DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Report to the

Senate Committee on General Laws and Technology

Study of Prohibition against Limiting Liability of Home Inspectors in Home Inspection Services Contracts pursuant to Senate Bill 627 (2018)

September 14, 2018

Department of Professional and Occupational Regulation
9960 Mayland Drive, Suite 400
Richmond, Virginia 23233
(804) 367-8500
http://www.dpor.virginia.gov

COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

September 14, 2018

Brian Ball
Secretary of
Commerce and Trade

The Honorable Frank M. Ruff, Jr.
Chair, Senate Committee on General Laws and Technology
P.O. Box 332
Clarksville, VA 23927

Senator Scott A. Surovell
P.O. Box 289
Mount Vernon, VA 22121

Dear Senators Ruff and Surovell:

The Department of Professional and Occupational Regulation (Department) respectfully submits the following report pursuant to a letter dated April 4, 2018, wherein the Senate Committee on General Laws and Technology referred the subject matter contained in Senate Bill 627 to the Department for study. Senate Bill 627, as introduced during the 2018 Session of the General Assembly, proposed to limit contract provisions for licensed home inspectors conducting business in Virginia. Specifically, the bill prohibited licensees from including contract provisions limiting liability for damages arising from the acts of an individual or business providing home inspection services.

The Department studied the issue in conjunction with the Board for Asbestos, Lead, and Home Inspectors, and with assistance from a committee comprised of licensed home inspectors. This report outlines the Department's findings and recommendation. Please let me know if I can answer any questions.

Very truly yours,

Jay W. DeBoer, J.D.
Director

cc: The Honorable Susan Clarke Schaar, Clerk, Senate of Virginia
Mark Vucci, Director, Division of Legislative Services

PREFACE

Senate Bill 627, as introduced during the 2018 Session of the General Assembly, proposed to limit contract provisions for licensed home inspectors conducting business in Virginia. Specifically, the bill prohibited licensees from including contract provisions limiting liability for damages arising from the acts of an individual or business providing home inspection services.

The Senate Committee on General Laws and Technology referred the subject matter of SB 627 to the Department of Professional and Occupational Regulation ("DPOR") for study, pursuant to Rule 20 (o) of the Rules of the Senate of Virginia.

DPOR studied the issue in conjunction with the Board for Asbestos, Lead and Home Inspectors ("Board"), and with assistance from a committee comprised of licensed home inspectors.

Study Committee Membership

Douglas Burgess
Charles Chisholm
John Cranor*
Barry Robinson
David Rushton,* Chair
Jim Vaughn

**Board for Asbestos, Lead and Home Inspectors member*

Staff Acknowledgements

Jay W. DeBoer, J.D., Director
Department of Professional and Occupational Regulation

Trisha L. Henshaw, Executive Director
Board for Asbestos, Lead and Home Inspectors

Paul G. Saunders, III, Board Administrator
Board for Asbestos, Lead and Home Inspectors

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EXECUTIVE SUMMARY

The Senate Committee on General Laws and Technology referred the subject matter contained in Senate Bill 627 to the Department of Professional and Occupational Regulation ("DPOR") for study. The legislation, as introduced during the 2018 Session of the General Assembly, proposed to limit contract provisions for licensed home inspectors conducting business in Virginia.

The expertise of DPOR and its regulatory boards does not extend to broader legal issues involving contract law. Public policy concerns about consumer protection in the context of professional regulation are generally addressed through bonding, escrow, insurance, trust or recovery funds rather than limitations on liability.

DPOR evaluated the issue in conjunction with the Board for Asbestos, Lead and Home Inspectors ("Board"), and with assistance from a committee comprised of licensed home inspectors. Based on research and comment obtained during the study, the public appears to be adequately protected with the existing regulatory framework of licensure, disclosure and minimum contract provisions, disciplinary complaint mechanisms, and private civil remedy.

The Board concluded that issue of enforceability of liability limitations is best left to the courts, having found no evidence or justification, either anecdotally or through complaints filed, demonstrating such a prohibition on home inspectors is necessary. DPOR concurs and recommends against a statutory amendment to prohibit licensed home inspectors from limiting liability as proposed in SB 627.

INTRODUCTION

Background

Effective July 1, 2017, as a result of legislation enacted during the 2016 Session of the General Assembly, regulation of home inspectors in Virginia transitioned from voluntary certification to mandatory licensure. The Board for Asbestos, Lead and Home Inspectors ("Board") at DPOR remained responsible for administration of the regulatory program, including development of the licensing regulations.

Pursuant to Board regulations, home inspectors must obtain and maintain a general liability insurance policy with minimum limits of $250,000 per occurrence. In addition, in order to promote public protection, the Board's regulations require the home inspector to execute a written contract with the following terms, minimum provisions, and disclosures:

18VAC15-40-120. Home Inspection Contract.

A. For the protection of both the client and the licensee, both parties shall sign a legible, written contract clearly specifying the terms, conditions, and limitations and exclusions of the work to be performed.

B. At a minimum, the written contract shall include:

1. Name, business name (if applicable), business address, and telephone number of the home inspector.

2. License number of the home inspector, and notation of NRS specialty, if applicable.

3. Name of the clients.

4. Physical address of the residential property to be inspected.
5. Cost of the home inspection.

6. A listing of all areas and systems to be inspected, including those inspections that are either partial or limited in scope.

7. A statement in the contract that the home inspection does not include a review for compliance with regulatory requirements (Virginia Uniform Statewide Building Code or other codes, regulations, laws, ordinances, etc.).

8. To the extent that any of the following categories are not covered by the home inspection, they shall be noted as exclusions in the inspection contract:

a. The condition of systems or components that are not readily accessible.

b. The remaining life of any system or component.

c. The strength, adequacy, effectiveness, or efficiency of any system or component.

d. The causes of any condition or deficiency.

e. The methods, materials, or costs of corrections.

f. Future conditions including failure of systems and components.

g. The suitability of the property for any specialized use.

h. The market value of the property or its marketability.

i. The advisability of the purchase of the property.

j. The presence of diseases harmful to humans or potentially hazardous plants or animals including wood destroying organisms and mold.

k. The presence of any environmental hazards including toxins, carcinogens, noise, asbestos, lead-based paint, mold, radon, and contaminates in soil, water, and air.

l. The effectiveness of any system installed or methods utilized to control or remove suspected hazardous substances.

m. The operating costs of systems or components.

n. The acoustical properties of any system or component.

o. The presence of components involved in manufacturer's recalls.

p. The inspection of outbuildings.

To the extent any other items are not specifically included in the home inspection by agreement of the parties, they shall also be noted as exclusions in the home inspection contract.

9. Estimated delivery date to the client of the home inspection report.

10. Dated signatures of both the home inspector and the client or the client's authorized representative.

C. The home inspection contract shall make written disclosure that the home inspection report is based upon visual observation of existing conditions of the inspected property at the time of the inspection and is not intended to be, or to be construed as, a guarantee, warranty, or any form of insurance. This provision does not prevent a home inspector from offering a separate guarantee, warranty, or any form of insurance if he so chooses.

D. If the home inspector recommends a person to the client for repairs or modifications to the inspected property, the home inspector shall disclose to the client all financial interests that the home inspector has with the recommended person. The disclosure shall be written within the home inspection contract.

Licensed home inspectors found in violation of the Board's regulations are subject to disciplinary action pursuant to § 54.1-202 of the *Code of Virginia.* Private civil remedies also remain available to parties in the event of a contract dispute.

During the 2018 Session of the General Assembly, Senator Scott Surovell sponsored legislation to prohibit a home inspector from limiting his contractual liabilities related to home inspection

services to the cost of the home inspection or some other fixed amount. Senate Bill 627 proposed the following:

> **§54.1-517.2:2. Certain contract provisions prohibited.**
> No contract for home inspection services shall contain any provision limiting the liability of any home inspector for damages arising from his acts or limiting any business that provides home inspection services from liability for the acts of its employees or agents.

The Senate Committee on General Laws and Technology referred the subject matter contained in Senate Bill 627 to DPOR for study.

Study Methodology

On May 17, 2018, at the first meeting of the Board following receipt of the referral letter from Susan Clarke Schaar, Clerk of the Senate, DPOR staff requested and received Board authorization to form a committee of home inspectors to assist with the SB 627 study.

DPOR and the Board sought public comment by posting a General Notice on the Virginia Regulatory Town Hall on June 12, 2018; accepting written comments for two weeks; and conducting a public hearing on June 28, 2018.

In addition, staff researched applicable laws and regulations for other DPOR programs and in other jurisdictions; analyzed statistical data; gathered information on case law and current legal issues; and compiled public comments received.

RESEARCH

Other DPOR-regulated contract provisions

Across its 18 regulatory boards and programs assigned by the General Assembly, DPOR licenses, certifies, or registers more than 300,000 individuals and businesses. Among those various professions and occupations, only four regulations (other than home inspectors) reference specific provisions for contracts involving licensees:

- Regulations of the Virginia Auctioneers Board (18VAC25-21-110);
- Cemetery Board Rules and Regulations (18VAC47-20-230);
- Common Interest Community Manager Regulations (18VAC48-50-190); and
- Board for Contractors Regulations (18VAC50-22-260).

The sections include requirements for a written contract and minimum terms, but none deal with liability provisions. Rather, public protection concerns are addressed by way of bonding, escrow, insurance, and recovery or trust funds.

Comparative state assessment

Based on DPOR staff review of requirements in other jurisdictions, the following six states have implemented limitations of liability affecting home inspectors.

State	Statute/Regulation	Citation
Alaska	Contractual provisions limiting the liability of a home inspector to the cost of the home inspection report are contrary to public policy and void.	Alaska Stat. Ann. § 08-18-085(d)
California	Contractual provisions limiting the liability of the home inspector to the cost of the home inspection report are contrary to public policy and invalid.	Added by Stats. 1996, Ch. 338, Sec. 2. Effective January 1, 1997
Kentucky	In a claim to recover damages resulting from a deficient home inspection or home inspection report, a home inspector is liable for his acts or omissions or the acts or omissions of his agents or employees.	Kentucky Revised Statutes §411.274
Massachusetts	Prohibits home inspectors from "attempting to limit liability for negligent or wrongful errors or omissions by use of a clause within a performance contract that limits the cost of damages for negligent or wrongful errors or omission."	Part I, Title XVI, Ch. 112, Sect. 225 of Massachusetts General Law
Wisconsin	No home inspector may include, as a term or condition in an agreement to conduct a home inspection, any provision that disclaims the liability, or limits the amount of damages for liability, of the home inspector for his failure to comply with standards of practice.	Wisconsin Statute 440-976

Legal opinions

According to a state-by-state guide compiled by The Hanover Insurance Group, a provider of commercial insurance products to small and mid-sized businesses, few states expressly prohibit the enforceability of limited liability clauses in home inspection contracts. The guide summarizes case law related to liability limitations, specific to home inspection contracts when applicable.

The entry for Virginia suggests the Commonwealth's case law on the topic is unsettled, and cites the following opinions:

- *Ash v. All Star Lawn and Pest Control, Inc.* 256 Va. 520 (Va., 1998): disclaimer does not automatically remove liability, but where inspector uses clear disclaimers and disclosure of his failure to inspect specific areas of the structure, the inspector will be insulated from liability;
- *Howie v. Atl. Home Inspection, Inc.*, 62 Va. Cir. 164 (Va. Cir. Ct., 2003): applies Ash to hold that liability was effectively disclaimed;
- *Williams v. Neff*, 43 Va. Cir. 464, 466 (Va. Cir. Ct. 1997): limited liability clause considered liquidated damages clause and enforced;
- *Baird v. Dodson Bros. Exterminating Co., Inc.*, 217 Va. 745 (Va., 1977): broad, generalized disclaimer does not automatically insulate from liability;

- *Kocinec v. Public Storage, Inc.,* 489 F. Supp. 2d 555 (Norfolk 2007): Eastern District Virginia federal court agreed with *Howie* reasoning, stating "contractual provision specifically limiting a party's liability" embodies "one of the essential purposes of contract law – the freedom of parties to limit their risks in commercial transactions."

The committee also reviewed a comprehensive analysis written on behalf of the International Association of Certified Home Inspectors ("InterNACHI") covering different perspectives on liability limitation interpretations, the public policy exception standard, and other legal issues.

Public comment

DPOR accepted public comment from June 12, 2018, to June 25, 2018. Of the 83 written comments received via regular and electronic mail, as well as the Virginia Regulatory Town Hall, one expressed support for SB 627. At the June 25, 2018, public hearing, all 25 commenters spoke in opposition to SB 627.

All comments are provided in Appendix F.

The predominant themes expressed in the public comments are summarized as follows:

1. A home inspection is a written evaluation of readily accessible components at the time of the inspection. Absent any contractual provisions limiting liability, a home inspector could be unfairly burdened with a costly lawsuit for a system failure at a future time. (Examples included risk of a component naturally breaking in the time between inspection and closing, or inspecting a vacant property with utilities turned off.) Commenters expressed concern about the uncertainty and resources required to respond to "frivolous" lawsuits, and resulting harm to homebuyers due to increased costs of home inspections.

2. Increased insurance costs or loss of mandatory insurance coverage. Board regulations require licensed home inspectors to obtain and maintain general liability insurance with minimum limits of $250,000 per occurrence. Commenters indicated their insurance providers were less likely to endorse a policy for home inspectors without limitations on liability, and would increase premiums for such policies tremendously in the event they did continue coverage. Consensus expressed in public comment is that with increased cost for insurance, home inspectors will be forced to charge more for home inspections, and some may choose to exit the business altogether.

3. Unintended consequences negatively affecting lower income or first-time homebuyers. Commenters indicated a prohibition on limiting liability would likely result in home inspectors avoiding "riskier" inspections, such as older homes, properties more likely to contain certain building materials such as lead-based paint or asbestos tiles, etc. Coupled with the increased cost of insurance and possible reduction in the number of licensed home inspectors, commenters suggested consumers most in need of an inspection report may be unable to engage the services of a home inspector.

Consider the following statistics applicable to purchasers age 36 and younger, according to the National Association of REALTORS® *Home Buyer and Seller Generational Trends Report 2017:*

- 66% were first-time homebuyers
- 89% bought previously-owned properties
- 27% of the homes were built 1960 or earlier
- Median price was $205,000
- Median home was built in 1984

4. Current laws appear adequate for protecting the public's health, safety, and welfare. Many commenters questioned the need for SB 627, pointing out that a limitation of liability clause in a home inspection contract currently can be overturned if a court finds the home inspector negligent. Some comments also suggested that the bill resulted from a termite inspection, which would not be covered by a home inspection contract, thus making the liability limitation prohibition moot.

Committee discussion

On June 28, 2018, upon adjournment of the public hearing, the Committee met to review the information gathered and discuss the issues surrounding SB 627. Committee members considered the research findings and public comments, offered their own expertise and perspective as licensed home inspectors, and also devoted attention to the following topics:

- Demographics of consumers who would be most harmed by rising costs of home inspections;
- Whether the home inspector licensing requirements have been in effect long enough to evaluate if further regulation is warranted;
- Regulations governing termite inspectors, as well as termite inspections when performed by home inspectors;
- The Board's complaint process and the number of complaints received against home inspectors[1] in relation to the number of inspections performed and homes sold;
- The availability of the DPOR complaint process in the event a home inspector is alleged to be in violation of the regulations; and
- The civil process for contract dispute issues, including instances that may supersede any liability limitations in a contract, such as gross negligence, malfeasance, or incompetence.

The Committee concluded the issue of enforceability of liability limitations is best left to the courts, having found no evidence or justification, either anecdotally or through complaints filed, demonstrating such a prohibition on home inspectors is necessary.

[1] Between July 1, 2017, and June 30, 2018, 24 complaints were filed with DPOR against home inspectors. Of those, 22 were closed by staff (compliance obtained, no jurisdiction, insufficient evidence, etc.), one is open, and one resulted in disciplinary action.

RECOMMENDATION

At its August 16, 2018, meeting, the Board voted to endorse the Committee's conclusion as presented in this report. DPOR concurs and recommends against a statutory amendment to prohibit licensed home inspectors from limiting liability as proposed in SB 627.

Based on research and public comment obtained during the study, the public appears to be adequately protected with the existing regulatory framework of licensure, disclosure and minimum contract provisions, disciplinary complaint mechanisms, and private civil remedy.

REFERENCES

Cohen, M., Gromicko, N. (n.d.). *The Enforceability of InterNACHI's Limitation of Liability and Related Provisions in Its Pre-Inspection Agreement*. Retrieved from https://www.nachi.org/limitation-agreement.htm.

National Association of REALTORS® Home Buyer and Seller Generational Trends Report 2017 (n.d.). Retrieved from https://www.nar.realtor/sites/default/files/reports/2017/2017-home-buyer-and-seller-generational-trends-03-07-2017.pdf.

The Hanover Insurance Group (n.d.). *2018 State by State Guide: Enforceability of Limited Liability Clauses in Home Inspector Pre-Inspection Contracts*. Retrieved from http://huielaw.com/wp-content/uploads/2018/04/Home.Inspector.Limitation.of_.Liability.State_.Chart_.LC-2018-145.pdf.

APPENDICES

Appendix A

Senate Bill 627 (2018)

INTRODUCED

18103570D

SENATE BILL NO. 627

Offered January 10, 2018

Prefiled January 10, 2018

A BILL to amend the Code of Virginia by adding in Article 2 of Chapter 5 of Title 54.1 a section numbered 54.1-517.2:2, relating to the Department of Professional and Occupational Regulation; home inspectors; certain contract provisions prohibited.

Patron—Surovell

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 2 of Chapter 5 of Title54.1 a section numbered 54.1-517.2:2 as follows:

§ 54.1-517.2:2. Certain contract provisions prohibited.

No contract for home inspection services shall contain any provision limiting the liability of any home inspector for damages arising from his acts or limiting any business that provides home inspection services from liability for the acts of its employees or agents.

INTRODUCED

SB627

2/8/18 11:19

Appendix B

Study Referral Letter

COMMONWEALTH OF VIRGINIA

SUSAN CLARKE SCHAAR
CLERK OF THE SENATE
P.O. BOX 396
RICHMOND, VIRGINIA 23218

SENATE

April 4, 2018

Jay W. DeBoer
Director, Department of Professional and Occupational Regulation
9960 Mayland Drive, Suite 400
Richmond, VA 23233

Dear Mr. DeBoer:

This is to inform you that, pursuant to Rule 20 (o) of the Rules of the Senate of Virginia, the Senate Committee on General Laws and Technology has referred the subject matter contained in Senate Bill 627 to the Department of Professional and Occupational Regulation for study. It is requested that the appropriate committee chair and bill patron receive a written report, with a copy to this office, by November 1, 2018.

With kind regards, I am

Sincerely yours,

Susan Clarke Schaar

SCS:lag

cc: Sen. Frank M. Ruff, Jr., Chair, Senate Committee on General Laws and Technology
Sen. Scott A. Surovell, Patron of SB 627
Mark Vucci, Director, Division of Legislative Services

Appendix C

June 28, 2018, Committee Meeting Minutes

VIRGINIA BOARD FOR
ASBESTOS, LEAD, AND HOME INSPECTORS
SB627 HOME INSPECTOR COMMITTEE MEETING MINUTES

The SB627 Home Inspector Committee of the Virginia Board for Asbestos, Lead, and Home Inspectors (Board) met on June 28, 2018, at the offices of the Department of Professional and Occupational Regulation (DPOR), Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room 1, Richmond, Virginia 23233.

The following members of the Committee were present:

Douglas (Scooter) Burgess
Charles Chisholm
John Cranor
Barry Robinson
David Rushton, Chair
Jim Vaughn

The following staff members were present for part or all of the meeting:

Trisha L. Henshaw, Executive Director
Paul G. Saunders, III, Board Administrator
Tanya M. Pettus, Administrative Assistant

Mr. Rushton called the meeting to order at 11:04 a.m. **Call to Order**

Mr. Rushton led the introduction of Committee members and staff. **Introduction of the Committee**

Ms. Henshaw advised the Board of the emergency evacuation procedures. **Emergency Evacuation Procedures**

Mr. Cranor moved to approve the agenda as presented. Mr. Vaughn seconded the motion which was unanimously approved by: Burgess, Chisholm, Cranor, Robinson, Rushton, and Vaughn. **Approval of Agenda**

Ms. Henshaw opened the floor for public comment. Gregory Patti of All Pro Services was present to address the Committee. Mr. Patti stated that home inspectors contend with limited access to areas of a home at the time of inspection and "willful concealment" of flaws by homeowners and sellers. Mr. Patti feels that if there is no limit to a home inspector's liability during a home inspection, then the home inspector's access to the home should not be limited during a home inspection. **Public Comment Period**

Lori Scaparo addressed the Committee as the spouse of a home

inspector and as someone who comes from a professional background which also requires licensing and continuing education. Ms. Scaparo commended the Commonwealth and DPOR for developing a mandatory licensure program for home inspectors as it has improved the industry. Ms. Scaparo also stated she appreciates the hard work of home inspectors and hopes all of those who attended the Home Inspector SB627 Public Hearing will be represented, not just those who made public comments. Ms. Scaparo expressed disappointment that there was little participation from other industries at the public hearing such as real estate professionals and builders.

Mark Londner, Architect and Licensed Home Inspector, addressed the Committee and stated he believes implementing SB 627 will result in frivolous lawsuits brought against home inspectors. Mr. Londner also stated he does not feel it is necessary to examine a home warranty requirement or the timeframe in which a home inspector's pre-inspection agreement is made available to a client.

Alex Aderton of Merit Home Inspectors addressed the Committee and suggested that the Board develop resources to track statistics on matters that affect the home inspector industry. Mr. Aderton provided the following as examples: number of homes sold verses number of home inspections performed, and number of complaints received against home inspectors.

Review Purpose of Committee and Overview of Legislative Study Guidelines

Mr. Rushton provided an overview of the responsibilities before the Committee. The Board formed the Committee to study Senate Bill 627 at the request of the bill's patron, and form a recommendation as to the feasibility of the implementation of SB 627.

Ms. Henshaw provided an overview of legislative guidelines, and advised the Committee's recommendation and draft study report will be presented to the Board for review at its August 16, 2018, Board meeting. After Board review, the final report in response to the study will be forwarded to the Senate Committee on General Laws and Technology and the bill's patron.

Consider Recommendation on SB 627

The Committee discussed general provisions related to limitations on contract liability, protections, and the potential adverse impacts on insurance rates and cost to consumers.

The Committee reviewed and discussed other states' regulations governing contract liability, as well as other DPOR licensing Boards' regulatory provisions regarding contracts.
The Committee reviewed public comments received on SB627 from

June 12, 2018 to June 25, 2018. Ms. Henshaw provided statistics on public comments received. Of 83 written comments received through June 25, 2018, one commenter was in favor of implementing SB627. One commenter stated he opposed SB627 as written, but suggested amendments to the bill that he would support. All other commenters were opposed to the implementation of SB627. Of the 25 commenters who spoke at the Home Inspector SB627 Public Hearing, none spoke in support of the bill.

Discussion was held on several topics including:

- Regulations governing termite inspectors and termite inspections performed by home inspectors;
- whether the home inspector licensing requirement has been in effect long enough to determine if further regulation is required;
- the Board's complaint process and the number of complaints against home inspectors in relation to the number of homes sold and inspections performed;
- demographics of consumers who would be most harmed by rising costs of home inspections;
- the availability of the DPOR complaint process in the event a home inspector is alleged to be in violation of the regulations; and
- the civil process for contract issues, including instances that may supersede any liability limitations in a contract, such as gross negligence, malfeasance, or incompetence.

Ms. Henshaw advised the Committee of House Bill 883, which establishes a regulatory reform pilot program to reduce regulatory requirements by 25% over the next three years. The pilot program will focus, in part, on DPOR, and is a reflection of the legislature's goal of reducing and streamlining regulatory requirements that impact regulated businesses and individuals.

Committee Recommendation

After discussion, Mr. Cranor moved to recommend to the Board that it encourage the legislature to not pursue any amendment to the law that would prohibit a home inspector from limiting liability as proposed in Senate Bill 627 (2018) as the enforceability of limits of liability are best left to the courts; no other DPOR profession or occupation is prohibited from limiting liability; and no evidence or justification, either anecdotally or through complaints filed, has been provided demonstrating that such prohibition on licensed home inspectors is necessary. Mr. Robinson seconded the motion which was unanimously approved by: Burgess, Chisholm, Cranor, Robinson, Rushton, and

Vaughn.

There being no further business, the meeting was adjourned at 12:29 p.m. **Adjourn**

Peter D. Palmer, Chair

Jay W. DeBoer, Secretary

Appendix D

August 16, 2018, Draft Board Meeting Minutes

VIRGINIA BOARD FOR
ASBESTOS, LEAD, AND HOME INSPECTORS
MEETING MINUTES

The Virginia Board for Asbestos, Lead, and Home Inspectors met on August 16, 2018, at the offices of the Department of Professional and Occupational Regulation (DPOR), Perimeter Center, 9960 Mayland Drive, 2nd Floor, Board Room 4, Richmond, Virginia 23233.

The following members of the Board were present:

Sandra Baynes	James E. Haltigan
John E. Cranor	Gene E. Magruder, Vice-Chair
Joe T. France	Peter D. Palmer, Chair
Erich Fritz	David P. Rushton

Board members Chadwick Bowman, Rick Holtz, and Walter C. Nixon were not present at the meeting.

The following staff members were present for all or part of the meeting:

Jay W. DeBoer, Director
Trisha L. Henshaw, Executive Director
Paul G. Saunders, III, Board Administrator
Tanya M. Pettus, Administrative Assistant

Elizabeth Peay from the Office of the Attorney General was present.

Call to Order

Mr. Palmer, finding a quorum of the Board present, called the meeting to order at 9:01 a.m.

Emergency Evacuation Procedures

Ms. Henshaw advised the Board of the emergency evacuation procedures.

Approval of Agenda

Mr. Magruder moved to approve the agenda as presented. Mr. Fritz seconded the motion which was unanimously approved by: Cranor, France, Fritz, Haltigan, Magruder, Palmer, and Rushton.

Approval of Minutes

Mr. Fritz moved to approve the minutes of the May 17, 2018, Board meeting as presented. Mr. Magruder seconded the motion which was unanimously approved by: Cranor, France, Fritz, Haltigan, Magruder, Palmer, and Rushton.

Mr. Fritz moved to approve the minutes of the June 28, 2018, SB 627 Home Inspector Committee meeting as presented. Mr. Rushton seconded the motion which was unanimously approved by: Cranor, France, Fritz, Haltigan, Magruder, Palmer, and Rushton.

Arrival of Board Member

Ms. Baynes arrived at 9:02 a.m.

Public Comment Period

There were no members of the public present to address the Board on matters other than the case files to be presented.

Recusal of Board Member

Mr. Rushton recused himself from the meeting for discussion and deliberations on File Numbers 2018-02449 and 2018-02450.

File Number 2018-02449, Paul Garth Hinz

In the matter of **File Number 2018-02449, Paul Garth Hinz**, the Board members reviewed the record which consisted of the application file, transcript and exhibits from the Informal Fact-Finding Conference, and the Presiding Officer's Summary and Recommendation.

Mr. Hinz was present to address the Board and stated that he did not intentionally provide incorrect information regarding disciplinary actions on his application. Mr. Hinz stated that he had difficulty verifying approved course credits online and that he participated in various message boards to obtain information. Mr. Hinz stated that he has been in the industry for 20 years and has acquired various education and equipment.

Mr. Haltigan moved to accept the recommendation of the Presiding Officer and deny Mr. Hinz's application for a home inspector license. Mr. Magruder seconded the motion. After discussion, the motion was unanimously approved by: Baynes, Cranor, France, Fritz, Haltigan, Magruder, and Palmer.

File Number 2018-02450, David Flake Boone, Jr.

In the matter of **File Number 2018-02450, David Flake Boone, Jr.**, the Board members reviewed the record which consisted of the application file, transcript and exhibits from the Informal Fact-Finding Conference, and the Presiding Officer's Summary and Recommendation.

Mr. Boone was present to address the Board. Mr. Boone referenced sections of the United States Constitution and Code of Virginia pertaining to the safety and welfare of the general public. Mr. Boone stated he has been a licensed home inspector in West Virginia since May 2018, and holds a license in Virginia from the Contractors Board. Mr. Boone asked the Board to consider accepting his experience as a building inspector in Tazewell County, and the home inspections he has completed in West Virginia in order for him to meet home inspector licensing requirements.

Mr. Magruder moved to accept the recommendation of the Presiding Officer and deny Mr. Boone's application for a home inspector license. Mr. Haltigan seconded the motion. After lengthy discussion, the motion was unanimously approved by: Baynes, Cranor, France, Fritz, Haltigan, Magruder, and Palmer.

Mr. Rushton returned to the meeting. **Return of Board Member**

Mr. Palmer recused himself from the meeting for discussion and deliberations on File Numbers 2018-02982, 2018-02983, and 2018-02550. Mr. Magruder, Vice-Chair, assumed the chair of the Board. **Recusal of Board Member**

In the matter of **File Number 2018-02982, Stephen Phillip Nicholson**, the Board members reviewed the record which consisted of the application file, transcript and exhibits from the Informal Fact-Finding Conference, and the Presiding Officer's Summary and Recommendation. **File Number 2018-02982, Stephen Phillip Nicholson**

Mr. Nicholson was present to answer questions but did not address the Board.

Mr. Cranor moved to accept the recommendation of the Presiding Officer and deny Mr. Nicholson's application for an asbestos project monitor license. Mr. Fritz seconded the motion which was unanimously approved by: Baynes, Cranor, France, Fritz, Haltigan, Magruder, and Rushton.

In the matter of **File Number 2018-02983, Stephen Phillip Nicholson**, the Board members reviewed the record which consisted of the application file, transcript and exhibits from the Informal Fact-Finding Conference, and the Presiding Officer's Summary and Recommendation. **File Number 2018-02982, Stephen Phillip Nicholson**

Mr. Nicholson was present to answer questions but did not address the Board.

Mr. Cranor moved to accept the recommendation of the Presiding Officer and approve Mr. Nicholson's application for an asbestos supervisor license. Mr. Fritz seconded the motion which was unanimously approved by: Baynes, Cranor, France, Fritz, Haltigan, Magruder, and Rushton.

In the matter of **File Number 2018-02550, Timothy Neil Smith, Jr.**, the Board members reviewed the record which consisted of the **File Number 2018-02550, Timothy Neil**

application file, transcript and exhibits from the Informal Fact-Finding Conference, and the Presiding Officer's Summary and Recommendation. Mr. Fritz moved to accept the recommendation of the Presiding Officer and deny Mr. Smith's application for an asbestos project monitor license with a request for waiver. Mr. Haltigan seconded the motion which was unanimously approved by: Baynes, Cranor, France, Fritz, Haltigan, Magruder, and Rushton.

Smith, Jr.

Mr. Palmer returned to the meeting and resumed chair of the Board.

Return of Board Member

In the matter of **File Number 2018-02832, Coralia Estela Rodriguez**, the Board members reviewed the record which consisted of the application file, transcript and exhibits from the Informal Fact-Finding Conference, and the Presiding Officer's Summary and Recommendation. Mr. Magruder moved to accept the recommendation of the Presiding Officer and deny Ms. Rodriguez's application for an asbestos worker license. Mr. Haltigan seconded the motion which was unanimously approved by: Baynes, Cranor, France, Fritz, Haltigan, Magruder, Palmer, and Rushton.

File Number 2018-02832, Coralia Estela Rodriguez

Ms. Henshaw provided an update on the current status of the regulatory review processes for the Board's regulatory packages.

Update on Regulatory Review Processes

Final amendments to Asbestos Analytical Laboratory and Project Monitor regulations were adopted on February 8, 2018. Final regulations are currently undergoing executive branch review.

The proposed Lead-Based Paint Renovation, Repair, and Painting Program regulations (Initial Promulgation) are currently undergoing review by the office of the Secretary of Commerce and Trade.

Mr. Saunders advised the Board of asbestos and lead training courses audited through July 17, 2018.

Asbestos and Lead Training Course Audits

Ms. Henshaw presented the Board with a draft report from the study conducted on Senate Bill 627, which proposed to prohibit home inspector contracts to contain any provision limiting their liability for damages arising from the acts of the home inspector or employees or agents of the home inspector. Ms. Henshaw advised the Board that a public comment period, including a public hearing,

Report from SB 627 Study Committee and Review Draft Report

was conducted as part of the study wherein 83 written comments were received. Twenty-five public comments were heard at the public hearing. Of the comments received, one participant was in favor of implementing SB 627. In addition, a Committee was formed to study general provisions related to limitations on contract liability, protections, and the potential adverse impacts on insurance rates and cost to consumers.

After review of the draft report, Mr. Rushton moved to adopt the following recommendation as written:

The Board concluded that issue of enforceability of liability limitations is best left to the courts, having found no evidence or justification, either anecdotally or through complaints filed, demonstrating such a prohibition on home inspectors is necessary.

Mr. Magruder seconded the motion which was unanimously approved by: Baynes, Cranor, France, Fritz, Haltigan, Magruder, Palmer, and Rushton.

Request for Clarification: Inspections

Ms. Henshaw advised the Board that staff had received an inquiry asking for clarification regarding non-licensed individuals who collect samples for asbestos testing. Discussion was held on the following topics:

- concerns over chain of custody;
- intent of the individual collecting the sample;
- a homeowner's legal ability to collect a sample from their home; and,
- the responsibility of the licensed asbestos inspector and analytical lab to decline samples from non-licensed individuals.

After discussion, the Board agreed by consensus that depending on the circumstances, a non-licensed individual collecting samples for asbestos testing could potentially be in violation of the Board's regulations depending upon the specific facts associated with the collection of the samples. The Board also agreed by consensus that an asbestos inspector is ultimately responsible for adhering to 18VAC15-20-459.1.

Request for Clarification: Project Monitors

Ms. Henshaw advised the Board that staff had received an inquiry asking for clarification regarding whether a contractor can take air samples for their own documentation. Also, staff has received inquiries regarding a project monitor providing only the final air sampling, though the project monitor has not been on site for the

duration of the project.

After discussion, the Board agreed by consensus that a contractor is authorized to take air samples for their own documentation so long as the contractor does not state or suggest that the sample is for final clearance.

The Board also agreed by consensus that Board regulations allow for project monitors to provide only the final air sampling if they are contracted to do so. A project monitor who is not contractually obligated to remain on site for the duration of a project is not required to monitor daily work practices in order to provide the final air sampling.

Discuss Guidance Document for Reviewing Asbestos and Lead Applications with Convictions

Ms. Henshaw asked the Board to review its current guidance document pertaining to staff review of criminal convictions on asbestos and lead licensing applications. The current guidance document states that staff is authorized to approve applications with felonies and misdemeanors older than five years so long as the felony is not related to environmental remediation activities, and did not result in an incarceration where the release date is less than one year from the application date. After discussion, Mr. Cranor moved to authorize staff to continue approving applications with misdemeanors more than five years old and not related to environmental remediation activities, but amend the current policy to require all asbestos and lead licensing applications with felony convictions be reviewed in accordance with 54.1-204 and the Administrative Process Act (Chapter 40 of Title 2.2 of the Code of Virginia). Mr. Haltigan seconded the motion which was unanimously approved by: Baynes, Cranor, France, Fritz, Haltigan, Magruder, Palmer, and Rushton.

Consideration of Resolution for Service

Board members considered the following resolution for former Board member Frederick Molter, IV:

Frederick Molter, IV

WHEREAS, Frederick Molter, did faithfully and diligently serve as a member of the Virginia Board for Asbestos, Lead, and Home Inspectors from 2013 to 2018;
WHEREAS, Frederick Molter, did devote generously of his time, talent and leadership to the Board;
WHEREAS, Frederick Molter, did endeavor at all times to render decisions with fairness and good judgement in the best interest of the citizens of the Commonwealth and these professions; and

WHEREAS, the Virginia Board for Asbestos, Lead, and Home Inspectors wishes to acknowledge its gratitude for devoted service of a person who is held in high esteem by the members of the Board and the citizens of the Commonwealth;
NOW THEREFORE BE IT RESOLVED, by the Virginia Board for Asbestos, Lead, and Home Inspectors this sixteenth day of August 2018, that Frederick Molter be given all honors and respect due him for his outstanding service to the Commonwealth and its citizens; and
BE IT FURTHER RESOLVED, that this Resolution be presented to him and be made a part of the official minutes of the Board so that all may know of the high regard in which he is held by this Board.

Mr. Magruder moved to adopt the resolution as presented. Ms. Baynes seconded the motion which was unanimously approved by: Baynes, Cranor, France, Fritz, Haltigan, Magruder, Palmer, and Rushton.

Outreach Update

Ms. Henshaw updated the Board on recent and upcoming outreach opportunities.

Ms. Henshaw and Mr. DeBoer advised the Board that DPOR will no longer seek funds from the EPA through the lead grant.

Other Business

Ms. Henshaw asked the Board to consider rescheduling its May 2019 meeting from May 30, 2019, to May 16, 2019, due to a scheduling conflict with another board. Mr. Magruder moved to reschedule the May 30, 2019, Board meeting to May 16, 2019. Mr. Fritz seconded the meeting which was unanimously approved by Baynes, Cranor, France, Fritz, Haltigan, Magruder, Palmer, and Rushton.

Future Meeting Dates

The following meeting dates have been scheduled:

- November 8, 2018
- February 7, 2019
- May 16, 2019
- August 15, 2019

Conflict of Interest Forms and Travel Vouchers

Mr. Palmer reminded Board members to complete their conflict of interest forms and travel vouchers.

Adjourn

There being no further business, the meeting adjourned at 10:34

a.m.

_____
Peter D. Palmer, Chair

_____
Jay W. DeBoer, Secretary

Appendix E

Virginia Court Opinions and Orders

489 F. Supp. 2d 555 (2007)

Deborah KOCINEC, Plaintiff,
v.
PUBLIC STORAGE, INC. Defendant.

No. 2:06 CV 649.
United States District Court, E.D. Virginia. Norfolk Division.

June 6, 2007.

*556 Francis John Driscoll, Jr., Law Office of Frank J. Driscoll Jr. PLLC, Barry Ray Taylor, Scialdone & Taylor, Inc., Claude Michael Scialdone, Scialdone & Taylor Inc., Virginia Beach, VA, for Deborah Kocinec, Plaintiff.

Keith Patrick Zanni, McGuireWoods LLP, Norfolk, VA, for Public Storage, Inc., Defendant.

MEMORANDUM OPINION AND ORDER

DOUMAR, District Judge.

Presently before the Court is a Motion for Partial Summary Judgment filed by Defendant Public Storage Inc. ("Defendant") against Plaintiff Deborah Kocinec ("Plaintiff') under Rule 56 of the Federal Rules of Civil Procedure. Defendant seeks to limit Plaintiffs potential recovery at trial to $5,000, pursuant to the terms of a written rental agreement executed by the parties on March 22, 2004 ("Rental Agreement"). For the reasons that follow, the Court GRANTS Defendant's Motion for Partial Summary Judgment and ORDERS judgment in favor of Defendant's First Affirmative Defense asserting that Plaintiffs damages are contractually limited to $5,000. As Plaintiff has not alleged fraud, willful injury, or willful violation of law, she may hereinafter recover damages, if any, of no more than $5,000, in accordance with the lawful exculpatory clause contained in the Rental Agreement.

I. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

A. Facts

On March 22, 2004, Plaintiff entered into a written contract with Defendant to rent storage unit A04 at a Defendant's privately-owned *557 self-storage facility located at 880 Widgeon Road in Norfolk, Virginia. Plaintiff alleges, and Defendant admits, that on August 28, 2006, Plaintiff received a rental payment receipt from Defendant reflecting a credit of $6.00 and indicating that the next payment under the Rental Agreement was due and payable on September 1, 2006. Plaintiff further alleges that she sent payment to Defendant after the due date, on September 30, 2006. Apparently, the parties made no other communications until October 21, 2006, on which date Plaintiff allegedly called Defendant to provide thirty days advance notice that she would be removing her property and vacating the unit. At that time, Defendant informed Plaintiff that the property contained in her storage unit had been sold at public auction on September 25, 2006. Plaintiff contends that Defendant failed to provide her with notice of the unpaid balance and intended auction, and that such failure constitutes a breach of Defendant's statutorily imposed duties. Plaintiff initially sought money damages of $82,225.00, but now seeks $70,000.00.[1]

B. Procedural Posture

Plaintiff filed this private cause of action against Defendant in the Circuit Court for the City of Norfolk on October 30, 2006, alleging Defendant breached its "statutorily imposed duty to notify the Plaintiff . . . of her alleged unpaid rental balance" and "its intention to auction her Unit and sell her property before executing such auction and sale." Compl. ¶ 7. Defendant properly removed Plaintiffs action on November 22, 2006, pursuant to this Court's diversity jurisdiction under 28 U.S.C. § 1332. Defendant subsequently filed an Answer to Plaintiffs Complaint and Affirmative Defenses on November 22, 2006, asserting, among other defenses, that "Plaintiffs damages are contractually limited to $5,000." Pl.'s Aff. Def. ¶ 1. Defendant filed the instant motion on May 11, 2007, and Plaintiff responded in opposition on May 25, 2007. As Defendant replied thereto on May 31, 2007, this motion is ripe for disposition.

II. ANALYSIS

A. Motion for Summary Judgment (Rule 56)

Federal Rule of Civil Procedure 56(c) provides that summary judgment should be granted where "the pleadings, depositions [and] answers to interrogatories . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." "The purpose of summary process is to avoid a clearly unnecessary trial," *Continental Can Co. v. Monsanto Co.,* 948 F.2d 1264, 1265 (Fed.Cir.1991) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986)),

and "it is not designed to substitute lawyers' advocacy for evidence, or affidavits for examination before the fact-finder, when there is a genuine issue for trial." *Continental Can Co.,* 948 F.2d at 1265.
In ruling on a motion for summary judgment, a court views the facts in the light most favorable to the non-moving party. *United States v. Lee,* 943 F.2d 366, 368 (4th Cir.1991). The moving party has the threshold burden of informing the court of the basis of the motion, of establishing that there is no genuine issue of material fact, and of showing that it is entitled to judgment as a matter of law. *Celotex Corp. v.* *558 *Catrett,* 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); *see also Castillo v. Emergency Med. Assoc.,* 372 F.2d 348, 346 (4th Cir.2004).
Once the moving party satisfies this threshold showing under Rule 53(c), the burden of production shifts to the nonmoving party. *Celotex Corp.,* 477 U.S. at 322-23, 106 S.Ct. at 2552. The non-movant must "go beyond the pleadings and by [his] own affidavits, or by `depositions, answers to interrogatories, and admissions on file,' designate `specific facts showing that there is a genuine issue for trial.'" *Id.* at 324, 106 S.Ct. at 2553. "The plain language of Rule 56(c) mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Id.* at 322, 106 S.Ct. at 2552. Thus, to defeat summary judgments the nonmovant must go beyond the pleadings with affidavits, depositions, interrogatories, or other evidence to show that a genuine issue of material fact exists. *See id.* at 324, 106 S.Ct. at 2553.

B. Exculpatory Agreements

The issue before the Court is whether a private party may contractually limit its potential liability to a counterparty in Virginia, and, if so, whether an exception to this right applies to private owners of self-storage facilities. The Court finds that parties may enter into such exculpatory agreements, and that no exception at law precludes a private self-storage facility, such as Defendant; from limiting its risk as to its customers. Moreover, the Court is unwilling to create such an exception under the circumstances of this case. Accordingly, Defendant's liability is to be limited pursuant to the exculpatory provisions contained in the Rental Agreement.

In Virginia, parties may limit their risk of loss through contract, as "it is apparently not against the public policy . . . for one to contract against his own negligence in some situations." *Nat'l Motels, Inc. v. Howard Johnson, Inc.,* 373 F.2d 375, 379 (4th Cir.1967). "Virginia courts regularly enforce exculpatory agreements." *Trumball Invs., Ltd. v. Wachovia Bank, N.A.,* No. 1:05CV15 (GBL), 2005 U.S. Dist. LEXIS 7195, at * 10 (E.D.Va. Apr. 15, 2005); *see, e.g., Chesapeake & Ohio R. Co. v. Clifton Forge-Waynesboro Tel. Co.,* 216 Va. 858, 224 S.E.2d 317, 321 (1976) ("[W]hen a railroad is called upon to perform a service which it is not compelled to perform by the very nature of its operation as a common carrier, it may, under proper conditions, contract against its liability for negligence for the reason that it is then acting in the capacity of a private carrier."); *Peninsula Transit Corp. v. Jacoby,* 181 Va. 697, 26 S.E.2d 97, 100 ("The courts generally have recognized the right of the carrier to limit its liability for the loss of baggage by special contract. . . ."); *Ripley Heatwole Co. v. John E. Hall Elec. Contr., Inc.,* 69 Va. Cir. 69, 71, 2005 WL 4827398 (2005) (noting that a "contractual provision specifically limiting a party's liability" embodies "one of the essential purposes of contract law —the freedom of parties to limit their risks in commercial transactions"); *Howie v. Atl. Home Inspection, Inc.,* 62 Va. Cir. 164, 167-70, 2003 WL 23162330 (2003) (upholding a contract provision limiting a termite inspector's liability to the cost of inspection); *Phoenix Med. Elecs. Servs. v. Klamm,* 18 Va. Cir. 128, 129, 1989 WL 646529 (1989) ("Since the contract specifically limits liability to the cost of repairing or correcting the defects, claims other than for such cost are demurrable."). However, such terms limiting liability are generally disfavored, and "should be read into a contract which shows no ambiguity *559 on its face." *Nat'l Motels,* 373 F.2d at 379. Additionally, "a party . . . may exempt itself from liability for negligence in a contract with a party on equal footing." *Gill v. Rollins Protective Servs. Co.,* 722 F.2d 55, 58 (4th Cir.1983).
Exculpatory clauses are typically evaluated through a three-part test.[2] "[A] defendant seeking to avoid liability under an exculpatory agreement must show (1) that the agreement does not contravene public policy, (2) that it could be readily understood by a reasonable person in the plaintiffs position, and (3) that it clearly and unequivocally releases the defendant from precisely the type of liability alleged by the plaintiff." *Hiett v. Barcroft Beach, Inc.,* 18 Va. Cir. 315, 318, 1989 WL 646461 (1989). Because the exculpatory clause contained in the Rental Agreement meets these requirements, it is valid and enforceable.. Accordingly, Plaintiff may recover damages, if any, of no more than $5,000, pursuant to the unambiguous terms of the Rental Agreement.
1. Public Policy

While Plaintiff "concede[s] . . . that Virginia law has permitted . . . the right to limit risk of loss through contract," she broadly asserts that "there does not appear to be any precedent whether an owner of a Virginia self-storage facility may do so by contract to the extent that the Defendant attempts to limit its liability in the Rental Agreement." Pl.'s Opp. Mot. Summ. J. 5. Plaintiff simply concludes that, "[a]s in the case of a common carrier and a passenger, an occupant and an owner of a self-service storage facility are . . . not on equal footing." *Id.* at 6. Evidence of this alleged disequilibrium, according to Plaintiff, is found in the Virginia Self-Service Storage Act, Va.Code § 55-416, *et seq.,* the statutory regime regulating self-service storage facilities in the state of Virginia, wherein the Virginia Legislature "set forth strict statutory requirements that an owner of a self-service storage facility must follow before they dispose of an occupant's personal property." Pl.'s Opp. Mot. Summ. J. 6.[3]

The Court finds no basis to conclude that Defendant possessed an unfair bargaining position over Plaintiff, nor that the exculpatory clause contained in the Rental Agreement violates public policy. *560 "[C]ertain parties have been prohibited as a matter of public policy from contractually limiting their tort liability. Thus such a provision has been held void when contained in the contract of carriage of a common carrier, unless a reduced fare was charged; or in the contract of a public utility under a duty to furnish telephone service; or when imposed by an employer as a condition of employment." *Hiett,* 18 Va. Cir. at 318, 1989 WL 646461. Defendant is not among these designated entities —principally quasi-public in nature —for which the contractual right to limit liability is circumscribed. Moreover, there is no reason, academic or practical, to foreclose the right of a private owner of a self-storage facility to contractually limit its liability as an appropriate or necessary business practice. As Defendant asserts, "without the common sense provision limiting liability to the amount of goods one is allowed to store, companies like PSI could not afford to offer self-storage services to consumers." Def.'s Reply Mem. Supp. Summ. 8. Indeed, given the relatively thick market for self-storage facilities in southeastern Virginia, it is probable, if not certain, that Defendant's contractual limitation of liability yielded a lower rental cost to Plaintiff. To hold that such a transaction between two symmetrically informed parties violates public policy would be to unnecessarily frustrate the private marketplace. The Court serves no such function, absent some evidence of market failure. As Plaintiff has offered no such evidence in this case, the Court finds that the exculpatory clause contained in the Rental Agreement does not contravene public policy.

2. Readily Understood by a Reasonable Person

Although Plaintiff does not appear to dispute whether the exculpatory clause can be "readily understood by a reasonable person in the plaintiff's position," the Court finds that the language contained Rental Agreement can be readily understood by reasonable parties. "[A] release, like any other contractual provision, must be interpreted based on its plain and unambiguous language." *FS Photo, Inc. v. PictureVision Inc.,* 61 F. Supp. 2d 473, 482 (E.D.Va.1999). To limit liability for one's own negligence, the exculpatory clause must be "clear and definite." *See Krazek v. Mountain River Tours, Inc.,* 884 F.2d 163, 165 (4th Cir. 1989).

In this case, the Rental Agreement contains two provisions that should have clearly informed a reasonable person in Plaintiffs position that Defendant's liability would be capped at $5,000. Paragraph 3 of the Rental Agreement, entitled "USE OF PREMISES AND PROPERTY AND COMPLIANCE WITH THE LAW," provides in relevant part as follows:

> Because the value of personal property may be difficult or impossible to ascertain, Occupant agrees that under no circumstances will the aggregate value of all personal property stored in the Premises exceed or be deemed to exceed, $5,000, and may be worth substantially less than $5,000. . . . Occupant acknowledges and agrees that the Premises and the Property are not suitable for the storage of heirlooms or precious, invaluable or irreplaceable property such as (but not limited to) books, records, writings, works of art, objects for which no immediate resale market exists, objects which are claimed to have special or emotional value to Occupant and records or receipts relating to the stored goods.

Pl.'s Mot. Summ. J. Ex. ¶ 3. Plaintiff signed her initials below this paragraph to *561 "acknowledge[] that [s]he has read and understands the provisions of this paragraph and agrees to comply with its requirements."[4] *Id.* Paragraph 5 of the Rental Agreement, plainly titled "LIMITATION OF OWNER'S LIABILITY; INDEMNITY," provides in relevant part as follows:

> "Owner and Owner's Agents will have no responsibility to Occupant or any other persons for any loss, liability, claim, expense, damage to property or injury to persons ("Loss") from any cause, including without limitation, Owner's and Owner's Agents' active or passive acts, omissions, negligence or conversion, unless the Loss is directly caused by Owner's fraud, willful injury or willful violation of law. . . . Occupant agrees that Owner's and Owner's Agents' total responsibility for any Loss from any cause whatsoever will not exceed a total of $5,000."

Pl.'s Mem. Summ. J. Ex. 1 ¶ 5. Again, Plaintiff signed her initials below this paragraph in apparent recognition and understanding thereof. *Id.*

These relevant provisions of the Rental Agreement are simple, direct, and concise. They contain no complex, legal, or confusing terms that require special expertise. Accordingly, the Court finds that a reasonable person in Plaintiffs position could have readily understood the import of such exculpatory language.

3. Claim Within the Contemplation of the Parties

Finally, the exculpatory clause must "clearly and unequivocally release[] the defendant from precisely the type of liability alleged by the plaintiff." *Hiett,* 18 Va. Cir. at 318, 1989 WL 646461. On this point, Plaintiff contends that "[i]t is not clear whether Plaintiffs Breach of Contract/Virginia Self-Service Storage Act Action falls within Defendant's limitation of liability language in Paragraph 5 [of the Rental Agreement]." Pl.'s Mem. Opp. Summ. J. 4. The Court disagrees, and finds that the exculpatory clause in the Rental Agreement clearly releases Defendant from liability for losses from any cause, unless such loss was caused by Defendant's "fraud, willful injury or willful violation of law." Def.'s Mot. Summ. J. Ex. ¶ 5.

In this case, Plaintiff has made no allegations, and offers no facts to support a claim, of fraud, willful injury, or willful violation of law. Perhaps in recognition of this, Plaintiff seeks to avoid summary judgment by now claiming at this late day that "[t]his issue is . . . not ripe for consideration because there is still discovery that must be conducted to determine whether fraud occurred, willful injury or willful violation of law by [Defendant] in the disposition of the Plaintiffs personal property." Pl.'s Mem. Opp. Summ. J. 4. Such an assertion fails on two grounds. First, Plaintiff failed to allege fraud, willful injury, or willful violation of law in her Complaint. Second, discovery closed on April 26, 2007, pursuant to this Court's Order issued on April 19, 2007. Plaintiffs mere assertion that discovery remains does not make it so, and her unsubstantiated assertion that Defendant engaged in fraud, without evidence of any kind, lacks merit. "In order to successfully defeat a motion *562 for summary judgment, a nonmoving party cannot rely on mere belief or conjecture, or the allegations and denials contained in his pleadings. Rather, the nonmoving party must set forth specific facts through affidavits, depositions, interrogatories; or other evidence to show genuine issues for trial." *Blaustein & Reich, Inc. v. Buckles,* 220 F. Supp. 2d 535, 541 (E.D.Va.2002) (citations omitted). Accordingly, the Court finds that the Rental Agreement clearly releases Defendant from precisely the type of liability alleged by Plaintiff.

III. CONCLUSION

In view of the foregoing, Defendant's Motion for Partial Summary Judgment is hereby GRANTED. Exculpatory agreements are routinely enforceable in. Virginia, and no basis exists in fact or law to curtail Defendant's *ex ante* right to contract for limited liability. Defendant held no unfair bargaining position over Plaintiff, and is not among the class of defendants for which exculpatory agreements violate public policy. The release, interpreted based on its plain and unambiguous language, may be readily understood by a reasonable person in Plaintiffs position. Finally, Plaintiffs asserted claim was clearly within the contemplation of the parties at the time of contracting. As such, the exculpatory clause contained in the Rental Agreement prevails, and effectively limits Plaintiffs potential recovery in this action to $5,000. The Court hereby ORDERS judgment in favor of Defendant's First Affirmative Defense.

The Clerk of the Court is DIRECTED to forward copies of this Memorandum Opinion and Order to counsel of record for all parties.

IT IS SO ORDERED.

NOTES

[1] On December 7, 2006, Plaintiff moved to amend her Complaint to reduce the *ad damnum* clause to $70,000. The Court granted Plaintiff's motion, over Defendant's objections, on January 9, 2007.

[2] Defendant asserts that the legal criteria a court must look to in evaluating exculpatory agreements is inapposite in this case because the contract term here at issue "does *not* seek a ruling exculpating it of all liability," but only "limits damages, if any, to $5,000." Def.'s Reply Mem. Supp. Mot. Summ. J. 4. Such a distinction, between terms that limit recovery and terms that wholly preclude recovery, lacks justification. Courts within this jurisdiction have consistently referred to both provisions —those that limit liability and those that foreclose liability —as "exculpatory." *See, e.g., Georgetown Steel Corp. v. Law Eng'g Testing Co.,* No. 92-2588, 1993 WL 358770, at *2-3, 1993 U.S.App. LEXIS 23541, at *7-9 (4th Cir. Sept. 14, 1993); *Trumball Invs.,*2005 U.S. Dist. LEXIS 7195 at *10-13. In this case, Defendant seeks to reduce Plaintiff's asserted damages by 93%, from $70,000 to, at most, $5,000. The Court is loathe to conclude that the contractual term purporting to impose such a limitation of liability does not constitute an "exculpatory clause." Accordingly, the Court will examine the contractual provision at issue in view of the law governing exculpatory agreements within this jurisdiction.

[3] A "self-service storage facility" is defined as "any real property designed and used for renting or leasing individual storage spaces, other than storage spaces which are leased or rented as an incident to the lease or rental of residential property or dwelling units, to which the occupants thereof have access for storing or removing their personal property." Va.Code § 55-417(4). Neither party disputes the application of the Virginia Self-Service Storage Act.

[4] In view of Plaintiff's signature, it is of no matter whether she actually read the terms of the Rental Agreement: "In the absence of fraud, duress, or mutual mistake . . . an individual having the capacity to understand a written document who signs it after reading it, *or who signs it without reading it,* is bound by the signature." *First Nat'l Exchange Bank of Virginia v. Johnson,* 233 Va. 254, 355 S.E.2d 326, 329-330 (1987) (emphasis added).

Baird v. Dodson Bros. Exterminating

217 Va. 745 (1977)

S. BARON BAIRD, JR. v. DODSON BROTHERS EXTERMINATING COMPANY, INCORPORATED.

Record No. 760374.

Supreme Court of Virginia.

March 4, 1977.

Present, I'Anson, C.J., Carrico, Harrison, Cochran, Harman and Compton, JJ.

1. Any ambiguities in contract must be resolved against party who prepared contract.

2. Verdict which has been set aside by trial court is not entitled to same weight as one which has been approved by trial court. However, if there was any credible evidence to support the verdict, trial court erred in setting it aside.

3. Exterminating company cannot ignore or disavow report of its initial inspection. Jury could reasonably infer from the evidence that only damage at time of first inspection was reported and repaired, and that additional damage, reasonably forseeable by the parties, thereafter occurred which would have been avoided if exterminating company had properly performed its agreement to inspect, treat, reinspect and re-treat house. There was sufficient evidence to support verdict of jury both as to liability and as to amount of damages.

Error to a judgment of the Circuit Court of Essex County. Hon. Dixon L. Foster, judge presiding.

Enos Richardson, Jr., for plaintiff in error.

William B. McLeod, for defendant in error.

COCHRAN

COCHRAN, J., delivered the opinion of the court.

S. Baron Baird, Jr., as plaintiff, filed a motion for judgment in the trial court against Dodson Brothers Exterminating Company, Incorporated (Dodson), defendant, seeking damages alleged to have resulted from Dodson's breach of a contract to control certain wood-eating insects on Baird's property. In a jury trial a verdict was returned for plaintiff

in the amount of $8,640, which, upon defendant's motion, was set aside by the trial court, *746 and judgment was entered for the defendant on November 26, 1975.

The sole question on appeal is whether there was sufficient evidence to support the jury verdict in favor of Baird.

Since 1946, Baird and his wife had resided in a frame house on Baird's farm in Essex County. In 1968, W. I. Shackelford, Dodson's representative, inspected the dwelling and informed Baird that there was termite damage under the northeast corner of the dining room. On March 15, 1968, a contract for treatment of the property was signed for Dodson by Shackelford, and for Baird by his wife. On the same day Dodson's employees treated the property. For this initial treatment Baird paid Dodson the sum of $173.50 by check dated March 19, 1968, and received a one-year, bonded guarantee. In accordance with the contract provisions Baird renewed the contract annually by paying $22.50 for each of the years 1969, 1970, 1971, 1972, 1973, and 1974.

Under the contract Dodson agreed to treat Baird's property for "Subterranean Termites" and for "Powder Post Beetles" as specified on a "graph sheet" and itemized list attached to and incorporated in the contract. The list indicated that a chemical spray was to be used in the treatment. Dodson further agreed "to make any necessary retreatment for the control of the above mentioned wood destroying insects" at no additional charge and to inspect the property at least once each year. The contract also provided that Dodson would not be responsible for damages except those due to its "neglect".

The graph sheet was an inspection report prepared by Shackelford, containing a diagram of the basement and crawl area under the first floor. No insect infestation was shown on the report. On the back of the graph sheet was a list of services to be performed by Dodson if specified. Blank spaces were filled to indicate that services were to be furnished as specified to insulate the building against both termites and powder-post beetles. In the blank space at Item 14, however, providing for treatment for powder-post beetles with Dodson Beetle Toxic, was written the word "No".

Baird testified that on the first visit Shackelford inspected the property by going "through the house", "under" it, and "around" it to determine whether there was any damage caused by *747 insects. Immediately after the initial treatment Baird employed a local carpenter to place a new sill and extra footing under the northeast corner of the dining room to repair what Shackelford had said was the only damage that he could find. About the same time, either shortly before or shortly after the 1968 treatment, Baird put new joists under the kitchen to level the floor and added a storage area.

Over a period of several days in 1969 or 1970, Baird and his wife saw what they thought were termites in the dining room and outside the house. In two successive years Baird wrote on his annual renewal check to Dodson a request that the exterminating company determine what the insects were. In 1972, he tried without success to communicate by telephone with Dodson's representative, Thompson, because the Bairds had seen more insects and had observed that the floors in the dining room and living room were

beginning to "give". His calls to Thompson were never returned. In 1973, after cracks in the floor of the hallway and stairway were observed, Mrs. Baird talked with Thompson by telephone, and Thompson came to the residence, but Baird did not see him. The next year, when floors were "giving" throughout the house, Baird had his attorney communicate with Dodson. Thompson returned, and Dodson employees re-treated the house. Nevertheless, the residence was badly damaged. Baird testified that prior to the 1968 treatment he had not had any trouble with wood-destructive insects.

Mrs. Baird's testimony was corroborative of her husband's. She also testified that Thompson came to the property in early 1974, inspected the area under the first floor, and told her that there were powder-post beetles under the house and that if it were his house he would "bulldoze it down". He requested that she obtain two estimates of the cost of repairing the damage, and this was done. She conceded that only the floor in one room, which was not damaged by insects, had been refinished since 1968.

William H. Robinson, Assistant Professor of Entomology at Virginia Polytechnic Institute and State University, described the distinctive characteristics, life cycles, and eating habits of termites and powder-post beetles. He identified damage to joists and floor boards taken from the Baird house as having been caused by these two kinds of wood-devouring insects. He could *748 not determine when the damage was done, since there were no live insects in the wood samples when he examined them; the damage could have occurred either before or after 1968. Robinson also testified that once a floor was finished, powder-post beetles would probably not infest it, as these insects generally bore into untreated wood.

Edward Beane, Jr., trained in the exterminating business by Dodson but employed by a competing company, testified that he inspected the Baird house prior to trial. He found "heavy and extensive termite damage" under the first floor and powder-post beetle damage under the dining room area. Having observed sawdust drifting out of the powder-post beetle holes, he testified that the infestation appeared to be of recent origin "because it seems to be active". He found no active infestation of termites.

Perry T. Allen, a contractor, testified for the plaintiff as to damages. In his inspection Allen discovered that the first floor had settled in three different places and that 75% of the floor joists he examined had been damaged by insects. To repair the damage, in his opinion, it would be necessary to replace floor joists and sills on the first floor, flooring on the first and second floors, and the wall on the north side of the house. It would also be necessary to jack the floor joists on the first floor to level the house. He estimated the cost of materials at $9,600 and labor at $12,000, making a total of $21,600, of which the cost of materials and labor for replacing the flooring was $5,000.

The evidence for Dodson consisted of the testimony of three of its employees. This evidence was to the effect that the damage must have occurred before 1968, and that there was no active infestation of termites or powder-post beetles in 1974, when they inspected the property and re-treated it. E. J. Lupini, district manager of Dodson's Richmond office during the period in question, testified that the second floor of the Baird

house was not treated for powder-post beetles because such treatment above the first floor would have required that the house be vacated, sealed, and fumigated with gas. While conceding that the Baird contract stated that the house had been treated for powder-post beetles, Lupini maintained that the contract only contemplated treatment for those insects under the first floor, where liquid chemical spray would be used. He could not explain why Shackelford, who had since died, failed to show on his graph sheet the area of infestation at the time of his inspection. *749

Dodson, acknowledging that the contract required it to make annual inspections and, if infestation appeared, to re-treat the property in order to control the insects, argues that the undisputed evidence showed that it made the required annual inspections and re-treated the Baird house at least once, thereby establishing compliance with its contractual obligations.

We do not agree. To accept such a contention would lead to the untenable conclusion that mere inspection, however casual or cursory and ineffectual to disclose obvious damage, would insulate Dodson from liability. This result would reward inaction or negligent performance by Dodson, and would defeat the purpose of the contract to protect Baird's residence from further insect damage.

As Dodson's counsel suggested in oral argument, the contract may have been inartfully drafted, but imprecise draftsmanship affords no relief to Dodson, for it prepared the contract. Therefore, any ambiguities must be resolved against Dodson. Lipscombe Security Ins., 213 Va. 81, 84, 189 S.E.2d 320, 323 (1972). Nevertheless, we will assume that the parties did not contract for treatment of the Baird house above the first floor. Even so, it was a question of fact whether Dodson breached its contract to control the specified insects.

Under the provisions of Code | 8-352 (Repl. Vol. 1957) the trial court set aside the jury verdict for the plaintiff as being without evidence to support it and entered judgment for the defendant. Under such circumstances, of course, the verdict is not entitled to the same weight as one which has been approved by the trial court. Guill Aaron, 207 Va. 393, 396, 150 S.E.2d 95, 98 (1966). However, if there was any credible evidence to support the verdict, the trial court erred in setting it aside. Commonwealth McNeely, 204 Va. 218, 129 S.E.2d 687 (1963).

Dodson cannot ignore or disavow the report of its initial inspection. Indeed, its counsel conceded in oral argument before us that Dodson had an obligation to determine by that inspection what the termite and powder-post beetle damage was. Therefore, we believe that a jury could reasonably infer from the evidence that at the time of Shackelford's inspection, the only damage to the Baird house, exclusive of damage above the first floor, was that which Shackelford orally reported to Baird; that Baird repaired the damage; and that additional damage, *750 reasonably foreseeable by the parties, thereafter occurred which would have been avoided if Dodson had properly performed its agreement to inspect, treat, reinspect, and re-treat the house.

This is a case of first impression for us. Courts in other jurisdictions, however, have construed similar contracts. Thus, in Orkin Exterminating Co. Buchaman, 108 Ga.App. 449, 133 S.E.2d 635 (1963), it was held that such a contract, if it did not expressly so provide, fairly implied that the pest control company would accomplish the desired result of preventing further damage to the landowner's home from the activities of insects. Therefore, it was a jury question whether insect damage resulted from infestation before or after treatment, and a verdict was upheld for the reasonable cost of repairing a house that was damaged after treatment. See also Orkin Exterminating Company, Inc. Mixon, 130 Ga.App. 885, 205 S.E.2d 13 (1974); Alabama Terminix Company Howell, 276 Ala. 59, 158 So. 2d 915 (1963); Orkin Exterminating Co. Gulf Coast Rice Mills, 343 S.W.2d 768 (Tex. Civ. App. 1961); Brown Battle, 220 Miss. 530, 71 So. 2d 790 (1954); Annot., 43 ALR2d 1237; cf. Orkin Exterminating Company, Inc. Stevens, 130 Ga.App. 363, 203 S.E.2d 587 (1973), distinguishable as a tort action where the contract contained a limitation of liability.

Here, there was evidence of damage to the first floor, joists, and sills from both termites and powder-post beetles. There was evidence that the cost of repairing all damage to the house would be $21,600. If the cost of replacing flooring, including that on the first floor as well as that on the second, is eliminated, the cost of repair would be $15,600, still substantially higher than the jury verdict.

We conclude that there was sufficient evidence to support the verdict of the jury both as to liability and as to damages, and we will therefore reverse the order of the trial court, reinstate the verdict, and enter final judgment thereon for the plaintiff.

Judgment reversed, verdict of the jury reinstated, and final judgment.

Supreme Court of Virginia.

Kenneth R. ASH, Sr. and Joyce A. Ash v. ALL STAR LAWN AND PEST CONTROL, INC.

Record No. 972711.

Decided: November 06, 1998

Present: All the Justices.William F. Burnside, Virginia Beach, for appellants. Joseph M. Young (Hall, Fox & Atlee, Hampton, on brief), for appellee.

In this appeal, we consider whether the trial court properly ruled that purchasers of real property could not recover under a claim of breach of contract against the inspection company for failure to provide an adequate termite and moisture damage report on behalf of the seller as required as a condition of the sale of the property.

Under well-settled principles, we recount only those facts necessary to our resolution of the appeal. On January 3, 1994, Kenneth R. Ash, Sr. and Joyce A. Ash (the Ashes) completed the purchase of a home in Portsmouth. The contract of sale required the Ashes to take possession of the home "as is." However, as a condition of the sale, the seller agreed to provide the Ashes with

an approved VA/FHA wood destroying insect report from a licensed pest control operator prior to Settlement Date showing the Property's principal dwelling and garage to be free of visible wood destroying insect infestation with no visible unrepaired damage from said infestation. Said report shall also indicate that readily accessible areas of the foundation and understructure including crawl space, sills, joists, subflooring and substructure support timbers to be free of standing water and/or visible moisture damage. Cost of inspection and required treatment and repairs shall be paid by Seller.

The seller contracted with All Star Lawn and Pest Control, Inc. (All Star) to provide this inspection report. Jeffrey C. Stuart, owner of All Star and a licensed pest control inspector, conducted an inspection of the home on December 18, 1993 and completed a standard form reporting the condition of the home. In that report, Stuart noted that he had found and repaired existing moisture damage in two locations outside the home.

Section 7 of the form Stuart used to make his report included a pre-printed statement that the "[a]ttic, interior of walls, under floor coverings and behind appliances" were inaccessible areas and obstructions and, thus, were not subject to inspection. In addition to the areas listed in the printed portion of section 7, a handwritten notation made by Stuart indicated that areas of the "Crawl Space-Behind Air Ducts" were also inaccessible.

Section 11 of the form consisted of four disclosures made by All Star, the first three of which are relevant to this appeal:

A. The inspection covered the readily accessible areas of the property, including attics and crawl spaces which permit entry. Special attention was given to those accessible areas which experience has shown to be particularly susceptible to attack by wood destroying insects. Probing and/or sounding of those areas and other visible accessible wood members showing evidence of infestation was performed.

B. The inspection did not include areas which were obstructed or inaccessible at the time of inspection.

C. This is not a structural damage report. Neither is this a warranty as to absence of wood destroying insects.

Section 10 of the form provided space for the inspector to make additional comments. In that section, Stuart noted that there was evidence of treated and repaired termite damage, but did not identify the location where this was observed. He further indicated that there was "no visible structural moisture damage in crawl space." Stuart charged the seller $1,010 for his services, which included a $35 fee for

the inspection and $975 for repairing and repainting the areas where unrepaired moisture damage had been observed.

The crawl space was 18 inches in height. Portions of it were obstructed by sheet metal air ducts suspended between the floor joists and the ground. Stuart subsequently testified that these areas were inaccessible to him because "I'm six-one and at the time I was 260 pounds." Stuart further testified that he attempted to see beyond the air ducts and tested the accessible area by probing the wood with a claw hammer.

Stuart conceded that he was able to get 10 feet into the crawl space, and that he attempted to look beyond the air ducts using a flashlight. He maintained that he did not observe any unrepaired moisture or termite damage anywhere in the crawl space. The Ashes introduced a photograph of the area of the crawl space in front of the air ducts that shows a screwdriver pressed into a floor joist as a probe to establish the existence of moisture damage.

The Ashes signed the purchasers' acknowledgement at the bottom of the form on the day of settlement at the office of the closing attorney. At trial, Kenneth Ash testified that he had "no recollection" of reading All Star's report at closing, saying "[w]e were just told [to] sign the papers. We [were] going to be here all night if you had to read everyone of them." Joyce Ash testified that she would not have signed the report if she "had been told there was anything wrong with it."

In September 1994, the Ashes employed Stuart M. Zenzel, a civil engineer and licensed pest control inspector, to reinspect the home. Zenzel testified that upon entering the crawl space he was able to observe unrepaired moisture damage in the area in front of the air ducts. This was the area that Stuart had conceded he had been able to enter and inspect at the time of his inspection. Zenzel, who is of a slighter build than Stuart, was able to move beyond the air ducts to the back areas of the crawl space and discovered significant termite and moisture damage in those areas. Zenzel further testified that all of the damage he discovered was not of recent origin and would have been visible at the time of Stuart's inspection.

As a result of Zenzel's report, the Ashes contracted with Wright Construction Company, Inc. for a structural evaluation and estimate for cost of repairs to the home. Joseph A. Fosnock, an estimator for Wright Construction, confirmed the existence of the damage discovered by Zenzel and estimated the cost of repair at $16,900.

On January 23, 1995, the Ashes filed a motion for judgment against All Star seeking damages of $18,500. In that pleading, the Ashes alleged that they were third-party beneficiaries of the contract between the seller and All Star.

The matter was heard by the trial court in a bench trial on September 29, 1997. At the conclusion of all the evidence, the trial court ruled that All Star's report "clearly indicated [Stuart] couldn't get to every place, that every place was not read[ily] accessible." Accordingly, the court determined that the Ashes were on notice that the report was incomplete and could have required a further inspection. Noting that "[c]aveat emptor still applies in Virginia," the court entered judgment in favor of All Star. We awarded the Ashes an appeal.

We begin by noting that although All Star initially contested the Ashes' claim of being third-party beneficiaries of the contract between the seller and All Star, that issue was not raised at trial. During oral argument on appeal, All Star conceded that it did not challenge that assertion at trial or assign cross-error for purposes of raising the issue on appeal. Accordingly, for purposes of this appeal, we accept that the Ashes were intended third-party beneficiaries of the contract.

The Ashes assert that the trial court erred in ruling that All Star could insulate itself from liability by disclaiming on the report that certain areas were accessible. In conjunction with this argument, the Ashes further assert that the trial court erred in construing the statements in the report in favor of All Star.

We agree with the Ashes that merely making a broad and generalized disclaimer on a termite inspection report following a casual or defective inspection does not automatically insulate the inspector from contract liability. To hold otherwise would render the report useless. The inspector, in preparing the report, undertakes the obligation to report clearly and effectively the existence of damage to the structure inspected. See Baird v. Dodson Bros. Exterminating, 217 Va. 745, 749, 232 S.E.2d 770, 773 (1977). Inherent in that obligation is the corresponding duty of the inspector to explain clearly and effectively any impediments encountered in making a thorough inspection through the use of clear disclaimers and disclosure of his failure to inspect specific areas of the structure. Where this is done, the inspector will be insulated from liability. However, the evidence presented in this record does not support the trial court's judgment that an adequate disclosure was made in this case.

The evidence clearly showed that the area behind the air ducts in the crawl space was not "inaccessible" in the same sense as other areas excluded from the report, such as interior walls and areas beneath permanent floor coverings that are not traditionally subject to inspection. These latter areas are "inaccessible" for visual and physical inspection because access to them would require structural alterations. By contrast, here the sole cause of the area behind the air ducts being inaccessible was, as Stuart conceded, that his large physical size prohibited him from going over or under the air ducts. At best, Stuart's disclaimer was ambiguous. At worst, it was misleading. In either case, the disclaimer did not effectively explain the circumstances surrounding Stuart's limited inspection or give notice to the purchasers of the property that a thorough inspection of the area would not otherwise require structural alterations.

Moreover, while the report states that there was "no visible structural moisture damage in [the] crawl space," the evidence at trial clearly showed that unrepaired damage was readily apparent in the area of the crawl space accessible to Stuart. Thus, notwithstanding his disclaimer, he simply failed in his contractual obligation to discover and disclose the unrepaired damage in the accessible area of the crawl space. Accordingly, the evidence in this particular case does not support the trial court's conclusion that All Star complied with its contractual obligations. Code § 8.01-680.

For these reasons, we will reverse the trial court's judgment, and, because the trial court did not reach the issue of damages, remand for further proceedings consistent with this opinion.*

Reversed and remanded.

FOOTNOTES

FOOTNOTE. Because of our holding on the issue addressed, we do not address the other issues raised by the Ashes in this appeal.

KOONTZ, Justice.

Appendix F

Public Comments

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Agency Department of Professional and Occupational Regulation

Board Virginia Board for Asbestos, Lead, and Home Inspectors

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Commenter: Robert Peek 6/17/18 10:57 pm

SB 627

Regarding SB 627

I am a licensed home inspector in Virginia, with 24 years experience in the building trades and another 22 years experience as a home inspector.

In my opinion, carrying errors and omissions insurance and general liability insurance is essential to protect myself and my clients from catastrophic loss. Many (most, or all) E&O carriers require a limit of liability in the inspection agreement to limit their exposure.

The limit of liability that all home inspectors include in their contracts allows us to offer inspections at an affordable cost. Prohibiting any limitation of liability will certainly increase the cost of home inspections, and it will probably increase the cost of an inspection beyond the reach of many consumers. It will undoubtedly limit the number of people who are willing to offer the service, because who can afford to be exposed to $500k of liability while charging only $600 for an inspection?

An opinion posted on this site that home inspectors are more interested in preserving the real estate transaction than providing accurate and complete inspection reports to their clients is about 25 years behind the times, and it ignores the fact that a Virginia inspector who fails to provide the required service puts his license and ability to earn a living at risk. Licensed inspectors have a powerful incentive to do the job properly, and they have no protection if they fail to do so.

As it stands now, a consumer has the option to sign my contract that includes a limit of liability, or to hire someone else. As it stands now, any licensed inspector can gain a competitive advantage over me by offering the service with no limit of liability (if he can afford to do so). SB 627 would eliminate these options and would replace them with home inspections that are beyond the reach of the very consumers who need them the most.

Bob Peek

Virginia license 3380000108

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Commenter: Mike Ward-Dahl, Pillar To Post Home Inspections 6/16/18 9:37 am

Removing clause of limited liability - Oppose

The SB627 to have the statement of "limit of liability" removed from the home inspection agreement will have significant impact on the availiblity of home inspections for the consumer. Presntly our cost of E&O insurance is over $3000 per year and the insurance requires our agreement to have that statement in our agreement, If that statement is removed the industry may not insure us or the cost may go up dramatically to cover the liability or inspectors may decide it is not worth the risk. This would increase the costs and limit availablity of inspectors

As Virginia is very pro business, this seems to be a very selective anti-business measure, with all of the abitration clauses that are allowed in business agremeents this one is going after the very small business. Even with the clause home inspection companys are still sued and settled with the E&O insurance if it is a legitimate claim.

As an inspector we have 2-4 hours to go through a home, we have to deal with personally belongings concealing walls in many locations, we deal with vacant homes that water has been turned off so issues are not present during th einspoection and may appear after wate ris turned on for a longer time. We deal with owners that have concealed the issues with paint or other coverings.

As inspectors we inspect a home on a set date, then the buyers move in and something fails, are we to be responsible for mechanical failures after we inspect the home. Just this week my compressor failed on my AC unit, it cost me $1200 to repair it, the unit is less than 3 years old. Would I as an inspector be responsible for that failure if it happend right after the buyers moved in.

As inspectors we test for wet basements, the basement is dry during the inspection, no visual sign of past water damage, after this past 2 weeks of extremely heavy rains, a basement gets wet, are we responible for the wet basement

These are examples of issues that with the clause of "Limited Liability" does not become a issue, with out this clause it may have to be defended against

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Commenter: Jim Burak 6/16/18 11:45 am

SB627 - Oppose

The attempt to prevent limits of liability statements in home inspection contracts is **unacceptable**. Simply put, I cannot name a legal business, or government agency for that matter, that does not have either a diclaimer, waiver, terms and conditions, or limits of liability statements supporting their operation. I recommend not going forward with this legislation becasue, the overall time and cost for a home inspection would undoubtedly increase. That would hurt homebuyers, sellers, realty professionals and the overall economy of Virginia.

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Commenter: Timothy Early, Early Home Inspections LLC 6/16/18 12:35 pm

SB 627 - Home Inspector's Limited Liability Contract Wording

SB 627 will effectively increase insurance costs for home inspectors and drive a number of inspectors out of business. New licensing requirements (July 1, 2017) already are reducing the number of newcomers into the business producing an aging work force. An aging workforce will opt to quit rather than defend frivolous lawsuits and risk any accumulated wealth. They will be frivolous because opinions rather than knowledge will rule actions. Lawyers will encourage this. To protect themselves, home inspectors will need to increase their on-site time many fold. And report preparation time and length will increase accordingly. Increased costs and lesser competitive pricing will be passed on to consumers. Well-heeled buyers won't be hurt but average ones will...probably opting to forego an inspection. The homes they can afford are the ones most likely to need work...work a home inspection highlights. This bill is an anti-consumer bill. Furthermore, it is redundant. There are other laws in effect that counter limited liability clauses, particularly in fraud or intent to harm scenarios. In reality, regardless what a contract says, a suit can be made. The only winners are lawyers. Limited liability clauses promote careful consideration before suing. If the government must do something, consider requiring E&O insurance as well as general liability. Also, consider requiring Workman's Compensation. Home inspectors can fall off roofs, through ceilings and get electrocuted in crawlspaces as well as electric panels. Without Workman's Compensation the seller is liable. Why aren't the Senators protecting them.

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Commenter: Timothy Early - Early Home Inspections, LLC 6/16/18 1:45 pm

SB 627 - Response To John Cowherd

I've read through all the 22 comments. There is one that is pro SB 627 from John C. Cowherd, PLC. He makes two major points which need addressing. The first, the close relationships between inspectors and real estate agents will tend to influence the degree to which an inspector emphasizes a problem. This downplay does in fact happen. Since 80% of all home inspections are referrals from real estate agents, to be successful home inspectors must court them. They don't hide problems and are not ill-intentioned, they're just not alarmists and in fact shouldn't be. We are considererd "the Deal killers", but then we are retired, cater to the remainder 20% and don't have to make a living doing home inspections.

Also, the courtship is done in more ways than soft-peddling a problem. Agents have to be at the inspection to open the house in Virginia. Imagine waiting 4 hours for a home inspection to be completed; thus, the 1 to1 1/2 hour inspection. I can't do an inspection (and there are two of us) in less than 2 1/2 hours...usually 4. Of course, we encourage buyers to walk around with us and question, question, question. Again, I remind you, we are retired and can afford to do this which we believe is very important. The educational component of a home inspection not addressed in the new regulation should be, but is not practical.

John's point is valid, but not via SB 627. A law banning real estate agents from recommending home inspectors in any way, shape or form (example: a list of three) should be passed. Massachuset has one, but it is the only state to my knowledge and it isn't even that clear.

John makes the point in support SB 627 to allow consumer actual damage protection. He is basically saying damage occurs because of the down play. Down play or emphasis is matter of opinion. It relies on grey interpretation. John's saying it is black and white. He's wrong.

Finally, he thinks we need to establish a professional standard for home inspectors. He obviously has never read the DPOR regulations which are greater for home inspectors than general contractors.

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Commenter: Joe Sorbello Bricks and Sticks Home Inspections LLC. 6/16/18 8:55 pm

Regarding SB 627.

The home inspectors' job is to provide the perspective home buyer enough information to make an informed decision regarding the purchase of a particular home. The home inspector provides a generalistic non destructive, inspection of accessible components of a home. Lists of all discovered deficiencies found during a home inspection are included in the inspection report. A home inspector will determine if a component is functioning as originally intended and will generally attempt to determine if the component is at or near the end of its typical life expectancy. A home inspector will never find all deficiencies in a home. Due to this, no warranty or guarantee is included or implied with a home inspection.

The term "damages", whether real or perceived is very vague and could leave the home inspector liable and open to law suits for almost, if not every aspect of a home inspection. In an industry fraught with law suits, many frivolous, the home inspector needs some means of protection.

Joe Sorbello

Bricks and Sticks Home Inspections, LLC

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Commenter: Seth Hurlbert - Hurlbert Home Inspection, LLC 6/15/18 8:47 am

SB 627

The Bill SB 627 will be very harmful to the Home Inspection industry in this state. It will likely raise insurance cost to a prohibitive level and make entering the profession more difficult. This will reduce the number of inspectors and raise the cost of the home inspection service. Home inspections may become too expensive for all but the most affluent. This will not protect the general public. It will harm first time home buyers the most, who need the information about the home the most.
Please do not let this bill continue!

Seth Hurlbert

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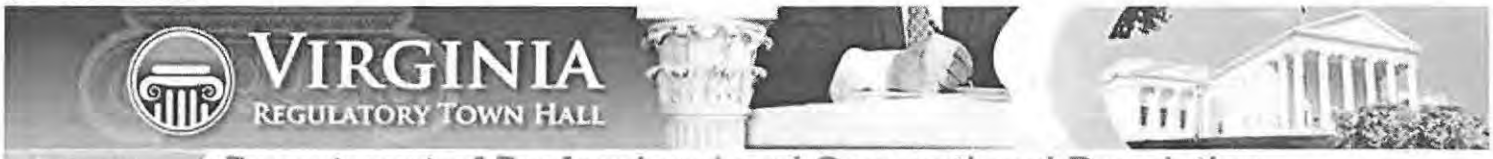

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Commenter: Steve Midkiff, Premier Inspections LLC 6/15/18 7:18 pm

Opposition to SB627

I am writing to state my opposition to SB627. Home inspections are non-invasive and are not engineering or code inspections. A home inspector can only report on what he or she can see.

A complete removal of liability limitations in home inspection contracts would unfairly penalize home inspectors, expose them to frivolous lawsuits, and raise the cost of home inspections.

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Commenter: Kevin F. Dougherty, Pillar to Post - Northern Virginia 6/14/18 9:08 am

Virginia Senate Bill 627 - Detrimental Effect

Virginia Senate Bill 627, in its proposed language, will have an unfavorable outcome for most every home buyer in the Commonwealth of Virginia.

The number of Home Inspection companies will be reduced because of the burden, risk and exposure associated with unlimited liability. The ensuing price for a Home Inspection will increase dramatically for several reasons: 1) Simply supply and demand – fewer Inspectors reduces supply and the demand likely will not decline given the current and expected real estate market conditions; 2) Increasing the price of the Home Inspection will allow the creation of a greater "war chest" in the event of legal action being taken by a buyer because of unlimited liability; and 3) Increasing the price of the Home Inspection will be necessary because insurance costs will significantly rise due to the degree of unlimited exposure.

Many private and public business entities have limitation of liability clauses in their contracts and typically are associated with or tied to the amount of the fees that are charged to provide defined services. Our Visual Inspection Agreements provide for the same type of limitation. Why then is our business being regulated to such an extent when these are normal business practices?

Our role is to be a generalist. We don't have a crystal ball to determine when an appliance will fail, a roof will leak or a basement flood due. Our service is delivered via a brief moment in time – and that is the time where we are visually evaluating a home. We are prohibited from performing invasive or intrusive measures, so if something is lurking behind a wall or poor construction techniques were employed but not visible, how could a Home Inspector be liable for latent defects?

I am a licensed Home Inspector and ASHI Certified. I operate a small business in the Northern Virginia region and my team performs nearly 600 Home Inspections annually. I carry $1M in E&O and General Liability Insurance. Not once in 6 years have we had any situation requiring the involvement of our insurance carrier.

Integrity, truth and accuracy combine to make the Home Inspection business a truly professional service oriented industry.

Please consider the detrimental effect the Virginia Senate Bill 627 in its current form and language will have on your constituents.

Respectfully yours,

Kevin Dougherty

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Commenter: Pillar to Post Home Inspections, Mark Scapro 6/14/18 11:01 am

The potential new ruling on liability of Home inspectors is ludacri. Will cost jobs

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Commenter: Troy Hendrickson, Professional Home Services, LLC 6/14/18 11:21 am

SB 627 will do serious damage to the real estate industry and will end up costing consumers far more

Most issues with home inspector liability are not due to the inspector being negligent or in any way remiss in his duty. Instead, they are typically due to latent defects that exist in a house that cannot be detected during a visual inspection for a number of reasons, and the defect only becomes apparent later due to changing conditions. Even though their should be no liability in these cases, people pursue them anyway and the inspector then needs to fight an uphill battle trying to prove, long after the initial inspection, that the defect could not have reasonably been detected during the visual inspection.

Being able to hold an inspector liable for an unlimited dollar amount for a perceived mistake in a service that typically only costs $300-500 already happens. However, our limitation of liability in inspection agreements mitigates this to a degree. Lifting our ability to limit liability will do tremendous damage to the industry for a number of reasons

- The number of claims against home inspectors will rise significantly. When people are on the hook for expensive repairs, regardless whether or not an inspector may be at fault, some will chase wherever the money is. In legitimate cases currently, inspectors can be and often are held liable for more than their contract states. Once word gets out that the limitations of liability are lifted, it doesn't take a detailed study to figure out that the number of claims, especially illegitimate ones, will rise.

- Insurance costs will skyrcoket. They are high already. This will push low volume inspectors out of the industry as well as inspectors that don't want to handle the extra liability.

- Home inspection fees will skyrocket. Few inspectors will absorb the higher insurance costs and take on the extra liability without passing those very real costs directly to home buyers.

- Fewer home buyers will get home inspections. With higher home inspection fees, many buyers will forgo having an inspection in the first place. This in turn will leave these buyers much more susceptible to inheriting major problems in a home purchase, which will cost them far more in the long run than the inspection fee would have been. Also, because higher fees will likely push out a disproportionate number of lower income buyers, such as those getting FHA or VA loans, lower income and minority buyers will be more prone to future major home expenses.

- Realtor liability will likely increase. Most home inspector insurance policies provide agent idemnity. With fewer people purchasing inspections due to increased cost, agents will be idemnified from house problems less often. Those chasing after the money that have no home inspector to go after will instead target the next representative with insurance, the Realtor.

- More increased cost to consumers as inspectors will far more often recommend specialist inspections to mitigate liability for those respective systems.

- To better defend against frivolous claims, inspectors may start reducing inspection quality by adhering only to required components of the Standards of Practice, and including and adhering to

clear language in inspection agreements that the inspector will only inspect mandatory systems and nothing more.

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Agency Department of Professional and Occupational Regulation

Board Virginia Board for Asbestos, Lead, and Home Inspectors

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Commenter: Cathi Lynch. Pillar To Post Home Inspectors 6/14/18 12:45 pm

Virginia Senate Bill 627

It is surprising to me that I have to draft a letter as to why this proposal is completely damaging to real estate transactions, the future home buyers and the hard working professional home inspectors. It is amazingly clear how wrong this proposal will be to the entire industry. To open up our liability for items that may arise after our inspection that were not visible the day of our visit and to require us to carry the liability for items that were either outside the scope of the state regulated home inspection or were undetectable just doesn't make sense. Limiting our liability as it states currently is the best way to ensure no frivolous lawsuits or claims arising because a home buyer decides that they aren't responsible for the costs that come with home ownership. For example, no homeowner wants to pay for a new HVAC unit that stops working properly 6 months after moving in but was working properly the day of the inspection. They feel someone should pay other than them and this is exactly the reason why we need to keep the protections in place for the home inspector. Unfortunately, systems break down, water entry occurs out of the blue from a storm, etc.. These are situations that come with home ownership. If you eliminate the liabilty protection from the home inspection contract, the home inspectors' liability insurance will become too cost prohibitive to afford and prices will therefore rise to cover this expense. There will be less home inspectors willing to conduct inspections when the opportunity for catastrophic liability and lawsuits will put them out of business. We are supposed to be getting rid of regulations in this country, not adding more. The majority of home inspectors do an honest and thorough inspection for their clients. The ones that are careless and do not perform a thorough inspection will be eliminated from the industry via word of mouth either from Realtors or social media. The government has no right to damage an entire industry for a few bad eggs.

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Board Virginia Board for Asbestos, Lead, and Home Inspectors

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Commenter: Arthur Miller, Tokori, Inc. 6/14/18 12:49 pm

Virginia Senate Bill 627 Opinion from multi-state licensed home inspector/contractor

We opine that a home inspection contract is a voluntary business agreement between two parties of which the Commonwealth should restrain itself from undue influence or intervention in the interest of promoting commerce and affordable housing. While the home inpector's professionalism and conduct are, and should remain, the purview of DPOR, this proposed legislation would create an undue burden to commerce--specifically, it dramatically encumbers one of the main residential purchasing agreement contingencies (the inspection clause) necessary to consummate a residential real estate transaction. We point out that no other adjacent state has this regulation, and only Delaware (having also recently adopted formal licensure for its home inspectors) requires Errors and Omissions (E&O) insurance for its inspectors. Based on our experiences in three states--MD, VA, and DE--we assess that placing an "unlimited" liability on the home inspector will create a significant barrier to entry to those building trades professionals who might otherwise consider licensure. Additionally, the business structure sought by the remaining home inspectors will most likely gravitate to those forms, such as LLCs, that will make any attempt to leverage the intended protections and the positive potential for damage compensation afforded by this Bill, should it become law, minimally rewarding for the plaintiff. Our response to this legislation, if enacted, will be to avoid inspections on "risky" properties, such as those built before 1978 or during phases in building construction that introduced such defects as unbonded CSST, galvanized plumbing supply lines, aluminum wiring, lead-based paint, asbestos insulation and tile, etc. This action, if adopted by our colleagues, will result in fewer available, experienced inspectors for the potential purchasers of these less favorable, aged properties--lower income and first-time homebuyers. Of those remaining inspectors that are available, they will be forced to raise their prices to cover the additional cost of E&O coverage, additional filing/recordation, extra accountancy burdens, etc. that will be required to defend against inevitable misguided or frivolous claims and to stay in business--again, unintentionally creating an additional financial burden for the purchaser (who typically pays for the inspection). For example, the cost of mandating E&O coverage for home inspectors as a condition of licensure raised our cost for home inspections in Delaware by over 30 percent, and, we rejected much more work than we accepted as a result of the potential risks associated with VISUALLY inspecting many older homes. If the Commonwealth decides to go forward with this legislation, we highly recommend that it be amended to provide a provision for a non-profit housing assistance organization's exemption--they will be the only ones in a viable position to provide inspections for the already underserved low-income and first-time homebuyer citizens this well intentioned, but woefully misguided law seeks to protect.

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Commenter: Charles Aulino, All In One Home Inspections 6/14/18 1:09 pm

Possible pitfalls with regard to SB 627

Greetings,

I'd like to point out a few possible pitfalls that I see with the proposed legislation in SB 627. First, it appears to be too broad and vague; it simply strips the contractual liability limit protections from the home inspection profession outright, and in such a manner that exposes the home inspection profession to the potential for frivolous or unscrupulous lawsuits.

Second, the proposed legislative change fails to recognize the very nature of a home inspection. Namely, it is a visual inspection of the house and related systems, and inspectors are actually forbidden to conduct the type of probative activities that would detect latent or intentionally concealed defects. As such, a home inspection and its related report are a snapshot in time, akin to a balance sheet statement, and the inspector cannot speculate, predict or determine when any particular system might fail in the future, but can only comment upon what he or she can observe during the time of inspection.

Next, consider the effects this proposed change could have with regard to creating an environment of frivolous or unscrupulous litigation. As it stands now, a home inspector ordinarily carries E&O insurance, typically with $1 million in coverage. If an inspector truly does miss a finding that results in significant financial harm, a homeowner can certainly litigate, and if it is determined that there was genuine negligence, the possibility of a judgment is real. With this proposed change, the incidence of litigation will undoubtedly increase, along with almost certain increases in cost for said insurance.

The legislature prudently revised the code in July of 2017 when it required home inspectors to be licensed through DPOR. Doing so created a minimum level of knowledge and proficiency and undoubtedly increased the standard of service for all home buyers in the Commonwealth. However the same cannot be said for this proposed legislative change. This appears to only increase the potential costs and risks for home inspectors, without providing any increase to the level of service that home buyers can expect. I urge you to reconsider.

Warm regards,

Charles Aulino

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Board Virginia Board for Asbestos, Lead, and Home Inspectors

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Commenter: Vince Clingenpeel 6/14/18 1:30 pm

I oppose SB 627

I am writing to oppose SB 627 as it will open the door for more frivolous lawsuits and unreasonable demands from disgruntled clients. It will also cause inspection prices to skyrocket to cover the increased insurance rates.

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Commenter: Wise Choice Inspections & More LLC 6/14/18 4:50 pm

Virinia Senate Bill 627

As Licensed Home Inpectors know, home inspections are a visual inspection for the most part. A home that is occupied that is filled with all the homeowners furniture and miscellaneous goods pose a huge problem in visually inspecting every inch on the property! one example on an issue that could happen is that if a buyer decides to do some renovations after purchasing a home you inspected and finds asbestos behind the vinyl siding could call you out on not advising them on it's presents or the cut ceiling joist hidden by the attic insulation. This bill is opening us Licensed Home Inspectors up for many lawsuits which at some point it will run this type of business in the ground or make so the average home buyer can nor afford to hire us.

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Commenter: Benjamin Meredith, Building Knowledge, Inc 6/14/18 3:14 pm

SB 627

Re: Senate Bill 627:

I have recently been made aware of Senate Bill 627 which is attempting to further regulate the home inspection industry in Virgina. In the last year Virgina has adopted a licensing requirement for home inspectors in Virginia, which was a positive step in protecting consumers.
The Senate Bill 627 is attempting to require home inspectors to remove any limit of liability in our contracts with consumers. A Virginia licensed home inspection is defined as a limited evaluation of a home, as a home inspection is only a visual inspection. The limits of the inspection process are outlined in the consumer contract, as is required by DPOR.
The home inspection process is designed to educate consumers about their property and to alert them to potential issues. A home inspection cannot limit all of the risk an individual takes when buying a property. Bill 627 would remove the home inspectors limit of liability opening the industry to limitless litigation.
Senator Surovell introduced this legislation after a constituent had a bad experience during the home inspection process. The passing of this legislation would affect an entire industry when there does not appear to be any widespread problem that needs repair.
Please do not support Bill 627.

Commonwealth of Virginia

DPOR: Board for Asbestos, Lead and Home Inspectors (DPOR), rr <alhi@dpor.virginia.gov>

SB 267

1 message

GHI Greg's Home Inspections <homes4younow@msn.com> Thu, Jun 14, 2018 at 8:29 PM
To: "ALHI@DPOR.Virginia.Gov" <ALHI@dpor.virginia.gov>

Commenter: Gregory Hoffmaster Certified Master Inspector, GHI Greg's Home Inspections

SB 267 RE: Home Inspectors

The proposed bill is BAD for Virginia, BAD for consumers, BAD for home inspectors and BAD for the Virginia real estate industry. As a home inspector serving Maryland, DC and Virginia for the past 8 years and part of a InterNachi brotherhood of home inspectors we work to protect home buyers with a non evasive visual inspection. The proposed legislation will open the flood gates for frivoluos claims and increase inspection costs to the consumer because of higher insurance premiums and costs related to doing business in Virginia. It may cause consumers to forgo an inspection because of the higher costs which harms us all. Home inspectors provide a valuable service to their customers and the community at fair and reasonable pricing and government regulatory agencies are becoming more involved with commerce without thinking of the consequences. This is a bad bill that needs a resounding NO.

Sincerely,
Greg Hoffmaster, Certified Master Inspector
GHI Greg's Home Inspections, LLC
PO Box 38
Germantown, MD 20875
Office 301-728-6032
Email: info@ghihomeinspect.com
Website www.ghihomeinspect.com
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On Youtube at : https://www.youtube.com/watch?v=y3M5DAZ1GfA

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Commenter: Gregory Hoffmaster Certified Master Inspector, GHI Greg's Home Inspections 6/14/18 8:11 pm

SB 267 RE: Home Inspectors

The proposed bill is BAD for Virginia, BAD for consumers, BAD for home inspectors and BAD for the Virginia real estate industry. As a home inspector serving Maryland, DC and Virginia for the past 8 years and part of a InterNachi brotherhood of home inspectors we work to protect home buyers with a non evasive visual inspection. The proposed legislation will open the flood gates for frivoluos claims and increase inspection costs to the consumer because of higher insurance premiums and costs related to doing business in Virginia. It may cause consumers to forgo an inspection because of the higher costs which harms us all. Home inspectors provide a valuable service to their customers and the community at fair and reasonable pricing and goverment regulatory agencies are becoming more involved with commerce without thinking of the consequences. This is a bad bill that needs a resounding NO.

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Commenter: Tim Bills, Sentry Home Inspections, LLC 6/14/18 5:21 pm

Opposed to SB 267

I am writing as a Virginia licensed home inspector in opposition to SB 267. If passed, this legislation will dramatically increase a home inspector's liability by making inspectors liable for items that exceed the American Society of Home Inspectors Standard of Practice, for issues reaching beyond our intended scope and purpose. As a Certified Home Inspector with the American Society of Home Inspectors, I subscribe to the ASHI Standard of Practice. Home inspectors are generalists tasked with identifying visually observable defects and inoperative systems by use of normal operating controls. Our mission has never been to perform technically exhaustive inspections, destructive testing, or to estimate the adequacy of or the estimated remaining life expectancy of any system or component. The inspection, which is a visual inspection, includes readily accessible areas and components. It is out of the scope of our Standard of Practice to perform any destructive testing to ascertain if a problem exists. Additionally, Inspectors are restricted by home sellers as sellers do not want their properties damaged by inspectors looking for potential problems. Inspectors are also restricted by their liability insurance policies from performing destructive testing and we stand the chance of loosing our insurance coverage if we do.

Licensed, qualified home inspectors provide a valuable service to the first time and experienced homebuyer. Inspectors possess a general knowledge of homes and their components and provide an affordable consulting service and general knowledge base to the layperson buyer. This service provides the homebuyer with the information necessary to make and educated purchasing decision. This legislation will likely reduce the number of qualified home inspectors willing to perform inspections and in turn, will likely result in higher inspection fees for homebuyers, neither of which are in the best interest of the home buying public.

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Commenter: Thomas Ball, Alcova Home Inspection, LLC 6/14/18 9:06 pm

S.B. No. 627 will only hurt Home Purchasers

This bill is trying to make Home Inspectors responsible for anything found wrong with the home when Home Inspectors only do a visual inspection. If a Home Inspector does not report something there are already means to make them liable through the court of law. This bill is trying to make Home Inspectors responsible for all issues. This will only cause a negative domino effect. Ending with less Home Inspectors and much higher rates but the need for a Home Inspector will not change. I am strongly against this bill.

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Commenter: Tim Hockenberry Home Facts Inc. 6/14/18 10:29 pm

Magic Glasses And A Crystal Ball

Greetings to all fellow home inspectors.

I've been doing home inspections for 25 years in Northern Virgina, and have often felt the service home inspectors provided was undervalued. I doubt anyone could coordinate the circus of contractors necessary to produce the results of a single home inspector. Afterall, you would need a framer, an electrician, a plumber, an HVAC tech, a roofer, possibly a water proofer, and likely a remodeler, all on the same day, without an agenda to sell you something, and for a reasonable fee. Imagine that, and realize that none of those contractors is going to take the time to explain how the house works, the educational component of a home inspection. Now VA Senator Surovell wants me to provide this undervalued service, with unlimited liability to my company, with SB627. Please, Senator Surovell, tell me where I can find those magic glasses to see thru walls, and the crystal ball to predict the future, because without those, if your bill passes, I will no longer be able to afford to provide my undervalued service.

Respectfully,

Tim Hockenberry

Home Facts Inc.

(703) 244-0092

Commonwealth of Virginia

DPOR: Board for Asbestos, Lead and Home Inspectors (DPOR), rr <alhi@dpor.virginia.gov>

Attn: Trisha Henshaw; I oppose SB 627

1 message

clingprop@aol.com <clingprop@aol.com> Thu, Jun 14, 2018 at 1:28 PM
To: alhi@dpor.virginia.gov

I am writing to oppose SB 627 as it will open the door for more frivolous lawsuits and unreasonable demands from disgruntled clients.

Vince

Clingenpeel Properties Inc.
Home Inspections and Home Owner Consulting
ASHI Certified - Virginia Certified - Class A Licensed Contractor
703.409.5292
www.clingprop.net

Commonwealth of Virginia

DPOR: Board for Asbestos, Lead and Home Inspectors (DPOR), rr <alhi@dpor.virginia.gov>

SB 627

1 message

Jay Markanich <jaymarkanich@gmail.com> Thu, Jun 14, 2018 at 10:21 AM
To: "DPOR: Board for Asbestos, Lead and Home Inspectors (DPOR)" <alhi@dpor.virginia.gov>

Miss Henshaw -- I have been contacted by my home inspector associations many times about the proposed SB 627 bill. To say it has me (and us) concerned is understated. As I've been doing home inspections for 38 years (I stopped counting many years ago at 25,000 inspections), I have seen many changes, but this is one that is frightening.

For years I did not want to register with the DPOR because I preferred to be invisible. That is an honest statement. Once I was forced to be DPOR registered and a known quantity it cost me a lot more money, but did NOTHING to improve my home inspection service or skills! The consumer is not any more protected because of my current "licensed" status the consumer was before I was made to become licensed.

Further, so I could continue to perform pre-drywall inspections I had to obtain the NRS designation. I've been doing pre-drywalls for well over 20 years. The class was, frankly, pathetic, was taught by someone who had never performed a home inspection, and improved my knowledge and skills not a bit. But now, after the NRS class, I am official and approved (!), and I use those words tongue in cheek! Again, all it did was cost me money. It did nothing to protect the consumer any more than before I became satisfactory...

But to the point. The verbiage I read in the bill says, " *No contract for home inspection services shall contain any provision limiting the liability of any home inspector for damages arising from his acts* ..."

What's frightening about that? Because my agreement has limits all over the place. And consumers are funny, as you know, and will sue for any reason, as you know. And lawyers are very good at taking advantage of anything, as you also know. We home inspectors are exposed by that clause immensely.

1. On my agreement, my liability is limited to conditions the day of the inspection. But the verbiage prevents "any provision" limiting my liability. Why is that clause on my agreement? Because often people are still living in the house, and break things! Sometimes, if it is a short sale, people are in the house for months! And VA wants me to be liable for what they break? Don't poo poo this!
2. On my agreement, my liability is limited to one year. That's reasonable. But the verbiage prevents "any provision" limiting my liability. As such, if I inspect a new roof and report it's in good shape and dry, and it leaks in 15 years, VA wants me to be liable? Don't poo poo this!
3. What acts? I don't do inspections without the client and/or realtor present because of this: once when I touched a washing machine knob it came off in my hand. They saw it! But the seller sent me a repair bill (for $800!!) because I "broke" the washing machine! That was a booby trap. If you think sellers don't set up booby traps for home inspectors you are naive indeed. But the verbiage makes me liable for "any act."
4. How long am I liable for my "acts?" For example, two or three times a year the ice maker does not work in the fridge. But the seller has put 7-11 ice in the bucket so ice comes out when I test it! I know the difference between 7-11 ice and ice maker ice shapes, but if I don't catch that for how long am I liable? That, by the way, is a booby trap. If you think sellers don't set up booby traps for home inspectors you are naive indeed. OFTEN: Furniture is placed in front of broken windows so I can't test them. Boxes are piled in front of foundation cracks so I can't see them. Obvious leaks are covered up with primer and paint, or furniture, and odors from such leaks are cleaned so they cannot be smelled. Termite damage is covered by rugs and furniture. Those things are common! They are not visual. And VA wants me to be liable? For how long?
5. On my agreement I am financially limited to the inspection fee. Many states have this provision! And VA wants no limits? Remember what I said, consumers are funny, as you know, and will sue for any reason, as you know. And lawyers are very good at taking advantage of anything, as you also know. States without some limit on the home inspector financial liability have the highest insurance premiums, and the most litigation. The reasons for that are multiple and obvious. And believe me, in VA my business insurance is PLENTY expensive now!
6. Finally, states without some limit on the home inspector financial liability have the highest insurance premiums, and the most litigation. The reasons for that are multiple and obvious. And believe me, in VA my business insurance is PLENTY expensive now! And now VA wants to become one of those no-limit states? I protest!

This idea that home inspectors and realtors or banks have relationships that we want to protect and because of those relationships we don't want to kill a deal is utterly ridiculous. I OFTEN do two and three home inspections for the same

client! The house is the house! I don't invent problems, and I don't make decisions for buyers as to what problem or risk they want to take on. If the realtor is upset by that, so be it -- I am ALWAYS on the side of my client.

I saw on line that someone thinks VA needs to impose standards on home inspectors. HA! Our associations have all sorts of standards to meet to join and to meet each year to stay viable. We have to retake and pass with 80% the association test every other year! As a result I am always learning because I don't simply retake the same class over and over to meet my annual Continuing Education requirements. People who think we need "standards" are, in a word, ignorant.

Again, I protest! If you feel my thinking above is incorrect please, please let me know.

If I need to somehow sign up to speak at this meeting, please let me know how that is done, or write my name in now. I really, really want to speak.

Thank you for your time. Sorry for the long email.

Jay Markanich

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Jay Markanich
Licensed Home Inspector
Virginia License # 3380-000723
DPOR New Residential Structures designation
Certified Master Inspector
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Festina Lente - Make Haste Slowly

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Board Virginia Board for Asbestos, Lead, and Home Inspectors

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Commenter: Paul E Tieche 6/13/18 9:00 pm

Virginia Senate Bill 627

Good evening! I am against any legisltion that could be "twisted" and/or abused. The wording used in this bill does not specify anything, it is to vague. I am a home inspector and always assume any responisblty for damage directly caused by myself at/during an inspection. If limitations are added to me and my performace by a bill worded like this then I will not be able to provide a respectible service to my customers. Thank you for thinking about the normal and not passing a bill for the exception.

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Commenter: Tim Wiley, Blue Horizon Home Inspections 6/13/18 5:54 pm

Virginia Senate Bill 627 has unintended consequences that do not serve the people

If Virginia Senate Bill 627 passes, I will probably close my home inspection business. I have never had any issues with the home inspections I have performed, but the risk to my business would be too great. I am certain that other home inspectors will feel the same way. Currently, people have a very difficult time finding qualified inspectors to do home inspections for them. If this bill passes, that difficulty may become an impossibility for many home buyers. How does not getting a home inspection help the people of this commonwealth? Clearly, it does not.

Lastly, I have yet to see the overwhelming evidence that this is a problem. Why are our politicians trying to solve a problem that likely does not exist? It seems evident to me that something else is driving this other than a goal of protecting the consumer and supporting small businesses.

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Commenter: Joseph Wingenbach, American Society of Home Inspectors (Northern Virginia) 6/13/18 3:32 pm

Commentary on proposed Senate Bill 627

Senate Bill 627 is short-sighted, attempting to be punitive without understandign the home inspection process. A home inspector's job is to asses the phsycial condition and mechanical function of a given home on the day of the inspection with the additional limitation of hindered visibility; home inspectors cannot remove fixtures, insulation, wall coverings, floor coverings, etc.

The wording of Bill 627 makes it possible for home buyers to inappropraitely declare a home inspector to be negligent for conditions not yet present at the time of the inspection or which were not detectabe during the inspection.

The proposed bill shows a lack of understanding of how the home inspection process works, specifically the limitations home inspectors encounter. Any legislators thinking of supporting this bill should take the time to familiarize themselves with the home inspection process in person. No two houses are the same. No two inspections are the same. Thereofre, a one-size-fits-all change to the liability of home inspectors does not make sense.

- Joe Wingenbach, American Society of Home Inspectors - Northern Virginia Chapter

Commonwealth of Virginia

DPOR: Board for Asbestos, Lead and Home Inspectors (DPOR), rr <alhi@dpor.virginia.gov>

Prohibition on Certain Limits of Liability in Home Inspection Contracts

1 message

Shane McClung <shane@asafehi.com> Tue, Jun 12, 2018 at 12:01 PM
To: ALHI@dpor.virginia.gov
Cc: rbohannon@hunton.com

Date: June 12, 2018

Dear Trisha L. Henshaw, Executive Director - ALHI@DPOR.Virginia.Gov

I currently operate a home inspection company in Northern Virginia.

This message is a PLEA for your support. The subject is regarding **Bill 627** which has been referred to DPOR.

Senator Scott Surovell (D-Fairfax) introduced Senate Bill 627 in the 2018 session that would prohibit home inspectors from *limiting their liability in home inspection contracts*. This stems from an experience whereby a homebuyer ordered a termite inspection as an additional service, from a drop-down menu offering, while ordering a full home inspection. Significant termite damage was discovered once the homebuyer took possession of the property. In reviewing the termite inspection contract, it was discovered that the inspection company had limited liability, and the homebuyer would only be able to recover the cost of the inspection. This issue was handled through the Home Inspector Licensing Board and regulatory body through DPOR, and no additional law should be necessary.

However, since the bill has been presented, I would like to bring several items to your attention:

-Home inspections include a written evaluation of the readily accessible components of a residential building such as heating, cooling, plumbing, and electrical systems; structural components; foundation; roof; and masonry. Termite inspections are not part of a home inspection, and are often separate inspections required by lenders.

-All home inspectors in Virginia are required to be licensed. As a condition of licensure, they are required to carry $250,000 of liability insurance. If this bill were to be enacted, insurers would likely either drop home inspectors from coverage because of the limits of liability being removed, or the rates would skyrocket, and/or the insurers could potentially require home inspectors to carry costly errors and omissions coverage, with that cost being passed on to the homebuyer. If insurers were to drop home inspectors, they would be unable to meet the state requirements for licensure.

-Passing this law could not only create an environment that increases the costs of home inspections, but reduces the number of home inspectors available in some given areas of the state, thereby creating a situation that might cause the homeowner to NOT hire a home inspector. It is our understanding that the goal of the state regulations are to protect the public health, safety and welfare of the residents of the Commonwealth. Failure to inspect a home, especially a vacant property, using the professional services of a licensed home inspector, could result in not only a negative financial impact to the homebuyer, but safety as well, as in the area of fire, carbon monoxide poisoning and other life threatening events.

-Limited liability is a necessary protection. Home inspectors test and assess a number of components within a home, most of which have a limited life span. An HVAC unit that functions properly in the spring can suddenly experience problems shortly thereafter during hot summer months when its load is increased.

-As part of the licensure requirement that was enacted in 2017, consumers can file complaints with the Board of Asbestos, Lead and Home Inspectors. If a home inspector was found to be negligent by the Board, they can have their license suspended or revoked.

Please consider the information I have provided and vote this bill down.

If you have any questions, please contact Robb Bohannon, VAREI's lobbyist in Richmond. He can be reached at (804) 614-7542 or by e-mail at rbohannon@hunton.com.

Sincerely yours,
Shane McClung, Certified Professional Inspector
A Safe Home Inspection, LLC

571-989-2315 voice/text
shane@asafehi.com
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Commenter: John C. Cowherd, Cowherd PLC 6/12/18 10:18 am

Certain Liability Waivers Should be Void as Against Public Policy

I would like to comment in favor of legislation similar to S.B. No. 627. The status quo in Virginia regarding the home inspection contingency is not acceptable. Legislative action would be very helpful. Home inspectors frequently have close relationships with sales agents and mortgage brokers. They know that if they identify a "deal breaker" defect in their report, the purchaser will likely back out, and the agent and broker will lose the value of their time invested for the sale of the property under contract. For that reason, home inspectors will downplay the significance of items requiring major repairs. In Virginia, the general rule is "buyer beware", which puts a special empasis on the home inspection process. Home inspectors routinely put language in their contracts that require arbitration of any disputes and limit any recovery to the amount paid for the home inspection service. This means that a purchaser could be saddled with a defect that requires $8000.00 in repairs and only have a remedy of $400.00.

I think that the text of the proposed S.B. 627 could be improved. The bill could be amended to clarify that the limitation of liability only applies to the actual "home inspection" activity and not for other acts or admissions for which a limitation of liability may be acceptable. It can also be clarified that it applies to the acts and ommissions.

I suspect that it will not make sense to ban such limitations on liability without doing something to establish a professional standard for home inspectors.

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Commenter: Fernando Barrientos, Abode Check Home inspections 6/25/18 11:55 pm

Oppose Virginia SB 627

I believe the passing of SB 627 Is equivalent to erasing all the hard work and dedication that has gone into achieving licensure for home inspectors. Careful consideration has already been taken in drafting the existing regulations for home inspectors to help protect the home buying public from irresponsible actors. It is understood that neglegent behavior on the part of the home inspector has a vehicle for disciplinary action through the procdesses established by DPOR. Holding a home inspector accountable for issues that arrise after the inspection or for items that may have been purposely hidden by an unscrupulous home seller, be it a homeowner or house flipping contractor is unreasonable. I inspect every home as if I were inspecting it for one of my children. Always having the client's best interest at heart. I am definitely opposed to Virginia SB 627.

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Commenter: Tony Toth, NOVA-ASHI - President 6/25/18 11:42 pm

Oppose SB627

Home inspectors are trained "generalists". It is not possible for anyone to be experts in all fields related to home construction nor is it possible for even the "experts" to perform without some limits of liability. The physical inspection is inherently limited. From a perspective of common sense, if the inspection process is limited then so must the libility of experts and home inspectors, alike.

Of all Townhall comments posted to date, all are opposed to SB627, with just one exception coming from an ATTORNEY.

A colleague in this forum posed the simple question - "Who gains from frivolous legislation?" I think we all know the answer to that question.

We all should - EVERYONE - be thinking of ways of protecting the general public. The Townhall comments, from many decades of experience, make clear there is little hope this will be good for the consumer, home inspectors and others involved in these real estate transactions.

Virginia home inspectors have DPOR enforceable contract standards, standards of conduct and standards of practice, but not to the exclusion of same from our respective professional organizations; and then there are those personal standards that many of us have that reach even higher.

Passage of SB627 will only create a new market niche for litigators at the expense of consumers and the home inspection industry. A sad day indeed, if this legislation comes to fruition.

Oppose SB627

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Commenter: Hollis Brown, Home Inspector Training Academy 6/25/18 10:05 pm

Defensive Inspections

The intent of this proposed legislation may well be to provide reasonable home buyers with recourse against unreasonable home inspectors. A likely unintended consequence, though, is certain to be inspectors performing defensive inspections with these practical end results:

- Additional time spent on site and off (report-writing) with little-to-no added value
- Reports including longer lists of inconsequential items
- Reports cluttered with more caveats and disclaimers making them harder to understand
- More referrals to third party specialists
- Increased insurance premiums
- Increased cost to consumers

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Commenter: Brand Home Inspections, LLC 6/25/18 9:03 pm

Virginia Senate Bill 627.

I am opposed to the proposed legislation of Virginia Senate Bill 627. This will not serve the public interest with an improved home inspection industry. It will just turn the dogs loose with frivolous claims against home inspectors.

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Commenter: Andy Rider, Atlantic House Whisperer 6/25/18 8:50 pm

Oppose SB627

Before legislation like this is to be passed, we need to take a big picture view of what the end result will be. Right now a home inspection should be conducted for the purpose of protecting the buyer, or client from hidden cost of repairs that may be needed, to make, or keep the home livable and safe. This legislation will not only result in the drastic increase in home inspection prices, but will also result in home inspectors protecting themselves instead of the client by providing a report that limits the inspectors liability, with very little useful information in it.

This is a word-or-mouth business and if an inspector displays a pattern that is detrimental to the industry, it shouldn't take long before he has very little, if any work. I do very little marketing and it didn't take long when I started years ago to have a full schedule and turning away work. Good inspectors should rise to the top and the rest should be left in the dust. This is how free enterprise works. We don't need government to protect us.

Attorneys do nothing more than capitalize and perpetuate problems for their own benefit.

It's also important to understand that a home inspection is:

A high liability, in depth Mutidisciplined technical analysis of a home, Conducted under adverse conditions, In front of a demanding audience, Requiring the generation of an incredibly detailed report, Prepared in an un-realistically short time frame, For an inconceivably low fee.

This legislation will not only hurt the entire home inspection process in Virginia, but will also hurt the buyers, clients and realtors in the process. If the intent is truly to protect the home buyers, than this legislation will not do that. Or is the intent to provide additional feeding for overzealous attorneys at the expense of the buyers? . . time will tell.

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Commenter: Ed Snope 6/25/18 8:32 pm

Oppose Senate Bill 627

Home inspections are ***not comprehensive*** and are inherently limited in scope, therefore there must be a reasonable limitation on what the inspector is liable for. Damages caused by the acts of a home inspector are already covered by general liability insurance. There is a system already in place to deal with inspectors who fail to follow the standard of practice. If this bill is attempting to lift the liabilty for Errors and Omissions, the wording is not clear. Is a report omission or an item that the inspector did not see considered "damages arising from his acts"? This makes no sense. I oppose this bill because it is not necessary for general liabilty, and Errors and Omissions ***does*** need limitations due to the limited visual and accessible nature of components and systems at one point in time in the home inspection.

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Commenter: Ken Zenzel, AMER Building Inspection Services 6/25/18 7:50 pm

Virginia Senate Bill 627, making home inspectors liable for any issue

1. What is the justification for such a massive assignment of responsibility to home inspectors? 2. Does this mean legislation requiring certification of all home inspectors that became effective last July has not proven to be effective? 3. What was the purpose of mandatory certification to begin with? 4. Have the effects of certification even been monitored? 5. Was mandatory certification a ploy in anticipation of full regulation? 6. What were the purposes/objectives of Certification? 7. Who is really pushing this legislation: NAR, VAR, lawyers, insurance companies, abused home buyers, national home inspection firms? 8. Is any other profession in VA open to unabridged liability? 9. How liabilities for building contractors and real estate sales limited? With discussion and answers to these questions and evaluation of the adverse consequences, such regulation may be unnecessary or imprudent.

More than 20 years ago when regulation was first considered, I believe "town meetings" were held in multiple forums around the Commonwealth. No justification for regulation was found. This important criteria for determining need for regulation was waived when when legislation for voluntary certification was enacted; and, it was waived again when when mandatory certification was enacted.

With mandatory certification now in effect, the Commonwealth should now be able to contact, notify and solicit comment from all home inspectors, which it was not able to do previously and apparently has not even used yet. Although I learned of this legislation belatedly from VAREI, I am not a member of and am not represented by VAREI. Furthermore, VAREI does not necessarily represent the best interests of Virginia home inspectors. If it did, this legislative camel we are confronting would not have slipped its nose, then head, and now the body of legislation into our tent practically unnoticed.

Bill 627 is probably written as severely in order to quell opposition with the least of compromises -- basically the strategy that was used when mandatory certification was changed to voluntary. Obviously this level of regulation would require development of inspection and documentation standards and a host of details to maximize regulation, which will surely increase costs to home buyers. And, look for a surge of litigation and settlement activity as the home inspection business "matures."

Ken Zenzel

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Commenter: Alex Aderton, Merit Home Inspectors LLC 6/25/18 7:16 pm

SB 627 Would Have Many Unfortunate Consequences

I am a relatively new home inspector. As part of the licensing process and in my current contractual relationship with another inspection firm, I have worked jointly with 12 inspectors. In all cases, I have been impressed by their professionalism, thoroughness, and knowledge. Each provided the clients with detailed insights, as well as a comprehensive written report to help them accurately assess the condition of the home, based on the limitations of a visual inspection.

In the more than 70 home inspections I have been involved with thus far, the homebuyers have been well informed about key issues with the homes they are considering for purchase. All inspections have been performed in accordance with the Standards of Practice established by the American Society of Home Inspectors (ASHI) and by the Virginia Department of Professional and Occupational Regulation (DPOR). The modest fees we charge represent tremendous value for the client, as I and other inspectors strive to educate buyers (and their real estate agents) about the condition of the home and its systems, and alert them to the many functional and safety issues that were discovered. There has yet to be "perfect" home without any issues.

If a bill like SB 627 were to pass, it would subject home inspectors to frivolous lawsuits. In fact, SB627 removes any type of limitation of liability clause from the contract, which provides at least some level of protection from meritless claims. These types of litigious pursuits would threaten inspectors' ability to remain in business, jeopardizing the entire inspection industry and the valuable services it offers. Both buyers and the well-being of the real estate community would be negatively impacted.

Home inspectors are "generalists" in the sense that we have three to four hours to inspect the property and discuss its condition with the buyer and the agent. We then spend additional time to prepare a written report, incorporating pictures and narratives of both marginal issues and defects that are more serious. The inspection follows a prescribed set of steps to evaluate the home, based on the Standards of Practice. Further, the inspection and its verbal and written report are a "snapshot" in time that is non-invasive and visually limited.

SB 627 would have many unintended consequences, could jeopardize the safety of uninformed homebuyers, and would have an overall detrimental effect on the real estate industry in Virginia. For these reasons, I strongly urge dismissing further consideration of SB 627.

Sincerely,

Alex Aderton
Merit Home Inspectors LLC

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Commenter: Joe Myers, Empire Home Inspections, Inc. 6/25/18 6:20 pm

SB 627: Respectfully Against--Negative for Home buyers, Home Inspectors, & Real Estate Transactions

I've supported my family 27 years inspecting homes and invested time, effort, and money in preparation. I provide an important and affordable service to prospective home buyers. I take tremendous pride in educating them about the condition of the home they want to buy and regularly receive positive feedback about how invaluable this information is to them.

When inspecting a home, many components are tested, examined, and assessed. We follow the national Standards of Practice and Code of Ethics and comply with VA licensing requirements. As an inspector, I'm a generalist and give buyers an overall idea of the current condition of the home and identify problem areas that need further review. I don't provide a technically exhaustive and unlimited examination which would require extensive expertise in many areas and be extremely expensive and time consuming for buyers—pricing many out of our service. Even then, there could be no guarantees provided. I inspect readily observable areas under the current weather and conditions at the time of inspection. Many areas are concealed and I can't dismantle or damage the seller's home. Despite this, I detect major defects, working in often difficult conditions (very hot, cold, wet, snowy, icy, dangerous, and distracted). Some homes are cluttered, in poor condition, or older, presenting added liability risks to home inspectors who may become reluctant to inspect these homes under SB 627.

Our Pre-inspection Agreement clearly states to customers what is covered during inspections and limitations. Each home is unique and I work diligently to identify major defects, based on conditions confronted—my reputation depends on satisfied customers. Inspectors can't guarantee that all satisfactory items will remain that way. We don't provide a home warranty, and even home warranty companies have exclusions, limitations, and deductibles.

Currently, DPOR requires inspectors to carry liability insurance and if providers price us out of the market or drop us because liability caps are removed, we can't remain licensed in VA. In our litigious environment, removing liability limitations would put many inspectors out of business even if claims are frivolous and unwarranted.

I'm a member of national and state professional organizations for home inspectors and participate in regular continuing education as required. I've had few customer complaints over the years and they've been resolved directly with the buyer. Our profession is largely based on referrals so inspectors with poor reputations will have difficulty remaining in business. DPOR has oversight and scrutiny over licensing in VA. Consumers can file complaints with the Board of ALHI and the courts are available to address grievances. Since licensing took effect, complaints against home inspectors appear minimal. If SB 627 passes, inspectors will be forced to be more defensive in reporting and reluctant to make judgement calls on conditions. They'll be motivated to disclaim responsibility and defer issues to specialists, thus increasing buyers' costs and delaying home purchases.

SB 627 may seem to provide good consumer protections, but the unintended consequences will hurt buyers by pushing many experienced home inspectors out of the profession and driving up

costs for consumers. Some realtors already state difficulty scheduling experienced inspectors to meet contract deadlines. If this bill takes effect, the risk of being exposed to unlimited liability will be too great for many of us to remain in business.

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Commenter: Terri Flight, LLC Assoc. Broker, RE/MAX Regency 6/25/18 5:52 pm

OPPOSE passing SB 627

I've been a Realtor for 30+ years and with the prevalant common practice of buyers hiring home inspectors prior to purchasing their homes, buyers proceed with a different confidence knowing a professional more knowledgeable than themselves has inspected the premises. It changes the financial dynamics of homeownership for buyers, especially first time home buyers. Good for the consumer. To limit their financial ability by raising E & O insurance rates for the home inspectors who would remain in the business - which will be passed onto the consumer - would be a giant step backwards into the 1970's. In what business is blame put on an independent 3rd party for issues that were either not discoverable, inadvertantly missed or arose after services were rendered? Not all service providers are 100% perfect in performance of duties, but to heap the burden of unlimited liability onto the industry ~~~ it would kill the home inspection industry and it would be a sad day for consumers not able to pay the excallated prices.

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Commenter: Quarles Consulting 6/25/18 4:59 pm

Pending Legislation re Home Inspectors

In my opinion, and as a "seasoned" home inspector with over 30 years in the profession, this legislation will invite open ended legal penalization for anyone in the home inspection industry. It is my belief that this is unfair, and will benefit only the lawyers who will chase these cases.

Martin Quarles

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Commenter: Sean Troxell, JD Grewell & Associates; ASHI 6/25/18 2:18 pm

Oppose SB 627

This bill is vague and short sighted and will damage the profession as a whole for the state of Virginia. There have been no impact studies or attempts at truly understanding the profession and/or what is expected of or dealt with during a home inspection. This bill will open the flood gates and make home inspectors the fall guy when someone decides to buy a bad house. Our job is to document the visible condition of the home on the day of the inspection. We do NOT tell people to buy it or not. We do NOT make any claims to see behind walls or predict what the future may hold. We also do NOT do any type of destructive investigation. It's very limited and this is reflected in the price. There seems to be a misunderstanding that, for hundreds of dollars, inspectors should be liable for hundreds of thounsands of dollars.

Commonwealth of Virginia

DPOR: Board for Asbestos, Lead and Home Inspectors (DPOR), rr <alhi@dpor.virginia.gov>

FW: Opposition to SB 627

Steve Messerschmidt <steve@homebaseinspections.com> Mon, Jun 25, 2018 at 12:05 PM
Reply-To: steve@homebaseinspections.com
To: alhi@dpor.virginia.gov

From: Steve Messerschmidt [mailto:steve@homebaseinspections.com]
Sent: Friday, June 22, 2018 1:35 PM
To: 'Ab Samoy'
Subject: RE: Opposition to SB 627

To whom this may concern,

I wish to voice my opposition to SB 627 . If this legislation moves forward I believe the home inspection industry, which serves the public interest, will be compromised.

My business will decline because:

I will have to ask every client if they are a lawyer, and if they are I will have decline to do the inspection.

I will have to decline to inspect any home over 20 yrs. old, where the risk of hidden defects becomes greater and the liability exposure increases.

I will have to eliminate inspecting expensive properties, due to the increased liability.

I will have to reduce the number of inspections I perform to also reduce my risk.

The cost of my liability insurance would increase astronomically and that will reduce my income.

And finally, I will be forced to retire from the business prematurely because I cannot risk being sued, and cannot risk defending a frivolous lawsuit.

The possibility of losing everything I have work so hard for, and compromising my families future, is enough incentive to quit the business which I have spent years to developed ASAP.

I am a very experienced inspector with many years of experience and thousands of inspections under my belt. I have earned certifications that help me to better serve my clients (home buyers and sellers), and am a long-standing member of ASHI. I am also a past and present member of VARI. I have been certified and licensed in the State of Virginia for many years. I believe I am exactly the kind of inspector the home buyers need to protect them against the contractors, builders, and DIY home sellers, who provide substandard and unsafe services, products, repairs, and remodeling.

I would also include my concerns about some of the unscrupulous realtors, with a vested interest to move a transaction forward, who will minimize serious concerns and defects, so they can get paid. I know this is a harsh statement, but my experience leads me to believe this to be true.

SB 627 will not serve the homebuyers; it will only serve lawyers, builders, and realtors. In my opinion SB 627 is bad and self- serving legislation. The end result will be the *reduction of qualified home inspectors and the home inspection industry.*

Perhaps this bill should be shelved and a more comprehensive study be undertaken.

Respectfully,

Steve Messerschmidt

VA #3380000099

From: Ab Samoy [mailto:ab@homebook.net]
Sent: Thursday, June 21, 2018 5:20 PM
To: Michael Lennon; keith.reeve@homeproservices.com
Cc: ksheldon homebook.net; Bob Murphy; Reggie Marston; Marston Reggie; RUST ROB; HOCKENBERYY TIM; BLUM DAN; MESSERSCHMIDT STEVE; Joe Sorbello
Subject: Opposition to SB 627

Gentlemen,

Just a quick recap...

Proposed to the Virginia State Senate is a bill, SB 627. In summation, from DPOR:

> "Prohibits a contract for home inspection services from including any provision limiting the liability of any home inspector arising from his acts or limiting any business that provides home inspection

services from liability for the acts of its employees or agents."

We are opposed to this bill!

There is a public hearing in Richmond on Thursday, 6/28 at 9:00am to voice opposition.

The office is securing a meeting with the senator sponsoring SB627, Scott Surovell, PRIOR to the hearing in Richmond; just waiting confirmation on the senator's schedule to meet with us.

Our call to action:

> We would like to gather your opinions on the bill to include your rants on limits/liability, affect on E&O insurance, and even inspection pricing for the public. We would also like to have examples from past inspections of instances where issues/problems were "covered up" that were identified later. Images would also be helpful.
>
> Please respond as soon as possible with your thoughts and examples so that we can put together an organized presentation for our meeting with Senator Surovell. We ask for your responses by Monday mid-day, 6/25.

If there is a consensus, we can review our meeting with the Senator in a gathering with you on Wednesday, 6/27 in the Falls Church office. If not, we will schedule a meeting AFTER the Richmond hearing.

As always, we will keep you posted and thank you for the immediate attention, cooperation, and action!

Regards,

Ab Samoy

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Commenter: Jonathan Russell, A-Pro Home Inspection Services 6/25/18 10:19 am

SB 627 Detrimental to VA Real Estate

The purpose of the contract provision that this bill seeks to prohibit is to ***deter*** frivolous and/or meritless lawsuits and to specify that the value of a home inspection is based on the professional service provided in the performance of a limited visual inspection of the general condition of a property's systems and components as specified by a Standard of Practice (SOP). Per 18VAC15-40-120(C), a home inspection contract shall disclose that the home inspection and report are not a *home warranty, guarantee, insurance policy, or substitute for real estate transfer disclosures* which may be required by law; therefore, the use of a Limitation of Liability clause is intended to provide the inspector with a degree of protection from such claims.

In consideration of the Limitation of Liability provision of the home inspection contract, the mutual agreement further acknowledges: (i) actual damages may be difficult or impractical to ascertain via a visual/non-invasive inspection; (ii) allocates a level of risk between the parties; and (iii) enables the inspector to perform the inspection for the agreed-upon fee. 18VAC15-40-30(G) currently requires a VA licensed home inspector to carry a ***minimum*** of $250,000 in general liability insurance coverage to serve as protection for the subject property from damages.

As many of my industry colleagues have already indicated, there are several key issues that will have a detrimental impact on the Home Inspection Industry in Virginia due to the unlimited liability, risk, and exposure factors proposed by SB 627 including, but not limited to: elevated insurance costs and a reduction in VA licensed inspectors. These factors alone will result in a significant increase in operational costs that will be passed along to the consumer. Drastic rising costs of a home inspection will certainly cause many potential home buyers or sellers to forego the home inspection process entirely.

It is my humble opinion that passing SB 627 would have a significant adverse effect on the entire Virginia Real Estate market. Impacting not only the home inspector, but also the buyer, seller, and their agents respectively. Please make the right decision and ***do not*** enact SB 627.

Respectively,

Jonathan Russell
Senior Home Inspector
A-Pro Home Inspection Services

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Trisha Henshaw

Agency Department of Professional and Occupational Regulation

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Commenter: joe fortuner 6/25/18 9:10 am

Unappreciated Industry

As a Realtor, I empathize with Inspectors that truly care about their customers and provide a detailed, quality service. Inspectors are on site to evaluate a home for one moment in time and usually within a (10) day period from the home going under contract. The moment the inspector leaves, the home is susceptible to actions of existing home owners or tennants, weather conditions, and simply time on the clock. After the inspection, under normal terms / conditions, there could be (20) to (30) more days before the Buyer closes and owns the home. Who is to say what happened in or to the home between those days?! Let's also keep in mind it is the duty of the Realtor to discuss inspection report items with the Inspector and their Clients. Realtors and Clients then AGREE on what is, "important," to repair. The Inspector is no longer involved. If there are serious issues with the home and the Realtor doesn't stress or help educate their Clients on what they may be getting into, OR, if the Buyer still wants the home, neither are the fault of the Home Inspector when things go South in the home. BUT, many folks have to blame someone.....and it is usually the Inspector. For cases of proven and/or obvious gross negligence by an Inspector, I believe the laws and systems in place will police these matters accordingly. Having open season on quality Home Inspectors is not a solution....it will become a bigger problem. I also believe there are bigger issues in this industry relating to Agents protecting Clients interests on repairs and condition of homes.....but that is another story.

Commonwealth of Virginia

DPOR: Board for Asbestos, Lead and Home Inspectors (DPOR), rr <alhi@dpor.virginia.gov>

Comment on SB 627 to limit liability on home inspectors

gpatti@allproenv.com <gpatti@allproenv.com> Mon, Jun 25, 2018 at 8:12 AM
To: alhi@dpor.virginia.gov

Ms. Henshaw:

Please accept these comments for the public record.

Thanks

Gregory Patti

Director of Home Inspections

All-Pro Services, Inc.

Metropol Realty #0225202959

A.S.H.I. Certified Member #104266

Virginia Certified Home Inspector

Virginia Home Inspection License Number. 3380-000173

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www.allproinfo.com office@allproenv.com 703-385-1347

limit of liability.pdf
122K

Comments on proposed prohibition of limited liability provisions in home inspection contracts

PUBLIC POLICY CONSIDERATIONS

I. WHY IS THIS REGULATION NEEDED?

1. Traditionally Virginia only regulates when and where there is a clearly demonstrable need—where is that here? Thousands of inspections are performed annually in Virginia. DPOR has received only 9 complaints and the board has only issued one sanction. This does not constitute a regulatory call to arms.
2. Regulate the right people for the right reasons. This legislation was prompted by a termite issue—which involves services home inspectors do not provide and which require additional certification in this state. This is akin to regulating passenger car drivers for a fault by the CDL driver of a commercial truck.
3. Other less heavy handed remedies exist-avenues exist for disciplining inspectors who do not meet expectations—fines, suspension of license, etc.

II. RESTRAINT OF TRADE

Public policy supports freedom to contract between willing parties—here the state is undertaking to mandate what can be offered in civil commerce. Is it the states plan to similarly micromanage other aspects of commerce—how many calories can be in a beverage, etc? A range of options for a range of prices giving buyers choice is fundamental to free enterprise systems—buyers vote with their dollars on which options they prefer. Limitless liability requires us to go far beyond currently accepted industry standards and prohibits buyers and inspectors from agreement on anything less than technically exhaustive inspections that would take many hours, involve additional professionals and cost thousands of dollars.

This law is like requiring a car dealer to only sell Cadillac cars at Cadillac prices—can't sell a more rudimentary product for a more affordable price. This essentially infringes on our right as citizens to decide for ourselves what services we are prepared to offer and accept and at what prices—a basic contractual right.

Our standards and contracts reflect the liability and responsibility we are prepared to accept for a given fee. Our intended scope and purpose is to serve as generalists, offering a limited survey of the visible and accessible portions of the home using normal operating controls. Our role is to say "Here is what we see and here are what the implications are" to produce a more informed consumer, not a comprehensively informed consumer. We offer an intermediate step between an unskilled buyer and a technical specialist. This is what we offer and what the buyer accepts for a fee—the essential elements of a contract.

To demand more would be akin to holding a doctor doing a basic physical liable for subsequent health issues only discoverable by CAT scan or MRI; or to hold a lawyer liable for the terms of a contract hundreds of pages long with only an opportunity to briefly scan the document.

We do not offer or pretend to perform technically exhaustive inspections or estimate the adequacy or remaining life of various components.

Example: Failure to detect that a home owner replaced a failed component with another not suited to or rated for that use. Only a skilled technician intimately familiar with that brand and model of machine would know the instrument in sufficient detail to detect this. If the device fails or does not function adequately would that fall under the home inspector's responsibility?

III. CONDITIONS INHIBITING THE ABILITY TO COMPLY WITH THE LEGISLATION

A home inspection is a survey—limited in duration and access

We must always be cognizant of the fact that the property we are inspecting does not belong to our client. We have an obligation to the seller to leave the property in substantially the same condition it was in when we arrived. This dramatically limits how invasive our methods can be and how much liability we can reasonably be expected to accept.

1. Personal property and storage limit access—an enormous issue in almost all occupied dwellings.
2. Concealed alterations—electrical and plumbing enclosed in walls, etc.
3. Willful concealment by sellers-always a possibility.
4. Problems that are intermittent in nature.
5. Problem ongoing or fixed? Water stain from during construction or rain last year; predate new roof?
6. Only use normal operating controls—don't test shutoff valves because so likely to continue to leak—
7. No crystal ball—there is always the day before something fails and the day after.
8. "How long will that last" is like asking "when are you going to die"—we can express averages and typical lives but can't relate to a specific component.
9. Some aging components look younger due to good maintenance/new stuff can look old if not cared for...predicting imminent failure
10. Distractions during the home inspection—being diverted by questions from buyer, agent, others accompanying the buyer. Whole families, pets, crying children distracting both inspector and buyer.
11. Agents that minimize the importance of a finding.
12. Agents or buyers who impose time constraints
13. Immediate assumption that the inspector did it

IV. IMPACT ON COST OF THE SERVICE

Public policy is also served by readily available home inspection services being widely available at modest cost to buyers.

Increased liability will require Error and Omissions insurance at greatly higher prices and with much more substantial deductibles—costs that must be passed on to the consumer. Increased risk can only be counterbalanced with higher fees.

1. Some inspectors will leave the industry and others will be dissuaded from starting—supply and demand will dictate higher fees—.
2. Reduced numbers of inspectors will reduce the availability of inspections within restricted contingency time windows. Buyers may be unable to procure the service quickly enough.

V. THOSE LEAST ABLE WILL BE MOST IMPACTED BY THIS LEGISLATION

1. Those who are lower on the economic ladder will be more price sensitive and less likely to have an inspection at $1500 than at $500.
2. They are the ones most likely to purchase more modest and/or distressed homes due to their affordability—precisely the homes most likely to suffer from the deferred maintenance, unskilled and non-professional work that a home inspection might reveal.
3. They have fewer resources to fix the stuff that would have been found by the inspection.

VI. BUSINESS AND FINANCIAL RAMIFICATIONS

Consider the financial sense of undertaking a liability without parameters-unlimited in either cost or time- in exchange for a single $400 or $500 payment and with only a few hours to examine the home with all of the limitations listed above. This effectively does much of what homeowner insurance policies do for hundreds or thousands of dollars every year. Who among you would advise a client to enter into such an agreement?

This will make E and O insurance virtually mandatory—with $2k+ premiums and up, and with deductibles of $2500 and up. These costs will soar if their exposure increases. Also people will file small and nuisance claims in the mistaken belief that they are not hurting the inspector but rather the insurance company with deep pockets. Rarely will a claim cost more than the deductible so it will in fact all be out of the inspector's pocket.

Homeowner's insurance adjusters will now have a justification to deny liability for recently bought homes—they may refuse to pay or pay and subrogate the claim to the inspector's insurance company, which may choose to settle rather than fight and simply pass on the costs in ever higher premiums.

VII. INSPECTORS WILL BE FORCED TO TAKE DEFENSIVE STEPS, REDUCING THE INSPECTIONS VALUE

1. Inspectors will recommend far more follow-up inspections (at additional cost).
2. If everything is important then nothing is important-(Loose screw on a switch plate or damaged window hardware (safety/security)
3. They will tend to 'awfulize' ramifications to worst case levels.
4. Will use broader and broader language/water down the precision and specificity of comments
5. Inspectors will take care never to exceed the standards—"you mentioned this outside of standards, why not that".
6. What about partial or single component inspections?—if an inspector is there to look only at the furnace, the inspector must ignore other issues plain and visible to avoid opening the door that he mentioned one unrelated visible hazard but not some others.

The net value of a home inspection will be reduced by all of the steps inspectors must consider to protect themselves. The end result will be injury to the public by profound changes in the nature of home inspections in terms of increased cost and diminished availability and content.

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Commenter: Edda Berglund 6/25/18 6:36 am

Oppose SB627

I oppose SB627 because it will result in the unintended consequences of harming instead of helping homebuyers, sellers and other service providers. Having worked in the mortgage industry for years my clients, especially first time buyers were challenged with finding affordable housing and subsequent affordable financing. As is the case with the advent of the CFPB regulations and its unintended consequences of higher fees, protracted approval periods, limited choices the SB627 will cause homebuyers to bear the cost of unlimited liability. SB627 will increase costs to the home inspector; thereby, resulting in higher costs to the homebuyer. Of greater concern is the homebuyer choosing to waive the inspection to reduce overall purchasing costs. Home inspections are imperative for due diligence yet SB627 will adversely impact those who would benefit the most from inspections, the first time homebuyers.

June 25, 2018

Trisha Henshaw, Executive Director
ALHI Board
9960 Maryland Drive, Suite 400
Richmond, VA 23233

Re: VA Senate Bill 627 Opposition Statement

Dear Director:

We writing to express our company's strong opposition to VA Senate Bill 627, which intends to prohibit home inspectors from any contractual limits on their liability. While our company, HouseMaster, an international home inspection franchise with licensed franchisees in Virginia, generally supports legislation that benefits the interest of consumers and helps ensure the availability of qualified and competent home inspectors. However, such legislation must be reasonable and not create a situation adverse to business survival or growth.

Unfortunately, the approach taken in the crafting of SB 627, that if passed into law, would prohibit home inspectors from limiting their liability, does just that – it is unreasonable and creates an undue burden on home inspectors and the home inspection industry.

Approval of SB 627:

- Would send an erroneous signal to home owners that they do not have to concern themselves with proper disclosure of property conditions.

- Would send an erroneous signal to homebuyers that a home inspector is liable for any condition they deem a deficiency (causing them to consider a home inspection as a warranty – more than they do now.)

- Would send an erroneous signal to contractors and service people that a home inspector's money will be available to help homeowners pay for repairs needs, legitimate or otherwise, that will help them secure a job.

- Would likely increase frivolous claims – financially affecting home inspectors, insurance companies, which would result in increased costs to consumers and less consumers availing themselves of the protection of a home inspection.

- May cause home inspectors to include additional disclaimers and limitation in inspection reports to address their increased liability, which is counterproductive to consumer protection. Such additional disclaimers can add confusion to reports, making it more difficult for consumers to understand the key issues identified in the report. May cause insurance premiums to increase, which would be passed on to consumers, potential making inspection services less available to lower income consumers. (Virginia's requirements for insurance already provides protection for homebuyers for major errors and omissions).

- May cause home inspectors to go out of business due to higher premiums or for fear of the extended exposure or because of the cost of a claim settlement or payout, regardless of its legitimacy, resulting in less competition for home inspectors, higher prices for consumers. It may also affect consumer's ability to avail themselves of the services of a home inspector due to real estate contract time restraints.

Some other points to consider:

- A home inspection is conducted during a limited time period, with the scope of the inspection spelled out in the standards of practice, including accepted limitations and exclusions.

- Home Inspectors are not the manufacturer, builder, installer or serviceperson for any element in a home. They do not verify compliance with building codes or manufacturer installation requirements.

- Home inspectors cannot/do not conduct invasive or destructive testing.

- Home inspectors do not have access to a home's past history or service record and may even provide erroneous information about the property.

- Home inspectors do not have any control over conditions that occur/change between the time of their inspection and title transfer.

- Home inspectors cannot inspect or assess inaccessible or concealed components or latent conditions.

- It can be weeks or months between the inspection and title transfer. Lack of owner maintenance, climatic factors and storms can adversely affect conditions.

Many courts that have addressed and upheld limits of liability clauses have generally considered the totality of the circumstances related to the services involved and upheld them as long as there is no attempt for a total limitation on liability or one that attempts to limit willful misconduct, fraudulent practices, recklessness or gross negligence. In their rulings, the courts have considered whether the language in a contract is clear; whether a reasonable approach was used to present the contract; and the reasonableness of any limitation. We understand the need for quality and accountability within the home inspection profession and believe these can be achieved easily by limiting liability to gross negligence, providing simple contract language, providing the contract to homebuyers well before the inspection (via electronic means or otherwise) and having a reasonable dollar limit.

While we believe the objective of SB 627 to provide protection to homebuyers is noteworthy, the total prohibition on limiting liability does not do so. For this and the foregoing reasons, we respectfully request that this bill be tabled, and consideration be given to determining other ways of providing protection for homebuyers for negligent home inspections.

Respectfully,

Scott Wharton, Richmond, VA, Licensed Home Inspector #3380000621

John Burke, Chesapeake, VA, Licensed Home Inspector # 3380001054

Tim Fisher, Stafford, VA, Licensed Homs Inspector # 3380000750

John Murray, Bristow, VA, Licensed Home Inspector # 3380000859

Darrell Fann, Carrollton, VA, Licensed Home Inspector # 3380000748

Commonwealth of Virginia

DPOR: Board for Asbestos, Lead and Home Inspectors (DPOR), rr <alhi@dpor.virginia.gov>

Virginia Senate Bill 627

1 message

Karl Colbrunn <hrsincinspection@gmail.com> Sun, Jun 24, 2018 at 10:26 PM
To: alhi@dpor.virginia.gov

Hello Mrs. Henshaw,
I'm contacting you in regard to the upcoming vote on the proposed revision to limits of liability for home inspection services. I have been providing home inspection services since 2002, I believe the proposed revision will create undue burden on the home inspection industry. The end result if passed will either force individual home inspectors such as myself out of business because of increased cost of error and omission insurance or make home inspection services unaffordable to home purchasers.
As a comparison, wouldn't this proposed legislation be the same as requiring a medical doctor to be liable if someone gets sick two years after performing a general check up and not discovering cancer?

Respectfully,
Karl Colbrunn

Hallmark Residential Services, Inc
Professional Home Inspections, Radon and Mold testing.

Licensed Virginia Home Inspector DPOR #3380000754

540-273-7453 / 540-854-0600

http://hrsinspection.com/

HRSincInspection@gmail.com

Providing excellent customer service since 2002!

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Commenter: Robert Thompson, Hawkeye Inspection Service, Inc. 6/24/18 8:54 pm

SB 627 should not be retroactive

I had entered previous comments last week stating our willingness to entertain the spirit of SB 627, but with several amendments to the bill as written. One additional change that is important to home inspectors, if the bill ever passes, is that it should not be retroactive.

My previouse excerpt is below:

"We believe that the liability should only be extended to serious circumstances regarding safety and *not* to cosmetic items, minor repairs, or any repairs that would be considered typical home maintenance. The altered Bill should have more depth and specificity wherein it defines "Safety", as well as how it defines the issues that would fall beneath the term, e.g., structural integrity of the dwelling, construction methods used, proper use of building materials, etc. Also, it should not be retroactive, but should have an effective date either July 1 or January 1 of the year following bill passage.

The spirit of SB 627 is well-intended; however, if the bill is not written properly (as in its present form), it will cause an avalanche of issues including 1) Rising insurance premiums and deductibles that will cause hardship to many small business owners, 2) Subsequent increases of inspection fees to customers as a result of increased business costs, 3) Exploitation and closure of non-franchised small businesses who have no capacity to bear the added costs, and 4) An increase in frivolous claims being made by some customers."

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Commenter: Lou Scerbo, HOMES ARE US, Inc. 6/24/18 4:30 pm

Oppose Senate Bill 627

I have read most of the comments voiced by many other respondents and whole heartedly agree with the professional and market concerns raised in opposition to SB 627. I believe the free matket influences and the oversight administration provided by Patricia Henshaw and the Board for Asbestos, Lead and Home Inspectors is more than adequate for policing and disciplining reported performance concerns.

Home buyers will not be better served by costly and potentially frivolous litigation, increased fees spurred by rising insurance rates, and less rate competition fueled by a shrinking home inspector pool.

Respectfully,

Lou Scerbo

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Commenter: HouseMaster 6/24/18 3:36 pm

Oppose VA Senate Bill 627

VA Senate Bill 627 Opposition Statement:

We writing to express our company's strong opposition to VA Senate Bill 627, which intends to prohibit home inspectors from any contractual limits on their liability. While our company, HouseMaster, an international home inspection franchise with licensed franchisees in Virginia, generally supports legislation that benefits the interest of consumers and helps ensure the availability of qualified and competent home inspectors. However, such legislation must be reasonable and not create a situation adverse to business survival or growth.

Unfortunately, the approach taken in the crafting of SB 627, that if passed into law, would prohibit home inspectors from limiting their liability, does just that – it is unreasonable and creates an undue burden on home inspectors and the home inspection industry.

Approval of SB 627:

- Would send an erroneous signal to home owners that they do not have to concern themselves with proper disclosure of property conditions.

- Would send an erroneous signal to homebuyers that a home inspector is liable for any condition they deem a deficiency (causing them to consider a home inspection as a warranty – more than they do now.)

- Would send an erroneous signal to contractors and service people that a home inspector's money will be available to help homeowners pay for repairs needs, legitimate or otherwise, that will help them secure a job.

- Would likely increase frivolous claims – financially affecting home inspectors, insurance companies, which would result in increased costs to consumers and less consumers availing themselves of the protection of a home inspection.

- May cause home inspectors to include additional disclaimers and limitation in inspection reports to address their increased liability, which is counterproductive to consumer protection.

Such additional disclaimers can add confusion to reports, making it more difficult for consumers to understand the key issues identified in the report. May cause insurance premiums to increase, which would be passed on to consumers, potential making inspection services less available to lower income consumers. (Virginia's requirements for insurance already provides protection for homebuyers for major errors and omissions).

- May cause home inspectors to go out of business due to higher premiums or for fear of the extended exposure or because of the cost of a claim settlement or payout, regardless of its legitimacy, resulting in less competition for home inspectors, higher prices for consumers. It may also affect consumer's ability to avail themselves of the services of a home inspector due to real estate contract time restraints.

Some other points to consider:

- A home inspection is conducted during a limited time period, with the scope of the inspection spelled out in the standards of practice, including accepted limitations and exclusions.

- Home Inspectors are not the manufacturer, builder, installer or serviceperson for any element in a home. They do not verify compliance with building codes or manufacturer installation requirements.

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- It can be weeks or months between the inspection and title transfer. Lack of owner maintenance, climatic factors and storms can adversely affect conditions.

Many courts that have addressed and upheld limits of liability clauses have generally considered the totality of the circumstances related to the services involved and upheld them as long as there is no attempt for a total limitation on liability or one that attempts to limit willful misconduct, fraudulent practices, recklessness or gross negligence. In their rulings, the courts have considered whether the language in a contract is clear; whether a reasonable approach was used to present the contract; and the reasonableness of any limitation. We understand the need for quality and accountability within the home inspection profession and believe these can be achieved easily by

limiting liability to gross negligence, providing simple contract language, providing the contract to homebuyers well before the inspection (via electronic means or otherwise) and having a reasonable dollar limit.

While we believe the objective of SB 627 to provide protection to homebuyers is noteworthy, the total prohibition on limiting liability does not do so. For this and the foregoing reasons, we respectfully request that this bill be tabled, and consideration be given to determining other ways of providing protection for homebuyers for negligent home inspections.

Respectfully,

Scott Wharton, Richmond, VA, Licensed Home Inspector #3380000621

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Commenter: Bryan Edward Home Detective LLC 6/24/18 1:28 pm

SB 627 opposition

Passing this legislation would in affect cause my company to close. this Legislation is more restrictive than what contractors and realtors operate under. Why is the home inspection occupation being unduly harmed.

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Commenter: Jason Bennett 6/24/18 11:43 am

Strongly Oppose this bill.

If this legislation is passed, the cost of doing business will increase so dramatically that we will no longer be in business. We carry E&O and general liability insurance and we offer a 200% refund if our clients have issues or are not happy with our services. If we ever had a client with an issue greater than that, we would direct the claim to our insurer. This bill provides nothing more than a free for all for lawyers to make money.

A better idea would be to have our client's read and sign the agreement or contract a minimum of 24 hours before the scheduled home inspection. If they don't like the agreement, they can shop around for one that better suits their needs.

Why would anyone subject their livelyhood, their retirement, their home, their childrens college future, or their healthcare on a profession that does not limit the ammount of potential gain from frivulous lawsuits that have the potential to get filed on every single inspection that you perform.

We are held accountable by laws and regulation already, introducing this bill as law will not benefit the public whatsoever. In fact, it will have the reverse affect and likely cause property buyers to forgoe the inspection due to cost. This will inherently cause a greater threat to the housing market, and the public who instills its trust in the process. This new bill is a gigantic misfire and I strongly oppose.

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Commenter: FireProof Home Inspections 6/23/18 8:17 pm

I oppose this legislation.

I fear that this legislation would allow former clients to file suit in an effort to get out of a mortgage that the client may no longer be able to afford or use the legislation as a scapegoat for bad negotiations between the realtors.

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Commenter: Daniel Stone, Danrocks Home Inspections 6/23/18 3:17 pm

Ludicrous Legislation

My name is Daniel Stone. I was Thumbtack.com's highest ranked home inspector in 2017. My clients both respect and revere my work ethic and opinion on inspection matters. However, none would question a disclaimer of liability on my report or agreement because they know I'm honest and wouldn't hide anything from them. I gain instant rapport at the inspection with them and their realtor, and I always explain what my role is. My role is to examine, check, and probe wherever I can to determine the condition of the home they are buying. Checking includes "turning on" a light, the stove, a gas hot water heater, for example. Are you actually considering disallowing me to do that job because I can't explain in advance that I'm not liable if it breaks? Who would determine that it wasn't already broken before I hit the switch? Should we invent a new profession that DPOR can also regulate for monitoring equipment before inspectors come to inspect? NO! Emphatically; NO! Enough is enough on beating down professions by over-regulating them with excessive legislation. The staggering cost to taxpayers to pass the bill would far outweigh the benefit of home inspections to clients, not to mention regulating, investigating claims, and prosecution of claims that only lawyers and insurance companies would profit from. Or is that whom you really are working for, Virginia lawmakers? Answer me this please? Who gains from frivolous legislation? Daniel Stone Danrocks Home Inspections, Fincastle VA

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Commenter: Tom Harris Quality Assurance Inspections. 6/23/18 12:42 pm

Opposition to SB 627

I oppose the adoption of SB 627. The language used in the bill is vague and opens the home inspector community to risk of litigation that is inappropriate. The costs associated with insurance requirements as a result of this bill will drastically effect the ability of smalll home inspection companies to continue doing business.

As a result of this bill the cost of doing business will increase dramatically and that cost will be passed on to the client. I do not believe that this bill is in the intrest of the home inspector community of the clients we serve.

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Commenter: Pillar to Post 6/23/18 10:54 am

Oppose/Reject SB 627 forever

As an inspector we have 2-4 hours to go through a home, we have to deal with personally belongings concealing walls in many locations, we deal with vacant homes that utilities may be turned off so issues are not present during the inspection and may appear after they are turned on for a longer time. We deal with owners that have concealed the issues with paint or other coverings on purpose.

If you eliminate the liability protection from the home inspection contract, there will be a dramatic increase in such frivolous claims, and the home inspectors' liability insurance will become too cost prohibitive to afford and prices will rise significantly for homebuyers to cover this expense. There will be less home inspectors willing to conduct inspections when the opportunity for catastrophic liability and lawsuits will put them out of business. As the industry sits now, if there is negligence in a home inspection, the home inspector will be held accountable – why are we trying to solve a problem that doesn't exist?

KILL The Bill

Brian Delhagen

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Commenter: Michael Mallott, Checkmark Home Inspections 6/23/18 7:44 am

Opposition to SB627

I am an ASHI Certified Home Inspector and follow the strick Standards of Practice and Code of Ethics set forth by this organization, the oldest, most respected organization for home inspectors in the US and Canada. We provide a valuable service to the home buying public, determing the condition of the property through a thorough NON INVASIVE inspection of the property., The inspection is a determination of the condition of the property through a visual inspection on the day of the inspection. This bill does not allow for the lawsuits that will surely arise when problems happen after the inspection. Wind storms damage roofs, rain causes new leaks and pests or rodents create damage that did not exist when the property was inspected. Now, with unlimited liabilty, the home inspector will be a target for the law suit hungry individual willing to take advantage of and file frivilous lawsuits for issues that were not visible or did not even exist on the day of the inspection.

Does this bill really help the general public ? I think not. Out of the tens of thousands of home inspections conducted annually in Virginia - how big of a problem is this anyway ? If one takes the time to better understand the home inspection process and to research the miniscule number of times this has become an issue, you will realize that this bill is unnecessary, beauracratic and harmful legislation.

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Commenter: Barry Holt, PepperWood Home Inspections LLC 6/22/18 5:08 pm

Reject Senate Bill 627

Please reject Senate Bill 627. Its passage would 1) undermine the consumer protection that the home inspection regulations have created for the Commonwealth and 2) be detrimental to the home inspection industry.

The bill fails to reflect:

- what a home inspection service really consists of, what is not included in the standards of practice, and the benefits of the home inspection to homebuyers.
- the substantial administrative, training, continuing education and insurance requirements related to a home inspector obtaining and maintaining a home inspector license in the Commonwealth, and
- the negative impacts of this bill on the home inspection businesses and their clients.

Negative Impacts on Consumers. If this bill were to be enacted, insurers might drop home inspectors from coverage and/or rates would skyrocket. Home Inspection providers would leave the business and/or these costs would need to be passed on to consumers. If inspections became too expensive, many home purchasers would forgo the service and enter into transactions uninformed and unprotected with respect to the condition of the homes they are buying. The impact on the availability of home inspectors would vary across the Commonwealth, and potentially leave some areas with reduced availability of qualified and licensed home inspectors. (Moreover, if insurance was unavailable, inspectors would be unable to meet the state requirements for licensure.) Failure to use the professional services of a licensed home inspector could result in not only a negative financial impact to the homebuyer, but safety as well, as in the area of fire, carbon monoxide poisoning and other life threatening events. ***These impacts seem contrary to the underlying core purpose of home inspection regulations.***

Limited liability is a necessary protection in this profession. Home inspectors test and assess a number of components within a home, most of which have a limited life span. Home inspectors are limited in the extent to which they can assess the components of a home - limited by time, the visual and non-destructive requirements, and what customers are willing to pay for a well-trained generalist. (Customers could choose to hire a plumber, roofer, electrician, structural engineer, and other specialists at far greater expense to assess the individual components of a home, but that would be impractical and cost prohibitive.) As it is, many customers blame home inspectors when components that were working at the inspection, but fail during the months that follow. Eliminating the liability limitations would probably increase the number and cost of frivolous claims. As part of the licensure requirement that was enacted in 2016, consumers can file complaints with the Board of Asbestos, Lead and Home Inspectors. If a home inspector is found to be negligent by the Board, it can suspend or revoke the inspector's license.

Senate Bill 627 would undermine the consumer protection that the home inspection regulations have created for the Commonwealth. Please consider the information and vote this bill down.

Thank you for your consideration,

Barry Holt, Principal

PepperWood Home Inspections, LLC

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Agency Department of Professional and Occupational Regulation

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Commenter: Jim Gannon, Gannon Home Inspections 6/22/18 4:44 pm

Virginia SB 627: opposed

I have been a professional home inspector since 1995; have been a member of ASHI (#200890) for over 20 years ; became certified by the State of Virginia at the inception of the voluntary program; and became licensed by the State of Virginia (#3380000058) , including New Residential Structure approval, when the Law went into effect in July of 2017. I have adhered to the Standards of Practice and the Code of Ethics set forth by both ASHI and the State of Virginia. I maintain all required insurance. I endeavor to meet and exceed what is required of me in each inspection. The house and conditions dictate the time required for the inspection and report writing, which typically totals 8 hours per inspection. I have recieved many high compliments for my professionalism and depth of detail. All of this to say, I am well aware of how much is NOT available for me to inspect in any given structure, for a host of reasons of inaccessibility. The list of what I am not able to inspect is extensive, no matter how diligent my work may be. SB 627, if it were to become law leaves me nakedly open to the wildest imaginations by buyers and attorneys to seek what they may wish from me for whatever reason they wish. SB 627 is dangerously vague from a home inspector view. We have in the State of Virginia strong oversight by DPOR, as defined in our licensing. We have a full range of options for legal recourse in our court system, available for any injured party. SB 627 would be a superfluous add-on to an already adequate set of systems now protecting the home buying public. The Commonwealth of Virginia has a long history of protecting our freedom. Buyers are free to be as aware as they wish in shopping for and choosing their home inspector. I have more than 6,000 past customers who would say that the home buying public and the home inspection industry would suffer a significant loss if I were to close my business. That option would be the likely outcome if SB 627 were to become law. I will not expose myself to unlimited liability, as SB 627 proposes. I, Jim Gannon of Gannon Home Inspections, am adamantly opposed to SB 627.

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Commenter: Dennis DiVito, Apex Home Inspections, LLC 6/22/18 2:17 pm

Reject Senate Bill 627

I recommend rejecting this Bill. There has not been a sufficient number of complaints that would indicate there is a widespread problem to call for this change in Home Inspector contracts. The reasons for this bill have not made clear.

Inspectors and the real estate market will be impacted by this change. Some will leave the business due to the increased liability. New inspectors will not be attracted to join the profession. The house buyer will find it harder to engage inspectors particularly in rural areas and the costs of an inspections will be higher due to increased insurance costs.

Limiting liability is a common practice in business. Since there are many hidden areas that inspectors cannot see to comment on, we'll be liable for an issue that comes to light after the inspection. This is plainly unfair.

We should only be liable for negligence in our duties as outlined in the inspection standards. The Bill does not specify what liabiity we should accept in the course of doing business nor should it. It is extremely vague to say "for his acts". The Bill places a target on our backs for frivolous claims.

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Commenter: Kevin Lovejoy, Pillar To Post Home Inspectors 6/22/18 12:15 pm

SB 627 - Bad for Homebuyers, Home Inspectors, & The Real Estate Industry!

Virginia Senate Bill 627, as proposed, will have an unfavorable outcome and be damaging to real estate transactions, future home buyers and the hard working professional home inspectors. To open up liability for items that may arise after an inspection that were not visible the day of the inspection, and to require home inspectors to carry the liability for items that were either outside the scope of the state regulated home inspection or were undetectable, just doesn't make sense. Limiting liability as it stands currently is the best way to ensure no frivolous lawsuits or claims arise when a homebuyer decides that they aren't responsible for the costs that come with home ownership.

For example, no homeowner wants to pay for a new HVAC unit that stops working properly 6 months after moving in but was working properly the day of the inspection. They feel someone should pay other than them and this is exactly the reason why we need to keep the protections in place for the home inspector. Unfortunately, systems break down, water entry occurs out of the blue from a storm, etc.. These are situations that come with home ownership. If you eliminate the liability protection from the home inspection contract, there will be a dramatic increase in such frivolous claims, and the home inspectors' liability insurance will become too cost prohibitive to afford and prices will rise significantly for homebuyers to cover this expense. There will be less home inspectors willing to conduct inspections when the opportunity for catastrophic liability and lawsuits will put them out of business. As the industry sits now, if there is negligence in a home inspection, the home inspector will be held accountable – why are we trying to solve a problem that doesn't exist?

Commonwealth of Virginia

DPOR: Board for Asbestos, Lead and Home Inspectors (DPOR), rr <alhi@dpor.virginia.gov>

Virginia Senate Bill 627

1 message

Owen Littlewood <olittlewood@crawltocrown.com> Fri, Jun 22, 2018 at 10:02 AM
To: "alhi@dpor.virginia.gov" <alhi@dpor.virginia.gov>

Dear Trisha,

This bill will hurt the home buyer in the long run.

The process of a home inspection is very difficult. With over 2,000 things to look for and in a window of 4 hours we focus on the important areas (9 key areas from structure, roof, electrical etc. onwards). All for typically around $400. We typically save the buyer thousands in negotiated contract costs.

We now live in a sue happy environment and every little detail will be sent over to the home inspector. We call problems defects in our industry. A defect may not materialize until after the day of the inspection ... under the new rules we will be liable for that too. The knock on effect is most of us will leave the industry, the price of an inspection will arise to a few thousand dollars and most people will forgo an inspection. Thus the majority of buyers will now be exposed and I guarantee you from all the inspections I have done and people I have saved from buying homes or in one case saved a buyer $33,000 in costs for repairs these problems will just be passed on to the buyer.

I feel the system is working fine as it is. My thought is, if this is to protect the buyer, then three should be a mandatory level of insurance required for home inspectors to carry. This will protect the consumer for errors and mistakes and has already been implemented with all inspectors now being DPOR certified and having to carry insurance. If your goal is to protect home buyers ... making inspectors liable for everything will have the opposite effect. No more inspections for the majority of people ... you wouldn't believe the things we find constantly. I urge you to protect the home buyer and not implement these changes proposed!

Thank you,

Owen P. Littlewood

President

Crawl to Crown, LLC

(757) 330-0772 (office)

olittlewood@crawltocrown.com

www.crawltocrown.com

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Commenter: Crawl To Crown Home Inspectors 6/22/18 10:01 am

President

I apose the bill

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Commenter: Hardman Homes & Consulting 6/22/18 9:47 am

Bill SB 627- Vote NO

What is the necessity in the legislation? With all the home sales in Virginia,, the % of issues with inspections is miniscule. In the last few years the Commonwealth has required specific testing and licensing for home inspectors. A contractor that builds a home now needs additional courses in order to look and comment on an desisting home!? The industry is not in need of micro-managing.

This, as in most legislation, creates an additional cost, insurance, etc which gets passed on the the buyer. Do we need home purchasing cost going up even more? The Feds rate hikes are doing that currently. We need home buying to be as affordable as possible. If a home inspection is too expensive for lower income purchasers they might choose to eliminate it, then subsequently have unknown costly repairs. This is legislation that is particularly problematic for lower income folks.

Last but certainly not least, this legislation opens more doors for *Creative Litigation*. My father was an attorney, my brother is an attorney, my wife is a par-legal in a firm, some of my best friends are lawyers. We all agree that over the last 25- 30 years ,there is a increasing trend of such lawsuits. That certainly does not need encouragement.

The answer to first question asked in the opening sentence is, there is none. Please focus legislation only when necessary. Government micro-managing on such minor things is very costly to both the consumer and taxpayer which is ALL of us!

Type over this text and enter your comments here. You are limited to approximately 3000 words.

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Commenter: Marj Croye, Promark Professional Homes Inspections, LLC 6/22/18 8:58 am

I oppose Bill 627

I oppose Bill 627! This bill is not reasonable and will drive up cost. Better alternatives are available such as a simple buyer due diligence period with a buy or pass deadline. There many ways to make the process better for everybody without putting excessive liability on the inspectors. How about the Realtors who sell the houses? What is their liability?

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Commenter: Robert Jennings 6/22/18 8:26 am

Opposition to SB 627

Dear Director Henshaw,

As you are aware, Senator Scott Surovell (D-Fairfax) introduced Senate Bill 627 in the 2018 session that would prohibit home inspectors from limiting their liability in home inspection contracts. This stems from an experience whereby a homebuyer ordered a termite inspection as an additional service, from a drop-down menu offering, while also ordering a full home inspection. Significant termite damage was discovered once the homebuyer took possession of the property. In reviewing the termite inspection contract, it was discovered that the inspection company had limited liability, and the homebuyer would only be able to recover the cost of the inspection. As I understand it, this issue was handled through the Home Inspector Licensing Board and regulatory body through DPOR.

However, since the bill has been presented, I would like to bring several items to your attention that I realize you are already aware of:

1. Home inspections include a written evaluation of the readily accessible components of a residential building such as heating, cooling, plumbing, and electrical systems; structural components; foundation; roof; and masonry. Termite inspections are not part of a home inspection, and are often separate inspections required by lenders.

2. All home inspectors in Virginia are required to be licensed. As a condition of State licensure, home inspectors are required to carry $250,000 of liability insurance. If this bill were to be enacted, insurers would likely either drop home inspectors from coverage because of the limits of liability being removed, or the rates would skyrocket, and/or the insurers could potentially require home inspectors to carry costly errors and omissions coverage, with that cost being passed on to the homebuyer. If insurers were to drop home inspectors, they would be unable to meet the state requirements for licensure.

3. Passing this law could not only create an environment that increases the costs of home inspections, but reduces the number of home inspectors available in some given areas of the state, thereby creating a situation that might cause the homeowner to NOT hire a home inspector. It is our understanding that the goal of the state regulations are to protect the public health, safety and welfare of the residents of the Commonwealth. Failure to inspect a home, especially a vacant property, using the professional services of a licensed home inspector, could result in not only a negative financial impact to the homebuyer, but safety as well, as in the area of fire, carbon monoxide poisoning and other life threatening events.

4. Limited liability is a necessary protection. Home inspectors test and assess a number of components within a home, most of which have a limited life span. An HVAC unit that functions properly in the spring can suddenly experience problems shortly thereafter during hot summer months when its load is increased.

5. As part of the licensure requirement that was enacted in 2016, consumers can file complaints with the Board of Asbestos, Lead and Home Inspectors. If a home inspector was found to be negligent by the Board, they can have their license suspended or revoked.

I am opposed to SB627 and request that you enter into the formal record my opposition to this bill.

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Commenter: Andrew Ling, Top Home Inspections 6/22/18 6:27 am

VA SB 627

This is in reqards to the above proposed VA licensed home inspector regulations changes to allow a language for an unlimited liability claims against the inspectors. I am strongly against this type of allowance. I believe there are many inspectors who will leave the insdustry due to higher insurance premiums, creating a shortage of professionals who perform the vital part of the realestate transaction process for the home buyers. The state license required liability insurance currently in place is adequate. In my 23 years of experience as a licensed and certified professional home inspector in Virginia and Maryland, I believe the current level of HI license requirements to be adequate and will serve the home buying publics interests well. We do not need to burden the industry professionals further.

Sincerely,

Andrew Ling, ACI, VA License #160

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EMAIL: rbohannon@huntonAK.com

FILE NO: 86918.000002

June 22, 2018

Ms. Tricia Henshaw
Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors
Department of Professional and Occupational Regulation
9960 Mayland Drive
Suite 200
Richmond, VA 23233

Re: Senate Bill 627

Dear Ms. Henshaw:

As the registered lobbyist for the Virginia Association of Real Estate Inspectors (VAREI), I write to provide some background behind Senate Bill 627 from the 2018 Virginia General Assembly. VAREI is the voice for Virginia home inspectors in regulatory and legislative issues, and works to promote excellence in the home inspection industry, representing a membership that spans the Commonwealth.

VAREI has a strong history of working to support professionalism and accountability in the home inspection industry. In 2016, we worked with the Virginia Association of Realtors (VAR) to establish the current licensure program, ensuring that home inspectors in Virginia have the appropriate education, training, and experience to perform their jobs. We have also worked with the Home Builders Association of Virginia (HBAV) on legislation requiring home inspectors performing inspections on new construction dwellings to have suitable training with regards to the Virginia Uniform Statewide Building Code (USBC). Proper training, education, and experience not only promotes proficiency in the industry, but provides home buyers with the peace of mind that they are hiring a qualified professional when purchasing a home.

Below I will highlight some of the flaws with SB 627, as well as address some of the discussion on the legislation that occurred in the Senate General Laws and Technology Committee during the 2018 legislative session.

SB 627 is a solution in search of a problem

When I first discovered Senator Surovell intended to file SB 627, he was kind enough to share a copy of the draft legislation, and invited me to his office to discuss it further. He stated the

impetus for the bill was a client of his who purchased a home where a termite inspection was conducted, and that inspection revealed that termite damage did not exist. Then, upon moving into the house, termite damage was discovered. In working with his client, Senator Surovell discovered that the termite inspection company had limited liability in their contract, and as such, could only be sued for the cost of the inspection. This amount was nominal, which made filing a lawsuit impractical.

SB 627 doesn't address the problem that led to its filing. As defined in the *Code of Virginia* a home inspection "means any inspection of a residential building for compensation conducted by a licensed home inspector. A home inspection shall include a written evaluation of the readily accessible components of a residential building, including heating, cooling, plumbing, and electrical systems; structural components; foundation; roof; masonry structure; exterior and interior components; and other related residential housing components"[1].

Termite inspections are not included in a home inspection, but are often required by the lending institution during the home buying process.

SB 627 would lead to problems with affording and obtaining liability insurance

Senator Surovell stated in the Senate General Laws and Technology Committee, "if you have liability, it makes you be careful. Right now, home inspectors don't have to worry about being careful".

Like any business, a home inspector's reputation and livelihood depends upon the inspector being reliable and knowledgeable, providing clients with valuable information about their home. VAREI members take great pride in their work, and insinuating that they need added financial liability to require them to be careful is simply insulting.

Unlimited liability would make insurance much more expensive, or would require a home inspector to purchase additional insurance. A component of limited liability is that it allows for insurance rates to be more affordable. Home inspectors carry $250,000 worth of liability insurance in the event that they are sued or damage property during an inspection. Limiting liability prevents frivolous lawsuits, but ensures that should there be gross negligence, a home inspector is insured. If a home inspector is opened up to much greater liability, insurance companies are going to insist on protecting themselves as well.

All of a home's components have a limited life span, and part of a home inspector's job is educating the home buyer about those components – such as how old they are, what their

[1] See *Code of Virginia* §54.1-500

average life span is, and whether or not a qualified specialist should assess them further. Consider a home inspector who performs an inspection in the spring when an air conditioning unit is functioning properly. Fast forward to when the home buyer moves into the house in the summer, and the weather is much hotter (and the air conditioner has an increased load placed on it), and the unit then breaks. If there was not limited liability in the home inspection contract, what would keep a home buyer from suing the home inspector for a new air conditioner? Or, it is well understood that houses settle over time. If a home buyer notices a new crack in their foundation, what would prevent them from suing their home inspector to address the issue, claiming the inspector missed it?

Increasing the cost of liability insurance in this manner would cripple home inspectors. Most home inspection companies are small businesses, and many home inspectors are sole proprietors. If the cost of liability insurance is increased significantly, the home inspector would have no choice but to pass that cost onto the home buyer, making home inspections much more expensive. As Senator Surovell stated in the Senate General Laws and Technology Committee, a home inspection normally costs around $300-$500, depending on the size and age of the house. If liability insurance rates skyrocket, those inspections will become much more expensive. The practical effect of that is some buyers would then likely forego the home inspection process, making them less knowledgeable about their homes. This would be especially true for lower priced homes, where an inspection is oftentimes the most beneficial to understanding potential defects that need to be addressed.

Another consequence of SB 627 would be that some liability insurers would likely drop home inspectors from coverage altogether. This then would put licensed home inspectors in the untenable position of being unable to secure the liability insurance they are required by regulation to obtain as a condition of licensure.

SB 627 would allow inspection reports to become a tool to be used against inspectors

In reviewing a home's major components, home inspectors provide a depiction of what a home buyer is purchasing, and alerting them if specific systems need further review by a qualified professional such as a plumber, roofer, or HVAC technician. While many home inspectors come from trades such as these, it is not a requirement. If SB 627 were to become law, it is conceivable that home buyers that experience problems with their home's major components will seek recourse from the home inspector, creating an unnecessarily litigious environment.

No one likes paying for expensive home repairs when they are inevitably needed. If SB 627 where to be enacted, it would allow homeowners looking to limit their expenses to use the

report to seek recourse from the home inspector for the cost of repairs. Even if such actions did not lead to a home inspector being found liable, the time and expense it would take a home inspector to protect themselves would be problematic.

Conclusion

Home inspections provide an invaluable tool for home buyers, allowing them to make informed decisions about the properties they are purchasing. Having a licensed, trained, and experienced professional provide this service gives home buyers needed assurance and knowledge during what is normally an incredibly stressful time.

Our members take great pride in the work they do, and strive to provide their clients with the best service possible. Many home inspectors encourage their clients to join them during the inspection so the client can see first-hand any potential issues, allowing them to ask questions and to learn about how to address problems.

The Board for Asbestos, Lead and Home Inspectors and the Virginia General Assembly cannot rely on anecdotal evidence – and anecdotal evidence that does not even relate to home inspections – to make policy. There has been no evidence that prohibiting limited liability for home inspectors would lead to better outcomes for the public.

VAREI has been proud to work with the Virginia General Assembly and the Board of Asbestos, Lead and Home Inspectors on issues that promote proficiency in the industry and that protect the health and welfare of the home buying public. Senate Bill 627 does neither of these.

Thank you for your time and consideration.

Sincerely,

Robert T. Bohannon
Director, Government Affairs

Cc: Barry Robinson, President, Virginia Association of Real Estate Inspectors

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Agency Department of Professional and Occupational Regulation

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Commenter: Robert Thompson, Hawkeye Inspection Service, Inc. 6/21/18 10:53 pm

SB 627

We oppose the present language of SB 627, but we are in favor of a *modification* to SB 627 that would eliminate *some* of the liability protections presently afforded by standard disclaimer agreements signed by customers of home inspection companies.

The notion that all liability for home inspectors is circumvented by said agreements, and that liability is valued equal to the inspection fee paid, and that this becomes law upon obtaining the signature of a somewhat pre-occupied customer is ludicrous.

Having said that, we believe that the liability should only be extended to serious circumstances regarding safety and *not* to cosmetic items, minor repairs, or any repairs that would be considered typical home maintenance. The altered Bill should have more depth and specificity wherein it defines "Safety", as well as how it defines the issues that would fall beneath the term, e.g., structural integrity of the dwelling, construction methods used, proper use of building materials, etc.

The spirit of SB 627 is well-intended; however, if the bill is not written properly (as in its present form), it will cause an avalanche of issues including 1) Rising insurance premiums and deductibles that will cause hardship to many small business owners, 2) Subsequent increases of inspection fees to customers as a result of increased business costs, 3) Exploitation and closure of non-franchised small businesses who have no capacity to bear the added costs, and 4) An increase in frivolous claims being made by some customers.

As someone who has been involved in residential construction for forty years, and who has been in the home inspection business for nineteen years, we appreciate the changes that have been implemented by the Commonwealth, specifically the certification requirement in effect since July 1, 2017. We welcome any changes that will increase professionalism in our industry, and we hope that SB 627 in its current form will be tabled until further study can be performed and modifications can be made as we have suggested.

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Commenter: David Throckmorton Sr. JODAT INSPECTIONS 6/21/18 9:33 pm

I oppose SB 627

I oppose SB 627 as it will encourage frivolous lawsuits, unreasonable demands from disgruntled clients, increase inspection cost, and increase insurance rates.

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Commenter: Doug Ferguson 6/21/18 7:36 pm

Home Inspectors Liability

In response to the proposed legislation to hold home inspectors completely liable for any future claims resulting from a home inspection is absolutely agressious and will only create an atmosphere of hostility. No other inspection trade, including local and state inspectors are held to this level of liability. The result of this legislation will result in a drastic decline in home inspectors willing to assume this type of unlimited liability and exposure. We are already required to afford $250,000 in Liability insurance for an average $400 Inspection which will only serve to attract more lawsuit happy lawyers. A home inspection is based upon many physical limitations. Access to inaccessible spaces. Evaluation based upon current conditions which can change in an instant. Unforeseen conditions. Problems arising post an inspection. To add this kind of burden onto the shoulders of a inspector is not reasonable no more than it would be reasonable to require sellers to be held reasonable for warranting a home after the sale. Too often, situations arise where access is not possible or has been made inaccessible by the owner who has decided not to be present during an inspection, in an attempt to cover up a problem creating a problem for an inspector to perform a full inspection. Conditions which may exist below grade level are not disclosed by governing authorities which may impact the property. I became an inspector to offer over 40 years of industry wide knowledge with the hope it would prove to be a beneficial contribution to my clients. However, I will not stay in this profession if this type of legislation is passed. I would have to assume many other professionals will do the same.

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Commenter: Patrick Hart Atlantic Coast Inspection Services 6/21/18 6:39 pm

Comments on SB 627

I am writing this statement in opposition to SB 627. I don't believe it is right that the Virginia Senate is going to submit this legislation in a way that will help anyone in the home inspection industry. The senate has to remember that we the inspectors have only one chance to inspect properties and that we don't know of any defects in advance in any of the properties that we do inspect. The only individual that knows what is wrong or broken in the property is the seller or at the time the owner. The owner/seller is the only one that knows if a window is broken and can't open or that the button on an oven is broken and will fall off when it is touched. By passing this legislation the senate will cause a major backlash with home inspectors getting out of the business (after we all just went through the licensing process and spent hundreds of dollars on training, books, and taking the exam.) If you want to pass this SB 627, then you better make legislation that makes it mandatory that home/property sellers get a pre sale inspection to identify what needs fixed before the buyers home inspector comes in and refuses to turn on any lights, equipment, HVAC systems, sinks, or showers. The other idea is to have the seller/owner be present at the inspection and **they** turn everything on, move items so we can get access to the electrical panel that is blocked with all of there belongings, open doors, operate windows, etc. Basically you will cause us home inspectors to do a cursory look around to see if a home is in good enough condition to buy, we will end up doing the seller a favor and not doing our client (the buyer) a good inspection which will cause the buyer to buy the house under false pretenses. This will be the demise of the home inspection industry here is Virginia. If SB 627 is passed the cost of performing inspections will go up increasingly higher, from a average cost of $450 up to about $750.00 for a $550K house. Say no to SB627

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Commenter: Lina Nardecchia - Informed home owner 6/21/18 3:20 pm

SB 627 - Unforeseen consequences?

I have purchased homes and have had home inspections performed. The inspectors I have had, have always tried there best to report the condition of the home and it is easy to understand some things cannot be seen. It is also understood that the buyer must assume some degree of risk when purchasing a home...that is stated in various language throughout the real estate documents we sign. A home is not a brand new car with a manufacturer warranty. And even new homes with warranties have issues...and often a warranty for only 1 year, sometimes less...

If a home inspection company has to assume full liability as a result of this Senate Bill 627, I can easily see the following happen when a homebuyer wants to have an inspection.

1. The inspection is going to take approximately 6-8 hours to complete and will cost an average of $1000 (condo) - $1600 (single Family)...maybe even more.

2. The inspection process will no longer be just one individual, but will include a licensed home inspector, a licensed electrician, a licensed plumber, a licensed roofer, a chimney specialist, a pest inspector and a structural engineer. These professionals will work side by side throughout the course of the entire day to uncover every single flaw within your home...because if they don't they are liable to unlimited ends.

3. In addition to the above listed professionals, a thermal imaging scan will need to be performed of every interior and exterior component.

4. An indoor air quality test in every single room will be necessary to ensure there are no unseen health hazards in the air, such as mold.

Radon tests will still be extra, as always.

All personal posessions will preferably be vacated from the property being inspected in order to ensure the inspectors can see everything. If posessions are present then there will be another clause the inspector has you sign somehow changing the terms...So homes on the market that are occupied will sit on the market longer as home buyers prefer the vacant homes.

The above items may sound extreme or unlikely....but the reality is that the cost of inspections for home buyers will rise as companies endeavor to provide a greater level of invasive and specialized inspection for the clients. This in turn will result in many home owners opting out of a home inspection all together due to the costs. It will also result in many smaller companies or individual inspectors going out of business as they are not able to take on the associated liabilities and increased costs to stay in business.

Food for thought.

Commonwealth of Virginia

DPOR: Board for Asbestos, Lead and Home Inspectors (DPOR), rr <alhi@dpor.virginia.gov>

SB627

1 message

Matt drifmeyer <noblehomeinsp@cox.net> Thu, Jun 21, 2018 at 10:29 AM
Reply-To: Matt drifmeyer <noblehomeinsp@cox.net>
To: alhi@dpor.virginia.gov

Good Morning Ms. Henshaw.

I have heard you speak many times and I thank you in advance for your efforts.

I'll be brief.

Bill SB627 creates unlimited liability for us. Our liability insurance will become malpractice insurance. Our ability to predict the future and see what is not there will be sorely tested.

If the ASHI standards of practice need amending then surely that is a place to start. If inspections take longer and cost more than perhaps that happens and we adapt.

Any change should be slow, well considered and the affects calculated. This bill simply tips the boat over instead of rocking it.

I oppose this bill with all that I am.

Matt Drifmeyer Ashi cert, state cert # 251000

Noble Home Inspections
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Commenter: Matthew B. Drifmeyer 6/21/18 10:20 am

SB 627

Unlimited liability? I can't imagine any profession that has an unlimited liability.

If our standards are to change, lets discuss it and create a new standards of operation for the state through ASHI and the powers that be. If our costs and fees change because of those changes, we will adapt eventually. I imagine the cost of an inspection will change considerably as will out insurance costs. Realtors will need to understand that an inspection (with unlimited liability) could take 6 to 8 hours. Some large old homes could take more than one day.

I hope the technology to see through walls and predict the future are available very soon so that we can understand the cost and pass that on to the buyers.

I expect this bill is a knee jerk reaction to a poor inspection and will be treated as such.

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Commenter: InspectionsVA.com 6/21/18 8:35 am

OPPOSED to SB 627

I am opposed to SB 627. There are many reasons this Bill not does not make sense. First and foremost, a Home Inspection is a Non-Invasive inspection. Meaning, the Inspector can not move the owner's belongings/items out of the way, the Inspector can not cut access into the walls to check for latent defects, etc. The visuals are limited; therefore, liability must also be limited.

I understand the thought behind the Bill, the desire to protect the Consumer. A Home Inspection is already providing an extra layer of protection for the Consumer. It is not meant to be, nor can it be, all enclusive. Should this Bill come to fruition, many Home Inspectors will leave the industry and cause the price of Home Inspections to rise, giving the Consumer less choice and less protection then they have now.

Dave Sfreddo - InspectionsVA.com

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Commenter: Michael Raymond Donitzen 6/21/18 7:50 am

SB 627 For and Against

I will not be able to attend the meeting on the 28th as I am already booked. However, I want my view on SB 627 to be heard.

I certainly believe that something needs to be done to better protect the public from negligent home inspectors. Home inspectors that breeze through a home because of the limit of liability clause, home inspectors that, in reality do not have the experience or knowledge that is necessary to conduct a proper home inspection.

Last month I conducted a home inspection on a property that the seller owned for only six months. They hired a licensed home inspector to protect their interest, which was a wise decision. Unfortunately, that inspector is one that breezes through a home.

After I conducted my inspection and delivered my findings. I was informed by my client that the sellers provided him with their six-month-old inspection report. He was in disbelief of the issues I discovered. In fact, his statement was and I quote "Why in the hell didn't (home inspectors name) find these issues. I am so glad I decided to hire you".

This is one icident of many I have encountered. Inspectors such as this give the profession a bad reputation and every inspector that has posted here knows that one inspector.

Home inspectors cannot predict the future, we cannot state how long an HVAC system, water heater, cook stove or refrigerator will continue to operate. However, in this case, that inspector clearly did not point out serious electrical and structural issues that were clearly and visibly apparent six months prior to my inspection.

1. The attic had a light box, but no fixture. The service wire was energized when the switch was activated and it was clear that a fixture had never been installed.
2. GFCI outlets were improperly wired.
3. Cracked/split floor joist that clearly was present six months prior to my inspection.

I estimate the cost to the seller to be between 3-5 thousand dollars. The first home inspector should be responsible for the repairs as they were not listed in his report, but is was clearly obvious that they were readily visible and present when he conducted the inspection.The current regulations only require that he refund his inspection fee. The lack of action by this inspector left the customer footing the bill for something they hired him to find.

The wording of SB 627 however makes an open door for a client buyer or seller to file suit for any issue at any time.

"No contract for home inspection services shall contain any provision limiting the liability of any home inspector for damages arising from his acts or limiting any business that provides home inspection services from liability for the acts of its employees or agents."

Home inspectors cannot have a limitless contract. We will be forced to pay for appliances and heating and air conditioning systems that simply fail due to age. Yet the consumer needs a path of recourse especially given the above incident. At what point does the home inspectors liability end? What is the maximum dollar amount of that liability?

This is my solution; it provides a level of protection for the inspector against frivolous law suits and provides protection for the clients against breeze through home inspectors.

No contract for home inspection services shall contain any provision limiting the liability of any home inspector for omitting visibly obvious material defects that exceed (?dollar amount?). The customer/client must prove within 30 days of closing, by evaluation of two equally qualified home inspectors that the material defect was visible and obviously present at the time of the original inspection.

Additionally all home inspectors should be carriing a minimum of 250,000 E&O insurance. Currently the requirement is GL only.

Thank you

Virginia.gov

VIRGINIA REGULATORY TOWN HALL

Agency Department of Professional and Occupational Regulation

Board Virginia Board for Asbestos, Lead, and Home Inspectors

Previous Comment Back to List of Comments

Commenter: Tim Wright, Structure Examinations 6/20/18 6:51 am

Bill 627

Whether by intent or gross over sight, if passed, Bill 627 would strip every Inspector of any protection against issues outside of His/Her control putting them at great risk and possibly out of buisness.

Virginia.gov

VIRGINIA REGULATORY TOWN HALL

Agency Department of Professional and Occupational Regulation

Board Virginia Board for Asbestos, Lead, and Home Inspectors

Previous Comment Next Comment Back to List of Comments

Commenter: Timothy Zenobia ACI 6/19/18 9:22 pm

OPPOSED to SB 627

By nature, vision and scope is limited during a home inspection and therefore liability should also continue to be limted.

There are numerous reasons why vision and scope is limited during a home inspection: 1. Personal possessions and furniture in occupied homes. 2. Latent defects that only occur under certain conditions that cannot be observed at the time of inspection 3. Concealed defects that are hidden behind finished materials such as drywall, carpet, insulation... 4. Intentional concealment of a known problem by a homeowner or contractor who has performed repairs 5. Limited accessibility to an area due to safety and or physical accessibility issues. 6. Limited specialization and licensing - i.e. a licensed home inspector is not a licensed electrician, licensed plumber, licensed hvac professional, licensed contractor etc...

A home inspector cannot see through furniture and walls and does not have X - Ray vision. A home inspection is not an MRI and should not be treated as such.

Sincerely,

Timothy Zenobia, ASHI Certified Inspector

Virginia.gov

VIRGINIA REGULATORY TOWN HALL

Agency Department of Professional and Occupational Regulation

Board Virginia Board for Asbestos, Lead, and Home Inspectors

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Commenter: Pillar to Post Home Inspections 6/19/18 8:24 pm

I a pose the bill

This bill is outragous. This leaves an open door for every inspector to be liable for items out of our control, and allows the buyer to expect payment for every little thing they find in thier opinion. This will also kill our industry, businesses, lively hood of all inspectors. This will also make our operating expences rise to the point the clients will be suffering, cost of inspection will have to double. As a business owner I can see my expences double or even tripple, my libility exposure will increas, which will force me to let go of my staff.

I feel the system is working fine as it is. My thougth is, if this is to protect the buyer, then thier should be a mandatory level of insurance required for home inspectors to carry. This will protect the consumer for errors and mistakes.

Virginia.gov

VIRGINIA REGULATORY TOWN HALL

Agency Department of Professional and Occupational Regulation

Board Virginia Board for Asbestos, Lead, and Home Inspectors

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Commenter: Stephen Comer, C'ville Home Inspection 6/19/18 5:11 pm

Opposed to SB 627

Staunchly Opposed to SB 627

In a just and fair world this bill would protect home buyers from shady, unprofessional home inspectors and it would hold us honest inspectors to the fire. I agree that some sort of winnowing process is needed to separate the wheat from the chaff, but relying on our current legislative system in the state of Virginia is not a viable option.

For example, several years ago I was notified by a former client that I would be held responsible for water damages to a home I inspected more than 90 days prior. This client claimed that I started the washing machine in the basement and left it running after I vacated the premises.
What actually happened, and was clearly pointed out in the inspection report, was that I found a slow leak at the clothes washer in the basement. The clothes washer was stopped and the slow leak stopped resulting in a small puddle on the concrete floor in front of the appliance. In this particular case the house was vacant, the home owner was out of state, the buyer's Realtor unlocked the house for me and then left without my knowing it and the home buyer was not able to attend the inspection. My only contact with the home buyer and buyer's agent was through email so I wrapped up the home inspection and emailed it to both within an hour. Twelve days later when the appraiser showed up from the bank he found standing water throughout the basement and a substantial amount of related damage. I was never contacted and the buyer's agent convinced her that they should close on the house and draw up a lawsuit against me afterwards for compensation of repair costs. In court the judge ruled that the home buyer was responsible for damages since she closed on the purchase with full knowledge of the current condition of the house. However he turned towards me and said before the whole court, "now you know as well as I do that *you* are the one that is responsible for this and I wish that I could force you to cover the repair costs ... but in this case the law is the law."

What happened was very unfortunate. Who is at fault? Is it the inspector, the Realtor, the home seller, the manufacturer of the clothes washing appliance? Poor decisions were made by several of the parties involved: I learned that I will never perform another home inspection without a licensed real estate agent present. I also now strongly encourage the homebuyer to be present for the entire inspection. I still inspect clothes washers but I know I am putting myself at risk in doing so. The homebuyer should never have taken the advice of the Realtor to close on the house with known damages. And the judge should have kept his opinions out of the courtroom. I lost faith in our legal system throughout this 9 month process. The hearing was rescheduled 3 times causing me to miss work those days and my lawyer fees and insurance fees could not be recouped because Virginia does not allow counter-suit.

A year later I was subpoenaed by a home seller who claimed I falsified my inspection report to thwart the sale of her home. She got statements from a plumber, electrician, class A contractor and HVAC specialist claiming that I made incorrect findings. Actually what I did is carefully, and in a very detailed fashion, inform the potential home buyer about the hazards associated with various major systems and components in the home. After more than 3 courtroom appearances and more

than $6000 in legal fees, the judge decided to throw the case out because there was never a contract between myself and the home seller in the first place.

This illustrates how we home inspectors are already at a disadvantage and to take away the only thing that could legally provide us any reprieve is a death sentence. Our legal system is not just and a limitation of liability is necessary to keep these inevitable disputes in small claims court. These were very stressful events for me that caused me to question my faith and motives and I was ready to leave the home inspection industry at any point. But if I now could lose my business because someone felt I was to blame for something I am not responsible for, then as others have already said in these threads I too will have to significantly raise my fees, say "no" to as many as 50% of inspection requests and I'll likely loose all joy in providing such a necessary service to those who really need us.

Strike down this bill please!

Stephen Comer, ASHI Certified Inspector, C'ville Home Inspection

Virginia.gov

VIRGINIA REGULATORY TOWN HALL

Agency Department of Professional and Occupational Regulation

Board Virginia Board for Asbestos, Lead, and Home Inspectors

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Commenter: Pillar To Post 6/19/18 4:19 pm

Virginia Senate Bill 627

Virginia Senate Bill 627 will have an adverse effect on the Home Inspection Industry in Virginia causing many businesses to close because of the proposed legislation due do the risk and unreasonable burden associated with unlimited liability. Liability insurance costs will likely rise due to increased risk exposure. Small, one man, inspection companies will likely fold due to the increase cost of liability insurance. For the businesses that remain will be forced to raise prices due to these increases in insurance premiums if this bill is passed. Not only will this have a detrimental effect on home inspectors but also future home buyers in Virginia due to increased fees associated with purchasing a new home.

Most businesses have limitation of liability clauses in their contracts and are typically tied to the amount of fees that are charged to the services provided. The Inspection Agreements used by our company provide for the same limitations. Why is the Home Inspection Industry being unfairly regulated when other industries are allowed reasonable Limited Liability Clause in their contracts.

Home inspectors are generalists. We cannot be expected to predict when something in a home will fail in the future due to normal wear; such as a roof leak, a furnace or water heater failure, or a basement leak due to a future system failure. Many components in the home at the actual time of the inspection may be in working order but can fail over time due to normal wear. It is unjust to expect me or any other inspection to be liable to a judgement that is out of our control and unable to predict. The Home Inspection is a visual inspection at a certain given moment in time. The inspection isn't invasive, we can't open walls to see what lurks behind them, we can't completely dismantle a furnace to see the heat exchanger or see inside the duct work inside the wall. We can't see electrical wiring hidden by drywall. So if something is hidden behind a wall or floor, or poor construction was used but not visible, how can any human being such as a home inspector be held liable for latent defects.

I'm a licensed home inspector in the Commonwealth of Virginia and have always operated with honesty and integrity as do other home inspectors in Virginia.

I am not in favor of Virginia Senate Bill 627 and respectfully request that this bill be killed.

Sincerely,

Anthony Lane

Commonwealth of Virginia

Henshaw, Trisha <trisha.henshaw@dpor.virginia.gov>

SB 627

Aztec Home Services <mike@aztechomeinsp.com> Tue, Jun 19, 2018 at 8:55 PM
To: "Henshaw, Trisha (DPOR)" <trisha.henshaw@dpor.virginia.gov>

Hello Ms. Henshaw,

I will not be able to attend the meeting on the 28th as I am already booked. However, I want my view on SB 627 to be heard.

I certainly believe that something needs to be done to better protect the public from negligent home inspectors. Home inspectors that breeze through a home because of the limit of liability clause, home inspectors that, in reality do not have the experience or knowledge that is necessary to conduct a proper home inspection.

Last month I conducted a home inspection on a property that the seller owned for only six months. They hired a licensed home inspector to protect their interest, which was a wise decision. Unfortunately, that inspector is one that breezes through a home.
After I conducted my inspection and delivered my findings. I was informed by my client that the sellers provided him with their six-month-old inspection report. He was in disbelief of the issues I discovered. In fact, his statement was and I quote "Why in the hell didn't (home inspectors name) find these issues. I am so glad I decided to hire you".

Home inspectors cannot predict the future, we cannot state how long an HVAC system, water heater, cook stove or refrigerator will continue to operate. However, in this case, that inspector clearly did not point out serious electrical and structural issues that were clearly and visibly apparent six months ago.

1. The attic had a light box, but no fixture. The service wire was energized when the switch was activated and it was clear that a fixture had never been installed.
2. GFCI outlets that were improperly wired.
3. Cracked/split floor joist that clearly was present six months prior to my inspection.

I estimate the cost to the seller to be between 3-5 thousand dollars. The first home inspector should be responsible for the repairs as they were not listed in his report, but is was clearly obvious that they were readily visible and present when he conducted the inspection.
The current regulations only require that he refund his inspection fee. The lack of action by this inspector left the customer footing the bill for something they hired him to find.

The wording of SB 627 however makes an open door for a client buyer or seller to file suit for any issue at any time.
"No contract for home inspection services shall contain any provision limiting the liability of any home inspector for damages arising from his acts or limiting any business that provides home inspection services from liability for the acts of its employees or agents."

Home inspectors cannot have a limitless contract. We will be forced to pay for appliances and heating and air conditioning systems that simply fail due to age. Yet the consumer needs a path of recourse especially given the above incident. At what point does the home inspectors liability end? What is the maximum dollar amount of that liability?

This is my solution; it provides a level of protection for the inspector against frivolous law suits and provides protection for the clients against breeze through home inspectors.

No contract for home inspection services shall contain any provision limiting the liability of any home inspector for omitting visibly obvious material defects that exceed (?dollar amount?). The customer/client must prove within 30 days of closing, by evaluation of two equally qualified home inspectors that the material defect was visible and obviously present at the time of the original inspection.

Thank you

Mike Donitzen
Aztec Home Services LLC
540-830-0259
www.aztechomeinsp.com

"FROM FLOOR TO ROOF I'VE GOT YOU COVERED"

Affiliate Member Harrisonburg Rockingham Association of Realtors

Structure Examinations
2488 Blackberry Rd.
Afton, Va. 22920

Dear Trisha Henshaw,
6/19/18

This short letter is in response to the legislation concerning Bill 627.

First let me state, I have served the Charlottesville and surrounding community as an inspector for over 20 years. I have a solid reputation and to present have had no legal claims against me or my business.
Here are ten good reasons why this is a very bad bill.
1. What if the Inspector inspects a property which was winterized, but those who winterized the house failed to cut off the power to the water heater prior to draining the system?
2. What if an angry home owner cut the refrigerator or washer lines when the utilities were terminated as they were forced out in foreclosure?
3. What if a vacant house was left without heat and the water was cut off yet not drained and the lines had burst in the wall or ceiling?
4. What if a heat or cooling system failed to operate during or directly after inspection due to normal circumstances but poor timing?
5. What if the Inspector tests GFCI circuits and or breakers that fail to reset?
6. What if an unhappy seller accuses the Inspector of damaging something that is already broken?
7. What if the Inspector drains a second level whirlpool tub after testing in a new house that the plumber failed to connect to waste?
8. What if the Inspector operates a washer in a renovated basement and the floor drain backs up and floods a finished floor because the waste lines are tied together and there is a blockage?
9. What if the Inspector tests the attic AC unit that was just installed and the condensate drain is routed into the furnace exhaust below?
10. What if the Inspector gets a call from a unhappy purchaser a month after closing because they failed to thoroughly read the report and consult a professional to address some issue disclosed?

These are but a few of my personal experiences. My contract is a safety net to protect me from unexpected problems that are outside of my control. This bill would strip any protection I have and would unfairly put me and many others at great risk and possibly out of business.
Please consider this and do not support or pass Bill 627 or one like it.

Respectfully,
Tim Wright
Structure Examainations

Licensed Hime Inspector
New Residential Structure
License #3380001076
Residential Radon Measurement Provider
NRPP ID 107957RT

Appendix G

June 28, 2018, Public Hearing Transcript

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

IN RE: PUBLIC HEARING

HEARD BEFORE: Trisha L. Henshaw

JUNE 28, 2018
SECOND FLOOR CONFERENCE ROOM
9960 MAYLAND DRIVE
RICHMOND, VIRGINIA 23233
9:05 A.M.

Reported by: Cherryl J. Maddox

CHERRYL MADDOX REPORTING
10119 Indiantown Road
King George, Virginia 22485
(540) 372-6874

BOARD DESIGNEE:

Trisha L. Henshaw, Presiding Officer

ALSO PRESENT:

Paul Saunders, Board Administrator

Tanya M. Pettus, Administrative Assistant

MS. HENSHAW: Good morning, ladies and gentlemen. I am Trisha Henshaw, and I am the executive Director for the Board for Asbestos, Lead, and Home Inspectors, and this is Paul Saunders, Board Administrator.

This is a public hearing held at the Department of Professional and Occupational Regulation, 9960 Mayland Drive, Richmond, Virginia. This hearing is being held to study the subject matter contained in Senate Bill 627 from the 2018 General Assembly Session, which proposed to prohibit contracts for home inspection services from containing any provision limiting the liability of any home inspector for damages arising from his acts, or a business from limiting liability for the acts of its employees or agents. Senate Bill 627 was referred by the Senate Committee on General Laws and Technology to the Department of Professional and Occupational Regulation for study.

Immediately following this public hearing, a committee selected by the Board for Asbestos, Lead, and Home Inspectors will meet to consider all public comments received, along with all other information relevant to the subject matter, to consider a recommendation for the Board. The committee's

recommendation in the form of a draft report prepared by staff will be presented to the Board at its meeting on August 16, 2018. The staff of the Department of Professional and Occupational Regulation will then submit a final written report to the Chair of the Senate Committee on General Laws and Technology and the bill patron.

The list of interested parties and organizations which were notified of this process and invited to comment is available upon request. The opportunity for public comment was distributed to registered individuals via the Virginia Regulatory Town Hall and noticed on the Department of Professional and Occupational Regulation website.

Now I would like to present the rules for this public hearing.

Comments will be received from any member of the public and initial comments will be limited to a maximum of five minutes, depending on the number of individuals who wish to speak. If you have not signed up to speak and you wish to give testimony today, please sign your name on the sign up sheet at this time. Please note that the public hearing is being transcribed by a court reporter in order to provide an accurate and complete account of the comments received

today.

Staff members may ask speakers questions or to clarify statements. However, this is not the proper forum for questions to the Board. If you have a question for the Board, please forward them in writing to the Board.

Okay, the first person who has signed up to speak today is, and forgive me if I don't get the last name. Tillman Simms.

Okay, Mr. Simms, please come to the table there.

And just a quick explanation, we do have a light box. It's a five minute light box. When I press the button, you can begin talking, or you can begin talking and I will press the button. When the green light comes on, you have five minutes, and when the yellow light comes on, you have one minute remaining.

MR. SIMMS: Okay, I won't be long.

MS. HENSHAW: Thank you.

MR. SIMMS: Yes, good morning, my name is Tillman, with Simms Home Inspection. I have just got a few points to go over.

First of all, I don't know why we are here. We are kind of conforming to everything that the DPOR wanted. I know it's been stated before we became

licensed, some of us are already licensed so we did that. And now we are going on, we got this, and we are trying to provide a service to the customers of Virginia, but if we have to go up on prices, we don't know if we can keep doing it because our E&O Insurance is going to be so high that some of us may not be able to afford it.

So, like if you do a pre-inspection, you do a pre-inspection, you know, somebody come behind you, not necessarily that you did anything wrong, they say you have got something wrong then you have got to go back and fight that. So it's just going to be a big colossal mess and I don't think that we need to go through this. That's just my opinion. Thank you.

MS. HENSHAW: Thank you.

All right, next on the list is Douglas Burgess.

MR. BURGESS: I didn't sign up to speak. I was signing in.

MS. HENSHAW: Okay, no problem.

All right, next is, is it Fred Reed?

MR. REED: Fred Reed, yes.

MS. HENSHAW: Okay, thank you.

MR. REED: Good morning.

MS. HENSHAW: Good morning.

MR. REED: Can I have his extra time?

Good morning, I'm Fred Reed from Accurate Home Inspections.

I think the bill you have in front here, is going to supply a whole lot of overreach into our businesses. We are already heavily regulated, and in the end, this is all going to effect the consumer badly.

It always, everything, all this law from the beginning started with an eye for an eye. It was always about making a person whole again through the agencies these laws were developed around, just making a person whole again. The Virginia, and then Code, centered around making a person whole again.

If a home inspector misses an item that was hidden, that problem existed before we were there. Our, the only offense, the only thing that we have taken from a customer is the fee. Therefore, our liability should be limited to the fee because the problem preexisted. Our only offense is the loss. We didn't cause that problem to happen.

You get the problems in this where as soon as this bill passes, you immediately run amuck of the VAC, and it's going to show up in court. It will kill a couple of home inspectors in the process because we

don't have the money to run this through the Supreme Court of Virginia. One of us do, somebody here has a hundred thousand dollars to get the case there, and it will run amuck of VAC for sure, but it's going to cost us a lot of money.

Second is you already have corporate laws that limits the liability of a person working for a corporation. Where your bill is written to say it is the inspector and the company, you have created a double jeopardy there that is going to run amuck of the SCC, so the law is immediately going to get questioned and maybe even set aside. So all the work that could go into creating this law is going to create a mess and have to be resolved later on. It's not going to stay in effect.

The second is we are already very heavily scrutinized. We have all been through background checks and license and insurance and extra classes and internet classes, and there is a whole lot that we have done. We have already proven ourselves here to the State. This is getting to the point of over regulation.

And the last is if you don't hear anything else today, hear this, if you guys pass, if the State passes this law, home inspectors will react. We are

going to get higher insurance rates. We are going to pass those along to customers. A lot of these guys in this room and maybe other guys, are going to drop out of this business. They are not going to absorb that extra risk. So, with less inspectors to serve just as many people and higher insurance rates, we could see double and triple the fees.

Now, your action inadvertently affects the poor, that those people who are getting those first time houses, the ones that need the most protection, the ones that are less savvy about the houses are going to be hit the hardest because they can't afford what protects them. That's all.

MS. HENSHAW: Thank you very much, Mr. Reed.

All right. Next signed up is Hollis Brown.

MR. BROWN: Yes, my name is Hollis Brown. I'm an inspector, have been for 20 years. I own and operate The Home Inspector Training Academy. A number of my students and former students are present in the room and I am currently the speaker of the Counsel of Representatives of the American Society of Home Inspectors.

When I find myself thinking back to, back in the day, before home inspectors, before these cases had

worked their way through the courts, establishing the precedent that we now rely on, the, every training program seemed like started out with some discussion of liability protection. Home inspectors were trained to think of their clients as potential adversaries. We, training events seem to, the Q and A seem to lean in the direction of how do we protect ourselves from this possibility, maybe not the likelihood but the possibility that our client may at some point take issue with our findings. But by the time these cases work their way through the courts and home inspectors found themselves more confident that they could successfully limit their liability to a refund of the fee, the relationship between the client and the professional changed.

As we no longer walked into rooms, into settings, into houses, concerned that this person that we are getting ready to accept money from may some day be an adversary, we began to think of it as a person that we were providing a service to, a person that we could say no to if they were asking us to do something inappropriate; a person that -- so, it gave us the opportunity to just be more candid with our clients, which created a better atmosphere, and I think it would be a shame to lose that. Thank you.

MS. HENSHAW: Thank you.

All right, next we have signed up Peter Jung.

MR. JUNG: Good morning. I have been an inspector for over fifteen years, and have always been proud to be part of this profession.

A number of us who do home inspections, feel, I think, real comradeship with a well known speaker by the name of John Boldin, Doctor John Boldin, who has been at several national conferences. And he often times, if not every time, starts out every one of his particular lectures with, it's a great day to be a home inspector. And I am sure that he would not feel that way relative to this proposed legislation.

It doesn't serve a useful purpose at all, and I am just going to read something that I think kind of summarizes it quite nicely. "The system works pretty well the way it is. Good inspectors get referral business by taking care of clients. Bad inspectors go out of business. It's understood that a few clients will be hurt in the process. Given the client the ability to sue a failing business is unlikely to be effective. Inspectors are likely to respond to this law by performing defensive inspections." And by that I mean, inspection reports will become more nitpicking, they will also include more referrals to other persons,

other professions, electricians, carpenters, plumbers. The list goes on and on and on, because in order to protect ourselves from the additional liability, that is more likely than not, going to happen.

And I also echo the comments that there are a number of people who may elect to no longer continue to be home inspectors because of this additional liability. And that's it.

MS. HENSHAW: Thank you very much.

All right, next on the list is Tony Toth.

MR. TOTH: Hi, I am Tony Toth, president of NOVA Ashing.

Home inspectors are trained generalists. It is not possible for anyone to be specialists in all fields related to home inspection, nor is it reasonable to expect that specialists perform within their respective fields without some limits of liability.

The physical inspection is inherently limited. From a perspective of common sense, if the inspection process is limited, then so must the liability of specialists and home inspectors alike.

MR. JUNG: Excuse me, are the microphones working? Because we can hardly hear Tony.

MR. TOTH: Should I do that again?

MS. HENSHAW: You can continue, it's

transcribed.

MR. TOTH: There is a course of action for the public. The public can enter into DPOR's complaint process for disciplinary action against licensed home inspectors that are negligent in their responsibilities. DPOR can fine and revoke a home inspector's license if found in noncompliance with contractural ethics and standard of practice.

The home inspector's limited liability can be overruled by courts, by the courts when inspectors are found grossly negligent. These are clear incentives to command all home inspectors to thoroughly and professionally conduct their business while safeguarding public interest, as suggested by the following evidence.

So, where is the evidence supporting the notion that too many Virginia licensed home inspectors are in noncompliance with DPOR's standard of practice? Since licensing took effect on July 1, 2017, through June 20, 2018, and possibly to this date, almost exactly one year, our DPOR record shows the following: That there have been 23 complaints reviewed. 21 were closed by staff for compliance, obtained no jurisdictional insufficient evidence, et cetera.

There is one open case, and only one rose to

the level of disciplinary action. Only one licensed home inspector has risen to the level of receiving disciplinary action from DPOR in the first year of mandatory licensing. As of June 1st, 2018, there were 844 licensed home inspectors in Virginia. All regulation in the agency, that is DPOR, for all professionals are currently under review as part of House Bill 883, from the 2018 General Assembly Session, which seeks to reduce the Department's regulatory requirements by 25 percent.

So, considering the home inspector's records in its first year of licensing, and the intent of Bill 883, where is reasonable cause for home inspectors needing further regulation of any kind? The burden of Senate Bill 627 will have to pass through to the consumer for inspectors to stay in business. This is not how we protect the home buying public, especially those in lower income brackets. Thank you.

MS. HENSHAW: Thank you.

Next on the list is Tim Welch.

MR. WELCH: Good morning.

MS. HENSHAW: Good morning.

MR. WELCH: My name is Tim Welch, with Premier Home Inspections. I have been in the inspection business for a little over 15 years.

About 10 years ago, I started offering what I would call a limited visual, I'm sorry, a waiver of the limitations on liability. So, I started offering two types of inspections. Limitations on liability inspection, which averages anywhere from three to $500 per inspection; and then to limit the liability, we are looking at an average of about $3,500. And in order to get to that figure, I would bring in a licensed electrician, HVAC technician, structural engineer, and plumber. And incurring all those costs to hire those professionals, we were getting to a price of about $3,500.

Upon offering this, I have had absolutely zero interest in anybody going that route. So, that's the only point I wanted to make, and this is after 10 years of offering both types of inspections. So, I feel that this will be very hard for most LLC's, sole proprietors, and individuals that perform home inspections in our business.

That's really all I wanted to convey. Thank you for your time.

MS. HENSHAW: Thank you.

Next is George Webster.

MR. WEBSTER: Good morning.

MS. HENSHAW: Good morning.

MR. WEBSTER: My name is George Webster. I'm a licensed home inspector in the Tidewater area. I have come a long ways to express my opinion on this situation, because it's going to dramatically effect what I do, and I feel that it's going to dramatically effect home buyers. And the references that I have gotten and the expressions of my inspections, it's helped out a lot of folks, primarily young couples who are buying new homes for the first time. They have no clue what they are getting into, and I feel that what we do is a great service to those types of folks.

So, let me go ahead and instead of babbling on, let me go through this. I oppose this bill because it will unleash home buyers that are not honest, reasonable and maybe for self gain, at the expense of a licensed home inspector. This bill will open flood gates for senseless lawsuits and will deteriorate the home building industry resulting in small businesses closing their doors, or the cost of home inspections skyrocketing to absorb the additional time and expense for higher E&O insurance premiums.

The standards that we adhere to is to perform a visual inspection of current conditions readily accessible at the time of the home inspection. Any hidden defects by home furnishings, personal

belongings, siding, insulation, sheetrock, floor coverings, store rugs, stuff like that, that is out of the scope of our work. I mean, these things can be hidden from our view at any time, you know, because most of the time we do home inspections, people are living in the home. We don't go and move cabinets and remove clothing so we can see every inch of the home. That's just not part of what we do.

Anyhow, older homes are susceptible to this issue. They have more problems than newer homes. I got a bad feeling that a lot of people are going to put a lot of stipulations on older homes because they tend to have more problems. Most young couples that are buying homes for the first time, this is what they can afford. They can afford older homes, smaller, cheaper. They are going to get hit the hardest, and those folks unfortunately are probably the least wisest of all because they don't know anything about homes. First time home buyers, they don't know.

This bill will not only effect home buyers, realtors and home inspectors, it will allow dishonest sellers to take advantage of first time buyers who have little knowledge of home components. We are the last defense from being taken advantage of. This bill will be devastating to them and they cannot afford to even

get a home inspection.

In closing, I ask that the Senate Bill 627 be dismissed for the good of the real estate industry and the home inspecting industry in Virginia. I want to thank you for allowing me to speak and my colleagues to be here today to support, to not support this bill. Thank you.

MS. HENSHAW: Thank you.

Next on the list is Alex Aderton.

MR. ADERTON: I want to thank you for allowing me to come and to address this group on the issue of SB 627.

And I think, you know, I'm looking around this room, and I see a lot of home inspectors. I think we are all very excited about what we do. We enjoy the opportunity to serve buyers and sellers alike in helping them to prepare the home and purchase a home that is in good condition.

My name is Alex Aderton. I'm with Merit Home Inspectors, LLC, and I also contract with another inspector in Virginia and do work with them. So, I'm just going to tell you two quick stories. This past Wednesday, I was inspecting a home that had a gas furnace, and in the gas furnace, it had a CSST pipe that was running through the furnace housing. Now,

manufacturers say you have to run black steel through the furnace housing. This particular yellow, flexible pipe was actually rubbing up against the housing wall, and it's only a three year old installation, but the reality is, it's only a matter of time before the minute movement because of the blower motor that runs on, you know, continuously off and on, is going to wear a hole in that CSST. Well, what's going to happen?

It was pretty exciting for me to tell the home buyer, and it was an unoccupied home at the time, that you are, you know, really, you need to address this immediately, because this could create, you know, a fire hazard and that would not only jeopardize the structure, it could even impact the lives of the occupants, as well.

And so, another situation, also a safety related issue that I was able to determine, I was inspecting a home, also earlier this week, that had, it was a very large home with a deck that spanned almost the entire width of the back of the house. Well, on the left side of the deck, there was a ledger board that was about 12 feet. That's the board that goes up against the home. And it was supported by two bolts. One on one end of the board and one on the other end of the board. Well imagine, here you have a large house,

you are going to have parties, you have 10 or 15 people on, you know, on this particular area. What would happen if that deck were to collapse with these people sitting there?

And so I feel like, you know, in both of these situations, very recent examples, very real examples, we were able to call attention of this to the buyers to point out that these are issues that you need to address. This is going to protect the safety of the occupants and the guests that come to these homes.

So, when we talk about, you know, it seems almost sometimes self-serving that our rates are going to go up for various things, not only what we would charge, but you know, what there is, you know, going to have the effect and the long term effect of causing some home inspectors to say, you know, I'm just not going to put up with the liability, the unlimited liability issue of running this business, because I can't afford that kind of a risk. So, it is a supply and demand issue. It's going to go down in terms of the number of inspectors. The fees are going to go up, and what's going to happen is the buying public and also sellers alike, if they want to repair their home, they are going to forego having a home inspection.

We are general, one of the other presenters

said earlier, and we provide a snapshot and time view of the home in its condition. And, it is a valuable service that I think that the real estate community, you know, values and appreciates, and for a reasonable fee, we offer tremendous resource and information. We are there to help, inform, and educate the buying public about the properties that they are looking at and examining, and considering, and we recognize that it is, you know, a significant purchase and commitment.

So, I would just say that, you know, the unattended consequences are significant for having, subjecting home inspectors to a situation where we are going to limit, you know, the number of inspectors and increase the cost, to cause people to say I'm not going to get a home inspection, and it is going to impact overall the health of the Virginia real estate community. And so for these reasons and some of the others that others have spoken here today, I really strongly urge that SB 627 and any other bills like it not be considered. Thank you.

MS. HENSHAW: Thank you.

Next on the list is Mike Lennon.

MR. LENNON: I hope you will give me a long time because I'm a really old guy. I have been in this business for over 40 years and I have brought some

show and tell.

I think what we are talking about is problems and deficiencies in the house that are unreported. The reason that I brought the show and tell is because this was in a house that my nephew bought. He wanted, I recommended to him that he install two heat pumps. One up, and one down would be more efficient et cetera, et cetera. And he went ahead and did that. And I said, in your garage you have a 200 amp panel, which is this panel right here.

So, three weeks after the heat pumps were installed, the lower one failed to function. I went and I looked in the box and I looked at the connection. Everything was okay in the connections, et cetera. And that's the limit of what I did. And I said it's time to call the contractor back and take a look at it. And he did so. This is what the contractor did.

The contractor pulled out the circuit breaker, and this is what he found. Okay, now, so my nephew asks me, well, okay, what should I do? And I said, well, the truth of the matter is I don't really know what caused this because this circuit breaker is three weeks old at this point, and I think it's a metal surge problem in here, but that's well beyond my pay grade. And he said, what do you recommend? And I

said, if my family was living in the house, I would change out the box.

So, I would like to poll the home inspectors here. I haven't disagreed with a thing that anybody said here because what I did, though, is I studied this a long time ago and the economics of it and I studied it and I found that the economics were unviable. We, at that time, were charging about $200. We believe that we were selling an educational service that was shedding light on risk.

Based on our visual inspection procedures, we were limited to symptoms, clues, and telltales because of over concealment itself, and we thought we could shed light on average about two-thirds of the risk. That meant we were welcomed by one-third of the risk at all times. How many in this room of home inspectors agree with that, that that is approximately correct? I think so. I think that's what we are doing.

So, then the question is what happens when those third risks come in, and I think that's what we are dealing with. We are saying, yes, there is about one-third of the risk that goes unreported, undiscovered, et cetera. And what happens is it real, is it there, is it real, will it come in? And everybody in this room knows it does. I know it does.

In this particular case, certainly I didn't charge my nephew anything for the inspection, but one, did I believe that this would turn into a lawsuit if it was a regular consumer? Sure it would. And do I believe any jury would look at it and say, oh, you poor consumer, your family is at risk, et cetera, et cetera, et cetera. That nasty, dirty home inspector.

The reality that I can't find is, although we have written a protocol for inspections where we advise moving the breakers, et cetera, not taking them out but moving them. Looking for a little smoke that might have accumulated here, et cetera. So, we have gone onto pretty exhaustive things.

There was a point where we were looking at gee, well, would errors and omissions insurance be viable in this industry? And so we adopted errors and omissions insurance and very soon we found out this. When we would have a claim, the insurance company was not really our ally, they were our enemy. Okay. And what they had done is they put a very, very high deductible, and in our case, it was $5,000, because we were doing a large volume of inspections.

And the first thing they said to me when I called them about this is they said, did you want us to honor this? And I said, well, why am I sending all

these premiums to you? And they said, okay, go ahead and do it, but forward the deductible. Which meant, write a check for $5,000. Thank you. They were not invested where I was on the merits of the inspection. Could I or could I not find it.

What I did was I also studied other similar industries and one was a new home inspection, a new home builder, rather. These people were doing a large volume of business in Virginia. There were warranties available that typically charged around $700. And that was money set aside to pay for claims. And they didn't have any concealments. In fact, they saw everything. It was their people, and their contractors, et cetera, who laid hands on everything that was brand new.

I will go back to saying, we think we are selling an educational service, so we think that we can shed light on two-thirds of the risk. What about the other one-third that is there? So, we report this to people, given that we think that they need to make a risk evaluation. So, we report it and we say this to them, based on the age of the house, based on the concealments, based on the complexity of the house, based on the number of changes in the house, based on deferred maintenance and based on amateur workmanship, all those concealed risks go up. The likelihood of a

problem existing and a problem being undiscovered, goes up with all those factors. So, we report that.

Economically, I don't think we can possibly do this. I don't think we can possibly have unlimited liability and remain viable in this business. We sell an educational service. In my experience, we sell this, the reporting system to other people. So, my experience is like 1.5 million home inspections. My personal experience is over 10,000. I have over 12 years as a radio host, talk radio host answering questions, et cetera for people. I know that most people who are home inspectors are very conscientious, want to help the consumer and in fact do.

We cannot act as an insurance company. We are prohibited by law from doing it. The economics are not there, including not there in E&O insurance. When I spoke, I spoke to the senators sponsoring this bill two days ago --

MS. HENSHAW: Can I ask you to conclude your comments.

MR. LENNON: I will conclude my comments, but thank you very much.

MS. HENSHAW: Thank you, Mr. Lennon, I appreciate it.

Next on the list is Jim Funkhouser.

MR. FUNKHOUSER: Just checking to make sure it is still morning. Good morning. Okay, I just have a few notes I want to go over.

I believe the people before me have mentioned the fact that this is going to adversely effect our general liability and our E&O insurance. I have talked to my carrier. They are still going to come back to me, however, their first reaction was, we are either going to cancel you or your premiums are going to go through the roof, one or the other. They are not willing to accept that.

Now, if the bill remains, the licensing law remains the same, and I am required to have general liability, I know that some people are going to be priced out of the market, even if we can find that. And so you are going to be asking us to do something that we are not able to do as a result of SB 627.

Necessarily, our prices are going to rise as a result of this. And this is going to adversely effect those people in most cases who are less likely to afford an inspection, that it is all they can do to come up with the down payment, let alone shell out the money for a home inspection, and those are the people that are also less likely to be able to afford the repairs that they are not going to be able to know

about until after they have moved in.

First and foremost, our job is to protect the public. That's what we do, and that's why we do this. And we are now necessarily going to allow a certain percentage of that public, as a result of this bill, to go without that protection. So, people will be injured, potentially people will be killed, and I think looking at the bill, and the way it's been written, indicates that very little thought went into the ramifications of what this bill would cause. And I am surprised that it has come back.

One of the other things that I considered is home inspectors are going to start writing extremely defensively. Right now, I have got 30 years of experience, and so I'm going to employ that experience in my reports. What my experience tells me that this normally does, and I am going to be as helpful as possible. I'm not going to be able to afford that anymore. I'm going to have to say, this doesn't look right, get an electrician. This doesn't look right, get a plumber; this doesn't look right, get a roofer; go ahead and get a structural engineer. And now I'm going to shove that liability over to other professions, because I can't afford to take it.

One of the things that occurs to me is that

if you are negligent in your job, I don't care what your contract says, you will be sued successfully, and rightly so. So, this limit of liability really, in effect, does not exist. If I'm truly negligent and I go to court, and that court finds that, yes, that voids the contract because you were negligent, sky is the limit as to what they can fine me. So, does this limit of liability do anything? Not really. I mean, removing it, doesn't do anything.

I think that, and somebody had mentioned this earlier, and I don't want to take credit for the line, but this bill appears to be a solution looking for a problem, and I will leave it at that. Thank you.

MS. HENSHAW: Thank you.

Next on the list is Burley Langford.

MR. LANGFORD: Good morning. I'm going to touch a little bit on something that hasn't been brought up, but does the senator that wrote this business, this bill, does his constituents really know where all this came from? I have heard things of where it came from. That it results from a home inspector that also provided a termite inspection, and correct me if I'm wrong, but I thought in the State of Virginia, to provide a termite inspection, you had to be licensed in that field. And so, I realize that you could do an

add on to your report, maybe looking for termites, but are you really qualified? So, my question to be is, the people that are going to be voting on this bill, be informed that this may not even be a home inspector's question at all. This may result over to the termite business, and therefore, you know, I'm even asking, why are we here today? Because, to me, it doesn't really seem that we are dealing with a home inspection issue, we are dealing with somebody, something that came up on a termite inspection.

Saying that and being a carpenter all my life, I find it hard to know where was this, I would like to know where was this damage at? Was it concealed damage? Because, if a home inspector missed a rotten or deteriorated floor joist from termites, then maybe he could consider a different profession, because that would be pretty obvious to see. So, that is all I have to say.

MS. HENSHAW: Thank you.

Next is Mark Londner.

MR. LONDNER: Good morning.

MS. HENSHAW: Good morning.

MR. LONDNER: I suppose I don't need to introduce myself because you told me who I was. I have been a licensed architect in Virginia for quite some

time, long before I even became a home inspector dealing with liabilities and different concerns.

I always found it was odd when we started pursuing things related to the home inspection profession that the home inspector had more of a target on his back than the architect, but I swear I could do more damage to the public as an incompetent architect than I can as an inspector that missed something.

I haven't heard anything today that I don't support. I do have a comment to make, but I would like to just share a couple of things that support what others have said.

I too, like Jim Funkhouser, yesterday I was talking to my insurance company about some other things, and I asked, I said, well, if we have, if I don't have a limited liability contract clause in my contract, what will happen? She said, well, either, we don't know yet, but either we will not cover you, or, and the word she used, your costs will skyrocket. I asked, double, triple, and she said I don't know. It will simply skyrocket. Okay.

You know, related to claims and stuff we have talked about, you know, there are many meritless or fruitless thoughts where people have called their attorneys. And the attorneys look at things and

possibly because of the limit of liability, but at the same time, that attorney knows that that limit of liability will not hold up in cases of gross negligence. I think, I'm not an attorney, but I have heard that that is the case. Regardless, if that doesn't seem to be the case, the attorney, in many cases, is going to explain to the client that it's not feasible. This is not financially feasible, and we shouldn't do anything that it limits.

Well, if we don't have any limits of liability, that changes that ballpark and all of a sudden, you know, you start looking at taking litigation against the home inspector, and then all of a sudden rolled in it are legal costs and this and that. Even if the home inspector is found not liable, he still has suffered all the costs of defending himself.

When you look at the insurance industry, yeah, we all know, and it's been already presented, that the insurance company, they are going to settle. Hopefully, they hope, they are settling for your deductible and not paying a penny more. You are protected, but guess what happens to your insurance rates if they continue to cover you, because now you go someplace else, you have got this claim against you. I

see the only benefactors of this, as to the attorneys and the insurance industry, they are the ones that have the opportunity to make money, okay.

Now, I do different than your average home inspection. I provide what I call educational inspections. For the average inspection, it would take two and a half to three hours. I'm there an hour before my client and I tell my client budget to be there with me for four hours. I explain more than what's going in the report, and I put a lot of information in the report because I take great pride in my reports; and the schedule of maintenance that I give them, I explain that this replaces the information that you get in the glove box when you buy a car, but you don't get anything like that to help you take care of your house.

This is America. We take care of our cars, we don't know anything about our houses. That's what I'm trying to do. I don't market. My business is based on referrals because of this. Okay. My business model will change if this happens, okay. Generally, I would say, well inspectors are going to do nothing more than the minimum standards and you are going to see a preponderance of disclaimers increasing as a result of this, because if you are going to be able to stay in

business, you better protect yourself. But that doesn't negate the fact that you have got to charge more because of your insurance rates.

What happens is I teach, the extra time that I put in, I'm not going to be able to provide that to the public, because I'm going to concentrate, I'm going to be spending more time writing a report protecting, my focus is going to be liability rather than service.

So, in closing, what I'm going to say is I'm going to take photos of everything. They are going to be in the report. They are not just going to be in my files if they come up, they are going to be in my report. So, the attorney will see, oh, well he couldn't see that because it is full of clothes and everything, because specifically, we are prohibited from moving their personal belongings.

So, I will leave it with that, just trying to support everything everybody else has said, and opening up, because this bill is not where it needs to go or we can't serve the public like our passions are. Like most of us are self-employed. I love my job, but I hate running a business to support it.

MS. HENSHAW: Thank you.

Next is Kurt Froelich.

MR. FROELICH: So, I have been a home

inspector for 16 years and done 6,000 home inspections, and a lot of good has been said and I agree with just about everything that was said.

I have my voice here, I have my presence here. A person who doesn't have his or her voice or presence here is the person two years from now who is buying a house, it's their first house. I know this point has been mentioned, but these are the people who are the most likely to realize the unintended consequences of a bill such as 627. They are the ones who, given the option of having a home inspection for $350 now, if it's going to be $500 a year from now, they are going to be hard pressed to say, I just saw a sofa for $500. It's a cheap sofa, but they want the sofa rather than the home inspection because they don't know what they are getting into. That's the person or the people that will be the unintended consequences of a bill like this that will go forward as it is written.

And I would like to reiterate some of the things that were said, because a lot of good things have been said. But the comment to make is that very little thought must have been given to the ramifications of this bill. Has there been a lot of thought by those proposing this bill to what those ramifications are? As time marches on, the unintended

consequences will not just be for this demographic or this situation, it will be wide spread. And all of us are here because we want to protect our businesses, but there are those who need our business, as it is presently, under the present circumstances. And we need to be thinking about those people and those who are considering this bill need to understand that this will impact a lot of people, unintentional consequences. Thank you.

MS. HENSHAW: Thank you.

Next up is James Wilson.

MR. WILSON: Hello, my name is James Wilson. Been doing inspections for about 20 years, and I was not going to speak today, but I'm fired up.

Everything I have heard, I agree with, but I'm going to bring it down to a more elementary level. Let's say for me, or for all the inspectors, they are doing their best to inspect that home for that buyer, their client, on the roof, in the hot attic, finding rotten floor joints, which the seller put new insulation in to cover the rotten floor joists. Then when they close, they call and say, Jim, you saved me $20,000, thank you, but you missed the tub stopper, and I called the plumber and it was $110. I said, why is it $110? Well, it was $10 for the stopper and a

hundred dollars for the plumber to install it. That would erode our profits.

Earlier, the inspectors were talking big hits, and of course you can only take one or two and you are out of business. But if that type of erosion I'm talking about is just as bad, why stay in business when a tub stopper, $105, every so often is going to erode your business income.

Now, I am a licensed contractor, too, and I have asked every county and city inspector, building inspector, do you ever miss anything? All the honest ones say yes. That's all they do, is 20 to 30 inspections a day, and they miss things. We here probably do one or two a day, so we try to do the most thorough inspection, but everybody cannot catch everything. But that's it. Thank you.

MS. HENSHAW: Thank you.

Next on the list is John Nelson.

MR. NELSON: Good morning, everybody. John Nelson, National Property Inspections. We are up in Northern Virginia. I didn't really have anything prepared to say for this morning, but would like to express that, yes, I certainly agree with everything that everyone has said.

I think there is one thing that's being

possibly overlooked by all of this is the net effect of this type of action will not only drive a lot of home inspectors out of business, and is going to drastically impact the home buying public, but it's also going to effect the real estate business in Virginia. As most of you are, I'm sure, aware, our actions limit the liability of the real estate agents. We indemnify, very many of us, anyway, indemnify realtors by using us, and if we are driven out of business, their liabilities are going to greatly increase. And it's just going to snowball. This kind of action would be detrimental to, I think, a good chunk of the economic environment in Virginia, and I think it's detrimental to everybody. Thank you.

MS. HENSHAW: Thank you.

Next on the list is Gregory Patti.

MR. PATTI: Ms. Henshaw, I was actually a little concerned, because I sent you my comments Monday morning, but I sent them to you and I didn't see them appear in the forum that was online. So, I took the liberty of printing some copies of them.

MS. HENSHAW: If you e-mailed them, and I do recall, they are part of the record.

MR. PATTI: They are a part, okay, very good. Then this will probably be all I need. Okay,

thank you.

My name is Greg Patti. I run a small home inspection firm in Northern Virginia. I have been doing this since 1993. As is always true when you do one of these things, you come with your list of things to say and then you scratch them off as other people say them. So, rather than reiterating everything that has been said, all of which has weight, I'm going to come at this from two different perspectives, one on the high end and one on the low end.

Okay, why is this regulation necessary? Traditionally, Virginia only regulates when and where there is a clearly demonstrated need. Where is that here? Somebody earlier mentioned that had there have only been only 23 complaints that have gone through the Board. Hundreds and hundreds and hundreds of inspections are done every single year. Clearly there is not a great, huge injury being done to the public, or you would have had more of a presence in that process. You know, this really doesn't, 23 complaints doesn't really constitute a regulatory call to arms.

Second, as somebody mentioned, let's regulate the right people for the right reasons. If we have a termite issue, which requires separate licensure in this state, why are we approaching it from this

perspective? That's a little bit like having a fellow who makes a mistake driving his commercial truck and the response is to regulate everybody who drives passenger cars. I mean, we have really gone to an entirely different place.

And Virginia, traditionally, is, you know, they tend to trust their public to be able to propose and agree upon contractual terms. If the only option that we are permitted to offer is an option that will see absolutely everything, absolutely everywhere, then, as everyone has said, the costs are going to skyrocket. The people who are most likely going to be impacted are those who are lower on the economic ladder, because they can afford a $500 inspection and they can't afford a $1,500 inspection.

You are also going to have a situation where the people who are passing on these inspections are the ones who benefit from it the most because they are the ones that are buying the houses that are perhaps a little more, a little less expensive, perhaps a little round at the heels because that's how they get the price down to where they can afford to look at them. They are the people that really need this second set of eyeballs working with them. We do not intend to be doing a technically comprehensive inspection. What we

are saying to the client is, here is what we see, and here is what we think the implications are. And then you take that information and you filter it through whatever your personal set of circumstances are.

If uncle Charlie died and left you $2 million then there is nothing that is going to scare you. If you are coming to this with very reduced resources, then you are going to have to make plans on how to do these things. We don't know what your circumstances are, we won't want to know what your circumstances are. What we want to be able to say is this is what we see, these are the potential ramifications, and then if your brother is an electrician, well, for pizza and beer you can get a lot of these things fixed. If you don't have access to those types of resources, you have different decision making to make.

This actually constitutes kind of a restraint of trade in that Virginia is undertaking to micromanage the terms of these contracts. I mean, this is a little bit like Michael Bloomburg deciding to regulate how big a soda you could sell in New York City. If you tell us you may only offer this service under this set of circumstances, with this set of ramifications, then for all intents and purposes, they are legislating the nature of the contract, which is not something that

they have traditionally done and do not do in most other industries.

To apply this same legislation a little differently, it is a little bit like telling us that you can hold a doctor responsible for things that would only be discernable by running a cat scan or an MRI when he didn't catch someone that was doing the physical. This is a middle function between no knowledge and comprehensive knowledge. And we don't really pretend to be anything else.

The limitations under which we work, I have pictures here of homes that are so filled with personal property, that massive cracks, huge water intrusions, the body of Jimmy Hoffa could be in those rooms, and it would be impossible for any person to see them.

MS. HENSHAW: Can I ask you to wrap up.

MR. PATTON: Some things are intermittent. I had a wonderful illustration is a shower pan which was leaking a couple of days after our inspection. We went back to look at it, we ran the water, couldn't make it leak. Home owner said, well obviously, I don't know what to say. This happened two or three times. And it turned out that it only leaked when her 300-pound husband was standing in it, flexing the bottom of the pan enough so that the crack would

open.

There are innumerable examples of that kind of thing that will never be discernable by a home inspector doing a traditional home inspection unless we are going to bring in --

MS. HENSHAW: Thank you Mr. Patti. I appreciate it.

MR. PATTI: Unless we are going to bring in all of these experts, they are not going to be known.

MS. HENSHAW: Next on the list is Robert Thompson.

MR. THOMPSON: Thank you. I enjoyed that very much, that was great.

I would just like to echo the sentiments of just about everybody that has spoken so far.

I do want to take a little bit of a different perspective on this as a home inspector. We have been in business nearly 20 years. I have also been a contractor most of my life. Been involved in residential construction my whole life.

There is one thing I would like to thank the Commonwealth for doing, and that is to, for the requirement that we are certified by the Commonwealth, because I think it's actually helped. I'm not a big

fan of regulation by any means. I'm very limited government person, but I think we have to acknowledge that certification has helped our industry, our profession by reducing the number of unqualified inspectors, which there have been many over the years. It's forced, you know, the qualified inspectors like us to improve our working knowledge, so I think it's been a good thing. And it's actually just increased the overall level of professionalism and it's lent additional credibility to our profession. So I acknowledge that that regulation is a good thing.

Having said that, I don't think that additional regulation is necessary, as it was presented in the failed Bill SB 627. I think that was presented as a retaliatory measure by that senator because of two failed legal cases that he underwent earlier. That's my understanding of that.

At any rate, I do have a couple of suggestions. One of these is within the purview of DPOR, the other is not. Because I think what the intent of this bill was, the language, even though it's vague and everything and poorly written, I think the intent is to provide additional public safety and look out for the consumer. Under existing laws, we have all the protection necessary within a real estate

transaction. Realtors are protected, home inspectors are protected, buyers, sellers, they are all protected by insurance. We are an insurance driven country, unfortunately, but that's how it is. So there is already existing protection and no need for additional regulation or deregulation taking away the liability protection that we have.

I will say that the first suggestion I had would be having more to do with the pre-inspection agreements that we provide our customers. I was kind of thinking about all this, and doing research in and our personal experience has been that the customer is typically given that pre-inspection agreement the day of the inspection, sometimes before, but most of the times the day of. So they have very little time to decide whether they agree with that statement, are they going to sign it, you know, or are they going to go somewhere else, are they going to do something different, forego the inspection, perhaps. So, I would say that if there is any regulation that needs to be added, it would be to possibly require a two or three day window for us to present that pre-inspection agreement to the customer, so they have time, not under pressure to read it over carefully and to sign it or not, but you know, the day of the inspection, that

just, they are thinking about the house, they are excited, they are actually distracted, they are reading a bunch of legal ease. They don't really understand it but they are going to go ahead and sign it anyway. If they have a little more time to digest it, I think that's a helpful thing. So that's something to consider.

The other thing is outside the purview of DPOR, but that would be to legally require home buyers to purchase home warranties. A lot of the companies that are available out there, with few exceptions, actually cover all the systems in the house, electrical plumbing, mechanical, structural. A lot of them focus on the appliances, HVAC systems, and that sort of thing. That might be a good option. If you are looking for consumer protection. I mean maybe that should be just part of the home buying process and I know that the people on the lower end of home purchases can't afford necessarily $500 a year more, but that is something to consider.

The other thing that I wanted to say that if any reduction to the limit of liability is proposed, it should be applicable only to significant public safety matters, for example, second story deck collapses where an inspection was made and it was a poorly done one and

they missed the fact that there was no hardware or some crazy thing or mechanical connections to the house were improper.

There should also always, I need to mention this because no one has talked about this yet, but the statute of limitations needs to remain in those liability clauses that we have. That's important, because of all the myriad factors involved that contribute to deficiencies of a house after inspections, after people have moved in. Now, it is very difficult to determine whether that was something that was missed by the inspector or not. So it's important to have that window, maybe one or two years as a statute of limitations. And that's pretty much all I have to say. Thank you.

MS. HENSHAW: All right, thank you.

Tim Hockonberry is next on the list.

MR. HOCKONBERRY: Good morning, all. Do we have any representatives from Senator Surovell's office?

UNKNOWN SPEAKER: That's her over there recording.

MR. HOCKONBERRY: Very good. Glad to see that you're here.

I just want to work, I want to be working

today, I want to be working this morning, I want to be working right now, but I'm in Richmond listening and dealing with this piece of legislation that imperils my ability to work.

Look around this room. All of these people are self-employed. They have taken the time off to come down here and address you because they are concerned about this, as I am, that you all are trying to impact my livelihood, for all intents and purposes, take my livelihood away. Let's look at some numbers. We had 23, let's make it 25 complaints. I want to work with simple numbers. 25 complaints registered since we have been licensed. We had 110 to 120,000 home sales in the State of Virginia last year. So let's narrow those down to 100,000. And let's say we got a quarter of those, that is 25,000 home inspections. One complaint per thousand home inspections. That's a pretty awesome batting average. I would like you to find that in any other trades involved in this business. I want to know how it is that we find ourselves at the bottom of the pecking order and the fact that we are being hosed by this piece of legislation in an industry that is netting nearly fifty billion dollars out of those hundred plus thousand homes that are being sold. And I am pretty certain

that the portion that the home inspectors make is way to the right hand side of the decimal point in that process.

As I said, I just want to work. I want to be able to do my job. I have enough fear and stress to put up with without having to ponder the possibility that I am now alleviated of the one defense I had, my one shield, my limited liability. You can't crush me, but you want to be able to do that. That just doesn't make any sense to me. None whatsoever.

As has been stated earlier, we are putting legislation out there that is trying to solve a problem that doesn't exist. I believe that through licensure, we have gotten to a level of professionalism that we haven't enjoyed before and I am thrilled to have it presently. I want to see that continue. But until we have a problem that warrants this type of response, I believe this type of response should be shelved. I think this piece of legislative litter needs to be put in the nearest receptacle that is appropriate for it, because this just isn't going to work for us. And if you take us out, the ramifications are huge. It's a giant ripple effect. This will have giant impact on home buyers, it will have impacts on real estate agents, it will have impacts on handyman services, it

will have impacts on all the other trades that derive work from us. Enough said.

MS. HENSHAW: Thank you.

The next on the list Tim Fisher.

MR. FISHER: Good morning. I am Tim Fisher with House Master Home Inspections. We have been in business since 1979. I personally have not been in business. I have been in business for about two years. House Master trained me and sent me out to do this. The reason I got into this business after 28 years in the military, for one I wanted an opportunity to work on my own business; and two, I wanted to serve the community. I really wanted to pay back the community.

Before the licensure requirements came into effect, I pursued and made sure that I was licensed in Virginia to be able to operate, and had the certificates required and was properly trained to do a proper home inspection. I made sure I did that right. Since then, I have pursued two years, at least 40 hours of additional training to make sure I'm properly trained on all the different aspects of home inspection that I think I need to provide to my clients. We provide very detailed inspections to our clients.

The impact of this type of requirement is,

it's going to increase the costs to everybody. It's going to increase the insurance costs, which, as everyone, we have heard other people say, is going to skyrocket. It's going to cause us to raise our prices dramatically for the consumers. Who is that going to hurt the most? It's the low income home buyers that it's going to impact the most. They are the ones that are going to be priced out of the market to do that sort of thing and not be able to purchase that support they need to be able to understand their homes.

Are home inspectors perfect? No. Are building inspectors perfect? No. I have inspected brand new homes and found things that would be generally considered as code violations. Living rooms with no insulation in the ceilings, unwired or electrical problems in kitchens where GFCI's weren't functioning properly and miswired, and code inspectors missed it. You are going to hold the home inspector criminally liable, or not criminally, financially liable on limited liability for any of these faults that we might happen to have missed. It's a little bit unfair, but more importantly it's going to impact the ability for those lower income people to do that.

And the last thing I want to say, this is a public hearing. There is, we have invited everyone to

be here. I haven't heard a single person today speak in favor of this bill. So, that's all I have to say.

MS. HENSHAW: Thank you.

All right, the next one on the list, I'm going to apologize because I can't understand the writing. I know it looks like Williamsburg, Virginia. Del Monte.

MR. DEL MONTE: Scott Del Monte.

MS. HENSHAW: Thank you. Scott Del Monte, sorry about my difficulty reading.

MR. DEL MONTE: That's okay. It's my difficulty in writing.

Good morning, if it is still. Talking about the language of the bill, I'm very unclear as to the exact language of it because what you are saying is we cannot add language limiting liability. So, where do we draw that line and exactly what are we referring to or what is the bill referring to? That's my problem with this bill and the language.

We provide a visual inspection only, that's all we do. If necessary, then we refer it to the experts.

I just made quick little notes here, so I'm just going to kind of touch on these kind of quick. The thing about construction, one tradesman will point

fingers at another tradesman, you know, he missed this, they missed this, they did this wrong, whatever. So, we run into that. We are generalists in what we do as far as our inspection goes. We go through a home. We see visual things and we report on it, and that's it. We can't see behind walls, we can't tell, you know. People say, well how long will this HVAC system last? I tell them that's a crystal ball question. It's working right now, this is what I can report on, it's working right now. How does it function? We do not add gauges to equipment to verify that, yes, it's got the right pressure, right amount of whatever, that's not what we do. Again we are visual. If it's working, we report on it, working not working. Needs attention.

So, in your language, there is no liability. How long of a period? Are we talking that day, are we talking a week, a month, is it infinite? So, again, the language is, to me, is just unclear and that's my whole problem with that.

One of the things I tell my clients, you know, because I go through, and I do find, I do an exhaustive inspection and I find a lot of things, and I tell them, I say, you know, if you let me live in this home for a year, I can find more, but for these few hours that I am here, this is what I found, and so this

is what I'm reporting on. Now make your best decision on my findings.

I don't know, someone mentioned percentages of homes being purchased. Mr. Hockonberry. Which was very good because our percentage of issues is, I think, very, very low compared to what you have. We are there to serve our clients, to help them make an informed decision on probably the most, largest purchase of their life. So, that's all I have to say.

MS. HENSHAW: Thank you.

Before I move on to the next person on the list, if I could just ask, as you are speaking, just be mindful that we do have a court reporter transcribing, so, just try not to speak too fast so that we can catch everything in the transcript.

Next on the list is Jarrett Ziegler.

MR. ZIEGLER: Good morning, folks. Jarrett Ziegler with Potomac Home Inspections. I do not believe that Bill 627 is good for the general buying public. I just don't think it helps them in any type of way. That's it.

MS. HENSHAW: Thank you.

Next on the list is Tim Perry.

MR. PERRY: Thank you.

I come to this from a different perspective.

I'm not a licensed inspector. I am in the process, though, of getting a license under the new licensure process, I guess, that went into effect July of last year.

I worked with a lot of these folks, or have met some of these folks back here, very, very ethical folks. And the process is still working through the system, I believe, in creating the inspectors under that process.

But prior to that, I had a career with the Federal Government in the intelligence community, and worked a lot with the White House and Congress in establishing policy. And one of the things you do before you establish policy, especially like this is, is you gather your data. You try to make data driven decisions in that. The gentleman back here mentioned 122,000 sales per year in Virginia. And if you look at the number that Tony mentioned of complaints, we are talking about not one percent, not a tenth of a percent, not a hundredths of a percent, but one thousandths of a percent of complaints themselves across the state.

I don't, it's rhetorical, nobody will probably answer it. How many licenses of home inspectors have been revoked? My guess is zero. So,

the process by which you guys have put in place has not actually had time to play out. And I would encourage that use of the carrot and not the stick to have time to play out.

Have you looked at recertifications? Have you looked at spot reports? Have you looked at informing the community, as Tony mentioned, on DPOR complaint process? So many things could be done that would inform others and that would make this more of a carrot instead of a major stick that everyone has mentioned back here.

And I will just finish by saying, I have options. I can go do other things. I have chosen to do this after a Federal career because I have a passion for it, and the folks involved in it are extremely ethical and passionate about what they do. If this passes, I am out. I will go somewhere else. You will end up with the best of the desperate at that point, and now, as they all said, the consequences of any of the best of the desperate in this process is going to be detrimental to the home buyers. Thank you.

MS. HENSHAW: Next on the list is Donald Masters.

MR. MASTERS: Good morning, my name is Donald Masters. I'm a home inspector. I apologize for

being late. I missed a few of the earlier comments. Several comments.

When this first came to my awareness, I contacted Mr., the delegate's office who proposed this bill, and both by e-mail and by phone. Did not get any responses back. I was in when the General Assembly was in session. I believe it was on February 28. I tried to track down Mr. Surovell and at his office, and I could not do that.

I want to clarify a couple of things. One gentleman spoke earlier about contracts being pushed on the consumer without them having time to look at it. And myself, I send them out electronically as soon as I can before the inspection. I think most inspectors that I know have automated systems or semi automated systems that could send out the contract so that the client has time to look at it before.

When I present the contract to the client, if they haven't already signed it electronically, at the inspection, they sign it there at the beginning of the inspection, or they can look it over and sign it whenever they choose.

The other gentleman that just spoke, it's my understanding that when it stated certifications of home inspectors before licensing, that DPOR also had a

review process and the customer was to complain about a home inspection, that they could get review and consideration by DPOR in that manner.

I just want to thank the staff for their due diligence. I understand you guys spend a lot of time already looking into this matter, covering all the bases. I know it's a considerable cost to the tax payers that when these bills go before the General Assembly, they require a, put forward a revenue statement or a cost statement as to what it's going to cost. And I hope that the staff would be able to flip forward a revised cost statement to the General Assembly with all the time that has been spent, and I thank you.

MS. HENSHAW: Thank you.

That is the last person that we have signed up. Before we close the public hearing, I would like to make sure there is not anyone who has changed their mind and would like to sign up to speak before we close the public hearing.

MS. FISHER: I would. My name is Madlyn Fisher, and I am with House Master Home Inspections. I'm just going to make a quick note of some facts because I'm very passionate with helping the consumer.

First of all, my name is Addy Fisher. I am a

Hispanic owner of a company, and we are trying to make sure that the consumer knows what they are getting into. I do a lot of presentations through VACA, through First Home Alliance, there are a number of organizations to give information and educate the consumer in regard of what they are getting into when they want to buy that home, dream of their home, that is having a home of your own.

At this point, let me throw out some facts. 86 percent of the damages or problems that we inspectors are in the home, that we encounter, are due to lack of maintenance from the seller. We had in our short two years, instances where sellers had consciously done misguided things to hide situations. Also keep in mind, going back to the consumer, 20 percent of nationwide home buying will be done by minorities, between now and 2030. And unfortunately, that same group of citizens are the ones that we don't have enough means to do the repairs. The jobs that we are doing as home inspectors is to provide, again, like everybody has said here, just a visual inspection of the places.

As I understand, these problems arise because of termites issues. Most of us companies that do the inspections, cannot see through walls. We are trying

with the new technology that we have around, but, you know, not everybody can do that. If you are trying to protect a customer, then the whole industry has to change, and I don't think that it's feasible for us, on an average, a home inspector stays three hours for a 3,000 square feet to do the home inspection. We dedicate our, our goal after being in the military was, because we went through the home inspection process, and I have been in quality assurance before that, that I wanted to contribute to my community, to make sure that the consumer is more aware of the things that are in their dream home.

We need to consider that you are going to put a hinderance not only like everybody says in here, that we are going to be reducing the manpower that it would help the community, but you are also are going to put more restrictions where, just like the other gentleman says, that then we will have to refer to all the professionals even more and you are going to extend the timeframe of the buying process because everybody wants to shift the liability. Let's try to work together to protect the consumer. Thank you very much.

MS. HENSHAW: Thank you.

All right, we do have Mr. Dave Rushton signed up to speak, as well.

MR. RUSHTON: I wasn't going to speak, but as most people who know me for any length of time, I have a hard time keeping my mouth shut when I have an opinion.

I feel the way the bill is written, it's very broadly written and not specific, damages, limited liability referred to someone's foot going through the ceiling during an inspection, where the sellers perceived monetary loss when a home sale doesn't go through. It creates a potentially adversarial relationship between a home inspector and their -- I have clients, I don't have customers. I deal with people for years and years, repeatedly.

Limited liability, tends to preserve a positive relationship between the home inspector and a client because, again, the home inspector is not on a total defensive posture in trying to protect their own selves and their own business, they are trying to protect their clients. The people that are getting the home inspections. That's the basis of our job.

The home inspectors and realtors' relationship may also be disturbed because the home inspector is limiting liability from the realtors now. That was one of the reasons the realtors pushed for home inspectors to be licensed.

It will increase potential referrals to specialists, and that increased the cost for the home buying public not only immediately for the home inspection, but if they have to pay a plumber or an electrician or roofer to come out when it's something that prior to, you know, losing the protection of the limited liability home inspector may have felt more confident in passing their own judgments rather than referring.

Unscrupulous buyers looking to get defective systems replaced after sales, may now be encouraged to do so by removing the limited liability. Again, inspection prices will increase because the cost of liability insurance will, as several people have said, skyrocket. Mine already went up just this year 25 percent, between last year and this year, and this is before the bill was, has been passed.

So, in short, I think that the bill has not been well thought out in its initial presentation, and it ultimately would, very significantly, effect the relationships between the home inspectors and their clients, the home inspectors and the realtors, and significantly effect the home buying public, by increasing costs and therefore the most vulnerable people, the people at the low end of the economic

spectrum that are reaching and trying to get into a home, the American dream, they would be the ones most seriously affected. The people that are buying $2 million houses, they can afford whatever an inspector would like to charge. Whether they want to or not is a question. But ultimately, the people that are just, you know, trying to achieve their version of the American dream will decide, well, we can't afford a home inspection and then they are the ones that discover the significant damage to the house, systems that fail within the first year, those sort of things. Thank you very much.

MS. HENSHAW: Thank you.

All right. That is the last speaker that we have signed up. One last call, if there is anyone who has had a change of heart.

All right, with that being said, thank you for your comments today. All of the written comments received through June 25, 2018 and the comments received today will be provided to the Board in consideration of the final report. This hearing is now closed.

HEARING CONCLUDED AT 10:34 A.M.

CERTIFICATE OF COURT REPORTER

I, Cherryl J. Maddox, hereby certify that I was the Court Reporter in the Public Hearing of the Board for Asbestos, Lead, and Home Inspectors regarding proposed regulations, at the offices of the Department of Professional and Occupational Regulation, 9960 Mayland Drive, Richmond, Virginia, on June 28, 2018, at the time of the hearing herein.

I further certify that the foregoing transcript is a true and accurate record of the hearing herein.

Given under my hand this 23rd day of July, 2018.

Cherryl J. Maddox, RPR

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CHERRYL J. MADDOX Court Reporter