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March 7, 2023

To: The Honorable Kumar P. Barve  
Chair, Environment and Transportation Committee

From: Karen M. Valentine, Deputy Chief  
Consumer Protection Division

Re: House Bill 1056 – Real Property - Warranties – Duration of Warranties and Repair of  
Defects (CONCERN)

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The Consumer Protection Division of the Office of the Attorney General (the "Division") has concerns regarding House Bill 1056 introduced by Delegate Pamela E. Queen. House Bill 1056, as drafted, would remove the implied warranty that a home is constructed according to sound engineering standards, which is created by Real Property Article § 10-203(a)(2), and replaces it with an implied warranty that a home is constructed in accordance with "building standards", which is defined as local building codes. Additionally, as drafted, House Bill 1056 would remove the warranty periods for certain express and implied warranties, including the implied warranties that the home is free from faulty materials, constructed in a workmanlike manner, and fit for habitation, which are created by Real Property Article § 10-203(a)(1), (3) and (4). House Bill 1056 would also remove the two-year warranty period for all structural defects and replace it with a 10-year warranty period for major construction defects due to noncompliance with building standards. Although the Division appreciates the sponsor's interest in providing purchasers of a new home with adequate time and procedures for addressing problems with the construction of their new home, we believe that, as drafted, House Bill 1056 may be inadvertently narrowing the implied warranties that protect consumers and removing important warranty periods without accomplishing the sponsor's goals. To ensure consumers are fully protected when buying a new home, the implied warranty created by Real Property Article § 10-203(a)(2) should remain in the statute, as should the warranty periods provided in Real Property Article § 10-204(b)(1) and (2) for implied warranties created by Real Property Article § 10-203(a). Additionally, the 10-year warranty period House Bill 1056 mandates for major construction defects due to noncompliance with building standards should be extended to such defects that do not violate a specific provision of an applicable building code and also extend to all structural defects.

First, House Bill 1056 may be inadvertently narrowing the protections currently available to purchasers of a new home. House Bill 1056 would replace the implied warranty that a new home is constructed according to sound engineering standards with an implied warranty that a new home is constructed according to “building standards” and defines “building standards” as the applicable local building codes. Although there is overlap between sound engineering standards and local building codes, House Bill 1056 may be narrowing the protections currently available to purchasers of a new home, if, for example, there are sound engineering standards regarding aspects of the construction of a residential home that are not clearly addressed or resolved by the local building code. However, specifically adding local building standards without removing sound engineering standards could help homeowners trying to resolve a specific applicable local building code violation.

Second, House Bill 1056 would remove all warranty periods for implied warranties except for certain implied warranties due to noncompliance with building standards which could result in consumers being forced into extensive, time consuming and expensive litigation over the appropriate or applicable warranty periods. For example, House Bill 1056 provides for a one-year warranty period for “a defect caused by faulty workmanship or defective materials due to noncompliance with building standards” but fails to provide a warranty period for an improvement that, for reasons other than noncompliance with building standards, has faulty materials, or is not constructed according to sound engineering standards or in a workmanlike manner. Similarly, House Bill 1056 provides for a two-year warranty period for “a defect resulting from faulty installation of plumbing, electrical, or heating and cooling systems due to noncompliance with building standards” but does not extend the warranty period, for example, where the installation was faulty but does not violate a specific provision of an applicable building code. However, specifically listing a two-year warranty period for all defects resulting from poor or faulty installation of plumbing, electrical, or heating and cooling systems without removing the warranty periods provided for in Real Property Article § 10-204(b)(1) and (2) could help homeowners who need a longer warranty period for issues related to plumbing, electrical, or heating and cooling systems. Additionally, House Bill 1056 conflates the terms “faulty workmanship” and “defective materials” with the commonly used terms “faulty materials” and “poor workmanship,” which may muddle the implied warranties protecting against “free from faulty materials” and “constructed in a workmanlike manner.”

Third, House Bill 1056 replaces the two-year warranty period for all “structural defects” with a ten-year warranty period for “major construction defects due to noncompliance with building standards”. Although House Bill 1056 appropriately extends the length of the warranty period, the Division is concerned that the definition of “major construction defects” used in the bill may be unduly restrictive and proposes to replace the term “structural defects” but the term “structural defect” remains used in other parts of the statute. As such, the Division recommends that House Bill 1056 extend the two-year warranty period for all structural defects to ten years.

Fourth, House Bill 1056 requires a homeowner to provide written notice to a vendor of an alleged defect and provides that a vendor may request, within 30 days after notice is provided, a home inspection for the purposes of the preparation of an offer to repair the alleged defect and, within 15 days after the completion of the inspection, the vendor shall provide the homeowner a written offer to repair. However, House Bill 1056 does not provide for the reasonable reduction

of these time periods to address emergency or safety issues, such as water intrusion or severe structural defects.

Accordingly, the Consumer Protection Division wanted to make the Environment and Transportation Committee aware of our concerns.

cc: The Honorable Pamela E. Queen  
Members, Environment and Transportation Committee