

20107141D

HOUSE BILL NO. 1161

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 4, 2020)

(Patron Prior to Substitute—Delegate Lopez)

*A BILL to amend and reenact §§ 54.1-2133 and 55.1-703 of the Code of Virginia, relating to Virginia Residential Property Disclosure Act; required disclosures for buyer to beware; lead pipes.***Be it enacted by the General Assembly of Virginia:****1. That §§ 54.1-2133 and 55.1-703 of the Code of Virginia are amended and reenacted as follows:****§ 54.1-2133. Licensees engaged by landlords to lease property.**

A. A licensee engaged by a landlord shall:

1. Perform in accordance with the terms of the brokerage agreement;
2. Promote the interests of the landlord by:

a. Conducting marketing activities on behalf of the landlord pursuant to the brokerage agreement with the landlord. In so doing, the licensee shall seek a tenant at the rent and terms agreed in the brokerage agreement or at a rent and terms acceptable to the landlord; however, the licensee shall not be obligated to seek additional offers to lease the property while the property is subject to a lease or a letter of intent to lease under which the tenant has not yet taken possession, unless agreed as part of the brokerage agreement, or unless the lease or the letter of intent to lease so provides;

b. Assisting the landlord in drafting and negotiating leases and letters of intent to lease, and presenting in a timely manner all written leasing offers or counteroffers to and from the landlord and tenant pursuant to § 54.1-2101.1, even when the property is already subject to a lease or a letter of intent to lease; and

c. Providing reasonable assistance to the landlord to finalize the lease agreement;

3. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the landlord consents in writing to the release of such information;

4. Exercise ordinary care;

5. Account in a timely manner for all money and property received by the licensee in which the landlord has or may have an interest;

6. Disclose to the landlord material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and

7. Comply with all requirements of this article, fair housing statutes and regulations for residential real estate transactions as applicable, and all other applicable statutes and regulations which are not in conflict with this article.

B. Licensees shall treat all prospective tenants honestly and shall not knowingly give them false information. A licensee engaged by a landlord shall disclose to prospective tenants all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee. If a licensee has actual knowledge of the existence of ~~defective drywall~~ *any pipe, pipe or plumbing fitting, fixture, solder, or flux that does not meet the federal Safe Drinking Water Act definition of "lead free" pursuant to 42 U.S.C. § 300j-21* in a residential property, the licensee shall disclose the same to the prospective tenant. ~~For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1.~~ As used in this section, the term "physical condition of the property" shall refer to the physical condition of the land and any improvements thereon, and shall not refer to: (i) matters outside the boundaries of the land or relating to adjacent or other properties in proximity thereto, (ii) matters relating to governmental land use regulations, and (iii) matters relating to highways or public streets. Such disclosure shall be made in writing. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law. Nothing in this subsection shall limit the right of a prospective tenant to inspect the physical condition of the property.

C. A licensee engaged by a landlord in a real estate transaction may, unless prohibited by law or the brokerage agreement, provide assistance to a tenant, or potential tenant, by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to violate the licensee's brokerage relationship with the landlord unless expressly prohibited by the terms of the brokerage agreement, nor shall performing such ministerial acts be construed to form a brokerage relationship with such tenant or potential tenant.

D. A licensee engaged by a landlord does not breach any duty or obligation owed to the landlord by showing alternative properties to prospective tenants, whether as clients or customers, or by representing other landlords who have other properties for lease.

60 E. Licensees in residential real estate transactions shall disclose brokerage relationships pursuant to
61 the provisions of this article.

62 **§ 55.1-703. Required disclosures for buyer to beware; buyer to exercise necessary due diligence.**

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

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

68 1. The owner makes no representations or warranties as to the condition of the real property or any
69 improvements thereon, or with regard to any covenants and restrictions, or any conveyances of mineral
70 rights, as may be recorded among the land records affecting the real property or any improvements
71 thereon, and purchasers are advised to exercise whatever due diligence a particular purchaser deems
72 necessary, including obtaining a home inspection, as defined in § 54.1-500, in accordance with terms
73 and conditions as may be contained in the real estate purchase contract, but in any event prior to
74 settlement pursuant to such contract;

75 2. The owner makes no representations with respect to any matters that may pertain to parcels
76 adjacent to the subject parcel, including zoning classification or permitted uses of adjacent parcels, and
77 purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with
78 respect to adjacent parcels in accordance with terms and conditions as may be contained in the real
79 estate purchase contract, but in any event prior to settlement pursuant to such contract;

80 3. The owner makes no representations to any matters that pertain to whether the provisions of any
81 historic district ordinance affect the property, and purchasers are advised to exercise whatever due
82 diligence a particular purchaser deems necessary with respect to any historic district designated by the
83 locality pursuant to § 15.2-2306, including review of (i) any local ordinance creating such district, (ii)
84 any official map adopted by the locality depicting historic districts, and (iii) any materials available from
85 the locality that explain (a) any requirements to alter, reconstruct, renovate, restore, or demolish
86 buildings or signs in the local historic district and (b) the necessity of any local review board or
87 governing body approvals prior to doing any work on a property located in a local historic district, in
88 accordance with terms and conditions as may be contained in the real estate purchase contract, but in
89 any event prior to settlement pursuant to such contract;

90 4. The owner makes no representations with respect to whether the property contains any resource
91 protection areas established in an ordinance implementing the Chesapeake Bay Preservation Act
92 (§ 62.1-44.15:67 et seq.) adopted by the locality where the property is located pursuant to
93 § 62.1-44.15:74, and purchasers are advised to exercise whatever due diligence a particular purchaser
94 deems necessary to determine whether the provisions of any such ordinance affect the property,
95 including review of any official map adopted by the locality depicting resource protection areas, in
96 accordance with terms and conditions as may be contained in the real estate purchase contract, but in
97 any event prior to settlement pursuant to such contract;

98 5. The owner makes no representations with respect to information on any sexual offenders registered
99 under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, and purchasers are advised to exercise whatever due
100 diligence they deem necessary with respect to such information, in accordance with terms and conditions
101 as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to
102 such contract;

103 6. The owner makes no representations with respect to whether the property is within a dam break
104 inundation zone. Such disclosure statement shall advise purchasers to exercise whatever due diligence
105 they deem necessary with respect to whether the property resides within a dam break inundation zone,
106 including a review of any map adopted by the locality depicting dam break inundation zones;

107 7. The owner makes no representations with respect to the presence of any stormwater detention
108 facilities located on the property, or the existence or recordation of any maintenance agreement for such
109 facilities, and purchasers are advised to exercise whatever due diligence they deem necessary to
110 determine the presence of any stormwater detention facilities on the property, or any maintenance
111 agreement for such facilities, such as contacting their settlement provider, consulting the locality in
112 which the property is located, or reviewing any survey of the property that may have been conducted, 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 8. The owner makes no representations with respect to the presence of any wastewater system,
116 including the type or size of the wastewater system or associated maintenance responsibilities related to
117 the wastewater system, located on the property, and purchasers are advised to exercise whatever due
118 diligence they deem necessary to determine the presence of any wastewater system on the property and
119 the costs associated with maintaining, repairing, or inspecting any wastewater system, including any
120 costs or requirements related to the pump-out of septic tanks, in accordance with terms and conditions as
121 may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to

122 such contract;

123 9. The owner makes no representations with respect to any right to install or use solar energy
124 collection devices on the property;

125 10. The owner makes no representations with respect to whether the property is located in one or
126 more special flood hazard areas, and purchasers are advised to exercise whatever due diligence they
127 deem necessary, including (i) obtaining a flood certification or mortgage lender determination of whether
128 the property is located in one or more special flood hazard areas, (ii) reviewing any map depicting
129 special flood hazard areas, (iii) contacting the Federal Emergency Management Agency (FEMA) or
130 visiting the website for FEMA's National Flood Insurance Program or for the Virginia Department of
131 Conservation and Recreation's Flood Risk Information System, and (iv) determining whether flood
132 insurance is required, in accordance with terms and conditions as may be contained in the real estate
133 purchase contract, but in any event prior to settlement pursuant to such contract;

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

138 12. The owner makes no representations with respect to whether the property is subject to a
139 community development authority approved by a local governing body pursuant to Article 6
140 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, and purchasers are advised to exercise whatever due
141 diligence a particular purchaser deems necessary in accordance with terms and conditions as may be
142 contained in the real estate purchase contract, including determining whether a copy of the resolution or
143 ordinance has been recorded in the land records of the circuit court for the locality in which the
144 community development authority district is located for each tax parcel included in the district pursuant
145 to § 15.2-5157, but in any event prior to settlement pursuant to such contract; *and*

146 13. *The owner makes no representations with respect to whether the property contains any pipe, pipe*
147 *or plumbing fitting, fixture, solder, or flux that does not meet the federal Safe Drinking Water Act*
148 *definition of "lead free" pursuant to 42 U.S.C. § 300j-21, and purchasers are advised to exercise*
149 *whatever due diligence they deem necessary to determine whether the property contains any pipe, pipe*
150 *or plumbing fitting, fixture, solder, or flux that does not meet the federal Safe Drinking Water Act*
151 *definition of "lead free," in accordance with terms and conditions as may be contained in the real estate*
152 *purchase contract, but in any event prior to settlement pursuant to such contract.*

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