

17103790D

**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

INTRODUCED

HB2034

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~~ *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

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

124 7. The owner makes no representations with respect to the presence of any stormwater detention  
125 facilities located on the property, or any maintenance agreement for such facilities, and purchasers are  
126 advised to exercise whatever due diligence they deem necessary to determine the presence of any  
127 stormwater detention facilities on the property, or any maintenance agreement for such facilities, in  
128 accordance with terms and conditions as may be contained in the real estate purchase contract, but in  
129 any event, prior to settlement pursuant to such contract;

130 8. The owner makes no representations with respect to the presence of any wastewater system,  
131 including the type or size thereof or associated maintenance responsibilities related thereto, located on  
132 the property and purchasers are advised to exercise whatever due diligence they deem necessary to  
133 determine the presence of any wastewater system on the property and the costs associated with  
134 maintaining, repairing, or inspecting any wastewater system, including any costs or requirements related  
135 to the pump-out of septic tanks, in accordance with terms and conditions as may be contained in the real  
136 estate purchase contract, but in any event, prior to settlement pursuant to such contract;

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

139 10. The owner makes no representations with respect to whether the property is located in one or  
140 more special flood hazard areas and purchasers are advised to exercise whatever due diligence they  
141 deem necessary, including (i) obtaining a flood certification or mortgage lender determination of whether  
142 the property is located in one or more special flood hazard areas, (ii) review of any map depicting  
143 special flood hazard areas, and (iii) whether flood insurance is required, in accordance with terms and  
144 conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement  
145 pursuant to such contract;

146 *11. The owner makes no representations with respect to whether the property is subject to one or*  
147 *more conservation or other easements and that purchasers are advised to exercise whatever due*  
148 *diligence a particular purchaser deems necessary in accordance with terms and conditions as may be*  
149 *contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such*  
150 *contract; and*

151 *12. The owner makes no representations with respect to whether the property is subject to a*  
152 *community development authority approved by a local governing body pursuant to Article 6*  
153 *(§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2 and that purchasers are advised to exercise whatever*  
154 *due diligence a particular purchaser deems necessary in accordance with terms and conditions as may*  
155 *be contained in the real estate purchase contract, including determining whether a copy of the*  
156 *resolution or ordinance has been recorded in the land records of the circuit court for the locality in*  
157 *which the community development authority district is located for each tax parcel included in the district*  
158 *pursuant to § 15.2-5157, but in any event, prior to settlement pursuant to such contract.*

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

163 **§ 55-519.1. Required disclosures pertaining to a military air installation.**

164 The owner of residential real property located in any locality in which a military air installation is  
165 located shall disclose to the purchaser whether the subject parcel is located in a noise zone or accident  
166 potential zone, or both, if so designated on the official zoning map by the locality in which the property  
167 is located. *Such disclosure shall be provided to the purchaser on a form provided by the Real Estate*  
168 *Board on its website.* Such disclosure shall state the specific noise zone or accident potential zone, or  
169 both, in which the property is located according to the official zoning map.

170 **§ 55-519.2. Required disclosures; defective drywall.**

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

177 **§ 55-519.2:1. Required disclosures; pending building or zoning violations.**

178 *Notwithstanding the exemptions in § 55-518, if the owner of a residential dwelling unit has actual*  
179 *knowledge of any pending enforcement actions pursuant to the Uniform Statewide Building Code*  
180 *(§ 36-97 et seq.) that affect the safe, decent, sanitary living conditions of the property of which the*  
181 *owner has been notified in writing by the locality, or any pending violation of the local zoning*

182 ordinance that the violator has not abated or remedied under the zoning ordinance, within a time period  
 183 set out in the written notice of violation from the locality or established by a court of competent  
 184 jurisdiction, the owner shall provide to a prospective purchaser a written disclosure that so states. Such  
 185 disclosure shall be provided to the purchaser on a form provided by the Real Estate Board on its  
 186 website and otherwise in accordance with this chapter.

187 **§ 55-519.4. Required disclosures; property previously used to manufacture methamphetamine.**

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

195 **§ 55-520. Time for disclosure; termination of contract.**

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

203 B. If the disclosure statement disclosures required by this chapter is are delivered to the purchaser  
 204 after the acceptance ratification of the real estate purchase contract, the purchaser's sole remedy shall be  
 205 to terminate the real estate purchase contract at or prior to the earliest of (i) three days after delivery of  
 206 the disclosure statement in person or by electronic delivery; (ii) five days after the postmark if the  
 207 disclosure statement is deposited in the United States mail, postage prepaid, and properly addressed to  
 208 the purchaser; (iii) settlement upon purchase of the property; (iv) occupancy of the property by the  
 209 purchaser; (v) the purchaser making written application to a lender for a mortgage loan where such  
 210 application contains a disclosure that the right of termination shall end upon the application for the  
 211 mortgage loan; or (vi) the execution by the purchaser after receiving the disclosure statement required by  
 212 this chapter of a written waiver of the purchaser's right of termination under this chapter contained in a  
 213 writing separate from the real estate purchase contract. In order to terminate a real estate purchase  
 214 contract when permitted by this chapter, the purchaser must, within the times required by this chapter,  
 215 give written notice to the owner by one of the following methods:

216 1. Hand delivery;

217 2. United States mail, postage prepaid, provided that the sender retains sufficient proof of mailing,  
 218 which may be either a United States postal certificate of mailing or a certificate of service prepared by  
 219 the sender confirming such mailing;

220 3. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may  
 221 be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate  
 222 of service prepared by the sender confirming the electronic delivery; or

223 4. Overnight delivery using a commercial service or the United States Postal Service.

224 If the purchaser terminates a real estate purchase contract in compliance with this chapter, the  
 225 termination shall be without penalty to the purchaser, and any deposit shall be promptly returned to the  
 226 purchaser.

227 C. Notwithstanding the provisions of subsection B of § 55-524, no purchaser of residential real  
 228 property located in a noise zone designated on the official zoning map of the locality as having a  
 229 day-night average sound level of less than 65 decibels shall have the right to terminate a real estate  
 230 purchase contract pursuant to this section for failure of the property owner to timely provide any  
 231 disclosure required by ~~§ 55-519.4~~ this chapter.

232 **§ 55-524. Actions under this chapter.**

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

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

239 2. A homicide, felony, or suicide.

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

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

244 2. In the event the owner fails to provide ~~the disclosure~~ *any of the applicable disclosures* required by  
245 ~~§ 55-519.1 this chapter~~, or the owner misrepresents, willfully or otherwise, the information required in  
246 such disclosure, except as result of information provided by an officer or employee of the locality in  
247 which the property is located, the purchaser may maintain an action to recover his actual damages  
248 suffered as the result of such violation. Notwithstanding the provisions of this subdivision, no purchaser  
249 of residential real property located in a noise zone designated on the official zoning map of the locality  
250 as having a day-night average sound level of less than 65 decibels shall have a right to maintain an  
251 action for damages pursuant to this section.

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

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