

26105892D

SENATE BILL NO. 577

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on _____)

(Patron Prior to Substitute—Senator Reeves)

A BILL to amend and reenact § 55.1-703 of the Code of Virginia, relating to Virginia Residential Property Disclosure Act; required disclosures for buyer to beware; buyer to exercise necessary due diligence; military ground installations.

Be it enacted by the General Assembly of Virginia:

1. That § 55.1-703 of the Code of Virginia is 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. 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. 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. 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. 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. 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;

8. The owner makes no representations with respect to the presence of any wastewater system, including the type or size of the wastewater system or associated maintenance responsibilities related to the wastewater system, 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) reviewing any map depicting special flood hazard areas, (iii) contacting the Federal Emergency Management Agency (FEMA) or visiting the website for FEMA's National Flood Insurance Program or the Virginia Flood Risk Information website operated by the Department of Conservation and Recreation, and (iv) determining 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. A flood risk information form, pursuant to the provisions of subsection D, that provides additional information on flood risk and flood insurance is available for download by the Real Estate Board on its website;

11. The owner makes no representations with respect to whether the property is subject to one or more conservation or other easements, and 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;

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 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;

13. The owner makes no representations with respect to whether the property is located on or near deposits of marine clays (marumsco soils), and 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 consulting public resources regarding local soil conditions and having the soil and structural conditions of the property analyzed by a qualified professional;

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

15. The owner makes no representations with respect to whether the property contains 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. § 300g-6, and purchasers are advised to exercise whatever due diligence they deem necessary to determine whether the property contains any pipe, pipe or plumbing fitting, fixture, solder, or flux that does not meet the federal Safe Drinking Water Act definition of "lead free," 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;

16. The owner makes no representations with respect to the existence of defective drywall on the property, and purchasers are advised to exercise whatever due diligence they deem necessary to determine whether there is defective drywall on the property, 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. For purposes of this subdivision, "defective drywall" means the same as that term is defined in § 36-156.1;

17. The owner makes no representation with respect to the condition or regulatory status of any impounding structure or dam on the property or under the ownership of the common interest community that the owner of the property is required to join, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary to determine the condition, regulatory status, cost of required

122 maintenance and operation, or other relevant information pertaining to the impounding structure or dam,
 123 including contacting the Department of Conservation and Recreation or a licensed professional engineer; ~~and~~

124 18. The owner makes no representations or warranties with respect to the property's proximity to a public
 125 use airport nor any noise from aircraft due to the proximity of the property to flight operations. The Federal
 126 Aviation Administration is responsible for managing the national airspace system, including aircraft flight
 127 paths. Purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary to
 128 determine whether a property is within proximity to a flight path or public use airport aircraft noise zone,
 129 including contacting (i) the locality or public use airport and reviewing any available maps depicting public
 130 use airport aircraft noise zones or (ii) the Department of Aviation or visiting the Department of Aviation's
 131 website, where any such maps, if made available by localities or public use airports, shall be accessible to the
 132 public; *and*

133 19. *The owner makes no representations with respect to the property's proximity to any military ground*
 134 *installation, including whether the property may be impacted by related noise or other effects of military*
 135 *operations. Purchasers are advised to exercise whatever due diligence a particular purchaser deems*
 136 *necessary to determine whether the property may be adversely impacted.*

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

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

140 Flood Risk Information Form

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

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

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

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

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