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**HOUSE BILL NO. 863**

Offered January 10, 2024

Prefiled January 9, 2024

*A BILL to amend and reenact §§ 55.1-703 and 55.1-708.2 of the Code of Virginia, relating to Virginia Residential Property Disclosure Act; flood-related disclosures.*

Patron—Hernandez

Referred to Committee on Housing/Consumer Protection

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

**That §§ 55.1-703 and 55.1-708.2 of the Code of Virginia are amended and reenacted 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, a mold assessment conducted by a business that follows the guidelines provided by the U.S. Environmental Protection Agency, 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 representation with respect to current lot lines or the ability to expand, improve, or add any structures on the property, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary, including obtaining a property survey and contacting the locality to determine zoning ordinances or lot coverage, height, or setback requirements on the property.

3. 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;

4. 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;

5. 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;

6. 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;

7. 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

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59 deem necessary with respect to whether the property resides within a dam break inundation zone, including a  
60 review of any map adopted by the locality depicting dam break inundation zones;

61 ~~8-~~ 7. The owner makes no representations with respect to the presence of any wastewater system,  
62 including the type or size of the wastewater system or associated maintenance responsibilities related to the  
63 wastewater system, located on the property, and purchasers are advised to exercise whatever due diligence  
64 they deem necessary to determine the presence of any wastewater system on the property and the costs  
65 associated with maintaining, repairing, or inspecting any wastewater system, including any costs or  
66 requirements related to the pump-out of septic tanks, in accordance with terms and conditions as may be  
67 contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

68 ~~9-~~ 8. The owner makes no representations with respect to any right to install or use solar energy collection  
69 devices on the property;

70 ~~10-~~ 9. The owner makes no representations with respect to whether the property is located in one or more  
71 special flood hazard areas, and purchasers are advised to exercise whatever due diligence they deem  
72 necessary, including (i) obtaining a flood certification or mortgage lender determination of whether the  
73 property is located in one or more special flood hazard areas, (ii) reviewing any map depicting special flood  
74 hazard areas, (iii) contacting the Federal Emergency Management Agency (FEMA) or visiting the website for  
75 FEMA's National Flood Insurance Program or the Virginia Flood Risk Information website operated by the  
76 Department of Conservation and Recreation, and (iv) determining whether flood insurance is required, in  
77 accordance with terms and conditions as may be contained in the real estate purchase contract, but in any  
78 event prior to settlement pursuant to such contract: ~~A flood risk information form, pursuant to the provisions~~  
79 ~~of subsection D, that provides additional information on flood risk and flood insurance is available for~~  
80 ~~download by the Real Estate Board on its website;~~

81 ~~11-~~ 10. The owner makes no representations with respect to whether the property is subject to one or more  
82 conservation or other easements, and purchasers are advised to exercise whatever due diligence a particular  
83 purchaser deems necessary in accordance with terms and conditions as may be contained in the real estate  
84 purchase contract, but in any event prior to settlement pursuant to such contract;

85 ~~12-~~ 11. The owner makes no representations with respect to whether the property is subject to a  
86 community development authority approved by a local governing body pursuant to Article 6 (§ 15.2-5152 et  
87 seq.) of Chapter 51 of Title 15.2, and purchasers are advised to exercise whatever due diligence a particular  
88 purchaser deems necessary in accordance with terms and conditions as may be contained in the real estate  
89 purchase contract, including determining whether a copy of the resolution or ordinance has been recorded in  
90 the land records of the circuit court for the locality in which the community development authority district is  
91 located for each tax parcel included in the district pursuant to § 15.2-5157, but in any event prior to  
92 settlement pursuant to such contract;

93 ~~13-~~ 12. The owner makes no representations with respect to whether the property is located on or near  
94 deposits of marine clays (marumsco soils), and purchasers are advised to exercise whatever due diligence a  
95 particular purchaser deems necessary in accordance with terms and conditions as may be contained in the real  
96 estate purchase contract, including consulting public resources regarding local soil conditions and having the  
97 soil and structural conditions of the property analyzed by a qualified professional;

98 ~~14-~~ 13. The owner makes no representations with respect to whether the property is located in a locality  
99 classified as Zone 1 or Zone 2 by the U.S. Environmental Protection Agency's (EPA) Map of Radon Zones,  
100 and purchasers are advised to exercise whatever due diligence they deem necessary to determine whether the  
101 property is located in such a zone, including (i) reviewing the EPA's Map of Radon Zones or visiting the  
102 EPA's radon information website; (ii) visiting the Virginia Department of Health's Indoor Radon Program  
103 website; (iii) visiting the National Radon Proficiency Program's website; (iv) visiting the National Radon  
104 Safety Board's website that lists the Board's certified contractors; and (v) ordering a radon inspection, in  
105 accordance with the terms and conditions as may be contained in the real estate purchase contract, but in any  
106 event prior to settlement pursuant to such contract;

107 ~~15-~~ 14. The owner makes no representations with respect to whether the property contains any pipe, pipe  
108 or plumbing fitting, fixture, solder, or flux that does not meet the federal Safe Drinking Water Act definition  
109 of "lead free" pursuant to 42 U.S.C. § 300g-6, and purchasers are advised to exercise whatever due diligence  
110 they deem necessary to determine whether the property contains any pipe, pipe or plumbing fitting, fixture,  
111 solder, or flux that does not meet the federal Safe Drinking Water Act definition of "lead free," in accordance  
112 with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to  
113 settlement pursuant to such contract;

114 ~~16-~~ 15. The owner makes no representations with respect to the existence of defective drywall on the  
115 property, and purchasers are advised to exercise whatever due diligence they deem necessary to determine  
116 whether there is defective drywall on the property, in accordance with terms and conditions as may be  
117 contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract.  
118 For purposes of this subdivision, "defective drywall" means the same as that term is defined in § 36-156.1;  
119 and

120 ~~17-~~ 16. The owner makes no representation with respect to the condition or regulatory status of any

121 impounding structure or dam on the property or under the ownership of the common interest community that  
122 the owner of the property is required to join, and purchasers are advised to exercise whatever due diligence a  
123 particular purchaser deems necessary to determine the condition, regulatory status, cost of required  
124 maintenance and operation, or other relevant information pertaining to the impounding structure or dam,  
125 including contacting the Department of Conservation and Recreation or a licensed professional engineer.

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

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

129 ~~Flood Risk Information Form~~

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

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

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

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

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

162 **§ 55.1-708.2. Required disclosures pertaining to flood risk.**

163 A. The owner of residential real property located in the Commonwealth who has actual knowledge that the  
164 dwelling unit is a repetitive risk loss structure shall disclose such fact to the purchaser. For purposes of this  
165 section, "repetitive risk loss" means that two or more claims of more than \$1,000 were paid by the National  
166 Flood Insurance Program within any rolling 10-year period, since 1978.

167 B. *The owner of residential real property located in the Commonwealth shall disclose to the purchaser*  
168 *whether:*

169 1. *The property is located wholly or partially in the 100-year (one percent annual chance) or 500-year*  
170 *(0.2 percent annual chance) FEMA-designated flood zones, community-designated flood zones, or within a*  
171 *dam break inundation zone as defined in § 10.1-604;*

172 2. *Whether the property is located wholly or partially in a floodway, flood pool, or reservoir; and*

173 3. *Whether the property is currently insured through public or private flood insurance.*

174 C. *The owner of residential real property in the Commonwealth shall disclose to the purchaser any actual*  
175 *knowledge of whether:*

176 1. *The property has experienced damage due to erosion, flooding, water seepage, or pooled water;*

177 2. *Any claims have been filed for flood damage to the property with an insurance provider, including the*  
178 *amount received from such insurance provider;*

179 3. *The property owner has received federal disaster assistance for damage to the property, including from*  
180 *FEMA, the U.S. Small Business Administration, HUD, or another agency;*

181 4. *The owner has an elevation certificate, which shall also be provided to the purchaser if it exists; and*

182 5. *The property has any erosion control structure, such as a bulkhead, a rock revetment, a seawall, or*

183 *buried sandbags, affecting the property and if so shall disclose a general description of the location,*  
184 *material, and approximate size of any such structure.*

185 *D. All such disclosures required by subsections A, B, and C shall be provided to the purchaser on a form*  
186 *prescribed by the Board on its website.*

187 *E. The owner of residential real property located in the Commonwealth shall disclose to each renter prior*  
188 *to signing any contract for tenancy whether:*

189 *1. The owner has actual knowledge that the property has experienced past damages from flooding; and*

190 *2. Whether any or all of the rental property is located wholly or partially in the 100-year or 500-year*  
191 *FEMA-designated flood zones or community-designated flood zones.*

192 *F. Every contract for tenancy in the Commonwealth shall contain the following notice to tenants:*

193 *"Flood insurance may be available to renters through FEMA's National Flood Insurance Program to*  
194 *cover your personal property and contents in the event of a flood. A standard renter's insurance policy does*  
195 *not typically cover flood damage. You are encouraged to examine your policy options to ensure coverage."*

196 *Such disclosure shall be provided to the purchaser on a form provided by the Real Estate Board on its*  
197 *website. Such form shall include spaces for (i) disclosure of historical flood damages, flood insurance claims,*  
198 *and costs to such residential real property; (ii) any mandatory flood insurance purchase requirement; and*  
199 *(iii) whether the property is located within a dam break inundation zone, as defined in § 10.1-604 or in the*  
200 *100-year or 500-year flood zone designated by the Federal Emergency Management Agency's Flood*  
201 *Insurance Rate Map, or in any community-designated flood risk area, including the flood zone classification*  
202 *of such property and the source and date of such information or classification.*