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HOUSE BILL NO. 2011

Offered January 10, 2007

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A BILL to amend and reenact §§ 55-517 through 55-522, and §§ 55-524 and 55-525 of the Code of Virginia, relating to the Virginia Residential Property Disclosure Act.

 Patron—Suit

 Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-517 through 55-522, and §§ 55-524 and 55-525 of the Code of Virginia are amended and reenacted as follows:

§ 55-517. Applicability.

The provisions of this chapter apply only with respect to transfers by sale, exchange, installment land sales contract, or lease with option to buy residential real property consisting of not less than one nor more than four dwelling units, whether or not the transaction is with the assistance of a licensed real estate broker or salesperson. *For the purposes of this chapter, a "real estate contract" means a contract for the sale, exchange, or lease with the option to buy residential real estate subject to this chapter.*

§ 55-518. Exemptions.

A. The following are specifically excluded from the provisions of this chapter:

1. Transfers pursuant to court order including, but not limited to, transfers ordered by a court in administration of an estate, transfers pursuant to a writ of execution, transfers by foreclosure sale *or by a deed in lieu of a foreclosure*, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance. *Also, transfers by an assignment for the benefit of creditors pursuant to Chapter 9 (§ 55-156 et seq) and transfers pursuant to escheats pursuant to Chapter 9 (§ 55-156 et seq).*

2. Transfers to a beneficiary of a deed of trust ~~by a trustee or successor in interest who is in default; transfers by a trustee under a deed of trust~~ pursuant to a foreclosure sale *or by a deed in lieu of foreclosure*, or transfers by a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust or has acquired the real property by a deed in lieu of foreclosure.

3. Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

4. Transfers from one or more co-owners solely to one or more other co-owners.

5. Transfers made solely to any combination of a spouse or a person or persons in the lineal line of consanguinity of one or more of the transferors.

6. Transfers between spouses resulting from a decree of divorce or a property settlement stipulation pursuant to the provisions of Title 20.

7. Transfers made by virtue of the record owner's failure to pay any federal, state, or local taxes.

8. Transfers to or from any governmental entity or public or quasi-public housing authority or agency.

9. Transfers involving the first sale of a dwelling; provided, that this exemption shall not apply to the disclosures required by § 55-519.1.

B. Notwithstanding the provisions of subdivision 9 of this section, the builder of a new dwelling shall disclose in writing to the purchaser thereof all known material defects which would constitute a violation of any applicable building code. In addition, for property that is located wholly or partially in any locality comprising Planning District 15, the builder or owner, if the builder is not the owner of the property, shall disclose in writing whether the builder or owner has any knowledge of (i) whether mining operations have previously been conducted on the property or (ii) the presence of abandoned mines, shafts, or pits, if any. The disclosures required by this subsection shall be made by a builder or owner (i) when selling a completed dwelling, before acceptance of the purchase contract or (ii) when selling a dwelling before or during its construction, after issuance of a certificate of occupancy. Such disclosure shall not abrogate any warranty or any other contractual obligations the builder or owner may have to the purchaser. The disclosure required by this subsection may be made on the disclosure form described in § 55-519. ~~The builder or owner may not satisfy the requirements of this subsection by the use of the disclaimer statement described in § 55-519.~~ If no defects are known by the builder to exist, no written disclosure is required by this subsection.

§ 55-519. Required disclosures.

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59 A. With regard to transfers described in § 55-517 of this chapter, the owner of the residential real
60 property shall furnish to a purchaser one of the following:

61 1. ~~Except with respect to the disclosures required by § 55-519.1, a residential property disclaimer~~
62 ~~disclosure~~ statement in a form provided by the Real Estate Board stating that the owner makes ~~no the~~
63 ~~following~~ representations or warranties as to the condition of the real property: ~~or any improvements~~
64 ~~thereon; and that the purchaser will be receiving the real property "as is," that is, with all defects which~~
65 ~~may exist, if any, except as otherwise provided in the real estate purchase contract; or~~

66 2. A residential property disclosure statement disclosing those items contained in a form provided by
67 the Real Estate Board to implement the provisions of this chapter and to list items which are required to
68 be disclosed relative to the physical condition of the property. Such disclosure form may include defects
69 of which the owner has actual knowledge regarding: (i) the water and sewer systems, including the
70 source of household water, water treatment system, and sprinkler system; (ii) insulation; (iii) structural
71 systems, including roof, walls, floors, foundation, and any basement; (iv) plumbing, electrical, heating
72 and air conditioning systems; (v) wood-destroying insect infestation; (vi) land use matters; (vii)
73 hazardous or regulated materials, including asbestos, lead-based paint, radon, and underground storage
74 tanks or other adverse environmental site conditions; and (viii) other material defects known to the
75 owner. The disclosure form shall contain a notice to prospective purchasers and owners (a) that the
76 prospective purchaser and the owner may wish to obtain professional advice or inspections of the
77 property and (b) that information is available at the Department of Environmental Quality which
78 identifies confirmed releases or discharges of oil or other adverse environmental site conditions that may
79 affect the property. The disclosure form shall also contain a notice to purchasers that the information
80 contained in the disclosure is the representations of the owner and is not the representations of the
81 broker or salesperson, if any. The owner shall not be required to undertake or provide any independent
82 investigation or inspection of the property in order to make the disclosures required by this chapter.

83 (ii) *The owner makes no representations or warranties as to the condition of the real property or*
84 *any improvements thereon, and purchasers are advised to exercise whatever due diligence a particular*
85 *purchaser deems necessary including obtaining a certified home inspection, as defined in § 54.1-500, in*
86 *accordance with terms and conditions as may be contained in the real estate purchase contract, but in*
87 *any event, prior to settlement on a parcel of residential real property.*

88 B. The disclosure and disclaimer forms shall contain a notice to purchasers that regardless of whether
89 the owner proceeds under subdivision A 1 or A 2, ~~the~~(ii) *The owner makes no representations with*
90 *respect to any matters which that may pertain to parcels adjacent to the subject parcel and that -*
91 *Further, such notice shall advise purchasers are advised to exercise whatever due diligence a particular*
92 *purchaser deems necessary with respect to adjacent parcels in accordance with terms and conditions as*
93 *may be contained in the real estate purchase contract, but in any event, prior to settlement on a parcel of*
94 *residential real property.*

95 C. The disclosure and disclaimer forms shall contain a notice to purchasers that regardless of whether
96 the owner proceeds under subdivision A 1 or A 2, if property is located in a historic district designated
97 by the locality pursuant to § 15.2-2306 and which the owner has knowledge of such designation, such
98 fact shall be disclosed by the owner. Otherwise, the notice shall advise purchasers to exercise whatever
99 due diligence a particular purchaser deems necessary to determine (iii) *The owner makes no*
100 *representations to any matters that pertain to whether the provisions of any historic district ordinance*
101 *affect the property and purchasers are advised to exercise whatever due diligence a particular*
102 *purchaser deems necessary with respect to any historic district designated by the locality pursuant to*
103 *§ 15.2-2306, including review of any local ordinance creating such district or any official map adopted*
104 *by the locality depicting historic districts, in accordance with terms and conditions as may be contained*
105 *in the real estate purchase contract, but in any event, prior to settlement on a parcel of residential real*
106 *property.*

107 D. The disclosure and disclaimer forms shall contain a notice to purchasers that regardless of whether
108 the owner proceeds under subdivision A 1 or A 2, ~~the~~(iv) *The owner makes no representations with*
109 *respect to whether the property contains any resource protection areas established in an ordinance*
110 *implementing the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) adopted by the locality where*
111 *the property is located pursuant to § 10.1-2109. Further, such notice shall advise and that purchasers are*
112 *advised to exercise whatever due diligence a particular purchaser deems necessary to determine whether*
113 *the provisions of any such ordinance affect the property, including review of any official map adopted*
114 *by the locality depicting resource protection areas, in accordance with terms and conditions as may be*
115 *contained in the real estate purchase contract, but in any event, prior to settlement on a parcel of*
116 *residential real property.*

117 E. The disclosure and disclaimer forms shall contain a notice to purchasers that whether the owner
118 proceeds under subdivision A 1 or A 2, (v) *The owner makes no representations with respect to*
119 *information on any sexual offenders registered under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2 and*
120 *that purchasers should be advised to exercise whatever due diligence they deem necessary with respect*

to such information on any sexual offenders registered under Chapter 23 (§ 19-2-387 et seq.) of Title 19-2, including how to obtain such information, 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 that contract.

F. The disclosure and disclaimer forms shall contain a notice to purchasers that whether the owner proceeds under subdivision 1 or 2 of subsection A, the (vi) The owner represents that there are no pending enforcement actions pursuant to the Uniform Statewide Building Code (§ 36-97 et seq.) that affect the safe, decent, and sanitary living conditions of the property of which the owner has been notified in writing by the locality, *except as disclosed on the disclosure statement.*

§ 55-519.1. Required disclosures pertaining to a military air installation.

The owner of residential real property located in any locality in which a military air installation is located, or in any adjacent locality, shall furnish to the purchaser *shall disclose to the purchaser whether the subject parcel is located in a noise zone or accident potential zone, or both, if so designated on the official zoning map by the locality in which the property is located* on a form provided by the Real Estate Board, a written disclosure stating that such property is located in a noise zone or accident potential zone, or both, as designated by the locality in its official zoning map. Such disclosure shall state the specific noise zone or accident potential zone, or both, in which the property is located according to the official zoning map.

§ 55-520. Time for disclosure; termination of contract.

A. The owner of residential real property subject to this chapter shall deliver to the purchaser the written disclosures or ~~disclaimer~~ *disclosure statement* required by this chapter prior to the acceptance of a real estate purchase contract *or otherwise be subject to the provisions of subsection B of this section.* For the purposes of this chapter, a "real estate purchase contract" means a contract for the sale, exchange, or lease with option to buy of real estate subject to this chapter, and "acceptance" means the full execution of a real estate purchase contract by all parties. The residential property disclaimer statement or residential property disclosure statement may be included in the real estate purchase contract, in an addendum thereto, or in a separate document.

B. If the disclosure or ~~disclaimer~~ *statement* required by this chapter is delivered to the purchaser after the acceptance of the real estate purchase contract, the purchaser's sole remedy shall be to terminate the real estate purchase contract at or prior to the earliest of (i) three days after delivery of the disclosure or ~~disclaimer~~ *statement* in person; or (ii) five days after the postmark if the disclosure or ~~disclaimer~~ *statement* is deposited in the United States mail, postage prepaid, and properly addressed to the purchaser; or (iii) settlement upon purchase of the property; or (iv) occupancy of the property by the purchaser; or (v) the execution by the purchaser of a written waiver of the purchaser's right of termination under this chapter contained in a writing separate from the real estate purchase contract; or (vi) (v) the purchaser making written application to a lender for a mortgage loan where such application contains a disclosure that the right of termination shall end upon the application for the mortgage loan; or (vi) the execution by the purchaser after receiving the disclosure statement required by this chapter of a written waiver of the purchaser's right of termination under this chapter contained in a writing separate from the real estate purchase contract. In order to terminate a real estate purchase contract when permitted by this chapter, the purchaser must, within the times required by this chapter, give written notice to the owner either by hand delivery or by United States mail, postage prepaid, and properly addressed to the owner. If the purchaser terminates a real estate purchase contract in compliance with this chapter, the termination shall be without penalty to the purchaser, and any deposit shall be promptly returned to the purchaser. Any rights of the purchaser to terminate the contract provided by this chapter shall end if not exercised prior to the earlier of (i) the making of a written application to a lender for a mortgage loan where the application contains a disclosure that the right of termination shall end upon the application for the mortgage loan or (ii) settlement or occupancy by the purchaser, in the event of a sale, or occupancy, in the event of a lease with option to purchase.

C. Notwithstanding the provisions of subsection B or of subdivision B 2 of § 55-524, no purchaser of residential real property located in a noise zone designated on the official zoning map of the locality as having a day-night average sound level of less than 65 decibels shall have the right to terminate a real estate purchase contract pursuant to this section for failure of the property owner to timely provide any disclosure required by § 55-519.1.

§ 55-521. Owner liability.

A. Except with respect to the disclosures required by § 55-519.1, the owner shall not be liable for any error, inaccuracy or omission of any information delivered pursuant to this chapter if: (i) the error, inaccuracy or omission was not within the actual knowledge of the owner or was based on information provided by public agencies or by other persons providing information as specified in subsection B that is required to be disclosed pursuant to this chapter, or the owner reasonably believed the information to be correct, and (ii) the owner was not grossly negligent in obtaining the information from a third party

182 and transmitting it. The owner shall not be liable for any error, inaccuracy, or omission of any
183 information required to be disclosed by § 55-519.1 if the error, inaccuracy, or omission was the result of
184 information provided by an officer or employee of the locality in which the property is located.

185 B. The delivery by a public agency or other person, as described in subsection C below, of any
186 information required to be disclosed by this chapter to a prospective purchaser shall be deemed to
187 comply with the requirements of this chapter and shall relieve the owner of any further duty under this
188 chapter with respect to that item of information.

189 C. The delivery by the owner of a report or opinion prepared by a licensed engineer, land surveyor,
190 geologist, wood-destroying insect control expert, contractor or ~~other~~ home inspection expert, dealing
191 with matters within the scope of the professional's license or expertise, shall satisfy the requirements of
192 ~~subsection A~~ *this chapter* if the information is provided to the ~~owner~~ *prospective purchaser* pursuant to a
193 request therefor, whether written or oral. In responding to such a request, an expert may indicate, in
194 writing, an understanding that the information provided will be used in fulfilling the requirements of this
195 chapter and, if so, shall indicate the required disclosures, or portions thereof, to which the information
196 being furnished is applicable. Where such a statement is furnished, the expert shall not be responsible
197 for any items of information, or, portions thereof, other than those expressly set forth in the statement.

198 § 55-522. Change in circumstances.

199 If information disclosed in accordance with this chapter is subsequently rendered or discovered to be
200 inaccurate as a result of any act, occurrence, information received, circumstance or agreement subsequent
201 to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a
202 violation of this chapter. However, at or before settlement, the owner shall be required to disclose any
203 material change in the ~~physical condition of disclosures made relative to~~ the property or certify to the
204 purchaser at settlement that the ~~condition of disclosures made relative to~~ the property ~~is~~are substantially
205 the same as it was when the disclosure form was provided. If, at the time the disclosures are required to
206 be made, an item of information required to be disclosed is unknown or not available to the owner, the
207 owner may state that the information is unknown or may use an approximation of the information,
208 provided the approximation is clearly identified as such, is reasonable, is based on the actual knowledge
209 of the owner, and is not used for the purpose of circumventing or evading this chapter.

210 § 55-524. Actions under this chapter.

211 A. Notwithstanding any other provision of this chapter or any other statute or regulation, no cause of
212 action shall arise against an owner or a real estate licensee for failure to disclose that an occupant of the
213 subject real property, whether or not such real property is subject to this chapter, was afflicted with
214 human immunodeficiency virus (HIV) or that the real property was the site of:

215 1. An act or occurrence which had no effect on the physical structure of the real property, its
216 physical environment, or the improvements located thereon; or

217 2. A homicide, felony, or suicide.

218 B. The purchaser's remedies hereunder for failure of an owner to comply with the provisions of this
219 chapter are as follows:

220 1. ~~In the event of a misrepresentation in any residential property disclosure statement or failure to~~
221 ~~deliver a disclosure or disclaimer statement, an action for actual damages suffered as a result of defects~~
222 ~~existing in the property as of the date of execution of the real estate purchase contract which would~~
223 ~~have been disclosed by a disclosure in compliance with this chapter and of which the purchaser was not~~
224 ~~aware at the time of settlement if by sale of the property, or occupancy by the purchaser if by lease~~
225 ~~with the option to purchase; or If the owner fails to provide~~

226 2. ~~In the event of a misrepresentation in any residential property disclosure statement or the failure to~~
227 ~~provide the disclosure or disclaimer statement required by this chapter, the contract may be terminated~~
228 ~~subject to the provisions of subsection B of § 55-520.~~

229 32. In the event the owner fails to provide the disclosure required by § 55-519.1, or the owner
230 misrepresents, willfully or otherwise, the information required in such disclosure, except as result of
231 information provided by an officer or employee of the locality in which the property is located, the
232 purchaser may maintain an action to recover his actual damages suffered as the result of such violation.
233 Notwithstanding the provisions of this subdivision, no purchaser of residential real property located in a
234 noise zone designated on the official zoning map of the locality as having a day-night average sound
235 level of less than 65 decibels shall have a right to maintain an action for damages pursuant to this
236 section.

237 C. Any action brought under this subsection shall be commenced within one year of the date the
238 purchaser received the disclosure ~~or disclaimer~~ statement. If no disclosure ~~or disclaimer~~ statement was
239 delivered to the purchaser, an action shall be commenced within one year of the date of settlement if by
240 sale, or occupancy if by lease with an option to purchase.

241 Nothing contained herein shall prevent a purchaser from pursuing any remedies at law or equity
242 otherwise available against an owner in the event of an owner's intentional or willful misrepresentation
243 of the condition of the subject property.

§ 55-525. Real Estate Board to develop form; when effective.

An owner shall be required to make disclosures ~~or a disclaimer~~ required by this chapter for real property subject to a real estate purchase contract which is fully executed by all parties thereto on and after ~~July 1, 1993~~ *January 1, 2008*. On or before January 1, ~~1993~~ *2008*, the Real Estate Board shall, by regulation, develop the ~~forms~~ *form* for the residential property disclaimer statement and the residential property disclosure statement. and shall provide at least one copy of each form to all licensees of the Board. Until such time as the forms are developed by the Board, forms currently in use may continue to be used. After development of the initial forms, the ~~The~~ Board may, by regulation, at any time amend the ~~forms~~ *form* as the Board deems necessary and appropriate.

Prior to July 1, 1993, at which time an owner of residential real property shall be required to provide a purchaser with disclosures required by this chapter, the parties may agree in writing (i) in the real estate purchase contract, (ii) in an addendum to the real estate purchase contract, or (iii) in a separate agreement, that the provisions of this chapter shall apply. Upon such agreement, the owner of residential real property shall provide the purchaser with a residential property disclaimer statement or a residential property disclosure statement. Such statement may be prepared by the owner, an attorney, or a real estate broker and shall comply with the provisions of this chapter.