

2021 SPECIAL SESSION I

SENATE SUBSTITUTE

21103860D

SENATE BILL NO. 1389

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 27, 2021)

(Patron Prior to Substitute—Senator Lewis)

A BILL to amend and reenact § 55.1-703 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55.1-708.2, relating to property; required disclosures for buyer to exercise due diligence; flood risk report.

Be it enacted by the General Assembly of Virginia:

1. That § 55.1-703 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55.1-708.2 as follows:

§ 55.1-703. Required disclosures for buyer to beware; buyer to exercise necessary due diligence.

A. The owner of the residential real property shall furnish to a purchaser a residential property disclosure statement for the buyer to beware of certain matters that may affect the buyer's decision to purchase such real property. Such statement shall be provided by the Real Estate Board on its website.

B. The residential property disclosure statement provided by the Real Estate Board on its website shall include the following:

1. The owner makes no representations or warranties as to the condition of the real property or any improvements thereon, or with regard to any covenants and restrictions, or any conveyances of mineral rights, as may be recorded among the land records affecting the real property or any improvements thereon, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary, including obtaining a home inspection, as defined in § 54.1-500, and a residential building energy analysis, as defined in § 54.1-1144, 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;

2. The owner makes no representations with respect to any matters that may pertain to parcels adjacent to the subject parcel, including zoning classification or permitted uses of adjacent parcels, and 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 pursuant to such contract;

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 (i) any local ordinance creating such district, (ii) any official map adopted by the locality depicting historic districts, and (iii) any materials available from the locality that explain (a) any requirements to alter, reconstruct, renovate, restore, or demolish buildings or signs in the local historic district and (b) the necessity of any local review board or governing body approvals prior to doing any work on a property located in a local historic district, 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;

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 (§ 62.1-44.15:67 et seq.) adopted by the locality where the property is located pursuant to § 62.1-44.15:74, and 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 pursuant to such contract;

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 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 such contract;

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 wastewater system, including the type or size of the wastewater system or associated maintenance responsibilities related to the wastewater system, located on the property, and purchasers are advised to exercise whatever due

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60 diligence they deem necessary to determine the presence of any wastewater system on the property and
61 the costs associated with maintaining, repairing, or inspecting any wastewater system, including any
62 costs or requirements related to the pump-out of septic tanks, in accordance with terms and conditions as
63 may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to
64 such contract;

65 8. The owner makes no representations with respect to any right to install or use solar energy
66 collection devices on the property;

67 9. The owner makes no representations with respect to whether the property is located in one or
68 more special flood hazard areas, and purchasers are advised to exercise whatever due diligence they
69 deem necessary, including (i) obtaining a flood certification or mortgage lender determination of whether
70 the property is located in one or more special flood hazard areas, (ii) reviewing any map depicting
71 special flood hazard areas, (iii) contacting the Federal Emergency Management Agency (FEMA) or
72 visiting the website for FEMA's National Flood Insurance Program or ~~for the Virginia Flood Risk~~
73 ~~Information website operated by the Virginia Department of Conservation and Recreation's Flood Risk~~
74 ~~Information System Recreation~~, and (iv) determining whether flood insurance is required, in accordance
75 with terms and conditions as may be contained in the real estate purchase contract, but in any event
76 prior to settlement pursuant to such contract. *A flood risk information form, pursuant to the provisions of*
77 *subsection D, that provides additional information on flood risk and flood insurance is available for*
78 *download by the Real Estate Board on its website;*

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

83 11. The owner makes no representations with respect to whether the property is subject to a
84 community development authority approved by a local governing body pursuant to Article 6
85 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, and purchasers are advised to exercise whatever due
86 diligence a particular purchaser deems necessary in accordance with terms and conditions as may be
87 contained in the real estate purchase contract, including determining whether a copy of the resolution or
88 ordinance has been recorded in the land records of the circuit court for the locality in which the
89 community development authority district is located for each tax parcel included in the district pursuant
90 to § 15.2-5157, but in any event prior to settlement pursuant to such contract;

91 12. The owner makes no representations with respect to whether the property is located on or near
92 deposits of marine clays (marumsco soils), and purchasers are advised to exercise whatever due
93 diligence a particular purchaser deems necessary in accordance with terms and conditions as may be
94 contained in the real estate purchase contract, including consulting public resources regarding local soil
95 conditions and having the soil and structural conditions of the property analyzed by a qualified
96 professional;

97 13. The owner makes no representations with respect to whether the property is located in a locality
98 classified as Zone 1 or Zone 2 by the U.S. Environmental Protection Agency's (EPA) Map of Radon
99 Zones, and purchasers are advised to exercise whatever due diligence they deem necessary to determine
100 whether the property is located in such a zone, including (i) reviewing the EPA's Map of Radon Zones
101 or visiting the EPA's radon information website; (ii) visiting the Virginia Department of Health's Indoor
102 Radon Program website; (iii) visiting the National Radon Proficiency Program's website; (iv) visiting the
103 National Radon Safety Board's website that lists the Board's certified contractors; and (v) ordering a
104 radon inspection, in accordance with the terms and conditions as may be contained in the real estate
105 purchase contract, but in any event prior to settlement pursuant to such contract;

106 14. The owner makes no representations with respect to whether the property contains any pipe, pipe
107 or plumbing fitting, fixture, solder, or flux that does not meet the federal Safe Drinking Water Act
108 definition of "lead free" pursuant to 42 U.S.C. § 300g-6, and purchasers are advised to exercise whatever
109 due diligence they deem necessary to determine whether the property contains any pipe, pipe or
110 plumbing fitting, fixture, solder, or flux that does not meet the federal Safe Drinking Water Act
111 definition of "lead free," in accordance with terms and conditions as may be contained in the real estate
112 purchase contract, but in any event prior to settlement pursuant to such contract;

113 15. The owner makes no representations with respect to the existence of defective drywall on the
114 property, and purchasers are advised to exercise whatever due diligence they deem necessary to
115 determine whether there is defective drywall on the property, in accordance with terms and conditions as
116 may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to
117 such contract. For purposes of this subdivision, "defective drywall" means the same as that term is
118 defined in § 36-156.1; and

119 16. The owner makes no representation with respect to the condition or regulatory status of any
120 impounding structure or dam on the property or under the ownership of the common interest community
121 that the owner of the property is required to join, and purchasers are advised to exercise whatever due

diligence a particular purchaser deems necessary to determine the condition, regulatory status, cost of required maintenance and operation, or other relevant information pertaining to the impounding structure or dam, including contacting the Department of Conservation and Recreation or a licensed professional engineer.

C. The residential property disclosure statement shall be delivered in accordance with § 55.1-709.

D. The Real Estate Board shall make available on its website a flood risk information form. Such form shall be substantially as follows:

Flood Risk Information Form

The purpose of this information form is to provide property owners and potential property owners with information regarding flood risk. This information form does not determine whether a property owner will be required to purchase a flood insurance policy. That determination is made by the lender providing a loan for the property at the lender's discretion.

Mortgage lenders are mandated under the Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994 to require the purchase of flood insurance by property owners who acquire loans from federally regulated, supervised, or insured financial institutions for the acquisition or improvement of land, facilities, or structures located within or to be located within a Special Flood Hazard Area. A Special Flood Hazard Area (SFHA) is a high-risk area defined as any land that would be inundated by a flood, also known as a base flood, having a one percent chance of occurring in a given year. The lender reviews the current National Flood Insurance Program (NFIP) maps for the community in which the property is located to determine its location relative to the published SFHA and completes the Standard Flood Hazard Determination Form (SFHDF), created by the Federal Emergency Management Agency (FEMA). If the lender determines that the structure is indeed located within a SFHA and the community is participating in the NFIP, the borrower is then notified that flood insurance will be required as a condition of receiving the loan. A similar review and notification are completed whenever a loan is sold on the secondary loan market or when the lender completes a routine review of its mortgage portfolio.

Properties that are not located in a SFHA can still flood. Flood damage is not generally covered by a standard home insurance policy. It is prudent to consider purchasing flood insurance even when flood insurance is not required by a lender. Properties not located in a SFHA may be eligible for a low-cost preferred risk flood insurance policy. Property owners and buyers are encouraged to consult with their insurance agent about flood insurance.

What is a flood? A flood is a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties, at least one of which is the policyholder's property, from (i) overflow of inland or tidal waters, (ii) unusual and rapid accumulation or runoff of surface waters from any source, (iii) mudflow, or (iv) collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood.

FEMA is required to update Flood Maps every five years. Flood zones for this property may change due to periodic map updates. To determine what flood zone or zones a property is located in a buyer can visit the website for FEMA's National Flood Insurance Program or the Virginia Department of Conservation and Recreation's Flood Risk Information System website.

§ 55.1-708.2. Required disclosures pertaining to repetitive loss.

The owner of residential real property located in the Commonwealth who has actual knowledge that the dwelling unit is a repetitive risk loss structure shall disclose such fact to the purchaser. For purposes of this section, "repetitive risk loss" means that two or more claims of more than \$1,000 were paid by the National Flood Insurance Program within any rolling 10-year period, since 1978. Such disclosure shall be provided to the purchaser on a form provided by the Real Estate Board on its website.

2. That the provisions of this act shall become effective on January 1, 2022.

3. That the provisions of this act shall not become effective unless an appropriation effectuating the purposes of this act is included in a general appropriation act passed in 2021 by the General Assembly that becomes law.