waste is being managed in accordance with rules adopted by the department of natural resources.
- f. That no known private sewage disposal system exists on the property or, if such private sewage disposal system exists, that the system has been inspected pursuant to section 455B.172, subsection 11, or that the property is not subject to inspection due to its exclusion from a regulated transfer pursuant to section 455B.172, subsection 11, paragraph "a".

2. Section 558.69 is amended by striking numbered paragraph 3.

3. Section 558.69, numbered paragraph 4, is amended to read as follows:

"A buyer of property shall be provided with a copy of the submitted groundwater hazard Statement, if required under this section, by the seller".

4. Section 558.69, numbered paragraph 7, is amended to read as follows:

"The county recorder shall transmit the groundwater hazard statements to the department of natural resources at times and in a manner directed by the director of the department." Groundwater hazard statements may be transmitted electronically to the department or may be presented to the department through a browser interface provided through the county land record information system. The form and timing of the transmittal of information shall be determined by the department and the county recorders.

5. Section 558.69, is amended by inserting the following after numbered paragraph 8:

"9. If there are no hazardous conditions present, as described in subsection 1 of this section, then a groundwater hazard statement shall not be submitted. In lieu of the submission of a groundwater hazard statement, any deed, instrument, or writing by which any real property in this state shall be granted, assigned, transferred, or otherwise conveyed shall include on the first page of the deed, instrument, or writing the following statement " There is no known Groundwater Hazard, and therefore, the parcel is exempt from the Groundwater Hazard Statement pursuant to Iowa Code 558.69". The owner of the property is responsible for the accuracy of this statement as is provided this section."

"10. The county recorder shall refuse to record any deed, instrument, or writing by which any real property in this state shall be granted, assigned, transferred, or otherwise conveyed, if the deed, instrument, or writing and a required declaration of value is not accompanied by a groundwater hazard statement, or the statement " There is no known Groundwater Hazard, and therefore, the parcel is exempt from the Groundwater Hazard Statement pursuant to Iowa Code 558.69" is not present on the first page of the deed, instrument, or writing."

6. By numbering or renumbering Section 558.69 as necessary.