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HOUSE BILL NO. 2034

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend and reenact §§ 55-517 through 55-519.2, 55-519.4, 55-520, and 55-524 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 55-517.1 and 55-519.2:1, relating to the Virginia Residential Property Disclosure Act.

Patron—Miller

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-517 through 55-519.2, 55-519.4, 55-520, and 55-524 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 55-517.1 and 55-519.2:1 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.

§ 55-517.1. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Electronic delivery," for purposes of delivery of the disclosures required by this chapter, means sending the required disclosures via the Internet, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery.

"Notification" means a statement of the availability of any disclosures required by this chapter on the Real Estate Board's website or delivery of any such disclosures to the purchaser.

"Ratification" means the full execution of a real estate purchase contract by all parties.

"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 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

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59 any locality comprising Planning District 15, the builder or owner, if the builder is not the owner of the
60 property, shall disclose in writing whether the builder or owner has any knowledge of (i) whether
61 mining operations have previously been conducted on the property or (ii) the presence of abandoned
62 mines, shafts, or pits, if any. The disclosures required by this subsection shall be made by a builder or
63 owner (i) when selling a completed dwelling, before acceptance ratification of the purchase contract or
64 (ii) when selling a dwelling before or during its construction, after issuance of a certificate of
65 occupancy. Such disclosure shall not abrogate any warranty or any other contractual obligations the
66 builder or owner may have to the purchaser. The disclosure required by this subsection may be made on
67 the disclosure form described in § 55-519. If no defects are known by the builder to exist, no written
68 disclosure is required by this subsection.

69 **§ 55-519. Required disclosures for buyer to beware; buyer to exercise necessary due diligence.**

70 A. With regard to transfers described in ~~§ 55-517~~, the owner of the residential real property shall
71 furnish to a purchaser a residential property disclosure statement ~~in for the buyer to beware of certain~~
72 ~~matters that may affect the buyer's decision to purchase such real property. Such statement shall be on~~
73 a form provided by the Real Estate Board stating that the owner makes the following representations as
74 to the real property:

75 1. The owner makes no representations with respect to the matters set forth and described at a
76 website maintained by the Real Estate Board and that the purchaser is advised to consult this website for
77 important information about the real property; and

78 2. The owner represents that there are no pending enforcement actions pursuant to the Uniform
79 Statewide Building Code (~~§ 36-97 et seq.~~) that affect the safe, decent, sanitary living conditions of the
80 property of which the owner has been notified in writing by the locality, except as disclosed on the
81 disclosure statement, nor any pending violation of the local zoning ordinance that the violator has not
82 abated or remedied under the zoning ordinance, within a time period set out in the written notice of
83 violation from the locality or established by a court of competent jurisdiction, except as disclosed on the
84 disclosure statement on its website.

85 B. At the website referenced in subdivision A 1, the Real Estate Board shall include language
86 providing notice to the purchaser that by delivering the residential property disclosure statement *The*
87 *residential property disclosure statement provided by the Real Estate Board on its website shall include*
88 *the following:*

89 1. The owner makes no representations or warranties as to the condition of the real property or any
90 improvements thereon, or with regard to any covenants and restrictions as may be recorded among the
91 land records affecting the real property or any improvements thereon, and purchasers are advised to
92 exercise whatever due diligence a particular purchaser deems necessary, including obtaining a home
93 inspection, as defined in § 54.1-500, in accordance with terms and conditions as may be contained in the
94 real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

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

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

107 4. The owner makes no representations with respect to whether the property contains any resource
108 protection areas established in an ordinance implementing the Chesapeake Bay Preservation Act
109 (§ 62.1-44.15:67 et seq.) adopted by the locality where the property is located pursuant to §
110 62.1-44.15:74 and that purchasers are advised to exercise whatever due diligence a particular purchaser
111 deems necessary to determine whether the provisions of any such ordinance affect the property,
112 including review of any official map adopted by the locality depicting resource protection areas, in
113 accordance with terms and conditions as may be contained in the real estate purchase contract, but in
114 any event, prior to settlement pursuant to such contract;

115 5. The owner makes no representations with respect to information on any sexual offenders registered
116 under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2 and that purchasers are advised to exercise whatever
117 due diligence they deem necessary with respect to such information, in accordance with terms and
118 conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement
119 pursuant to such contract;

120 6. The owner makes no representations with respect to whether the property is within a dam break

inundation zone. Such disclosure statement shall advise purchasers to exercise whatever due diligence they deem necessary with respect to whether the property resides within a dam break inundation zone, including a review of any map adopted by the locality depicting dam break inundation zones;

7. The owner makes no representations with respect to the presence of any stormwater detention facilities located on the property, or any maintenance agreement for such facilities, and purchasers are advised to exercise whatever due diligence they deem necessary to determine the presence of any stormwater detention facilities on the property, or any maintenance agreement for such facilities, 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;

8. The owner makes no representations with respect to the presence of any wastewater system, including the type or size thereof or associated maintenance responsibilities related thereto, located on the property and purchasers are advised to exercise whatever due diligence they deem necessary to determine the presence of any wastewater system on the property and the costs associated with maintaining, repairing, or inspecting any wastewater system, including any costs or requirements related to the pump-out of septic tanks, 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;

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

10. The owner makes no representations with respect to whether the property is located in one or more special flood hazard areas and purchasers are advised to exercise whatever due diligence they deem necessary, including (i) obtaining a flood certification or mortgage lender determination of whether the property is located in one or more special flood hazard areas, (ii) review of any map depicting special flood hazard areas, and (iii) whether flood insurance is required, 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;

11. The owner makes no representations with respect to whether the property is subject to one or more conservation or other easements and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary 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; and

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

C. Any purchaser who is a party to a real estate purchase contract subject to this section may provide in such contract that the disclosures provided on the Real Estate Board website be printed off and provided to such purchaser. The residential property disclosure statement shall be delivered in accordance with § 55-520.

§ 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 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. *Such disclosure shall be provided to the purchaser on a form provided by the Real Estate Board on its website.* 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.

§ 55-519.2. Required disclosures; defective drywall.

Notwithstanding the exemptions in § 55-518, if the owner of a residential dwelling unit has actual knowledge of the existence of defective drywall in such dwelling unit, the owner shall provide to a prospective purchaser a written disclosure that the property has defective drywall. Such disclosure shall be provided to the purchaser on a form provided by the ~~Virginia~~ Real Estate Board *on its website* and otherwise in accordance with this chapter. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1.

§ 55-519.2:1. Required disclosures; pending building or zoning violations.

Notwithstanding the exemptions in § 55-518, if the owner of a residential dwelling unit has actual knowledge of any 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, or any pending violation of the local zoning

ordinance that 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, the owner shall provide to a prospective purchaser a written disclosure that so states. Such disclosure shall be provided to the purchaser on a form provided by the Real Estate Board on its website and otherwise in accordance with this chapter.

§ 55-519.4. Required disclosures; property previously used to manufacture methamphetamine.

Notwithstanding the exemptions in § 55-518, if the owner of a residential dwelling unit has actual knowledge that such residential property was previously used to manufacture methamphetamine and has not been cleaned up in accordance with the guidelines established pursuant to § 32.1-11.7 and the applicable licensing provisions of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, the owner shall provide to a prospective purchaser a written disclosure that so states. Such disclosure shall be provided to the purchaser on a form provided by the Virginia Real Estate Board on its website and otherwise in accordance with this chapter.

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

A. The owner of residential real property subject to this chapter shall ~~deliver~~ provide notification to the purchaser the written disclosure statement of any disclosures required by this chapter prior to the acceptance ratification 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, "acceptance" means the full execution of a real estate purchase contract by all parties. The residential property disclosure statement may be included in the real estate purchase contract, in an addendum thereto, or in a separate document disclosures required by this chapter shall be on forms provided by the Real Estate Board on its website.

B. If the disclosure statement disclosures required by this chapter is are delivered to the purchaser after the acceptance ratification 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 statement in person or by electronic delivery; (ii) five days after the postmark if the disclosure statement is deposited in the United States mail, postage prepaid, and properly addressed to the purchaser; (iii) settlement upon purchase of the property; (iv) occupancy of the property by the purchaser; (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 by one of the following methods:

1. Hand delivery;
2. United States mail, postage prepaid, provided that the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing;
3. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or
4. Overnight delivery using a commercial service or the United States Postal Service.

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.

C. Notwithstanding the provisions of subsection B 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 ~~§ 55-519.4~~ this chapter.

§ 55-524. Actions under this chapter.

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

1. An act or occurrence which had no effect on the physical structure of the real property, its physical environment, or the improvements located thereon; or
2. A homicide, felony, or suicide.

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

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

2. In the event the owner fails to provide ~~the disclosure~~ *any of the applicable disclosures* required by §- 55-519.1 *this chapter*, or the owner misrepresents, willfully or otherwise, the information required in such disclosure, except as result of information provided by an officer or employee of the locality in which the property is located, the purchaser may maintain an action to recover his actual damages suffered as the result of such violation. Notwithstanding the provisions of this subdivision, 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 a right to maintain an action for damages pursuant to this section.

C. Any action brought under this ~~subsection~~ *section* shall be commenced within one year of the date the purchaser received the ~~disclosure statement~~ *disclosures required by this chapter*. If ~~no disclosure statement was the disclosures required by this chapter were not~~ delivered to the purchaser, an action shall be commenced within one year of the date of settlement if by sale, or occupancy if by lease with an option to purchase.

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