

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1056 (Delegate Queen)
 Environment and Transportation

Real Property - Warranties - Duration of Warranties and Repair of Defects

This bill alters the durations of specified home warranties and establishes procedures to resolve an alleged breach of warranty prior to the owners commencing an action for the alleged breach.

Fiscal Summary

State Effect: General fund expenditures for the Office of the Attorney General (OAG) increase by \$110,500 in FY 2024 for staff; future years reflect annualization and inflation. Revenues are not materially affected.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	110,500	127,600	133,200	139,300	146,800
Net Effect	(\$110,500)	(\$127,600)	(\$133,200)	(\$139,300)	(\$146,800)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Meaningful.

Analysis

Bill Summary/Current Law:

Definitions

Under the bill, “major construction defect” means actual damage to the load-bearing portion of a dwelling, including damage due to the subsidence, expansion, or lateral

movement of the soil, that affects the load-bearing function and that vitally affects or is imminently likely to vitally affect the use of the dwelling for residential purposes. It does not include damage due to the movement of the soil caused by flood, earthquake, or other natural disaster.

Under the bill, “warranty date” means (1) for a dwelling completed at the time of the delivery of the deed to the original purchaser, the date of delivery or the taking of possession by the original purchaser, whichever occurs first; (2) for a dwelling not completed at the time of delivery of the deed to the original purchaser, the date of the completion or the taking of possession by the original purchaser, whichever occurs first; and (3) in the case of a structural defect, the date of completion, delivery, or taking of possession, whichever occurs first.

Under current law, “improvements” means every newly constructed private dwelling unit, and fixture and structure which is made a part of a newly constructed private dwelling unit at the time of construction by any building contractor or subcontractor.

Implied and Express Warranties

Generally, under current law, in every sale for real property, unless provided otherwise, warranties are implied that, at the time of the delivery of the deed to a completed improvement or at the time of completion of an improvement not completed when the deed is delivered, the improvement is (1) free from faulty materials; (2) constructed according to *sound engineering* standards (the bill alters this requirement to *building* standards); (3) constructed in a workmanlike manner; and (4) fit for habitation. However, these warranties do not apply to any condition that an inspection of the premises would reveal to a reasonably diligent purchaser at the time the contract is signed.

Generally, express warranties by a vendor are created as follows:

- any written affirmation of fact or promise that relates to the improvement and is made a part of the basis of the bargain between the vendor and the purchaser creates an express warranty that the improvement conforms to the affirmation or promise;
- any written description of the improvement, including plans and specifications of it, which is made a part of the basis of the bargain between the vendor and the purchaser creates an express warranty that the improvement conforms to the description; or
- any sample or model which is made a part of the basis of the bargain between the vendor and the purchaser creates an express warranty that the improvement conforms substantially to the sample or model.

Duration of Warranties

Unless an express warranty specifies a *longer* period of time, the warranties included in existing statute expire as follows:

- in the case of a dwelling completed at the time of the delivery of the deed to the original purchaser, one year after the delivery or after the taking of possession by the original purchaser, whichever occurs first;
- in the case of a dwelling not completed at the time of delivery of the deed to the original purchaser, one year after the date of the completion or taking of possession by the original purchaser, whichever occurs first; and
- in the case of structural defects, two years after the date of completion, delivery, or taking possession, whichever occurs first.

The bill alters these durations as follows:

- for a defect caused by faulty workmanship or defective materials due to noncompliance with building standards, one year after the warranty date;
- for a defect resulting from faulty installation of plumbing, electrical, or heating and cooling systems due to noncompliance with building standards, two years after the warranty date; and
- for major construction defects due to noncompliance with building standards, 10 years after the warranty date.

Under current law (and unchanged by the bill), the warranties do not expire on the sale of a dwelling by the original purchaser to a subsequent purchaser. However, these warranties do not apply to any defects caused by the original purchaser.

Curing a Breach of Warranty and Commencing Action

Under current law, if any warranty is breached, the court may award legal and/or equitable relief. Any action must be commenced within two years after the defect was discovered (or should have been discovered) or within two years after the expiration of the warranty, whichever occurs first.

The bill requires, prior to commencing an action, for an owner to provide a vendor with written notice of the alleged defect. Within 30 days after notice is provided, a vendor may request – and an owner must allow – a home inspection for the purposes of the preparation of an offer to repair the alleged defect. Any damage to the dwelling resulting from an inspection performed by the vendor must be repaired promptly by the vendor.

Within 15 days after the completion of the inspection the vendor must provide the owner with a written offer to repair the defect. The offer must include information on (1) the scope of the proposed work to be performed; (2) a proposed date on which the repair work may begin; and (3) an estimated date of completion for the work.

If the vendor and the owner agree to the scope of work, the vendor must perform the repair in accordance with that offer. However, the bill does not preclude an owner from securing a separate, independent inspection by a third-party contractor or from negotiating with the original vendor for a different scope of work.

An owner may commence an action for a breach of warranty if (1) the vendor does not request or perform an inspection; (2) the vendor fails to make an offer to repair; or (3) the vendor and purchaser cannot agree to the terms provided in the offer to repair.

The statute of limitations established under the bill must be tolled for 180 days from the date that the required written notice from the owner is postmarked, or, if the written notice is not sent by first-class mail, the date that the notice is received by the vendor.

The provisions of the bill may not be waived by contract or agreement.

State Fiscal Effect: OAG anticipates the bill increases complaints regarding construction defects and likely generates a volume of complaints that supports the need for one part-time assistant Attorney General and a part-time mediation supervisor. Accordingly, OAG general fund expenditures increase by \$110,506 in fiscal 2024, which accounts for the bill's October 1, 2023 effective date. This estimate reflects the cost of hiring the two part-time staff referenced above and includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	1.0
Salaries and Fringe Benefits	\$96,483
Operating Costs	<u>14,023</u>
Total 2024 State Expenditures	\$110,506

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Small Business Effect: Vendors that provide services subject to the bill's provisions are exposed to longer liability and may incur costs to correct specific defects; however, the required opportunity to cure defects before litigation is commenced by an owner may be beneficial.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; Maryland Department of Labor; Department of Legislative Services

Fiscal Note History: First Reader - March 3, 2023
rh/jkb

Analysis by: Donovan A. Ham

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