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HOUSE BILL NO. 2160

Offered January 12, 2011

Prefiled January 12, 2011

A BILL to amend and reenact § 55-70.1 of the Code of Virginia, relating to implied warranties on new homes; notice of breach.

Patron—Iaquinto

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 55-70.1 of the Code of Virginia is amended and reenacted as follows:**

§ 55-70.1. Implied warranties on new homes.

A. In every contract for the sale of a new dwelling, the vendor shall be held to warrant to the vendee that, at the time of the transfer of record title or the vendee's taking possession, whichever occurs first, the dwelling with all its fixtures is, to the best of the actual knowledge of the vendor or his agents, sufficiently (i) free from structural defects, so as to pass without objection in the trade, and (ii) constructed in a workmanlike manner, so as to pass without objection in the trade.

B. In addition, in every contract for the sale of a new dwelling, the vendor, if he is in the business of building or selling such dwellings, shall be held to warrant to the vendee that, at the time of transfer of record title or the vendee's taking possession, whichever occurs first, the dwelling together with all its fixtures is sufficiently (i) free from structural defects, so as to pass without objection in the trade, (ii) constructed in a workmanlike manner, so as to pass without objection in the trade, and (iii) fit for habitation.

C. The above warranties implied in the contract for sale shall be held to survive the transfer of title. Such warranties are in addition to, and not in lieu of, any other express or implied warranties pertaining to the dwelling, its materials or fixtures. A contract for sale may waive, modify or exclude any or all express and implied warranties and sell a new home "as is" only if the words used to waive, modify or exclude such warranties are conspicuous (as defined by subdivision (10) of § 8.1A-201), set forth on the face of such contract in capital letters which are at least two points larger than the other type in the contract and only if the words used to waive, modify or exclude the warranties state with specificity the warranty or warranties that are being waived, modified or excluded. If all warranties are waived or excluded, a contract must specifically set forth in capital letters which are at least two points larger than the other type in the contract that the dwelling is being sold "as is."

D. If there is a breach of warranty under this section, the vendee, or his heirs or personal representatives in case of his death, shall have a cause of action against his vendor for damages; provided, however, for any defect discovered after July 1, 2002, such vendee shall first provide the vendor, by registered or certified mail at his last known address, a written notice stating the nature of the warranty claim. *Such notice also may be hand delivered to the vendor with the vendee retaining sufficient proof of having hand delivered such notice.* After such notice, the vendor shall have a reasonable period of time, not to exceed six months, to cure the defect that is the subject of the warranty claim.

E. The warranty shall extend for a period of one year from the date of transfer of record title or the vendee's taking possession, whichever occurs first, except that the warranty pursuant to subdivision (i) of subsection B for the foundation of new dwellings shall extend for a period of five years from the date of transfer of record title or the vendee's taking possession, whichever occurs first. Any action for its breach shall be brought within two years after the breach thereof. For all warranty claims arising on or after January 1, 2009, sending the notice required by subsection D shall toll the limitations period for six months.

F. As used in this section, the term "new dwelling" shall mean a dwelling or house ~~which~~ *that* has not previously been occupied for a period of more than 60 days by anyone other than the vendor or the vendee or ~~which~~ *that* has not been occupied by the original vendor or subsequent vendor for a cumulative period of more than 12 months excluding dwellings constructed solely for lease. The term "new dwelling" shall not include a condominium or condominium units created pursuant to Chapter 4.2 (§ 55-79.39 et seq.) of this title.

G. The term "structural defects," as used in this section, shall mean a defect or defects that reduce the stability or safety of the structure below accepted standards or that restrict the normal use thereof.

H. In the case of new dwellings where fire-retardant treated plywood sheathing or other roof sheathing materials are used in lieu of fire-retardant treated plywood the vendor shall be deemed to have

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59 assigned the manufacturer's warranty, at settlement, to the vendee. The vendee shall have a direct cause
60 of action against the manufacturer of such roof sheathing for any breach of such warranty. To the extent
61 any such manufacturer's warranty purports to limit the right of third parties or prohibit assignment, said
62 provision shall be unenforceable and of no effect.