

Virginia Residential Property Disclosure Act...No More Disclaimer?

By Jay N. Eskovitz

During Virginia's last legislative session, the seller disclosure/disclaimer law was overhauled.

The disclaimer statement has merely consisted of the seller saying he/she would give no information on the property condition, while the disclosure statement included a list of questions that the seller would answer spelling out past property issues that the seller was aware of. What evolved from this law was a universal acceptance of the disclaimer statement, with only a handful of disclosure statements ever issued.

New legislation, which becomes effective January 1, 2008, provides that there will now be only one form – called a disclosure statement.

The new disclosure statement does not include a list of questions

pertaining to the property condition, but does include six mandated “disclosures.” The mandated “disclosures” are as follows:

- The owner makes no representations as to the condition of the property or any improvements thereon
- The owner makes no representations as to adjacent parcels
- The owner makes no representations as to whether a historic district ordinance affects the property
- The owner makes no representations as to whether the Chesapeake Bay Preservation Act affects the property
- The owner makes no representations as to sexual offenders living in the community, and
- The owner represents there are no pending enforcement actions

pursuant to the Uniform Statewide Building Code, except as disclosed on the disclosure.

The bill continues to exempt certain transactions, e.g. first sale of dwelling, property sold by an estate or bank foreclosure, etc. Also, there is still an option for a purchaser to void the sales contract, if the disclosure statement is provided after contract ratification.

Additionally, there is a mandatory noise and accident potential zone disclosure requirement pertaining to properties located proximate to a military air installation, which happen to be located only in the Virginia Beach/Tidewater region.

The new disclosure statement should be made available to the buyer prior to contract ratification to eliminate a “buyer’s remorse” scenario.