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| Slide 1 |  |  |
| Slide 2 |  | **Instructor:** Today we are going to discuss some changes Virginia REALTORS made to its form Purchase Contract regarding septic inspections, why they made those changes, and how to best represent your clients’ needs regarding septic inspections through contract. |
| Slide 3 |  | **Instructor:** It’s important to know first and foremost that nothing in Virginia state law or regulations requires a septic system to be inspected or pumped before a property is sold. A locality may require evidence that a septic tank has been pumped within the last five years. Some lenders may require a septic inspection before approving the loan. But if not required by the lender, any pumping, inspection, or other requirements will be controlled by the sales contract. Before this new law, the Virginia REALTORS® sales contract (Form 600) addressed septic system inspections in two places: paragraph 17 of the Contract and the Home Inspection Contingency Addendum (Form 600D). |
| Slide 4 |  | **Instructor:** Before we dive into the contract changes, let’s take a look at the language of the new law. House Bill 1266 introduced the new language into the Code of Virginia regarding septic inspectors and inspections. The new language regarding real estate transactions is italicized and highlighted here.  [*Click the links to the laws if you want to explore the language further*] |
| Slide 5 |  | **Instructor:** Real estate agents and brokers ran into several issues regarding this new law. The primary concern was a lack of inspectors that met the criteria required by the law. A secondary issue related to that was how form contracts handle septic inspections. Before September 2020, the Virginia REALTORS form Purchase Contract required the seller to provide the buyer with a “certificate” dated not more than 30 days before settlement indicating there was no evidence of malfunction of or needed maintenance to the sewage system. The certificate was to be from the appropriate governmental authority – the Virginia Department of Health or a local health department – or an acceptable private company. However, the paragraph did not go into detail on what must be done to determine whether there was evidence of malfunction or needed maintenance, and as a result many sellers had a simple “walk over inspection” where an inspector from a private company, maybe not even a septic company, looked for surface effluent. Virginia REALTORS began to hear that there were few licensed or accredited professionals who were willing to provide a certificate of any type without first conducting an inspection involving more than a “walkover,” and the cost of these more extensive inspections is significantly higher than buyers and sellers, or their agents, had anticipated. Further, the Home Inspection Contingency addendum requires any inspections, including septic, to be done by someone with the proper credentials and the law change made the required credentials that a septic inspector be licensed very clear. |
| Slide 6 |  | **Instructor:** Virginia REALTORS made some changes to its form offerings to accommodate the concerns resulting from the new law. First, it removed the requirement in the Purchase Contract that the Seller provide the Purchaser with a certificate stating the septic system is in good working order. For those agents and/or clients who want to require this, there is language in the Standard Clause booklet to accommodate this. The Virginia REALTORS Standard Forms subcommittee also decided to remove reference to a “home inspection” throughout the Purchase Contract to make it clear that the inspection contingency is more broad than just an interior home inspection and may include a number of other inspections, such as septic. The Home Inspection Contingency Addendum remains unchanged in this regard but please keep in mind that if your client chooses to get a septic inspection under that contingency, it must be done by a professional. |
| Slide 7 |  | **Instructor:** Here we can see the changes made to Section 17, including changing the heading from “Well and Septic” to just “Well.” The original Section (b) has been removed, which is the section that required a certificate, and references to septic in Section (c). Remember, there is no state law or regulation requiring a septic inspection be done before a property may be transferred. |
| Slide 8 |  | **Instructor:** If you need to add language regarding a septic inspection back into a Purchase Contract, you can find that in the Standard Clause booklet that Virginia REALTORS provides. It is Form SCB 2020 [*check that this form number has not changed as of the date of your presentation*]. You will find the septic language in Section 9 of this booklet. You will note that the language requires the Purchaser to pay for such an inspection – so this shifts the burden of what used to be the Seller providing a certificate, to the Buyer now paying for an inspection. However, it also gives the Buyer a way to terminate the contract if repair or remediation of the septic system is required and the parties cannot come to an agreement on repairs. |
| Slide 9 |  | **Instructor:** Further, the Home Inspection Contingency Addendum remains unchanged in this regard and can be used to pursue a septic inspection. This contingency also puts the burden on the Buyer to pay for the inspection, but also allows the Buyer to terminate the contract if the Buyer finds the results of their inspection(s) unsatisfactory. |
| Slide 10 |  |  |
| Slide 11 |  | **Instructor:** (1)Virginia REALTORS has a page on their website dedicated to this issue, which includes a few blog post articles and a podcast.  (2) When concerns about having enough inspectors were raised with the Virginia Department of Health, VDH staff shared this website. If you scroll down on the page, there is a link to a map where you can select the type of license that you are looking for, and it will display providers. On that map, you would need to select “Installer”, “OSE”, and “Operator.” VHD acknowledged that this is not a complete list of licensees, but it is one resource available.  (3) Additionally, you can search for the license types in DPOR’s license lookup using the “Advanced License Search” feature under the “Board for WWWOOSSP” (Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals). But this system isn’t great if you don’t know what you’re looking for or put in the right locality, and you may not get many results.  Finally, if an individual is “accredited” by the National Sanitation Foundation (NSF) or an equivalent national accrediting organization, for which accreditation includes the passage of both a written and practical exam, they are able to perform septic inspections. At this time there is no one location to search for accredited septic inspectors. This means you should ask the individual that your clients are working with whether they have been accredited by the NSF or equivalent national accrediting organization. |