

USE OF SEPTIC SYSTEM WAIVER DISCLOSURE FORM

IMPORTANT NOTE: THE DISCLOSURE IS NOT REQUIRED FOR EVERY PROPERTY WITH A SEPTIC SYSTEM. IT IS ONLY NECESSARY WHEN A PROPERTY OWNER HAS OBTAINED – OR APPLIED FOR – THIS WAIVER FROM THE BOARD OF HEALTH.

Effective July 1, 2005, some home sellers may have to disclose **important** information about their current septic systems. According to a new law, when the seller has received or applied for a Board of Health waiver from current septic system requirements for the property, **the seller must disclose that a waiver is in effect and that the waiver is null and void upon the sale of the property.**

Beginning July 1, listing agents must ask the sellers about such waiver and if it is present, the seller must provide the prospective buyer with a signed disclosure prior to the acceptance of a real estate purchase contract. If the Purchaser is not provided with the disclosure prior to the acceptance of a purchase contract, the Purchaser may terminate the purchase contract in accordance with the prescribed notice requirement.

FREQUENTLY ASKED QUESTIONS

What is the Board of Health waiver?

Two years ago, the General Assembly passed a law allowing property owners to apply for a septic system waiver in order to “grandfather” in their older systems since many do not meet the current regulatory requirements for the Board of Health. Under the old law, if a septic system needs repair, some local governments were requiring property owners to meet current, newer standards in order to comply with current regulations. This was costly for property owners and often led to a complete replacement of the septic system. The new law allows these owners to obtain a waiver from the Board of Health so that they may repair their system to working conditions, regardless of whether that functionality is in line with more modern standards.

Why is a disclosure required?

The new law specified that the waiver becomes null and void upon the transfer of the property. It did not, however, mandate disclosure of the waiver, which created numerous legal issues for potential purchasers of the property. Because the waiver is no longer valid after the purchase, a buyer could be faced with having to install a brand new septic system – a costly repair. With no disclosure provisions or remedy in the contract, the buyer could purchase the home – all the while unaware of the septic waiver and the associated problems. Even if the buyer learned of the waiver after the contract was signed, they would have to proceed with the sale since they had no recourse under the law.

What does the new disclosure do?

The new disclosure simply applies the current real estate disclosure laws and procedures (with which agents are already familiar) to the presence of a septic system waiver.

What is required of the listing agent?

Listing agents must inquire as to the existence of a septic system waiver and advise effected owners of their rights and obligations under this legislation. They should also ensure that the appropriate disclosure notice is given to prospective purchasers prior to the acceptance of a purchase offer.

What is required of the buyer's agent?

Selling agents must advise their clients of their right and obligations, prior to or at the time of execution of an offer to purchase a property subject to this statute

USE OF SEPTIC SYSTEM WAIVER DISCLOSURE FORM

DISCLOSURE REGARDING ONSITE SEWAGE SYSTEM

Property Address: _____ (the "Property").

Pursuant to Section 32.1-164.1:1 of the Code of Virginia, Owner discloses to Purchaser that the onsite sewage system that serves the Property fails to meet the Board of Health's current regulatory requirements and that Owner has filed or applied for a waiver from the Board of Health for the operation of such system. **PURCHASER IS ADVISED THAT A WAIVER TO THE OPERATING PERMIT FOR THE ONSITE SEWAGE SYSTEM SHALL BE NULL AND VOID AT THE TIME OF TRANSFER OR SALE OF THE PROPERTY TO PURCHASER, AND THAT THE BOARD OF HEALTH'S REGULATORY REQUIREMENTS FOR ADDITIONAL TREATMENT OR PRESSURE DOSING SHALL BE REQUIRED BEFORE AN OPERATING PERMIT FOR THE ONSITE SEWAGE SYSTEM WILL BE REINSTATED.**

If this Disclosure is delivered to the Purchaser after the acceptance of the real estate purchase contract, Purchaser's sole remedy shall be to terminate the real estate purchase contract at or prior to the earliest of the following: (i) three days after delivery of the Disclosure in person; (ii) five days after the postmark if the disclosure is deposited in the United States mail, postage prepaid, and properly addressed to the Purchaser; (iii) settlement upon purchase of the Property; (iv) occupancy of the Property by the Purchaser; (v) the execution by the Purchaser of a written waiver of the Purchaser's right of termination under this chapter contained in a writing separate from the real estate purchase contract; or (vi) the Purchaser making written application to a lender for a mortgage loan where such application contains a disclosure that the right of termination shall end upon the application for the mortgage loan.

In order to terminate a real estate purchase contract when permitted by this Disclosure, the Purchaser shall, within the time period set forth above, give written notice to the Owner either by hand delivery or by United States mail, postage prepaid, and properly addressed to the Owner. If the Purchaser terminates a real estate purchase contract in compliance with this chapter, the termination shall be without penalty to the Purchaser, and any deposit shall be promptly returned to the Purchaser. Any rights of the Purchaser to terminate the contract provided by this chapter shall end if not exercised prior to the earlier of (i) the making of a written application to a lender for a mortgage loan where the application contains a disclosure that the right of termination shall end upon the application for the mortgage loan or (ii) settlement or occupancy by the Purchaser, in the event of a sale, or occupancy, or in the event of a lease with option to purchase.

Owner Date

Owner Date

Purchaser Date

Purchaser Date