

§ 32.1-164.1:1. Validity of certain septic tank permits

A. A septic tank permit shall remain valid for 18 months from the date of issuance, unless significant changes occur in the soil or site conditions at the proposed location of the septic system. If a building permit has been obtained or construction has started, the septic tank permit can be extended for an additional 18 months. Applicants will be notified of the permit's validity period and are encouraged to apply only when they are ready to begin construction.

B. If an onsite sewage system is malfunctioning or the owner has chosen to voluntarily upgrade the system in accordance with § 32.1-164.1:3, and the system serves a property with one to four dwelling units, and the Board's regulations require (i) a higher level of treatment than what the existing system provides when functioning properly, or (ii) a new pressure dosing requirement, the owner may request a waiver. The Commissioner must approve such a waiver unless the system was installed illegally without a permit. Any granted waivers must be recorded in the land records of the circuit court where the property is located. Waivers are not transferable and will become void if the property is sold or transferred.

Any property owner who (a) received a waiver to repair a failing onsite sewage system between July 1, 2004, and December 6, 2011, (b) completed the repair, and (c) voluntarily upgrades the system, may request and will be granted a voluntary upgrade waiver in accordance with this section and § 32.1-164.1:3. This waiver must be recorded in the land records of the circuit court in the jurisdiction where the onsite sewage system is located and will override any previously recorded waivers under this section.

The property owner must disclose, in accordance with subsection D, that any operating permit for the onsite sewage system granted a waiver under this subsection will become null and void upon transfer or sale of the property. Additionally, the Board's regulatory requirements for additional treatment or pressure dosing must be met before the operating permit can be reinstated.

The provisions of this subsection apply exclusively to transfers involving the sale, exchange, installment land sales contract, or lease with an option to purchase residential real property containing between one and four dwelling units, regardless of whether the transaction involves a licensed real estate broker or salesperson.

C. The following are specifically allowed under the provisions of subsection B:

1. Transfers ordered by a court, including but not limited to, transfers in the administration of an estate, transfers through a writ of execution, foreclosure sales, bankruptcy trustee transfers, eminent domain transfers, and transfers resulting from a decree of specific performance. Transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default, or transfers by a trustee under a deed of trust pursuant to a foreclosure.

2. Transfers without value by a fiduciary in the administration of a decedent's estate, guardianship, or conservatorship, or trust.

3. Transfers between spouses resulting from a divorce decree or property settlement agreement under Title 20.
4. Transfers to or from any governmental entity or public or quasi-public housing authority or agency.
5. Transfers under real estate purchase contracts where the owner has obtained a permit to voluntarily upgrade an onsite sewage system in accordance with § [32.1-164.1:3](#).
6. Other transfers consistent with criteria established by the Board of Health and the Real Estate Board.

D. The owner of residential real property subject to subsection B shall provide the purchaser with a written disclosure prior to accepting a real estate purchase contract. The disclosure statement shall be in a separate document, developed by the Real Estate Board by January 1, 2006. Prior to that, the owner is responsible for preparing and providing the disclosure to the purchaser.

E. If the disclosure required by subsection B is provided to the purchaser after the acceptance of the real estate purchase contract, the purchaser's only remedy is to terminate the contract at or prior to the earliest of the following: (i) three days after delivery in person; (ii) five days after the postmark if mailed; (iii) settlement upon purchase; (iv) occupancy by the purchaser; (v) execution of a written waiver by the purchaser; or (vi) the purchaser applying for a mortgage loan, where the application includes a disclosure that termination rights end upon application.

To terminate a real estate purchase contract as permitted by this subsection, the purchaser must provide written notice to the owner within the required time, either by hand delivery or U.S. mail, postage prepaid. If the purchaser terminates the contract in compliance with this chapter, there will be no penalty, and any deposit will be promptly returned. The right to terminate ends if not exercised before the earlier of (i) submitting a written mortgage loan application containing a termination disclosure, or (ii) settlement or occupancy by the purchaser in a sale or lease with an option to purchase.

F. A real estate licensee representing an owner of residential real property as the listing broker must inform the owner of their rights and obligations under subsection B. A real estate licensee representing a purchaser or, if unrepresented, the licensee representing the owner must inform the purchaser of their rights and obligations under subsection B. If the licensee fulfills these duties, they have no further obligations under this section and are not liable for any violation of subsection B or failure to disclose information regarding the property.

G. For the purposes of this section:

"Acceptance" means the full execution of a real estate purchase contract by all parties.

"Real estate purchase contract" refers to a contract for the sale, exchange, or lease with an option to buy real estate subject to this section.

H. The Real Estate Board shall enforce subsections D, E, and F pursuant to the provisions of Chapter 21 of Title 54.1 (§ [54.1-2100](#) et seq.).

1984, c. 401; 1986, c. 331; 1994, c. [747](#); 2004, c. [916](#); 2005, c. [469](#); 2011, c. [394](#); 2015, c. [111](#).

The chapters of the acts of assembly listed in the historical citation at the end of this section may not be a complete list and may omit chapters whose provisions have expired.