

Real Estate Disclosures for Flooding

Real estate transactions in Hampton Roads are occurring without disclosing whether a property is vulnerable to flooding or has already experienced damage from a flood. In many cases, prospective or recent buyers do not become aware of these issues until they are required to buy flood insurance policies as part of their mortgage agreements. If this occurs during or prior to closing, it may result in a cancelled sale; if it occurs after a transaction has been made, then the new owner is suddenly subjected to additional costs, which can be quite high in some cases. Virginia's residential property disclosure requirements should be amended to require the seller to disclose information about a property's vulnerability to flooding and any history of flood damage.

Disclosure requirements for sellers of residential property are governed by the Virginia Residential Property Disclosure Act (Code of Virginia §§ 55.1-700 through 55.1-714). The Act currently mandates four disclosures for residential properties:

- 1) If a residential dwelling is in a military air installation noise zone or accident potential zone
- 2) Pending enforcement actions or violations of the Uniform Statewide Building Code or local zoning ordinance
- 3) If a residential dwelling was previously used to manufacture methamphetamine and has not been cleaned up in accordance with state law
- 4) The long-term maintenance and inspection requirements of any privately owned stormwater management facilities

The first required disclosure is based on a community's official zoning map, while the other three are based on the seller's "actual knowledge" of the issues in question. All other potential issues with a residential property fall under the Commonwealth's policy of *caveat emptor* – let the buyer beware. Vulnerability to flooding and past flood damage is one of the issues that falls under *caveat emptor*.

Many nondisclosures can be investigated by a prospective owner, including whether a property is located in a flood zone. However, information on previous flood damage or flood claims is typically not available without the seller giving the information to the prospective buyer. Without the owner's consent, due diligence is not sufficient to determine whether a property has flooded in the past or if flood insurance claims have been filed. The property's flood history can have significant financial impacts on new homeowners. For example, if FEMA has designated a property as Severe Repetitive Loss due to a history of flood insurance claims, that will cause a significant increase in flood insurance premiums.

Recommendations:

Virginia's residential property disclosure requirements should be amended to require the seller to disclose information about a property's vulnerability to flooding and any history of flood damage or flood insurance claims. Such information would allow prospective homeowners to make informed decisions about property purchases. Amendments to the Virginia Residential Property Disclosure Act should include:



- 1) Removing § 55.1-703(B)(9) and creating a new section requiring disclosure of whether a property is located in a special flood hazard area modeled after the requirement for military air installation zones
- 2) Including a provision requiring the seller to disclose actual knowledge of flood damage to a residential dwelling
- 3) Including a provision requiring the seller to disclose actual knowledge of prior flood insurance claims, to be provided by the flood insurance provider

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