



UNDERSTANDING YOUR RIGHTS AND RESPONSIBILITIES UNDER THE VIRGINIA RESIDENTIAL DISCLOSURE ACT

The Virginia Residential Disclosure Act (the "Act") (Code of Virginia Sections 55-517 et seq.*) requires real estate licensees to inform their clients about the responsibilities of owners/sellers and purchasers under the Act. Your agent has given you this form to help you understand those rights and responsibilities. Your agent can answer any questions you may still have after you read this form and can provide you with a copy of the Act, if you request it.

The Act applies to the sale, exchange, installment sale, or lease with option to purchase of residential real property improved with one to four dwelling units. The Act does not apply to all transactions, however; you can read the complete list of exemptions in Section 55-518 of the Act. Some of the exemptions include transfers pursuant to certain court orders; transfers by foreclosure or in bankruptcy; transfers between co-owners or spouses; transfers between parents and grandparents and their children or grandchildren; tax sales; and transfers by governmental or housing authorities. Sales of new homes are exempt, with some exceptions as described below.

The Act requires the owner to give the purchaser a form developed by the Virginia Real Estate Board, called the "Residential Property Disclosure Statement" (the "Statement"). The Statement has information that can help the purchaser make a more knowledgeable decision about purchasing a property, and contains both disclaimers and disclosures by the owner.

First, the owner states that the property and all improvements are being sold "as is," thus disclaiming any warranties or representations as to the condition of the property or its improvements. The Statement advises the purchaser to use whatever due diligence the purchaser thinks necessary, including home and other inspections or examinations as specified in the purchase contract, to determine the condition of the property. The purchaser must complete all such inspections prior to settlement.

In addition, the owner makes no representations about any property that may be adjacent to the owner's property. The purchaser has the responsibility to inquire about the status of any adjacent parcels, using whatever due diligence the buyer deems necessary to satisfy any questions about such adjacent land. The purchaser must also conclude all those types of inquiries prior to settlement.

These two initial 'disclaimers' are then followed by a series of declarations about other factors that may affect the property. In each of those declarations, the seller informs the purchaser that the owner either makes no representations as to the individual matters asserted.

The owner makes no warranties or representations concerning the:

- Existence of any historic district ordinances affecting the property;
- Existence of any resource protection areas on the property that might have been created by an ordinance implementing the Chesapeake Bay Preservation Act (Section 10.1 - 2100 et seq.) adopted by the locality where the property is situated, pursuant to Section 10.1 - 2109).

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- Proximity of, or any information concerning, sexual offenders registered under Chapter 23 of Title 19.2 (Section 19.2-387 et seq.);
- Whether the property is within a dam break inundation zone;
- Presence of any stormwater detention facilities located on the property;
- Presence of any wastewater system, including the type or size thereof or associated maintenance responsibilities related thereto, located on the property.

In the next paragraph, the owner positively represents that no pending actions or violations exist under the Statewide Building Code (Section 36-97 et seq.) that affect the safe, decent, and sanitary living conditions of the property of which the owner has been informed in writing, or of any pending violation of local zoning ordinances that have not been terminated or remedied within the time period specified by the locality issuing the violation.

In each case, the purchaser should exercise whatever due diligence the purchaser deems necessary, including reviews of local maps, zoning ordinances, the Virginia sex offender registry (contact the local police department, or visit www.vsp.state.va.us), inspection reports or other sources of information, all in accordance with the contract's terms and conditions.

There are some "Additional Written Disclosure Requirements" which may apply to the sale and purchase of a property, depending on certain factors unique to that property. If applicable to the transaction, the owner has the obligation to inform the purchaser that:

- Section 55-518.B contains disclosures concerning the first sale of a residential property; the builder of the new property has the duty to provide the purchaser with the disclosures required under that section if the property is a new home;
- If the property is located wholly or partially in Planning District 15, the builder or owner of the property must inform the purchaser in writing whether the builder or owner has any knowledge of any mining activities that may have taken place on the property in the past, and the presence of any abandoned mines, shafts or pits. (This provision applies only to properties located in Planning District 15. Properties located in the geographic area served by NVAR are not located in Planning District 15.)
- Section 55-519.1 contains disclosures required when the property is located in any area where there is a military air installation. (This provision applies to certain localities in the Hampton Roads region; it does not include properties located in the geographic area served by NVAR).
- If the seller has been operating the septic system under a waiver, then the buyer must be informed that the waiver will not convey to the new owner (see Section 32.1-164.1:1).
- The seller must always comply with the provisions of the Virginia Condominium Act (Section 55-79.39 et seq.), the Virginia Cooperative Act (Section 55-424 et seq.) and the Virginia Property Owners' Association Act (Section 55-508 et seq.), as applicable, as further described in the contract.

The owner must provide the purchaser with the completed, signed Statement prior to contract acceptance (ratification). The Statement may be included in the contract, in an addendum or in a separate document. If the owner fails to deliver the Statement prior to ratification, the purchaser has the right to terminate the contract at or prior to the earliest of the following:

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- 3 days after delivery if the Statement is delivered in person;
- 5 days after the date of the postmark if the Statement was sent by U.S. mail, postage prepaid and properly addressed to the purchaser;
- at settlement;
- upon occupancy;
- on the purchaser's written application to a lender for a mortgage loan if the application contains a disclosure that the right to terminate the contract ends upon loan application;
- Purchaser signs a written waiver of the right to terminate under this Act, when the waiver is not part of the purchase contract, after the buyer has received a signed copy of the Statement.

Should the purchaser choose to terminate the contract under this Act, the purchaser must give the owner written notice under the same time periods as above. The purchaser can deliver the written termination notice by hand or by U.S. mail, postage prepaid and properly addressed to owner. A purchaser who terminates the contract in compliance with the Act can not be penalized and the purchaser's deposit must be returned promptly.

Unless the owner is grossly negligent, or willfully or negligently misrepresents information in the Statement, he or she is not responsible for any error, inaccuracy or omission in the Statement. The owner can reasonably rely on information from public agencies, from public officials or employees, and from informational reports prepared by licensed engineers, land surveyors, geologists, wood-destroying insect experts, contractors or home inspection experts. Also, if the purchaser, in the course of performing his or her due diligence, receives information directly from a public agency, governmental official or employee, or from the types of experts listed above, and the purchaser informs the person or agency that the purchaser intends to rely on that information pursuant to this Act, then the owner is relieved of any further responsibility related to the information given to the purchaser or for such information found in the Statement.

Finally, if the owner learns of any material changes related to the information provided in the Statement, or if any of the information becomes inaccurate due to something that happens after the Statement is delivered to the purchaser, the owner must give the purchaser the updated information at or prior to settlement. The owner has not violated the Act if such a change occurs. If there are no such changes, at settlement the owner must certify to the purchaser that the Statement remains accurate, and that the property condition remains substantially the same as at the time the owner completed the Statement.

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