VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 390

An Act to amend and reenact §§ 54.1-2350 and 55-519 of the Code of Virginia, relating to residential property; information on covenants; required disclosures; stormwater management facilities.

[H 2019]

Approved March 14, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2350 and 55-519 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2350. Annual report; form to accompany resale certificates and disclosure packets.

In addition to the provisions of § 54.1-2349, the Board shall:

1. Administer the provisions of Chapter 29 (§ 55-528 et seq.) of Title 55;

2. Develop and disseminate an association annual report form for use in accordance with §§ 55-79.93:1, 55-504.1, and 55-516.1; and

3. Develop and disseminate a form to accompany resale certificates required pursuant to § 55-79.97 and association disclosure packets required pursuant to § 55-509.5, which form shall summarize the unique characteristics of common interest communities generally that may affect a prospective purchaser's decision to purchase a lot or unit located in a common interest community. The form shall include information on the following, which may or may not be applicable to a particular common interest community: (i) the obligation on the part of an owner to pay regular annual or special assessments to the association; (ii) the penalty for failure or refusal to pay such assessments; (iii) the purposes for which such assessments, if any, may be used, *including for the construction or maintenance of stormwater management facilities*; (iv) the importance the declaration of restrictive covenants or condominium instruments, as applicable, and other governing documents play in association living; (v) limitations on an owner's ability to rent his lot or unit; (vi) limitations on an owner's ability to park or store certain types of motor vehicles or boats within the common interest community; (vii) limitations on an owner's ability to maintain an animal as a pet within the lot or unit, or in common areas or common elements; (viii) architectural guidelines applicable to an owner's lot or unit; (ix) limitations on an owner's ability to operate a business within a dwelling unit on a lot or within a unit; (x) the period or length of declarant control; and (xi) that the purchase contract for a lot within an association is a legally binding document once it is signed by the prospective purchaser where the purchaser has not elected to cancel the purchase contract in accordance with law. The form shall also provide that (a) the purchaser remains responsible for his own examination of the materials that constitute the resale certificate or disclosure packet and of any table of contents that may be contained therein; (b) the purchaser shall carefully review the entire resale certificate or disclosure packet; and (c) the contents of the resale certificate or disclosure packet shall control to the extent that there are any inconsistencies between the form and the resale certificate or disclosure packet.

§ 55-519. 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 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, 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 that 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 that 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 that 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 stormwater detention facilities located on the property, or *the existence or recordation of* 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, *such as contacting their settlement provider, consulting the locality in which the property is located, or reviewing any survey of the property that may have been conducted*, 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;

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. The residential property disclosure statement shall be delivered in accordance with § 55-520.