

# VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

## CHAPTER 394

*An Act to amend and reenact § 32.1-164.1:1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 32.1-164.1:3, relating to permits for voluntarily upgrading onsite sewage systems.*

[H 1626]

Approved March 23, 2011

**Be it enacted by the General Assembly of Virginia:**

**1. That § 32.1-164.1:1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 32.1-164.1:3 as follows:**

§ 32.1-164.1:1. Validity of certain septic tank permits.

A. Any septic tank permit issued shall be valid for a period of 18 months from the date of issuance unless there has been a substantial, intervening change in the soil or site conditions where the septic system is to be located. However, if a building permit has been obtained or building construction has commenced, the permit may be extended for an additional 18 months. Applicants shall be informed of the septic tank permit validity period and advised to apply only when ready to begin construction.

B. Further, whenever any onsite sewage system is failing, *or an owner has elected to voluntarily upgrade an onsite sewage system pursuant to § 32.1-164.1:3*, and it is on or serves real property consisting of not less than one nor more than four dwelling units and the Board's regulations ~~for repairing such failing system~~ impose (i) a requirement for treatment beyond the level of treatment provided by the existing onsite sewage system when operating properly or (ii) a new requirement for pressure dosing, the owner may request a waiver from such requirements. The Commissioner shall grant any request for such waiver, unless he finds that the ~~failing~~ system was installed illegally without a permit. Any such waivers shall be recorded in the land records of the clerk of the circuit court in the jurisdiction in which the property on which the relevant onsite sewage system is located. Except as provided in subsection C, waivers granted hereunder shall not be transferable and shall be null and void upon transfer or sale of the property on which the onsite sewage system is located. Additional treatment or pressure dosing requirements shall be imposed in such instances when the property is transferred or sold.

The owner of the relevant property shall disclose, in accordance with subsection D, that any operating permit for the onsite sewage system that has been granted a waiver authorized by this subsection shall be null and void at the time of transfer or sale of the property and that the Board's regulatory requirements for additional treatment or pressure dosing shall be required before an operating permit may be reinstated.

The provisions of this subsection shall 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.

C. The following are specifically allowed under the provisions of subsection B:

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, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.

2. Transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default, transfers by a trustee under a deed of trust pursuant to a 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 deed in lieu of foreclosure.

3. Transfers not for value by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

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

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

6. *Transfers pursuant to real estate purchase contracts where the owner has obtained a permit to voluntarily upgrade an onsite sewage system pursuant to § 32.1-164.1:3.*

7. Other transfers consistent with criteria established by the Board of Health and the Real Estate Board.

D. The owner of residential real property subject to subsection B shall deliver to the purchaser a written disclosure prior to the acceptance of a real estate purchase contract. The written disclosure

statement shall be in a separate document, developed by the Real Estate Board on or before January 1, 2006. Prior to that time, it shall be the obligation of the owner of such residential real property to prepare the written disclosure statement and provide it to the purchaser as otherwise provided herein.

E. If the disclosure required by subsection B 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 the following: (i) three days after delivery of the disclosure in person; (ii) five days after the postmark if the disclosure 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 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) 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.

In order to terminate a real estate purchase contract when permitted by this subsection, the purchaser shall, within the time 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, or in the event of a lease with option to purchase.

F. A real estate licensee representing an owner of residential real property as the listing broker shall have a duty to inform each such owner represented by that licensee of the owner's rights and obligations under subsection B. A real estate licensee representing a purchaser of residential real property or, if the purchaser is not represented by a licensee, the real estate licensee representing an owner of residential real estate and dealing with the purchaser shall have a duty to inform each such purchaser of the purchaser's rights and obligations under subsection B. Provided a real estate licensee performs those duties, the licensee shall have no further duties to the parties to a residential real estate transaction under this section, and shall not be liable to any party to a residential real estate transaction for a violation of subsection B or for any failure to disclose any information regarding any real property subject to subsection B.

G. For the purposes of this section:

"Acceptance" means the full execution of a real estate purchase contract by all parties; ~~and~~.

"Real estate purchase contract" means a contract for the sale, exchange, or lease with option to buy of real estate subject to this section.

H. The Real Estate Board shall enforce subsections D, E, and F pursuant to the provisions of Chapter 21 of Title 54.1 (§ 54.1-2100 et seq.).

*§ 32.1-164.1:3. Permits for voluntary system upgrades.*

*Any owner desiring to voluntarily upgrade an onsite or alternative discharging sewage system that is not failing shall file an application, according to instructions from the Board, to obtain a construction permit to improve the system in accordance with the laws and regulations of the Board for repairing failing systems, provided such upgrade is for the purposes of reducing threats to the public health, or to ground and surface waters, including the reduction of nitrogen discharges.*

*The Department shall attach a statement to any permit issued pursuant to this section clearly stating that the upgrades specified in the permit are voluntary and not required by law. The Department may require the owner to indemnify and hold harmless the Department prior to the issuance of any such permit. Any permits issued pursuant to this section shall be subject to the provisions of § 32.1-164.1:1.*

**2. That an emergency exists and this act is in force from its passage.**