

HOUSE BILL NO. 702

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on _____)

(Patron Prior to Substitute--Delegate Keam)

A BILL to amend and reenact § 55.1-703 of the Code of Virginia, relating to Residential Property Disclosure Act; required disclosures for buyer to beware; buyer to exercise necessary due diligence; lot coverage.

Be it enacted by the General Assembly of Virginia:

1. That § 55.1-703 of the Code of Virginia is amended and reenacted as follows:

§ 55.1-703. Required disclosures for buyer to beware; buyer to exercise necessary due diligence.

A. The owner of the residential real property shall furnish to a purchaser a residential property disclosure statement for the buyer to beware of certain matters that may affect the buyer's decision to purchase such real property. Such statement shall be provided by the Real Estate Board on its website.

B. The residential property disclosure statement provided by the Real Estate Board on its website shall include the following:

1. The owner makes no representations or warranties as to the condition of the real property or any improvements thereon, or with regard to any covenants and restrictions, or any conveyances of mineral rights, as may be recorded among the land records affecting the real property or any improvements thereon, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary, including obtaining a home inspection, as defined in § 54.1-500, a mold assessment conducted by a business that follows the guidelines provided by the U.S. Environmental Protection Agency, and a residential building energy analysis, as defined in § 54.1-1144, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

27 2. The owner makes no representation with respect to current lot lines or the ability to expand,
28 improve, or add any structures on the property, and purchasers are advised to exercise whatever due
29 diligence a particular purchaser deems necessary, including obtaining a property survey and contacting
30 the locality to determine zoning ordinances or lot coverage, height, or setback requirements on the
31 property.

32 3. The owner makes no representations with respect to any matters that may pertain to parcels
33 adjacent to the subject parcel, including zoning classification or permitted uses of adjacent parcels, and
34 purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with
35 respect to adjacent parcels in accordance with terms and conditions as may be contained in the real estate
36 purchase contract, but in any event prior to settlement pursuant to such contract;

37 ~~3.~~4. The owner makes no representations to any matters that pertain to whether the provisions of
38 any historic district ordinance affect the property, and purchasers are advised to exercise whatever due
39 diligence a particular purchaser deems necessary with respect to any historic district designated by the
40 locality pursuant to § 15.2-2306, including review of (i) any local ordinance creating such district, (ii) any
41 official map adopted by the locality depicting historic districts, and (iii) any materials available from the
42 locality that explain (a) any requirements to alter, reconstruct, renovate, restore, or demolish buildings or
43 signs in the local historic district and (b) the necessity of any local review board or governing body
44 approvals prior to doing any work on a property located in a local historic district, in accordance with
45 terms and conditions as may be contained in the real estate purchase contract, but in any event prior to
46 settlement pursuant to such contract;

47 ~~4.~~5. The owner makes no representations with respect to whether the property contains any
48 resource protection areas established in an ordinance implementing the Chesapeake Bay Preservation Act
49 (§ 62.1-44.15:67 et seq.) adopted by the locality where the property is located pursuant to § 62.1-44.15:74,
50 and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary to
51 determine whether the provisions of any such ordinance affect the property, including review of any
52 official map adopted by the locality depicting resource protection areas, in accordance with terms and

53 conditions as may be contained in the real estate purchase contract, but in any event prior to settlement
54 pursuant to such contract;

55 ~~5-6.~~ The owner makes no representations with respect to information on any sexual offenders
56 registered under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, and purchasers are advised to exercise
57 whatever due diligence they deem necessary with respect to such information, in accordance with terms
58 and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement
59 pursuant to such contract;

60 ~~6-7.~~ The owner makes no representations with respect to whether the property is within a dam
61 break inundation zone. Such disclosure statement shall advise purchasers to exercise whatever due
62 diligence they deem necessary with respect to whether the property resides within a dam break inundation
63 zone, including a review of any map adopted by the locality depicting dam break inundation zones;

64 ~~7-8.~~ The owner makes no representations with respect to the presence of any wastewater system,
65 including the type or size of the wastewater system or associated maintenance responsibilities related to
66 the wastewater system, located on the property, and purchasers are advised to exercise whatever due
67 diligence they deem necessary to determine the presence of any wastewater system on the property and
68 the costs associated with maintaining, repairing, or inspecting any wastewater system, including any costs
69 or requirements related to the pump-out of septic tanks, in accordance with terms and conditions as may
70 be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such
71 contract;

72 ~~8-9.~~ The owner makes no representations with respect to any right to install or use solar energy
73 collection devices on the property;

74 ~~9-10.~~ The owner makes no representations with respect to whether the property is located in one
75 or more special flood hazard areas, and purchasers are advised to exercise whatever due diligence they
76 deem necessary, including (i) obtaining a flood certification or mortgage lender determination of whether
77 the property is located in one or more special flood hazard areas, (ii) reviewing any map depicting special
78 flood hazard areas, (iii) contacting the Federal Emergency Management Agency (FEMA) or visiting the
79 website for FEMA's National Flood Insurance Program or the Virginia Flood Risk Information website

80 operated by the Department of Conservation and Recreation, and (iv) determining whether flood insurance
81 is required, in accordance with terms and conditions as may be contained in the real estate purchase
82 contract, but in any event prior to settlement pursuant to such contract. A flood risk information form,
83 pursuant to the provisions of subsection D, that provides additional information on flood risk and flood
84 insurance is available for download by the Real Estate Board on its website;

85 ~~10-11.~~ The owner makes no representations with respect to whether the property is subject to one
86 or more conservation or other easements, and purchasers are advised to exercise whatever due diligence
87 a particular purchaser deems necessary in accordance with terms and conditions as may be contained in
88 the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

89 ~~11-12.~~ The owner makes no representations with respect to whether the property is subject to a
90 community development authority approved by a local governing body pursuant to Article 6 (§ 15.2-5152
91 et seq.) of Chapter 51 of Title 15.2, and purchasers are advised to exercise whatever due diligence a
92 particular purchaser deems necessary in accordance with terms and conditions as may be contained in the
93 real estate purchase contract, including determining whether a copy of the resolution or ordinance has
94 been recorded in the land records of the circuit court for the locality in which the community development
95 authority district is located for each tax parcel included in the district pursuant to § 15.2-5157, but in any
96 event prior to settlement pursuant to such contract;

97 ~~12-13.~~ The owner makes no representations with respect to whether the property is located on or
98 near deposits of marine clays (marumsco soils), and purchasers are advised to exercise whatever due
99 diligence a particular purchaser deems necessary in accordance with terms and conditions as may be
100 contained in the real estate purchase contract, including consulting public resources regarding local soil
101 conditions and having the soil and structural conditions of the property analyzed by a qualified
102 professional;

103 ~~13-14.~~ The owner makes no representations with respect to whether the property is located in a
104 locality classified as Zone 1 or Zone 2 by the U.S. Environmental Protection Agency's (EPA) Map of
105 Radon Zones, and purchasers are advised to exercise whatever due diligence they deem necessary to
106 determine whether the property is located in such a zone, including (i) reviewing the EPA's Map of Radon

107 Zones or visiting the EPA's radon information website; (ii) visiting the Virginia Department of Health's
108 Indoor Radon Program website; (iii) visiting the National Radon Proficiency Program's website; (iv)
109 visiting the National Radon Safety Board's website that lists the Board's certified contractors; and (v)
110 ordering a radon inspection, in accordance with the terms and conditions as may be contained in the real
111 estate purchase contract, but in any event prior to settlement pursuant to such contract;

112 ~~14-15.~~ The owner makes no representations with respect to whether the property contains any
113 pipe, pipe or plumbing fitting, fixture, solder, or flux that does not meet the federal Safe Drinking Water
114 Act definition of "lead free" pursuant to 42 U.S.C. § 300g-6, and purchasers are advised to exercise
115 whatever due diligence they deem necessary to determine whether the property contains any pipe, pipe or
116 plumbing fitting, fixture, solder, or flux that does not meet the federal Safe Drinking Water Act definition
117 of "lead free," in accordance with terms and conditions as may be contained in the real estate purchase
118 contract, but in any event prior to settlement pursuant to such contract;

119 ~~15-16.~~ The owner makes no representations with respect to the existence of defective drywall on
120 the property, and purchasers are advised to exercise whatever due diligence they deem necessary to
121 determine whether there is defective drywall on the property, in accordance with terms and conditions as
122 may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such
123 contract. For purposes of this subdivision, "defective drywall" means the same as that term is defined in
124 § 36-156.1; and

125 ~~16-17.~~ The owner makes no representation with respect to the condition or regulatory status of
126 any impounding structure or dam on the property or under the ownership of the common interest
127 community that the owner of the property is required to join, and purchasers are advised to exercise
128 whatever due diligence a particular purchaser deems necessary to determine the condition, regulatory
129 status, cost of required maintenance and operation, or other relevant information pertaining to the
130 impounding structure or dam, including contacting the Department of Conservation and Recreation or a
131 licensed professional engineer.

132 C. The residential property disclosure statement shall be delivered in accordance with § 55.1-709.

133 D. The Real Estate Board shall make available on its website a flood risk information form. Such
134 form shall be substantially as follows:

135 Flood Risk Information Form

136 The purpose of this information form is to provide property owners and potential property owners
137 with information regarding flood risk. This information form does not determine whether a property owner
138 will be required to purchase a flood insurance policy. That determination is made by the lender providing
139 a loan for the property at the lender's discretion.

140 Mortgage lenders are mandated under the Flood Disaster Protection Act of 1973 and the National
141 Flood Insurance Reform Act of 1994 to require the purchase of flood insurance by property owners who
142 acquire loans from federally regulated, supervised, or insured financial institutions for the acquisition or
143 improvement of land, facilities, or structures located within or to be located within a Special Flood Hazard
144 Area. A Special Flood Hazard Area (SFHA) is a high-risk area defined as any land that would be inundated
145 by a flood, also known as a base flood, having a one percent chance of occurring in a given year. The
146 lender reviews the current National Flood Insurance Program (NFIP) maps for the community in which
147 the property is located to determine its location relative to the published SFHA and completes the Standard
148 Flood Hazard Determination Form (SFHDF), created by the Federal Emergency Management Agency
149 (FEMA). If the lender determines that the structure is indeed located within a SFHA and the community
150 is participating in the NFIP, the borrower is then notified that flood insurance will be required as a
151 condition of receiving the loan. A similar review and notification are completed whenever a loan is sold
152 on the secondary loan market or when the lender completes a routine review of its mortgage portfolio.

153 Properties that are not located in a SFHA can still flood. Flood damage is not generally covered
154 by a standard home insurance policy. It is prudent to consider purchasing flood insurance even when flood
155 insurance is not required by a lender. Properties not located in a SFHA may be eligible for a low-cost
156 preferred risk flood insurance policy. Property owners and buyers are encouraged to consult with their
157 insurance agent about flood insurance.

158 What is a flood? A flood is a general and temporary condition of partial or complete inundation of
159 two or more acres of normally dry land area or of two or more properties, at least one of which is the

160 policyholder's property, from (i) overflow of inland or tidal waters, (ii) unusual and rapid accumulation or
161 runoff of surface waters from any source, (iii) mudflow, or (iv) collapse or subsidence of land along the
162 shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents
163 of water exceeding anticipated cyclical levels that result in a flood.

164 FEMA is required to update Flood Maps every five years. Flood zones for this property may
165 change due to periodic map updates. To determine what flood zone or zones a property is located in a
166 buyer can visit the website for FEMA's National Flood Insurance Program or the Virginia Department of
167 Conservation and Recreation's Flood Risk Information System website.

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