

SENATE BILL NO. _____ HOUSE BILL NO. _____

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

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

4 **1. That §§ 55.1-703 and 55.1-708.2 of the Code of Virginia are amended and reenacted as follows:**

5 **§ 55.1-703. Required disclosures for buyer to beware; buyer to exercise necessary due**
6 **diligence.**

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

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

12 1. The owner makes no representations or warranties as to the condition of the real property or any
13 improvements thereon, or with regard to any covenants and restrictions, or any conveyances of mineral
14 rights, as may be recorded among the land records affecting the real property or any improvements
15 thereon, and purchasers are advised to exercise whatever due diligence a particular purchaser deems
16 necessary, including obtaining a home inspection, as defined in § 54.1-500, a mold assessment conducted
17 by a business that follows the guidelines provided by the U.S. Environmental Protection Agency, and a
18 residential building energy analysis, as defined in § 54.1-1144, in accordance with terms and conditions
19 as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to
20 such contract;

21 2. The owner makes no representation with respect to current lot lines or the ability to expand,
22 improve, or add any structures on the property, and purchasers are advised to exercise whatever due
23 diligence a particular purchaser deems necessary, including obtaining a property survey and contacting
24 the locality to determine zoning ordinances or lot coverage, height, or setback requirements on the
25 property.

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

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

41 5. The owner makes no representations with respect to whether the property contains any resource
42 protection areas established in an ordinance implementing the Chesapeake Bay Preservation Act (§ 62.1-
43 44.15:67 et seq.) adopted by the locality where the property is located pursuant to § 62.1-44.15:74, and
44 purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary to
45 determine whether the provisions of any such ordinance affect the property, including review of any
46 official map adopted by the locality depicting resource protection areas, in accordance with terms and
47 conditions as may be contained in the real estate purchase contract, but in any event prior to settlement
48 pursuant to such contract;

49 6. The owner makes no representations with respect to information on any sexual offenders
50 registered under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, and purchasers are advised to exercise
51 whatever due diligence they deem necessary with respect to such information, in accordance with terms

52 and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement
53 pursuant to such contract;

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

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

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

68 10. The owner makes no representations with respect to whether the property is located in one or
69 more special flood hazard areas [unless the owner has actual knowledge as provided in § 55.1-708.2](#), and
70 purchasers are advised to exercise whatever due diligence they deem necessary, including (i) obtaining a
71 flood certification or mortgage lender determination of whether the property is located in one or more
72 special flood hazard areas, (ii) reviewing any map depicting special flood hazard areas, (iii) contacting the
73 Federal Emergency Management Agency (FEMA) or visiting the website for FEMA's National Flood
74 Insurance Program or the Virginia Flood Risk Information website operated by the Department of
75 Conservation and Recreation, and (iv) determining whether flood insurance is required, in accordance
76 with terms and conditions as may be contained in the real estate purchase contract, but in any event prior
77 to settlement pursuant to such contract. A flood risk information form, pursuant to the provisions of

78 subsection D, that provides additional information on flood risk and flood insurance is available for
79 download by the Real Estate Board on its website;

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

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

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

97 14. The owner makes no representations with respect to whether the property is located in a locality
98 classified as Zone 1 or Zone 2 by the U.S. Environmental Protection Agency's (EPA) Map of Radon
99 Zones, and purchasers are advised to exercise whatever due diligence they deem necessary to determine
100 whether the property is located in such a zone, including (i) reviewing the EPA's Map of Radon Zones or
101 visiting the EPA's radon information website; (ii) visiting the Virginia Department of Health's Indoor
102 Radon Program website; (iii) visiting the National Radon Proficiency Program's website; (iv) visiting the
103 National Radon Safety Board's website that lists the Board's certified contractors; and (v) ordering a radon

104 inspection, in accordance with the terms and conditions as may be contained in the real estate purchase
105 contract, but in any event prior to settlement pursuant to such contract;

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

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

119 17. The owner makes no representation with respect to the condition or regulatory status of any
120 impounding structure or dam on the property or under the ownership of the common interest community
121 that the owner of the property is required to join, and purchasers are advised to exercise whatever due
122 diligence a particular purchaser deems necessary to determine the condition, regulatory status, cost of
123 required maintenance and operation, or other relevant information pertaining to the impounding structure
124 or dam, including contacting the Department of Conservation and Recreation or a licensed professional
125 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
128 form 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
131 with information regarding flood risk. This information form does not determine whether a property owner
132 will be required to purchase a flood insurance policy. That determination is made by the lender providing
133 a loan for the property at the lender's discretion.

134 Mortgage lenders are mandated under the Flood Disaster Protection Act of 1973 and the National
135 Flood Insurance Reform Act of 1994 to require the purchase of flood insurance by property owners who
136 acquire loans from federally regulated, supervised, or insured financial institutions for the acquisition or
137 improvement of land, facilities, or structures located within or to be located within a Special Flood Hazard
138 Area. A Special Flood Hazard Area (SFHA) is a high-risk area defined as any land that would be inundated
139 by a flood, also known as a base flood, having a one percent chance of occurring in a given year. The
140 lender reviews the current National Flood Insurance Program (NFIP) maps for the community in which
141 the property is located to determine its location relative to the published SFHA and completes the Standard
142 Flood Hazard Determination Form (SFHDF), created by the Federal Emergency Management Agency
143 (FEMA). If the lender determines that the structure is indeed located within a SFHA and the community
144 is participating in the NFIP, the borrower is then notified that flood insurance will be required as a
145 condition of receiving the loan. A similar review and notification are completed whenever a loan is sold
146 on the secondary loan market 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
148 by a 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
153 two or more acres of normally dry land area or of two or more properties, at least one of which is the
154 policyholder's property, from (i) overflow of inland or tidal waters, (ii) unusual and rapid accumulation or
155 runoff of surface waters from any source, (iii) mudflow, or (iv) collapse or subsidence of land along the

156 shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents
157 of water exceeding 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
159 change due to periodic map updates. To determine what flood zone or zones a property is located in a
160 buyer can visit the website for FEMA's National Flood Insurance Program or the Virginia Department of
161 Conservation and Recreation's Flood Risk Information System website.

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

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

167 ~~Such disclosure~~

168 B. The owner of residential real property located in the Commonwealth who has actual knowledge
169 that the dwelling unit is located (i) wholly or partially within the 100-year (one percent annual chance)
170 Special Flood Hazard Area or the 500-year (0.2 percent annual chance) Moderate Risk Flood Hazard Area
171 or (ii) within more than one floodplain, as indicated by the Virginia Flood Risk Information System
172 operated by the Department of Conservation and Recreation or the Federal Emergency Management
173 Agency (FEMA) National Flood Hazard Layer Viewer, shall disclose such fact to the purchaser.

174 C. All disclosures required pursuant to this section shall be provided to the purchaser on a form
175 provided by the Real Estate Board on its website.

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