

SENATE BILL NO. 286

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator Ebbin)

A BILL to amend and reenact § 55.1-703 of the Code of Virginia, relating to required disclosure for buyer to beware; buyer due diligence; historic districts.

**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;

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

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

41           4. The owner makes no representations with respect to whether the property contains any resource  
42 protection areas established in an ordinance implementing the Chesapeake Bay Preservation Act (§ 62.1-  
43 44.15:67 et seq.) adopted by the locality where the property is located pursuant to § 62.1-44.15:74, and  
44 purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary to  
45 determine whether the provisions of any such ordinance affect the property, including review of any  
46 official map adopted by the locality depicting resource protection areas, in accordance with terms and  
47 conditions as may be contained in the real estate purchase contract, but in any event prior to settlement  
48 pursuant to such contract;

49           5. The owner makes no representations with respect to information on any sexual offenders  
50 registered under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, and purchasers are advised to exercise  
51 whatever due diligence they deem necessary with respect to such information, in accordance with terms

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

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

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

66 8. The owner makes no representations with respect to any right to install or use solar energy  
67 collection devices on the property;

68 9. The owner makes no representations with respect to whether the property is located in one or  
69 more special flood hazard areas, and purchasers are advised to exercise whatever due diligence they deem  
70 necessary, including (i) obtaining a flood certification or mortgage lender determination of whether the  
71 property is located in one or more special flood hazard areas, (ii) reviewing any map depicting special  
72 flood hazard areas, (iii) contacting the Federal Emergency Management Agency (FEMA) or visiting the  
73 website for FEMA's National Flood Insurance Program or the Virginia Flood Risk Information website  
74 operated by the Department of Conservation and Recreation, and (iv) determining whether flood insurance  
75 is required, in accordance with terms and conditions as may be contained in the real estate purchase  
76 contract, but in any event prior to settlement pursuant to such contract. A flood risk information form,  
77 pursuant to the provisions of subsection D, that provides additional information on flood risk and flood  
78 insurance is available for download by the Real Estate Board on its website;

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

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

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

96 13. The owner makes no representations with respect to whether the property is located in a locality  
97 classified as Zone 1 or Zone 2 by the U.S. Environmental Protection Agency's (EPA) Map of Radon  
98 Zones, and purchasers are advised to exercise whatever due diligence they deem necessary to determine  
99 whether the property is located in such a zone, including (i) reviewing the EPA's Map of Radon Zones or  
100 visiting the EPA's radon information website; (ii) visiting the Virginia Department of Health's Indoor  
101 Radon Program website; (iii) visiting the National Radon Proficiency Program's website; (iv) visiting the  
102 National Radon Safety Board's website that lists the Board's certified contractors; and (v) ordering a radon  
103 inspection, in accordance with the terms and conditions as may be contained in the real estate purchase  
104 contract, but in any event prior to settlement pursuant to such contract;

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

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

118 16. The owner makes no representation with respect to the condition or regulatory status of any  
119 impounding structure or dam on the property or under the ownership of the common interest community  
120 that the owner of the property is required to join, and purchasers are advised to exercise whatever due  
121 diligence a particular purchaser deems necessary to determine the condition, regulatory status, cost of  
122 required maintenance and operation, or other relevant information pertaining to the impounding structure  
123 or dam, including contacting the Department of Conservation and Recreation or a licensed professional  
124 engineer.

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

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

128 Flood Risk Information Form

129 The purpose of this information form is to provide property owners and potential property owners  
130 with information regarding flood risk. This information form does not determine whether a property owner

131 will be required to purchase a flood insurance policy. That determination is made by the lender providing  
132 a loan for the property at the lender's discretion.

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

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

151 What is a flood? A flood is a general and temporary condition of partial or complete inundation of  
152 two or more acres of normally dry land area or of two or more properties, at least one of which is the  
153 policyholder's property, from (i) overflow of inland or tidal waters, (ii) unusual and rapid accumulation or  
154 runoff of surface waters from any source, (iii) mudflow, or (iv) collapse or subsidence of land along the  
155 shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents  
156 of water exceeding anticipated cyclical levels that result in a flood.

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

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