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HOUSE BILL NO. 863
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on General Laws
on _____)
(Patron Prior to Substitute--Delegate Hernandez)

A BILL to amend and reenact §§ 55.1-703 and 55.1-708.2 of the Code of Virginia, relating to Virginia Residential Property Disclosure Act; flood-related disclosures.

Be it enacted by the General Assembly of Virginia:
That §§ 55.1-703 and 55.1-708.2 of the Code of Virginia are 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 representation with respect to current lot lines or the ability to expand,
27 improve, or add any structures on the property, and purchasers are advised to exercise whatever due
28 diligence a particular purchaser deems necessary, including obtaining a property survey and contacting
29 the locality to determine zoning ordinances or lot coverage, height, or setback requirements on the
30 property.

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

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

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

52 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 information on any sexual offenders
55 registered under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, and purchasers are advised to exercise
56 whatever due diligence they deem necessary with respect to such information, in accordance with terms
57 and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement
58 pursuant to such contract;

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

63 ~~8-7.~~ The owner makes no representations with respect to the presence of any wastewater system,
64 including the type or size of the wastewater system or associated maintenance responsibilities related to
65 the wastewater system, located on the property, and purchasers are advised to exercise whatever due
66 diligence they deem necessary to determine the presence of any wastewater system on the property and
67 the costs associated with maintaining, repairing, or inspecting any wastewater system, including any costs
68 or requirements related to the pump-out of septic tanks, in accordance with terms and conditions as may
69 be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such
70 contract;

71 ~~9-8.~~ The owner makes no representations with respect to any right to install or use solar energy
72 collection devices on the property;

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

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

84 ~~11.9.~~ The owner makes no representations with respect to whether the property is subject to one
85 or more conservation or other easements, and purchasers are advised to exercise whatever due diligence
86 a particular purchaser deems necessary in accordance with terms and conditions as may be contained in
87 the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

88 ~~12.10.~~ The owner makes no representations with respect to whether the property is subject to a
89 community development authority approved by a local governing body pursuant to Article 6 (§ 15.2-5152
90 et seq.) of Chapter 51 of Title 15.2, and purchasers are advised to exercise whatever due diligence a
91 particular purchaser deems necessary in accordance with terms and conditions as may be contained in the
92 real estate purchase contract, including determining whether a copy of the resolution or ordinance has
93 been recorded in the land records of the circuit court for the locality in which the community development
94 authority district is located for each tax parcel included in the district pursuant to § 15.2-5157, but in any
95 event prior to settlement pursuant to such contract;

96 ~~13.11.~~ The owner makes no representations with respect to whether the property is located on or
97 near deposits of marine clays (marumsco soils), and purchasers are advised to exercise whatever due
98 diligence a particular purchaser deems necessary in accordance with terms and conditions as may be
99 contained in the real estate purchase contract, including consulting public resources regarding local soil
100 conditions and having the soil and structural conditions of the property analyzed by a qualified
101 professional;

102 ~~14.12.~~ The owner makes no representations with respect to whether the property is located in a
103 locality classified as Zone 1 or Zone 2 by the U.S. Environmental Protection Agency's (EPA) Map of
104 Radon Zones, and purchasers are advised to exercise whatever due diligence they deem necessary to
105 determine whether the property is located in such a zone, including (i) reviewing the EPA's Map of Radon

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

111 ~~15-13.~~ The owner makes no representations with respect to whether the property contains any
112 pipe, pipe or plumbing fitting, fixture, solder, or flux that does not meet the federal Safe Drinking Water
113 Act definition of "lead free" pursuant to 42 U.S.C. § 300g-6, and purchasers are advised to exercise
114 whatever due diligence they deem necessary to determine whether the property contains any pipe, pipe or
115 plumbing fitting, fixture, solder, or flux that does not meet the federal Safe Drinking Water Act definition
116 of "lead free," in accordance with terms and conditions as may be contained in the real estate purchase
117 contract, but in any event prior to settlement pursuant to such contract;

118 ~~16-14.~~ The owner makes no representations with respect to the existence of defective drywall on
119 the property, and purchasers are advised to exercise whatever due diligence they deem necessary to
120 determine whether there is defective drywall on the property, in accordance with terms and conditions as
121 may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such
122 contract. For purposes of this subdivision, "defective drywall" means the same as that term is defined in
123 § 36-156.1; and

124 ~~17-15.~~ The owner makes no representation with respect to the condition or regulatory status of
125 any impounding structure or dam on the property or under the ownership of the common interest
126 community that the owner of the property is required to join, and purchasers are advised to exercise
127 whatever due diligence a particular purchaser deems necessary to determine the condition, regulatory
128 status, cost of required maintenance and operation, or other relevant information pertaining to the
129 impounding structure or dam, including contacting the Department of Conservation and Recreation or a
130 licensed professional engineer.

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

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

134 ~~Flood Risk Information Form~~

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

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

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

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

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

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

167 **§ 55.1-708.2. Required disclosures pertaining to flood risk; Real Estate Board disclosure**
168 **forms.**

169 A. The owner of residential real property located in the Commonwealth who has actual knowledge
170 that the dwelling unit is a repetitive risk loss structure shall disclose such fact to the purchaser. For
171 purposes of this section, "repetitive risk loss" means that two or more claims of more than \$1,000 were
172 paid by the National Flood Insurance Program within any rolling 10-year period, since 1978.

173 B. The owner of residential real property located in the Commonwealth shall disclose to the
174 purchaser whether the property (i) is located wholly or partially in the 100-year (one percent annual
175 chance) or 500-year (0.2 percent annual chance) Federal Emergency Management Agency (FEMA)
176 designated flood zones or is located within a FEMA-designated floodway, as indicated by the FEMA
177 National Flood Hazard Layer and the Virginia Flood Risk Information System online mapping tool and
178 (ii) is currently insured through public or private flood insurance.

179 C. The owner of residential real property in the Commonwealth shall disclose to the purchaser any
180 actual knowledge of whether:

181 1. The property is located within a community-designated flood zone, or within a dam break
182 inundation zone as defined in § 10.1-604;

183 2. Any structure on the property has experienced damage due to erosion or flooding;

184 3. Any claims have been filed for flood damage to the property with an insurance provider,
185 including the amount received from such insurance provider;

186 4. The property owner has received federal disaster assistance for damage to the property,
187 including from FEMA, the U.S. Small Business Administration, the U.S. Department of Housing and
188 Urban Development, or another agency;

189 5. The owner has an elevation certificate, which shall also be provided to the purchaser if it exists;
190 and

191 6. The property has any erosion control structure, such as a bulkhead, a rock revetment, a seawall,
192 or buried sandbags, affecting the property and if so shall disclose a general description of the location,
193 material, and approximate size of any such structure.

194 D. The owner of residential real property, excluding any short-term rental as defined in § 15.2-
195 983, located in the Commonwealth shall disclose to each renter prior to signing any contract for tenancy
196 whether:

197 1. The owner has actual knowledge that the property has experienced past damages from flooding;
198 and

199 2. Any or all of the rental property is located wholly or partially in the 100-year or 500-year FEMA-
200 designated flood zones or within a FEMA-designated floodway, as indicated by the FEMA National Flood
201 Hazard Layer and the Virginia Flood Risk Information System.

202 E. Every contract for tenancy in the Commonwealth shall contain the following notice to tenants:

203 "Flood insurance may be available to renters through FEMA's National Flood Insurance Program
204 to cover your personal property and contents in the event of a flood. A standard renter's insurance policy
205 does not typically cover flood damage. You are encouraged to examine your policy options to ensure
206 coverage."

207 ~~Such disclosure shall be provided to the purchaser on a form provided by the Real Estate Board~~
208 ~~on its website.~~

209 F. All such disclosures required by subsections A, B, and C shall be provided to the purchaser on
210 a form prescribed by the Real Estate Board on its website.

211 G. The Real Estate Board shall make available on its website a flood risk information form. Such
212 form shall be substantially as follows:

213 Flood Risk Information Form

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

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

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

236 What is a flood? A flood is a general and temporary condition of partial or complete inundation of
237 two or more acres of normally dry land area or of two or more properties, at least one of which is the
238 policyholder's property, from (i) overflow of inland or tidal waters, (ii) unusual and rapid accumulation or
239 runoff of surface waters from any source, (iii) mudflow, or (iv) collapse or subsidence of land along the

240 shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents
241 of water exceeding anticipated cyclical levels that result in a flood.

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

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