

Prepared by James Knapp, Co-chair of the Vt Bar Association - Real Estate Section

Date: February 3, 2024

**My Background:** 25 years in private practice as an attorney concentrating in all areas of property law; approx. 2 years as the Interim Director of Property Valuation and Review; 10 years in the title insurance industry, 35 years involved with the Vt. Bar Association Title Standards project; adjunct faculty (instructor) Champlain College Paralegal Program.

Overview. Generally providing people with more information about significant purchases, like housing, is beneficial. There is a potential challenge regarding how homeowners will comply with the disclosure requirements because the information to be disclosed is not always readily available.

### **Specific Comments.**

#### Access to Flood Hazard Information

In order to comply with the requirement of this statute, property owners must be able to access information on flood hazard zones, flood rates, and the like. Having spent the better part of 40 years dealing with land titles, municipal records, and access to information related to land, the task is not always a simple one. A person can visit the municipal office, but the clerk or deputy clerk, or zoning officials, or listers (depending on who is available and who has custody of the FEMA maps) may not be able to identify the correct maps or locate the property on the maps to facilitate disclosure. That means a seller may not be able to access information to make an appropriate disclosure.

There are online resources that provide similar information:

- at the FEMA site (however on the day that I checked the status of my house, FEMA disclosed that they were having technical difficulties overlaying flood hazard zones on the parcel maps they were using making the exercise ineffective)
- At the Vermont Agency of Natural Resources Atlas (overall a great tool to locate information about a lot of natural resource matters) but to utilize the Atlas to find flood information, one has to know how to navigate map layers, submenus to find the appropriate layers, resulting in a somewhat challenging exercise to find the information to disclose. In addition, the ANR Atlas only provides information related to FEMA maps that have been digitized. There is no indication whether all the FEMA maps for Vermont have been digitized

Comments on the specific language of the bill follows on the next page.

Comments on Language of the Bill

Page and Line	Comment	Notes
Page 2, Line 11	Making a representation regarding “whether the property was ever flooded” is problematic. Most house owners will only know if the property flooded <b>during the time they owned it</b> . Asking someone to make a more broad representation without adequate information is unfair.	Perhaps strike the word “ever” and add after “flooding” -> “during the time the seller owned the property”.
Page 2, Line13	The remedy of allowing the buyer to cancel the contract if the information isn’t provided is reasonable, but the provision should also make clear that any funds the buyer paid to the seller on account of the contract (deposits and the like) would be returned in full.	“All consideration paid or deposits paid on account of the contract shall be promptly returned to Buyer upon the cancellation of the contract pursuant to this provision”
Page 2, Line 18	<p>Subsection (c) should clarify that the damages for which a buyer may recover must relate directly to the consequences of not having been advised of the flood hazard status of the property.</p> <p>The inclusion of attorney’s fees poses an interesting conundrum. What is the intended consequence if the buyer brings an action under this section, and the court determines that the seller has no liability? Can the buyer still collect their attorney’s fees for the unsuccessful litigation?</p>	

<p>Page 3, Line 8</p>	<p>Including confirmation that the failure to comply with the requirements of the statute does not create a defect in title is definitely a sound policy. However, the better choice of language is to use the provisions of 27 VSA Sec. 612 which clarifies that the failure to comply does constitute a defect in title or adversely affect the marketability of the title to the property.</p>	<p>From 27 VSA 612 “no encumbrance on record title to real estate or &lt;&lt;adverse&gt;&gt; effect on marketability shall be created by the failure to obtain or comply”</p>
-----------------------	---	---