

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1185

(Senator Muse)

Judicial Proceedings

Real Property - New Residential Construction - Correction of Drainage Defect

This bill requires a builder of a new home to correct a drainage defect within 30 days after receiving written notice of the defect if (1) the owner notifies the home builder of a drainage defect within one year after taking possession of the new home, or the day the home builder completes any grading or landscaping work on or adjacent to the lot, whichever occurs later, and (2) the written notice includes documentation of the flooding, including the frequency and extent, caused by the drainage defect.

Fiscal Summary

State Effect: The Office of the Attorney General, Consumer Protection Division, can handle the bill's requirements with existing resources, assuming 50 or fewer new complaints are generated by the bill. Revenues are not affected.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: "Drainage defect" means improper grading, poor soil composition, or any other design or workmanship defect attributable to a home builder that results in a flooded yard or water in the basement of a new home. "Home builder" means a person that builds a new home. "New home" means a newly constructed single-family dwelling unit; it includes a custom home as defined in § 10-501 of the Real Property Article or a mobile home as defined in § 8A-101 of the Real Property Article. "Owner" means the purchaser of a new home who uses the home primarily for residential purposes.

Current Law: Statute does not specifically address the correction of a drainage defect by a builder of a new home.

Generally, in addition to any express warranty made by a builder, in every sale, warranties are generally implied that at the time of completion any improvement is:

- free from faulty materials;
- constructed according to sound engineering standards;
- constructed in a workmanlike manner; and
- fit for habitation.

If any express or implied warranty is breached, a court may award legal or equitable relief, or both, as justice requires. Unless an express warranty specifies a longer period of time, express or implied warranties generally expire one year after the delivery of the home, or after the taking of possession by the original purchaser, whichever occurs first. Warranties for structural defects expire two years after the date of completion, delivery, or taking possession, whichever occurs first. Warranties do not expire on the subsequent sale of a dwelling. However, the warranties do not apply to any defect *caused* by the original purchaser.

Additionally, in Baltimore City and all counties except Montgomery County, prior to entering into a contract for sale or construction of a new home, the builder must disclose in writing to the owner whether (1) the builder participates in a new home warranty security plan through which the builder must provide the owner with a new home warranty or the builder may provide a new home warranty to the owner at the owner's option or (2) the builder does not participate in a new home warranty security plan.

In Montgomery County, builders are required to provide specified disclosures, including notice of specified performance standards and the existence of a specified new home warranty.

Additional notice and disclosure requirements apply, statewide, to contracts for the initial sale or resale of residential real property.

Background: The U.S. Census Bureau reports that, in 2015, the most recent year for which complete data is available, 17,057 housing units were newly authorized for construction in the State. These included 11,108 single units, as well as 152 structures containing five or more units.

Small Business Effect: Home builders that qualify as small businesses may incur significant costs to correct drainage defects not covered under express or implied warranties or a new home warranty security plan.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, HB 1413 (Delegate Proctor, *et al.* - Environment and Transportation) is not identical.

Information Source(s): Office of the Attorney General (Consumer Protection Division); U.S. Census Bureau; Department of Legislative Services

Fiscal Note History: First Reader - March 15, 2017
fn/kdm

Analysis by: Nathan W. McCurdy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510