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HOUSE BILL NO. 1303

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend and reenact §§ 55-519, 55-520, 55-521, and 55-524 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55-519.2, relating to Virginia Residential Property Disclosure Act; required disclosures.

Patron—Oder

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-519, 55-520, 55-521, and 55-524 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55-519.2 as follows:

§ 55-519. Required disclosures.

With regard to transfers described in § 55-517 of this chapter, the owner of the residential real property shall furnish to a purchaser a residential property disclosure statement in a form provided by the Real Estate Board stating that the owner makes the following representations as to the real property:

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

2. The owner makes no representations with respect to any matters that may pertain to parcels adjacent to the subject parcel and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to adjacent parcels in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on a parcel of residential real property;

3. The owner makes no representations to any matters that pertain to whether the provisions of any historic district ordinance affect the property and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to any historic district designated by the locality pursuant to § 15.2-2306, including review of any local ordinance creating such district or any official map adopted by the locality depicting historic districts, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on a parcel of residential real property;

4. The owner makes no representations with respect to whether the property contains any resource protection areas established in an ordinance implementing the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) adopted by the locality where the property is located pursuant to § 10.1-2109 and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary to determine whether the provisions of any such ordinance affect the property, including review of any official map adopted by the locality depicting resource protection areas, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on a parcel of residential real property;

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

6. 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, 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, nor any pending violation of the local zoning ordinance which the violator has not abated or remedied under the zoning ordinance, within a time period set out in the written notice of violation from the locality or established by a court of competent jurisdiction, except as disclosed on the disclosure statement.

§ 55-519.2. Required disclosures pertaining to a historic district.

Any locality may, by ordinance, provide that the owner of residential real property located within such locality shall disclose, in writing, to the purchaser of such property whether (i) such property is located in a historic district designated by the locality pursuant to § 15.2-2306 and (ii) the provisions of

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59 *any historic district ordinance affect the property. Such written disclosure shall state the specific historic*
60 *district in which the property is located according to the official zoning map.*

61 § 55-520. Time for disclosure; termination of contract.

62 A. The owner of residential real property subject to this chapter shall deliver to the purchaser the
63 written disclosure statement required by this chapter prior to the acceptance of a real estate purchase
64 contract or otherwise be subject to the provisions of subsection B of this section. *In addition, the owner*
65 *of residential real property subject to this chapter shall deliver to the purchaser any written disclosure*
66 *required by a locality pursuant to § 55-519.2 prior to the acceptance of a real estate purchase contract*
67 *or otherwise be subject to the provisions of subsection B of § 55-524.* For the purposes of this chapter,
68 "acceptance" means the full execution of a real estate purchase contract by all parties. The residential
69 property disclosure statement may be included in the real estate purchase contract, in an addendum
70 thereto, or in a separate document.

71 B. If the disclosure statement required by this chapter is delivered to the purchaser after the
72 acceptance of the real estate purchase contract, the purchaser's sole remedy shall be to terminate the real
73 estate purchase contract at or prior to the earliest of (i) three days after delivery of the disclosure
74 statement in person; (ii) five days after the postmark if the disclosure statement is deposited in the
75 United States mail, postage prepaid, and properly addressed to the purchaser; (iii) settlement upon
76 purchase of the property; (iv) occupancy of the property by the purchaser; (v) the purchaser making
77 written application to a lender for a mortgage loan where such application contains a disclosure that the
78 right of termination shall end upon the application for the mortgage loan; or (vi) the execution by the
79 purchaser after receiving the disclosure statement required by this chapter of a written waiver of the
80 purchaser's right of termination under this chapter contained in a writing separate from the real estate
81 purchase contract. In order to terminate a real estate purchase contract when permitted by this chapter,
82 the purchaser must, within the times required by this chapter, give written notice to the owner either by
83 hand delivery or by United States mail, postage prepaid, and properly addressed to the owner. If the
84 purchaser terminates a real estate purchase contract in compliance with this chapter, the termination shall
85 be without penalty to the purchaser, and any deposit shall be promptly returned to the purchaser.

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

91 § 55-521. Owner liability.

92 A. Except with respect to the disclosures required by §§ 55-519.1 and 55-519.2, the owner shall not
93 be liable for any error, inaccuracy or omission of any information delivered pursuant to this chapter if:
94 (i) the error, inaccuracy or omission was not within the actual knowledge of the owner or was based on
95 information provided by public agencies or by other persons providing information that is required to be
96 disclosed pursuant to this chapter, or the owner reasonably believed the information to be correct, and
97 (ii) the owner was not grossly negligent in obtaining the information from a third party and transmitting
98 it. The owner shall not be liable for any error, inaccuracy, or omission of any information required to be
99 disclosed by §§ 55-519.1 and 55-519.2 if the error, inaccuracy, or omission was the result of
100 information provided by an officer or employee of the locality in which the property is located.

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

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

114 § 55-524. Actions under this chapter.

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

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

121 2. A homicide, felony, or suicide.

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

124 1. If the owner fails to provide the disclosure statement required by this chapter, the contract may be
125 terminated subject to the provisions of subsection B of § 55-520.

126 2. In the event the owner fails to provide the ~~disclosure~~ *disclosures* required by §§ 55-519.1 and
127 55-519.2, or the owner misrepresents, willfully or otherwise, the information required in such ~~disclosure~~
128 *disclosures*, except as result of information provided by an officer or employee of the locality in which
129 the property is located, the purchaser may maintain an action to recover his actual damages suffered as
130 the result of such violation. Notwithstanding the provisions of this subdivision, no purchaser of
131 residential real property located in a noise zone designated on the official zoning map of the locality as
132 having a day-night average sound level of less than 65 decibels shall have a right to maintain an action
133 for damages pursuant to this section.

134 C. Any action brought under this subsection shall be commenced within one year of the date the
135 purchaser received the disclosure statement. If no disclosure statement was delivered to the purchaser, an
136 action shall be commenced within one year of the date of settlement if by sale, or occupancy if by lease
137 with an option to purchase.

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