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## HOUSE BILL NO. 1161

Offered January 24, 2000

*A BILL to amend and reenact § 55-70.1 of the Code of Virginia, relating to implied warranties on new homes; synthetic stucco.*

Patrons—Albo, Almand, Callahan, Darner, Drake, May, McQuigg, Plum and Scott; Senators: Mims, Ticer and Whipple

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That § 55-70.1 of the Code of Virginia is amended and reenacted as follows:**

§ 55-70.1. Implied warranties on new homes.

A. In every contract for the sale of a new dwelling, the vendor shall be held to warrant to the vendee that, at the time of the transfer of record title or the vendee's taking possession, whichever occurs first, the dwelling with all its fixtures is, to the best of the actual knowledge of the vendor or his agents, sufficiently (i) free from structural defects, so as to pass without objection in the trade, and (ii) constructed in a workmanlike manner, so as to pass without objection in the trade.

B. In addition, in every contract for the sale of a new dwelling, the vendor, if he is in the business of building or selling such dwellings, shall be held to warrant to the vendee that, at the time of transfer of record title or the vendee's taking possession, whichever occurs first, the dwelling together with all its fixtures is sufficiently (i) free from structural defects, so as to pass without objection in the trade, (ii) constructed in a workmanlike manner, so as to pass without objection in the trade, and (iii) fit for habitation.

C. The above warranties implied in the contract for sale shall be held to survive the transfer of title. Such warranties are in addition to, and not in lieu of, any other express or implied warranties pertaining to the dwelling, its materials or fixtures. A contract for sale may waive, modify or exclude any or all express and implied warranties and sell a new home "as is" only if the words used to waive, modify or exclude such warranties are conspicuously (as defined by subdivision (10) of § 8.1-201) set forth on the face of such contract in capital letters which are at least two points larger than the other type in the contract and only if the words used to waive, modify or exclude the warranties state with specificity the warranty or warranties that are being waived, modified or excluded. If all warranties are waived or excluded, a contract must specifically set forth in capital letters which are at least two points larger than the other type in the contract that the dwelling is being sold "as is".

D. If there is a breach of warranty under this section, the vendee, or his heirs or personal representatives in case of his death, shall have a cause of action against his vendor for damages.

E. The warranty shall extend for a period of one year from the date of transfer of record title or the vendee's taking possession, whichever occurs first, except that the warranty pursuant to ~~subdivision~~ *clause (i) of subsection B for the foundation of new dwellings and the warranties pursuant to clauses (i) and (ii) of subsection B for the exterior wall envelope of new dwellings constructed in whole or in part with synthetic stucco, commonly known as exterior insulation and finish systems*, shall extend for a period of five years from the date of transfer of record title or the vendee's taking possession, whichever occurs first. Any action for its breach shall be brought within two years after the breach thereof. As used in this section, the term "new dwelling" shall mean a dwelling or house which has not previously been occupied for a period of more than sixty days by anyone other than the vendor or the vendee or which has not been occupied by the original vendor or subsequent vendor for a cumulative period of more than twelve months excluding dwellings constructed solely for lease. The term "new dwelling" shall not include a condominium or condominium units created pursuant to Chapter 4.2 (§ 55-79.39 et seq.) of this title. *As used in this section, the term "exterior wall envelope" means a system or assembly of exterior wall components, including exterior wall finish materials, that provide protection of the building's structural members, including framing and sheathing materials, and conditioned, interior space from detrimental effects of the exterior environment.*

F. The term "structural defects," as used in this section, shall mean a defect or defects which reduce the stability or safety of the structure below accepted standards or which restrict the normal use thereof.

G. In the case of new dwellings where fire-retardant treated plywood sheathing or other roof sheathing materials are used in lieu of fire-retardant treated plywood the vendor shall be deemed to have assigned the manufacturer's warranty, at settlement, to the vendee. The vendee shall have a direct cause of action against the manufacturer of such roof sheathing for any breach of such warranty. To the extent any such manufacturer's warranty purports to limit the right of third parties or prohibit assignment, said

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HB1161

**60** provision shall be unenforceable and of no effect.