

1 CHAPTER ~~27~~ XX [2].

2 VIRGINIA RESIDENTIAL PROPERTY DISCLOSURE ACT.

3 **Drafting note: Existing Chapter 27, Virginia Residential Property Disclosure Act,**
4 **is retained as proposed Chapter XX [2].**

5 § ~~55-517.1~~ 55.1-xxx. Definitions.

6 As used in this chapter, unless the context requires a different meaning:

7 "Electronic delivery," for purposes of delivery of the disclosures required by this chapter,
8 means sending the required disclosures via the Internet, provided that the sender retains sufficient
9 proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation
10 that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming
11 the electronic delivery.

12 "Notification" means a statement of the availability of any disclosures required by this
13 chapter on the Real Estate Board's website or delivery of any such disclosures to the purchaser.

14 "Ratification" means the full execution of a real estate purchase contract by all parties.

15 "Real estate contract" means a contract for the sale, exchange, or lease with the option to
16 buy of residential real estate subject to this chapter.

17 **Drafting note: Technical change.**

18 § ~~55-517~~ 55.1-xxx. Applicability.

19 The provisions of this chapter apply only with respect to transfers by sale, exchange,
20 installment land sales contract, or lease with option to buy of residential real property consisting
21 of not less than one nor more than four dwelling units, whether or not the transaction is with the
22 assistance of a licensed real estate broker or salesperson.

23 **Drafting note: Technical change.**

24 § ~~55-518~~ 55.1-xxx. Exemptions.

25 A. The following are specifically excluded from the provisions of this chapter:

26 1. Transfers pursuant to court order including, ~~but not limited to,~~ transfers ordered by a
27 court in administration of an estate, transfers pursuant to a writ of execution, transfers by

28 foreclosure sale or by a deed in lieu of a foreclosure, transfers by a trustee in bankruptcy, transfers
29 by eminent domain, and transfers resulting from a decree for specific performance. Also,
30 transfers by an assignment for the benefit of creditors pursuant to Chapter 9 (§ ~~55-156~~ 55.1-xxx
31 et seq.) and transfers pursuant to escheats pursuant to Chapter 9 (~~§ 55-156 et seq.~~).

32 2. Transfers to a beneficiary of a deed of trust pursuant to a foreclosure sale or by a deed
33 in lieu of foreclosure, or transfers by a beneficiary under a deed of trust who has acquired the
34 real property at a sale conducted pursuant to a foreclosure sale under a deed of trust or has
35 acquired the real property by a deed in lieu of foreclosure.

36 3. Transfers by a fiduciary in the course of the administration of a decedent's estate,
37 guardianship, conservatorship, or trust.

38 4. Transfers from one or more co-owners solely to one or more other co-owners.

39 5. Transfers made solely to any combination of a spouse or ~~a person or~~ one or more
40 persons in the lineal line of consanguinity of one or more of the transferors.

41 6. Transfers between spouses resulting from a decree of divorce or a property settlement
42 stipulation pursuant to the provisions of Title 20.

43 7. Transfers made by virtue of the record owner's failure to pay any federal, state, or local
44 taxes.

45 8. Transfers to or from any governmental entity or public or quasi-public housing
46 authority or agency.

47 9. Transfers involving the first sale of a dwelling~~;~~, provided~~;~~ that this exemption shall not
48 apply to the disclosures required by § ~~55-519.1~~ 55.1-xxx.

49 B. Notwithstanding the provisions of subdivision A 9, the builder of a new dwelling shall
50 disclose in writing to the purchaser ~~thereof~~ all known material defects ~~which that~~ would
51 constitute a violation of any applicable building code. In addition, for property that is located
52 wholly or partially in any locality comprising Planning District 15, the builder or owner, if the
53 builder is not the owner of the property, shall disclose in writing whether the builder or owner
54 has any knowledge of (i) whether mining operations have previously been conducted on the

55 property or (ii) the presence of abandoned mines, shafts, or pits, if any. The disclosures required
56 by this subsection shall be made by a builder or owner ~~(i)~~ (a) when selling a completed dwelling,
57 before ratification of the real estate purchase contract or ~~(ii)~~ (b) when selling a dwelling before
58 or during its construction, after issuance of a certificate of occupancy. Such disclosure shall not
59 abrogate any warranty or any other contractual obligations the builder or owner may have to the
60 purchaser. The disclosure required by this subsection may be made on the disclosure form
61 described in § ~~55-519~~ 55.1-xxx. If no defects are known by the builder to exist, no written
62 disclosure is required by this subsection.

63 **Drafting note: In subdivision A 1, "but not limited to" is removed following the term**
64 **"including" on the basis of § 1-218, which states that throughout the Code "'Includes'**
65 **means includes, but not limited to." Technical changes are made.**

66 § ~~55-519~~ 55.1-xxx. Required disclosures for buyer to beware; buyer to exercise necessary
67 due diligence.

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

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

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

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

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

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

106 5. The owner makes no representations with respect to information on any sexual
107 offenders registered under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, and ~~that~~ purchasers are

108 advised to exercise whatever due diligence they deem necessary with respect to such
109 information, in accordance with terms and conditions as may be contained in the real estate
110 purchase contract, but in any event, prior to settlement pursuant to such contract;

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

116 7. The owner makes no representations with respect to the presence of any stormwater
117 detention facilities located on the property, or any maintenance agreement for such facilities, and
118 purchasers are advised to exercise whatever due diligence they deem necessary to determine the
119 presence of any stormwater detention facilities on the property, or any maintenance agreement
120 for such facilities, in accordance with terms and conditions as may be contained in the real estate
121 purchase contract, but in any event, prior to settlement pursuant to such contract;

122 8. The owner makes no representations with respect to the presence of any wastewater
123 system, including the type or size ~~thereof~~ of the wastewater system or associated maintenance
124 responsibilities related ~~thereto~~ to the wastewater system, located on the property, and purchasers
125 are advised to exercise whatever due diligence they deem necessary to determine the presence
126 of any wastewater system on the property and the costs associated with maintaining, repairing,
127 or inspecting any wastewater system, including any costs or requirements related to the pump-
128 out of septic tanks, in accordance with terms and conditions as may be contained in the real estate
129 purchase contract, but in any event, prior to settlement pursuant to such contract;

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

132 10. The owner makes no representations with respect to whether the property is located
133 in one or more special flood hazard areas, and purchasers are advised to exercise whatever due
134 diligence they deem necessary, including (i) obtaining a flood certification or mortgage lender

135 determination of whether the property is located in one or more special flood hazard areas, (ii)
136 ~~review of~~ reviewing any map depicting special flood hazard areas, and (iii) determining whether
137 flood insurance is required, in accordance with terms and conditions as may be contained in the
138 real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

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

144 12. The owner makes no representations with respect to whether the property is subject
145 to a community development authority approved by a local governing body pursuant to Article
146 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, and ~~that~~ purchasers are advised to exercise
147 whatever due diligence a particular purchaser deems necessary in accordance with terms and
148 conditions as may be contained in the real estate purchase contract, including determining
149 whether a copy of the resolution or ordinance has been recorded in the land records of the circuit
150 court for the locality in which the community development authority district is located for each
151 tax parcel included in the district pursuant to § 15.2-5157, but in any event, prior to settlement
152 pursuant to such contract.

153 C. The residential property disclosure statement shall be delivered in accordance with §
154 ~~55-520~~ 55.1-xxx.

155 **Drafting note: Technical changes.**

156 § ~~55-519.1~~ 55.1-xxx. Required disclosures pertaining to a military air installation.

157 The owner of residential real property located in any locality in which a military air
158 installation is located shall disclose to the purchaser whether the subject parcel is located in a
159 noise zone or accident potential zone, or both, if so designated on the official zoning map by the
160 locality in which the property is located. Such disclosure shall be provided to the purchaser on a
161 form provided by the Real Estate Board on its website. Such disclosure shall state the specific

162 noise zone or accident potential zone, or both, in which the property is located according to the
163 official zoning map.

164 **Drafting note: No change.**

165 § ~~55-519.2~~ 55.1-xxx. Required disclosures; defective drywall.

166 Notwithstanding the exemptions in § ~~55-518~~ 55.1-xxx, if the owner of a residential
167 dwelling unit has actual knowledge of the existence of defective drywall in such dwelling unit,
168 the owner shall provide to a prospective purchaser a written disclosure that the property has
169 defective drywall. Such disclosure shall be provided to the purchaser on a form provided by the
170 Real Estate Board on its website and otherwise in accordance with this chapter. For purposes of
171 this section, "defective drywall" means all defective drywall as defined in § 36-156.1.

172 **Drafting note: No change.**

173 § ~~55-519.2:1~~ 55.1-xxx. Required disclosures; pending building or zoning violations.

174 Notwithstanding the exemptions in § ~~55-518~~ 55.1-xxx, if the owner of a residential
175 dwelling unit has actual knowledge of any pending enforcement actions pursuant to the Uniform
176 Statewide Building Code (§ 36-97 et seq.) that affect the safe, decent, sanitary living conditions
177 of the property of which the owner has been notified in writing by the locality, or any pending
178 violation of the local zoning ordinance that the violator has not abated or remedied under the
179 zoning ordinance, within a time period set out in the written notice of violation from the locality
180 or established by a court of competent jurisdiction, the owner shall provide to a prospective
181 purchaser a written disclosure that so states. Such disclosure shall be provided to the purchaser
182 on a form provided by the Real Estate Board on its website and otherwise in accordance with
183 this chapter.

184 **Drafting note: No change.**

185 § ~~55-519.3~~ 55.1-xxx. Permissive disclosure; tourism activity zone.

186 An owner of residential property located partially or wholly within a designated tourism
187 activity zone established pursuant to § 15.2-982 may disclose in writing to any prospective
188 purchaser or lessee of the property that the subject property is located within a tourism activity

189 zone, with a description of potential impacts associated with the parcel's location in a tourism
190 activity zone, including impacts caused by special events, parades, temporary street closures, and
191 indoor and outdoor entertainment activities.

192 **Drafting note: No change.**

193 § ~~55-519.4~~ 55.1-xxx. Required disclosures; property previously used to manufacture
194 methamphetamine.

195 Notwithstanding the exemptions in § ~~55-518~~ 55.1-xxx, if the owner of a residential
196 dwelling unit has actual knowledge that such residential property was previously used to
197 manufacture methamphetamine and has not been cleaned up in accordance with the guidelines
198 established pursuant to § 32.1-11.7 and the applicable licensing provisions of Chapter 11 (§ 54.1-
199 1100 et seq.) of Title 54.1, the owner shall provide to a prospective purchaser a written disclosure
200 that so states. Such disclosure shall be provided to the purchaser on a form provided by the Real
201 Estate Board on its website and otherwise in accordance with this chapter.

202 **Drafting note: No change.**

203 § ~~55-520~~ 55.1-xxx. Time for disclosure; termination of contract.

204 A. The owner of residential real property subject to this chapter shall provide notification
205 to the purchaser of any disclosures required by this chapter prior to the ratification of a real estate
206 purchase contract or otherwise be subject to the provisions of subsection B. The disclosures
207 required by this chapter shall be on forms provided by the Real Estate Board on its website.

208 B. If the disclosures required by this chapter are delivered to the purchaser after
209 ratification of the real estate purchase contract, the purchaser's sole remedy shall be to terminate
210 the real estate purchase contract ~~at~~ upon or prior to the earliest of (i) three days after delivery of
211 the disclosure statement in person or by electronic delivery; (ii) five days after the postmark if
212 the disclosure statement is deposited in the United States mail, postage prepaid, and properly
213 addressed to the purchaser; (iii) settlement upon purchase of the property; (iv) occupancy of the
214 property by the purchaser; (v) the ~~purchaser~~ purchaser's making written application to a lender
215 for a mortgage loan where such application contains a disclosure that the right of termination

216 shall end upon the application for the mortgage loan; or (vi) the execution by the purchaser after
217 receiving the disclosure statement required by this chapter of a written waiver of the purchaser's
218 right of termination under this chapter contained in a writing separate from the real estate
219 purchase contract. In order to terminate a real estate purchase contract when permitted by this
220 chapter, the purchaser must, within the times required by this chapter, give written notice to the
221 owner by one of the following methods:

- 222 1. Hand delivery;
- 223 2. United States mail, postage prepaid, provided that the sender retains sufficient proof
224 of mailing, which may be a certificate of service prepared by the sender confirming such mailing;
- 225 3. Electronic delivery; or
- 226 4. Overnight delivery using a commercial service or the United States Postal Service.

227 If the purchaser terminates a real estate purchase contract in compliance with this chapter,
228 the termination shall be without penalty to the purchaser, and any deposit shall be promptly
229 returned to the purchaser.

230 C. Notwithstanding the provisions of subsection B of § ~~55-524~~ 55.1-xxx, no purchaser
231 of residential real property located in a noise zone designated on the official zoning map of the
232 locality as having a day-night average sound level of less than 65 decibels shall have the right to
233 terminate a real estate purchase contract pursuant to this section for failure of the property owner
234 to timely provide any disclosure required by this chapter.

235 **Drafting note: No change.**

236 § ~~55-521~~ 55.1-xxx. Owner liability.

237 A. Except with respect to the disclosures required by § ~~55-519.1~~ 55.1-xxx, the owner
238 shall not be liable for any error, inaccuracy, or omission of any information delivered pursuant
239 to this chapter if: (i) the error, inaccuracy, or omission was not within the actual knowledge of
240 the owner or was based on information provided by public agencies or by other persons providing
241 information that is required to be disclosed pursuant to this chapter, or the owner reasonably
242 believed the information to be correct, and (ii) the owner was not grossly negligent in obtaining

243 the information from a third party and transmitting it. The owner shall not be liable for any error,
244 inaccuracy, or omission of any information required to be disclosed by § ~~55-519.1~~ 55.1-xxx if
245 the error, inaccuracy, or omission was the result of information provided by an officer or
246 employee of the locality in which the property is located.

247 B. The delivery by a public agency or other person, as described in subsection C ~~below~~,
248 of any information required to be disclosed by this chapter to a prospective purchaser shall be
249 deemed to comply with the requirements of this chapter and shall relieve the owner of any further
250 duty under this chapter with respect to that item of information.

251 C. The delivery by the owner of a report or opinion prepared by a licensed engineer, land
252 surveyor, geologist, wood-destroying insect control expert, contractor, or home inspection
253 expert, dealing with matters within the scope of the professional's license or expertise, shall
254 satisfy the requirements of this chapter if the information is provided to the prospective purchaser
255 pursuant to a request ~~therefor~~ for such information, whether written or oral. In responding to
256 such a request, an expert may indicate, in writing, an understanding that the information provided
257 will be used in fulfilling the requirements of this chapter and, if so, shall indicate the required
258 disclosures, or portions ~~thereof~~ of such required disclosures, to which the information being
259 furnished is applicable. Where such a statement is furnished, the expert shall not be responsible
260 for any items of information, or, portions ~~thereof~~ of items of information, other than those
261 expressly set forth in the statement.

262 **Drafting note: Technical changes.**

263 § ~~55-522~~ 55.1-xxx. Change in circumstances.

264 If information disclosed in accordance with this chapter is subsequently rendered or
265 discovered to be inaccurate as a result of any act, occurrence, information received,
266 circumstance, or agreement subsequent to the delivery of the required disclosures, the inaccuracy
267 resulting therefrom does not constitute a violation of this chapter. However, at or before
268 settlement, the owner shall be required to disclose any material change in the disclosures made
269 relative to the property. If, at the time the disclosures are required to be made, an item of

270 information required to be disclosed is unknown or not available to the owner, the owner may
271 state that the information is unknown or may use an approximation of the information, provided
272 [that](#) the approximation is clearly identified as such, is reasonable, is based on the actual
273 knowledge of the owner, and is not used for the purpose of circumventing or evading this chapter.

274 **Drafting note: Technical change.**

275 § ~~55-523~~ [55.1-xxx](#). Duties of real estate licensees.

276 A real estate licensee representing an owner of residential real property as the listing
277 broker has a duty to inform each such owner represented by that licensee of the owner's rights
278 and obligations under this chapter. A real estate licensee representing a purchaser of residential
279 real property or, if the purchaser is not represented by a licensee, the real estate licensee
280 representing an owner of residential real estate and dealing with the purchaser has a duty to
281 inform each such purchaser of the purchaser's rights and obligations under this chapter. Provided
282 [that](#) a real estate licensee performs those duties, the licensee shall have no further duties to the
283 parties to a residential real estate transaction under this chapter, and shall not be liable to any
284 party to a residential real estate transaction for a violation of this chapter or for any failure to
285 disclose any information regarding any real property subject to this chapter.

286 **Drafting note: Technical changes.**

287 § ~~55-524~~ [55.1-xxx](#). Actions under this chapter.

288 A. Notwithstanding any other provision of this chapter or any other statute or regulation,
289 no cause of action shall arise against an owner or a real estate licensee for failure to disclose that
290 the real property was the site of:

- 291 1. An act or occurrence which had no effect on the physical structure of the real property,
292 its physical environment, or the improvements located thereon; or
293 2. A homicide, felony, or suicide.

294 B. The purchaser's remedies ~~hereunder~~ for failure of an owner to comply with the
295 provisions of this chapter are as follows:

296 1. If the owner fails to provide any of the applicable disclosures required by this chapter,
297 the contract may be terminated subject to the provisions of subsection B of § ~~55-520~~ 55.1-xxx.

298 2. In the event that the owner fails to provide any of the applicable disclosures required
299 by this chapter, or the owner misrepresents, willfully or otherwise, the information required in
300 such disclosure, except as result of information provided by an officer or employee of the locality
301 in which the property is located, the purchaser may maintain an action to recover his actual
302 damages suffered as the result of such violation. Notwithstanding the provisions of this
303 subdivision, no purchaser of residential real property located in a noise zone designated on the
304 official zoning map of the locality as having a day-night average sound level of less than 65
305 decibels shall have a right to maintain an action for damages pursuant to this section.

306 C. Any action brought under this section shall be commenced within one year of the date
307 the purchaser received the applicable disclosures required by this chapter. If the disclosures
308 required by this chapter were not delivered to the purchaser, an action shall be commenced within
309 one year of the date of settlement, if by sale, or occupancy, if by lease with an option to purchase.

310 Nothing contained ~~herein~~ in this chapter shall prevent a purchaser from pursuing any
311 remedies at law or equity otherwise available against an owner in the event of an owner's
312 intentional or willful misrepresentation of the condition of the subject property.

313 **Drafting note: Technical changes.**

314 § ~~55-525~~ 55.1-xxx. Real Estate Board to develop form; when effective.

315 An owner shall be required to make disclosures required by this chapter for real property
316 subject to a real estate purchase contract ~~which~~ that is fully executed by all parties thereto on and
317 after January 1, 2008. ~~On or before January 1, 2008,~~ The Real Estate Board shall develop and
318 maintain the form for the residential property disclosure statement in accordance with § 54.1-
319 2105.1. The Board may at any time amend the form as the Board deems necessary and
320 appropriate.

321 **Drafting note: The word "maintain" is added because, pursuant to this section, the**
322 **form was developed as of January 1, 2008. A technical change is made.**

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