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Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property - Residential Dwellings - Notice and Opportunity to Repair**
3 **Construction Defects**

4 FOR the purpose of establishing certain procedures for a homeowner or an association
5 to assert a claim against a contractor for a construction defect in a residential
6 dwelling under certain circumstances; requiring a claimant to comply with
7 certain notice requirements to a contractor regarding a construction defect
8 before bringing an action for damages under certain circumstances; requiring a
9 claimant to allow inspection of the dwelling by the contractor and to provide
10 certain evidence of the construction defect to the contractor under certain
11 circumstances; requiring a contractor to respond in a certain manner to a
12 claimant about the notice of a construction defect; authorizing a claimant to file
13 an action without further notice if a contractor fails to respond as required
14 under this Act; requiring a claimant to accept or reject a contractor's proposal
15 within a certain time period; requiring a claimant who discovers a construction
16 defect subsequent to another construction defect to comply with the
17 requirements of this Act before filing an action concerning the subsequently
18 discovered defect; limiting recovery in a certain manner in an action for a
19 claimant who rejects an offer or refuses to allow a contractor an opportunity to
20 perform certain repairs under certain circumstances; providing that certain
21 actions of a claimant are admissible in an action under this Act under certain
22 circumstances; providing certain evidentiary presumptions in an action under
23 this Act under certain circumstances; providing that certain actions of a
24 contractor may preclude the contractor from raising certain defenses in an
25 action under this Act under certain circumstances; tolling certain statutes of
26 limitations under certain circumstances; requiring a court to dismiss an action
27 without prejudice for the failure to comply with requirements of this Act under
28 certain circumstances; authorizing a court to award attorneys' fees under this
29 Act under certain circumstances; providing that this Act is not applicable to
30 certain actions arising out of claims for personal injury or death; requiring a real
31 property sales contract to contain a certain notice regarding the purchaser's
32 rights under this Act; defining certain terms; and generally relating to notice
33 and opportunity to repair construction defects in residential dwellings.

34 BY adding to

1 Article - Real Property
2 Section 10-801 through 10-815, inclusive, to be under the new subtitle "Subtitle
3 8. Notice and Opportunity to Repair Construction Defects in Residential
4 Dwellings"; and 14-117(k)
5 Annotated Code of Maryland
6 (2003 Replacement Volume and 2004 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article - Real Property**

10 SUBTITLE 8. NOTICE AND OPPORTUNITY TO REPAIR CONSTRUCTION DEFECTS IN
11 RESIDENTIAL DWELLINGS.

12 10-801.

13 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
14 INDICATED.

15 (B) "ACTION" MEANS A CIVIL LAWSUIT OR ARBITRATION PROCEEDING FOR
16 DAMAGES OR INDEMNITY ASSERTING A CLAIM FOR INJURY OR LOSS TO A DWELLING
17 OR PERSONAL PROPERTY CAUSED BY AN ALLEGED CONSTRUCTION DEFECT
18 RELATED TO OR ARISING OUT OF THE DESIGN, CONSTRUCTION, OR CONDITION OF A
19 DWELLING.

20 (C) "ASSOCIATION" MEANS:

21 (1) A HOMEOWNERS ASSOCIATION AS DEFINED IN § 11B-101 OF THIS
22 ARTICLE;

23 (2) A COUNCIL OF UNIT OWNERS OF A CONDOMINIUM AS DEFINED IN §
24 11-101 OF THIS ARTICLE; OR

25 (3) A COOPERATIVE HOUSING CORPORATION AS DEFINED IN § 5-6B-01
26 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.

27 (D) "CLAIMANT" MEANS A HOMEOWNER OR ASSOCIATION THAT ASSERTS A
28 CLAIM AGAINST A CONTRACTOR CONCERNING A CONSTRUCTION DEFECT IN THE
29 DESIGN, CONSTRUCTION, OR CONDITION OF A DWELLING.

30 (E) "CONSTRUCTION DEFECT" MEANS A DEFICIENCY IN OR ARISING OUT OF
31 THE DESIGN, SPECIFICATIONS, SURVEYING, PLANNING, SUPERVISION,
32 OBSERVATION OF, OR CONSTRUCTION OF RESIDENTIAL IMPROVEMENTS THAT
33 RESULTS FROM:

34 (1) USE OF DEFECTIVE MATERIALS, PRODUCTS, OR COMPONENTS IN
35 THE CONSTRUCTION;

1 (2) VIOLATION OF APPLICABLE BUILDING CODES IN EFFECT AT THE
2 TIME OF THE CONSTRUCTION;

3 (3) FAILURE OF THE DESIGN TO MEET THE APPLICABLE PROFESSIONAL
4 STANDARDS OF CARE AT THE TIME OF GOVERNMENTAL APPROVAL OF THE DESIGN;
5 OR

6 (4) FAILURE TO CONSTRUCT THE RESIDENTIAL IMPROVEMENTS IN
7 ACCORDANCE WITH THE ACCEPTED TRADE STANDARDS FOR GOOD AND
8 WORKMANLIKE CONSTRUCTION AT THE TIME OF CONSTRUCTION.

9 (F) (1) "CONTRACTOR" MEANS:

10 (I) A PERSON THAT IS ENGAGED IN THE BUSINESS OF DESIGNING,
11 DEVELOPING, OR CONSTRUCTING DWELLINGS; OR

12 (II) A RISK RETENTION GROUP REGISTERED UNDER APPLICABLE
13 LAW THAT INCLUDES ALL OR ANY PART OF A CONTRACTOR'S LIABILITY FOR THE
14 COST TO REPAIR A CONSTRUCTION DEFECT.

15 (2) "CONTRACTOR" INCLUDES A HOME BUILDER REGISTERED UNDER
16 TITLE 4.5 OF THE BUSINESS REGULATION ARTICLE.

17 (G) (1) "DWELLING" MEANS:

18 (I) A SINGLE-FAMILY, DETACHED, OR ATTACHED RESIDENTIAL
19 STRUCTURE OR DUPLEX UNIT; OR

20 (II) A UNIT IN A MULTIFAMILY STRUCTURE DESIGNED FOR
21 RESIDENTIAL USE IN WHICH TITLE TO EACH RESIDENTIAL UNIT IS TRANSFERRED TO
22 THE OWNER UNDER A CONDOMINIUM OR COOPERATIVE SYSTEM.

23 (2) "DWELLING" INCLUDES:

24 (I) THE SYSTEMS, COMPONENTS, AND IMPROVEMENTS THAT ARE
25 PART OF A SINGLE OR MULTIFAMILY UNIT AT THE TIME OF CONSTRUCTION; AND

26 (II) THE COMMON AREAS AND IMPROVEMENTS OWNED OR
27 MAINTAINED BY AN ASSOCIATION.

28 10-802.

29 BEFORE A CLAIMANT MAY BRING AN ACTION FOR DAMAGES TO A DWELLING OR
30 PERSONAL PROPERTY BASED ON A CLAIM OF A CONSTRUCTION DEFECT, THE
31 CLAIMANT SHALL COMPLY WITH THE REQUIREMENTS OF THIS SUBTITLE.

32 10-803.

33 (A) NO LATER THAN 90 DAYS BEFORE FILING AN ACTION FOR DAMAGES TO A
34 DWELLING OR PERSONAL PROPERTY BASED ON A CLAIM OF A CONSTRUCTION
35 DEFECT, THE CLAIMANT SHALL SERVE WRITTEN NOTICE OF THE CLAIM ON THE

1 CONTRACTOR WITH WHICH THE CLAIMANT HAS A DIRECT CONTRACTUAL
2 RELATIONSHIP.

3 (B) THE NOTICE SHALL BE SENT BY CERTIFIED MAIL TO THE CONTRACTOR'S
4 PRINCIPAL PLACE OF BUSINESS IN THE STATE.

5 (C) THE NOTICE SHALL:

6 (1) STATE THE CLAIM OF A CONSTRUCTION DEFECT; AND

7 (2) DESCRIBE THE CLAIM IN DETAIL REASONABLY SUFFICIENT FOR THE
8 CONTRACTOR TO DETERMINE:

9 (I) THE GENERAL NATURE OF THE CONSTRUCTION DEFECT; AND

10 (II) THE RESULTS OF THE DEFECT, IF KNOWN.

11 10-804.

12 (A) ON REQUEST OF A CONTRACTOR THAT RECEIVES NOTICE UNDER § 10-803
13 OF THIS SUBTITLE, THE CLAIMANT SHALL:

14 (1) ALLOW THE CONTRACTOR OR THE CONTRACTOR'S AGENTS PROMPT
15 UNFETTERED ACCESS DURING NORMAL WORKING HOURS TO INSPECT THE
16 DWELLING TO DETERMINE THE NATURE AND CAUSE OF THE CONSTRUCTION
17 DEFECT AND THE NATURE AND EXTENT OF REPAIRS OR REPLACEMENTS NECESSARY
18 TO REMEDY THE CONSTRUCTION DEFECT; AND

19 (2) PROVIDE ANY EVIDENCE THAT DEPICTS THE NATURE AND CAUSE OF
20 THE CONSTRUCTION DEFECT OR THE NATURE AND EXTENT OF REPAIRS NECESSARY
21 TO REMEDY THE CONSTRUCTION DEFECT.

22 (B) EVIDENCE DESCRIBED IN SUBSECTION (A)(2) OF THIS SECTION MAY
23 INCLUDE ANY EVIDENCE DISCOVERABLE UNDER THE MARYLAND RULES,
24 INCLUDING EXPERT REPORTS, PHOTOGRAPHS, OR VIDEOTAPES.

25 10-805.

26 (A) NO LATER THAN 30 DAYS AFTER INSPECTION OF THE DWELLING OR
27 RECEIPT OF EVIDENCE REQUIRED UNDER § 10-804(A)(2) OF THIS SUBTITLE,
28 WHICHEVER IS LATER, A CONTRACTOR THAT RECEIVES NOTICE UNDER § 10-803 OF
29 THIS SUBTITLE SHALL SEND A WRITTEN RESPONSE TO THE CLAIMANT BY CERTIFIED
30 MAIL OR PERSONAL DELIVERY.

31 (B) THE WRITTEN RESPONSE REQUIRED UNDER SUBSECTION (A) OF THIS
32 SECTION SHALL:

33 (1) PROPOSE TO REPAIR THE CONSTRUCTION DEFECT WITHIN A
34 SPECIFIED TIME PERIOD;

35 (2) OFFER TO SETTLE THE CLAIM BY MONETARY PAYMENT; OR

1 (3) STATE THAT THE CONTRACTOR DENIES THE CLAIM AND REFUSES TO
2 REPAIR THE CONSTRUCTION DEFECT OR SETTLE THE CLAIM.

3 10-806.

4 A CLAIMANT MAY FILE AN ACTION WITHOUT FURTHER NOTICE IF A
5 CONTRACTOR:

6 (1) DOES NOT RESPOND TO WRITTEN NOTICE WITHIN 30 DAYS OF
7 RECEIVING A NOTICE OF THE CLAIM UNDER § 10-803 OF THIS SUBTITLE;

8 (2) IF INSPECTION OR EVIDENCE IS REQUESTED UNDER § 10-804 OF THIS
9 SUBTITLE, DOES NOT RESPOND AS REQUIRED BY § 10-805 OF THIS SUBTITLE; OR

10 (3) RESPONDS BY REFUSING TO REPAIR THE CONSTRUCTION DEFECT
11 OR SETTLE THE CLAIM.

12 10-807.

13 (A) WITHIN 30 DAYS AFTER RECEIVING A PROPOSAL OR OFFER UNDER §
14 10-805(B)(1) OR (2) OF THIS SUBTITLE, A CLAIMANT SHALL SEND A WRITTEN NOTICE
15 TO A CONTRACTOR BY CERTIFIED MAIL THAT STATES WHETHER THE CLAIMANT:

16 (1) REJECTS THE REPAIR PROPOSAL OR SETTLEMENT OFFER, AND
17 PROVIDES A BASIS FOR THE REJECTION IN THE NOTICE; OR

18 (2) ACCEPTS THE REPAIR PROPOSAL OR SETTLEMENT OFFER.

19 (B) A CLAIMANT THAT ACCEPTS THE REPAIR PROPOSAL UNDER SUBSECTION
20 (A)(2) OF THIS SECTION SHALL ALLOW THE CONTRACTOR OR THE CONTRACTOR'S
21 AGENTS PROMPT UNFETTERED ACCESS TO THE DWELLING DURING NORMAL
22 BUSINESS HOURS TO PERFORM THE WORK WITHIN THE TIME PERIOD STATED IN THE
23 PROPOSAL.

24 10-808.

25 UNLESS A CONTRACTOR HAS FAILED TO RESPOND IN GOOD FAITH TO A NOTICE
26 SERVED UNDER § 10-803 OF THIS SUBTITLE, A CLAIMANT THAT DISCOVERS A
27 CONSTRUCTION DEFECT AFTER SERVING THE NOTICE MAY NOT FILE AN ACTION
28 FOR DAMAGES TO THE DWELLING OR PERSONAL PROPERTY FOR A SUBSEQUENTLY
29 DISCOVERED CONSTRUCTION DEFECT BEFORE COMPLYING WITH THE
30 REQUIREMENTS OF THIS SUBTITLE WITH RESPECT TO THE SUBSEQUENTLY
31 DISCOVERED CONSTRUCTION DEFECT.

32 10-809.

33 A CLAIMANT THAT REJECTS A REASONABLE REPAIR PROPOSAL MADE UNDER §
34 10-805(B)(1) OF THIS SUBTITLE OR THAT ACCEPTS THE PROPOSAL BUT DOES NOT
35 PERMIT A CONTRACTOR OR AN AGENT OF A CONTRACTOR REASONABLE
36 OPPORTUNITY TO REPAIR THE CONSTRUCTION DEFECT IN ACCORDANCE WITH THE

1 WRITTEN ACCEPTANCE UNDER § 10-807(A)(2) OF THIS SUBTITLE IS LIMITED IN AN
2 ACTION TO THE RECOVERY OF:

3 (1) THE REASONABLE COST OF THE REPAIR PROPOSAL MADE UNDER §
4 10-805(B)(1) OF THIS SUBTITLE; OR

5 (2) THE SETTLEMENT AMOUNT OFFERED UNDER § 10-805(B)(2) OF THIS
6 SUBTITLE.

7 10-810.

8 (A) A CLAIMANT'S FAILURE TO ALLOW AN INSPECTION AS REQUIRED UNDER §
9 10-804(A)(1) OF THIS SUBTITLE OR TO RESPOND TO A REPAIR PROPOSAL OR
10 SETTLEMENT OFFER MADE UNDER § 10-805 OF THIS SUBTITLE:

11 (1) IS ADMISSIBLE IN AN ACTION RELATING TO A DWELLING INVOLVING
12 A CONSTRUCTION DEFECT; AND

13 (2) ESTABLISHES A REBUTTABLE PRESUMPTION THAT THE CLAIMANT'S
14 DAMAGES COULD HAVE BEEN MITIGATED.

15 (B) WITH RESPECT TO ALL MATTERS SPECIFIED IN A BUILDING CODE,
16 COMPLIANCE OF A CONTRACTOR WITH THE CODE IN EFFECT AT THE TIME OF THE
17 CONSTRUCTION OF A DWELLING IS CONCLUSIVE EVIDENCE OF CONSTRUCTION IN
18 ACCORDANCE WITH ACCEPTED TRADE STANDARDS FOR GOOD WORKMANLIKE
19 CONSTRUCTION.

20 10-811.

21 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A
22 CONTRACTOR THAT FAILS TO RESPOND IN GOOD FAITH TO A NOTICE SERVED UNDER
23 § 10-803 OF THIS SUBTITLE MAY NOT ASSERT IN AN ACTION THAT THE CLAIMANT
24 FAILED TO COMPLY WITH THE REQUIREMENTS OF THIS SUBTITLE.

25 (B) A CONTRACTOR MAY RAISE A GOOD CAUSE REASON FOR FAILING TO
26 RESPOND TO A NOTICE SERVED UNDER § 10-803 OF THIS SUBTITLE.

27 10-812.

28 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, SERVICE BY CERTIFIED
29 MAIL OF A WRITTEN NOTICE UNDER § 10-803 OF THIS SUBTITLE SHALL TOLL FOR 90
30 DAYS ALL STATUTES OF LIMITATIONS APPLICABLE TO THE CLAIM STATED IN THE
31 NOTICE AGAINST A CONTRACTOR THAT RECEIVES THE NOTICE.

32 10-813.

33 THE COURT, ON THE MOTION OF A PARTY TO AN ACTION UNDER THIS
34 SUBTITLE:

35 (1) SHALL DISMISS AN ACTION WITHOUT PREJUDICE THAT DOES NOT
36 COMPLY WITH THE REQUIREMENTS OF THIS SUBTITLE; AND

1 (2) MAY AWARD INCURRED ATTORNEYS' FEES TO THE DEFENDANT.

2 10-814.

3 IN AN ACTION RELATING TO A DWELLING INVOLVING A CONSTRUCTION
4 DEFECT, A CONTRACTOR MAY NOT BE LIABLE FOR DAMAGES INVOLVING OR CAUSED
5 BY:

6 (1) NORMAL WEAR, TEAR, DETERIORATION, OR SHRINKAGE WITHIN
7 ACCEPTABLE TOLERANCES;

8 (2) THE CONTRACTOR'S RELIANCE ON WRITTEN INFORMATION
9 RELATING TO THE DWELLING THAT WAS OBTAINED FROM OFFICIAL GOVERNMENT
10 RECORDS OR PROVIDED BY A GOVERNMENT ENTITY;

11 (3) ANY CONSTRUCTION DEFECT KNOWN BY OR DISCLOSED TO A
12 CLAIMANT IN WRITING BEFORE THE CLAIMANT'S PURCHASE OF THE DWELLING; OR

13 (4) THE REFUSAL OF THE CLAIMANT TO ALLOW THE CONTRACTOR OR
14 AN AGENT OF THE CONTRACTOR TO PERFORM THE CONTRACTOR'S WARRANTY
15 WORK.

16 10-815.

17 THIS SUBTITLE DOES NOT APPLY TO ANY ACTION ARISING OUT OF A CLAIM FOR
18 PERSONAL INJURY OR DEATH, OR BOTH.

19 14-117.

20 (K) (1) THIS SUBSECTION APPLIES THROUGHOUT THE STATE.

21 (2) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE
22 MEANINGS INDICATED.

23 (II) "DESIGN PROFESSIONAL" INCLUDES:

24 1. AN ARCHITECT LICENSED UNDER TITLE 3 OF THE
25 BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE;

26 2. AN INTERIOR DESIGNER CERTIFIED UNDER TITLE 8 OF
27 THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE;

28 3. A LANDSCAPE ARCHITECT LICENSED UNDER TITLE 9 OF
29 THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE;

30 4. A PROFESSIONAL ENGINEER LICENSED UNDER TITLE 14
31 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE; AND

32 5. A PROFESSIONAL LAND SURVEYOR OR PROPERTY LINE
33 SURVEYOR LICENSED UNDER TITLE 15 OF THE BUSINESS OCCUPATIONS AND
34 PROFESSIONS ARTICLE.

1 (III) "HOME BUILDER" HAS THE MEANING STATED IN § 4.5-101 OF
2 THE BUSINESS REGULATION ARTICLE.

3 (IV) "NEW HOME" HAS THE MEANING STATED IN § 4.5-101 OF THE
4 BUSINESS REGULATION ARTICLE.

5 (V) "OWNER" HAS THE MEANING STATED IN § 4.5-101 OF THE
6 BUSINESS REGULATION ARTICLE.

7 (3) THE FOLLOWING STATEMENT SHALL BE INCLUDED IN THE
8 CONTRACT OF SALES IN CONSPICUOUS TYPE:

9 "NOTICE

10 TITLE 10, SUBTITLE 8 OF THE REAL PROPERTY ARTICLE OF THE ANNOTATED
11 CODE OF MARYLAND CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW
12 BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE
13 CONTRACTOR THAT CONSTRUCTED YOUR HOME. NINETY DAYS BEFORE YOU FILE A
14 LAWSUIT ABOUT DEFECTIVE CONSTRUCTION, YOU MUST DELIVER TO THE
15 CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE
16 ARE DEFECTIVE. YOU MUST PROVIDE YOUR CONTRACTOR AND ANY AGENT OF THE
17 CONTRACTOR THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE
18 DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE
19 CONTRACTOR OR ANY AGENT OF THE CONTRACTOR. THERE ARE STRICT DEADLINES
20 AND PROCEDURES UNDER STATE LAW AND FAILURE TO FOLLOW THEM MAY AFFECT
21 YOUR ABILITY TO FILE A LAWSUIT."

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
23 effect July 1, 2005.