

HOUSE BILL 1056

N1

3lr1372

By: **Delegate Queen**

Introduced and read first time: February 10, 2023

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Warranties – Duration of Warranties and Repair of Defects**

3 FOR the purpose of altering the expiration date of certain implied warranties for dwellings
4 and establishing a procedure for the resolution of an alleged breach of an implied
5 warranty prior to an owner commencing an action regarding the alleged breach; and
6 generally relating to home warranties.

7 BY repealing and reenacting, with amendments,
8 Article – Real Property
9 Section 10–201, 10–203, and 10–204
10 Annotated Code of Maryland
11 (2015 Replacement Volume and 2022 Supplement)

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

14 **Article – Real Property**

15 10–201.

16 (a) In this subtitle the following words have the meanings indicated unless
17 otherwise apparent from context.

18 **(B) “BUILDING STANDARDS” MEANS THE MATERIALS AND INSTALLATION**
19 **STANDARDS OF THE MARYLAND BUILDING PERFORMANCE STANDARDS, AS**
20 **AMENDED BY THE LOCAL JURISDICTION IN WHICH THE PROPERTY IS LOCATED.**

21 **[(b)] (C)** “Improvements” includes every newly constructed private dwelling
22 unit, and fixture and structure which is made a part of a newly constructed private dwelling
23 unit at the time of construction by any building contractor or subcontractor.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

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1 [(c)] (D) "Purchaser" means the original purchaser of improved realty, and the
2 heirs and personal representatives of the original purchaser.

3 [(d)] (E) "Realty" includes both freehold estates and redeemable leasehold
4 estates.

5 [(e)] (F) "Vendor" means any person engaged in the business of erecting or
6 otherwise creating an improvement on realty, or to whom a completed improvement has
7 been granted for resale in the course of his business.

8 10-203.

9 (a) **THE IMPLIED WARRANTIES PROVIDED IN THIS SECTION MAY NOT
BE EXCLUDED, MODIFIED, OR WAIVED BY CONTRACT OR AGREEMENT.**

~~10 Except as provided in subsection (b) of this section or unless excluded or
modified pursuant to subsection (d) of this section, [(B)] [(i)]~~ In every sale, warranties are
11 implied

12 that, at the time of the delivery of the deed to a completed improvement or at the time of
13 completion of an improvement not completed when the deed is delivered, the improvement
is:

- 14 (1) Free from faulty materials;
- 15 (2) Constructed according to [sound engineering] **BUILDING [s]Standards;**
- 16 (3) Constructed in a workmanlike manner; and
- 17 (4) Fit for habitation.

18 (b) The warranties of subsection (a) of this section do not apply to any condition
19 that an inspection of the premises would reveal to a reasonably diligent purchaser at the
20 time the contract is signed.

21 (c) If the purchaser, expressly or by implication, makes known to the vendor the
22 particular purpose for which the improvement is required, and it appears that the
23 purchaser relies on the vendor's skill and judgment, there is an implied warranty that the
24 improvement is reasonably fit for the purpose.

~~25 [(d)] Neither words in the contract of sale, nor the deed, nor merger of the contract
26 of sale into the deed is effective to exclude or modify any implied warranty. However, if the
27 contract of sale pertains to an improvement then completed, an implied warranty may be
28 excluded or modified wholly or partially by a written instrument, signed by the purchaser,
29 setting forth in detail the warranty to be excluded or modified, the consent of the purchaser
30 to exclusion or modification, and the terms of the new agreement with respect to it.~~

31 10-204.

Commented [SK1]: Proposed subsection 10-204 (h) prohibits waiver of the provisions of that section by contract or agreement. Without also revising Section 10-203, the proposed Section 10-204(h) would create an ambiguity with current Section 10-203 (d) which currently allows a new home seller to exclude or modify implied new home warranties after closing. These comments include adding at 10-203 (a) language consistent with the language in the Maryland Condominium Act (RP 11-131(a)), which prohibits the modification or exclusion of implied warranties applicable to condominiums so that vendors cannot simply nullify the implied warranties through sales contracts containing exclusions or agreements to execute exclusions at or after a purchaser closes on a new home. This revision will provide all new home purchasers with the same warranty protections the law provides to residential condominium purchasers.

1 (a) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
2 INDICATED.

3 ~~_____~~ (2) ~~(1)~~ “LOAD BEARING ELEMENT” MEANS ANY WALL, BEAM,
COLUMN, GIRDER, LINTEL, JOIST, ARCH, DROP PANEL, FLAT
PLATE, SLAB, FLAT SLAB, FOUNDATION, FOOTING, FRAMING, ROOF
FRAMING SYSTEM, FLOOR SYSTEM, OR OTHER ELEMENT OF AN
IMPROVEMENT, OR PORTION THEREOF, THAT PERFORMS A LOAD-
BEARING FUNCTION.

4 ~~_____~~
3 ~~(3)~~ (1) “MAJOR CONSTRUCTION DEFECT” MEANS ACTUAL OR LIKELY
IMMINENT DAMAGE
45 TO THE A LOAD-BEARING PORTION-ELEMENT OF A DWELLING, INCLUDING, WITHOUT
LIMITATION, DAMAGE DUE TO THE
56 SUBSIDENCE, EXPANSION, OR LATERAL MOVEMENT OF THE SOIL, THAT AFFECTS
6 THE LOAD-BEARING FUNCTION OF A LOAD-BEARING ELEMENT AND THAT VITALLY
AFFECTS OR IS IMMINENTLY
7 LIKELY TO VITALLY AFFECT OR THE USE OF THE DWELLING FOR
RESIDENTIAL
8 PURPOSES.

97 ~~_____~~ (II) “MAJOR CONSTRUCTION DEFECT” DOES NOT INCLUDE
108 ~~_____~~ DAMAGE DUE TO THE MOVEMENT OF ~~THE~~ SOIL CAUSED BY FLOOD,
EARTHQUAKE, OR
9 ~~_____~~ OTHER NATURAL DISASTER.

11 ~~_____~~

1210 ~~_____~~ ~~(4)~~ “WARRANTY DATE” MEANS:

1311 ~~_____~~ (I) FOR A DWELLING COMPLETED AT THE TIME OF THE
1412 ~~_____~~ DELIVERY OF THE DEED TO THE ORIGINAL PURCHASER, THE DATE OF DELIVERY OR
1513 ~~_____~~ THE TAKING OF POSSESSION BY THE ORIGINAL PURCHASER, WHICHEVER OCCURS
1614 ~~_____~~ FIRST;

1715 ~~_____~~ (II) FOR A DWELLING NOT COMPLETED AT THE TIME OF
1816 ~~_____~~ DELIVERY OF THE DEED TO THE ORIGINAL PURCHASER, THE DATE OF THE
1917 ~~_____~~ COMPLETION OR THE TAKING OF POSSESSION BY THE ORIGINAL PURCHASER,
2018 ~~_____~~ WHICHEVER OCCURS FIRST; AND

2119 ~~_____~~ (III) IN THE CASE OF A ~~STRUCTURAL DEFECT, LOAD BEARING~~
~~ELEMENT OR MAJOR CONSTRUCTION DEFECT,~~ THE DATE OF
2220 ~~_____~~ COMPLETION, DELIVERY, OR TAKING OF POSSESSION, WHICHEVER OCCURS FIRST.

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~~2321~~ (B) If any warranty provided for in this subtitle is breached, the court may award ~~2422~~ legal or equitable relief, or both, as justice requires.

~~2523~~ [(b)] (C) Unless an express warranty specifies a longer period of time, the ~~2624~~ warranties provided for in this subtitle expire:

~~2725~~ (1) [In the case of a dwelling completed at the time of the delivery of the ~~2826~~ deed to the original purchaser, one year after the delivery or after the taking of possession ~~29~~ by the original purchaser, whichever occurs first] ~~FOR A DEFECT CAUSED BY FAULTY~~
~~30 WORKMANSHIP OR DEFECTIVE MATERIALS DUE TO NONCOMPLIANCE WITH~~
~~3127 BUILDING STANDARDS, 1 2 YEARS AFTER THE WARRANTY DATE;~~

~~3228~~ (2) [In the case of a dwelling not completed at the time of delivery of the ~~3329~~ deed to the original purchaser, one year after the date of the completion or taking of ~~34~~ possession by the original purchaser, whichever occurs first] ~~FOR A DEFECT RESULTING~~

Commented [SK2]: The current statute provides a 1 year implied warranty and a 2 year implied warranty against structural defects, although the term "structural" is undefined. While the proposed bill, as written, would provide a longer 10 year warranty for major construction defects, it would limit the existing 2 year implied warranty coverage to plumbing, electrical, and heating and cooling systems, shortening existing warranty coverage for other, non-enumerated elements. These comments would instead make the implied warranty 2 years and 10 years for load bearing elements and major construction defects.

~~1 FROM FAULTY INSTALLATION OF PLUMBING, ELECTRICAL, OR HEATING AND~~
~~21 COOLING SYSTEMS DUE TO NONCOMPLIANCE WITH BUILDING STANDARDSLOAD-~~
~~BEARING ELEMENT, OR IN THE CASE OF A MAJOR CONSTRUCTION DEFECT, 210~~
~~YEARS~~

~~32 AFTER THE WARRANTY DATE; and~~

~~43 _____ (13) [In the case of structural defects, two years after the date of completion,~~
~~5 delivery, or taking possession, whichever occurs first] FOR MAJOR CONSTRUCTION~~
~~6 DEFECTS DUE TO NONCOMPLIANCE WITH BUILDING STANDARDS, 10 YEARS AFTER~~
~~4 THE WARRANTY DATE.~~

~~5~~
~~76~~

~~87 _____ (c) (D) The warranties provided under this section do not expire on the~~
~~98 subsequent sale of a dwelling by the original purchaser to a subsequent purchaser, but~~
~~109 continue to protect the subsequent purchaser until the warranties provided under~~
~~110 subsection [(b)] (C) of this section expire. The warranties provided under this section do~~
~~121 not apply to any defect caused by the original purchaser.~~

~~1312 _____ (d) (E) [Any] EXCEPT AS PROVIDED IN SUBSECTION (G)(2) OF THIS~~
~~1413 SECTION, ANY action arising under this subtitle shall be commenced within [two] 2 years~~
~~1514 after the [defect] BREACH OF WARRANTY was discovered or should have been~~
~~discovered, or within [two] 2 years~~
~~1615 after the expiration of the warranty, whichever occurs first.~~

~~1716 _____ (F) (1) PRIOR TO COMMENCING AN ACTION UNDER THIS SUBTITLE, AN~~
~~1817 OWNER MUST PROVIDE A VENDOR WITH WRITTEN NOTICE OF THE ALLEGED~~
~~DEFECTBREACH OF WARRANTY. THE TEXT OF THE NOTICE MAY BE IN ANY FORM~~
~~REASONABLY CALCULATED TO PUT THE VENDOR ON NOTICE OF THE GENERAL~~
~~NATURE OF THE OWNER'S CLAIMS INCLUDING, WITHOUT LIMITATION, A LIST OF THE~~
~~CLAIMED CONDITIONS CONSTITUTING A BREACH OF WARRANTY.~~

~~1918 _____ (2) (I) WITHIN 30 DAYS AFTER NOTICE PROVIDED UNDER~~
~~2019 PARAGRAPH (1) OF THIS SUBSECTION, A VENDOR MAY REQUEST IN WRITING, AND~~
~~AN OWNER~~
~~2120 SHALL ALLOW, A HOME INSPECTION FOR THE PURPOSES OF THE PREPARATION OF~~
~~2221 AN OFFER TO REPAIR THE ALLEGED DEFECTBREACH OF WARRANTY.~~

~~2322 _____ (II) ANY DAMAGE TO THE DWELLING RESULTING FROM AN~~
~~2423 INSPECTION PERFORMED BY THE VENDOR MUST BE REPAIRED PROMPTLY BY THE~~
~~2524 VENDOR.~~

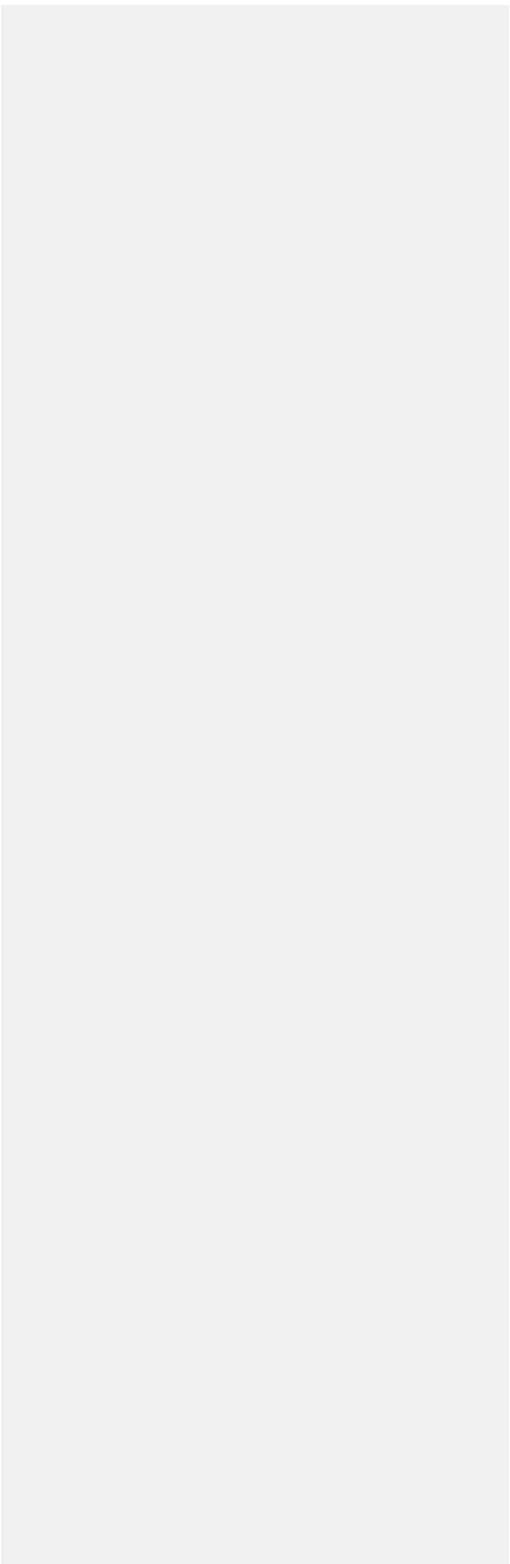
~~2625 _____ (3) WITHIN 15 DAYS AFTER THE COMPLETION OF AN INSPECTION~~
~~2726 PERFORMED IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION, THE~~
~~2827 VENDOR SHALL PROVIDE TO THE OWNER A WRITTEN OFFER TO REPAIR STATING:~~

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~~2928~~ (I) THE SCOPE OF THE PROPOSED REPAIR WORK TO BE PERFORMED;

30 (II) A PROPOSED DATE ON WHICH THE REPAIR WORK
31 BEGIN; AND MAYSHALL

32 (III) AN ESTIMATED DATE OF COMPLETION OF THE REPAIR WORK.



1 (4) ~~IF THE VENDOR AND THE OWNER AGREES TO ACCEPT THE SCOPE-~~
 2 ~~OF WORK~~WRITTEN OFFER TO REPAIR
 3 PROVIDED BY THE VENDOR UNDER PARAGRAPH (3) OF THIS SUBSECTION, THE
 4 VENDOR SHALL
 5 PERFORM THE REPAIR WORK IN ACCORDANCE WITH THE OFFER TO REPAIR.

6 (5) THIS SUBSECTION DOES NOT PRECLUDE AN OWNER FROM
 7 SECURING A SEPARATE, INDEPENDENT INSPECTION BY AN ENGINEER,
 8 CONTRACTOR, ARCHITECT, OR OTHER CONSTRUCTION PROFESSIONAL, OR FROM
 9 NEGOTIATING WITH THE VENDOR FOR A REPAIR THAT IS DIFFERENT-SCOPE-OF-
 10 WORKFROM THE WRITTEN OFFER TO REPAIR PROVIDED BY THE VENDOR.

11 (G) (1) AN OWNER MAY COMMENCE AN ACTION FOR A BREACH OF
 12 WARRANTY UNDER THIS SUBTITLE IF:

13 (i) THE VENDOR DOES NOT TIMELY REQUEST IN WRITING
 14 ~~OR—PERFORM~~ AN
 15 INSPECTION UNDER SUBSECTION (F)(2) OF THIS SECTION;
 16 ~~OR (II) THE VENDOR DOES NOT TIMELY PERFORM AN INSPECTION UNDER SUBSECTION~~
 17 ~~(F)(2) OF THIS SECTION;~~

18 ~~(III) THE VENDOR FAILS TO TIMELY MAKE—PROVIDE TO THE~~
 19 ~~OWNER AN WRITTEN OFFER TO REPAIR AS~~
 20 ~~REQUIRED UNDER SUBSECTION (F)(3) OF THIS SECTION; OR~~

21 ~~(IV) THE PARTIES—OWNER CANNOT—DOES NOT AGREE TO~~
 22 ~~ACCEPT THE TERMS PROVIDED IN~~
 23 ~~THE VENDOR'S OFFER TO REPAIR REQUIRED UNDER SUBSECTION (F)(3) OF THIS~~
 24 ~~SECTION; OR~~

25 ~~(V) THE VENDOR DOES NOT PERFORM THE REPAIR WORK IN ACCORDANCE WITH AN~~
 26 ~~ACCEPTED OFFER TO REPAIR AS REQUIRED UNDER SUBSECTION (F)(4) OF THIS~~
 27 ~~SECTION.~~

28 (2) THE STATUTE OF LIMITATIONS UNDER THIS SECTION SHALL BE
 29 TOLLED FOR 180 DAYS FROM THE DATE THAT THE WRITTEN NOTICE REQUIRED
 30 UNDER SUBSECTION (F)(1) OF THIS SECTION IS POSTMARKED, OR, IF THE WRITTEN
 31 NOTICE IS NOT SENT BY FIRST-CLASS MAIL, THE DATE THAT THE NOTICE IS
 32 RECEIVED BY THE VENDOR.

33 (H) THE PROVISIONS OF THIS SECTION MAY NOT BE EXCLUDED, MODIFIED,
 34 OR WAIVED BY CONTRACT
 35 OR AGREEMENT.

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 37 ~~October 1, 2023.~~