
By: Delegate Kach

Introduced and read first time: January 17, 1996
Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property - Sale of New Homes - Disclosure of Environmental Hazards**

3 FOR the purpose of requiring new home builders to disclose or make a certain disclaimer
4 as to the presence of certain hazardous materials on the site of a new home to
5 certain owners under certain circumstances; making stylistic changes; and generally
6 relating to the disclosure of certain hazardous materials by builders to certain
7 persons.

8 BY repealing and reenacting, with amendments,
9 Article - Real Property
10 Section 10-603, 10-604, and 10-607(a)
11 Annotated Code of Maryland
12 (1988 Replacement Volume and 1995 Supplement)

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

15 **Article - Real Property**

16 10-603.

17 (a) If the builder does not participate in a new home warranty security plan:

18 (1) The builder must make a disclosure containing an explanation in 12
19 point type that:

20 (i) The owner should be aware that builders of new homes in the
21 State of Maryland are not required to be licensed by the State and are not licensed in
22 most local jurisdictions; [and]

23 (ii) Without a new home warranty or other express warranties, the
24 owner may be afforded only certain limited implied warranties as are provided by law[.];
25 AND

26 (III) 1. DESCRIBES ANY HAZARDOUS OR REGULATED
27 MATERIALS, INCLUDING ASBESTOS, LEAD-BASED PAINT, RADON, UNDERGROUND
28 STORAGE TANKS, LICENSED LANDFILLS, OR OTHER ENVIRONMENTAL HAZARDS
29 PRESENT ON THE SITE OF THE NEW HOME OF WHICH THE BUILDER HAS ACTUAL
30 KNOWLEDGE; OR

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1 2. STATES THAT THE BUILDER IS MAKING NO
2 REPRESENTATIONS OR WARRANTIES AS TO WHETHER THERE IS ANY HAZARDOUS
3 OR REGULATED MATERIAL ON THE SITE OF THE NEW HOME;

4 (2) The owner shall acknowledge in writing that the owner understands that
5 the builder does not participate in a new home warranty security plan and that the owner
6 has read and understood the disclosure pursuant to paragraph (1) of this subsection; and

7 (3) Any purchase or construction contract entered into which does not
8 contain the acknowledgment required by [subsection] PARAGRAPH (2) of this [section]
9 SUBSECTION is voidable by the owner.

10 (b) (1) An owner who has made the acknowledgment described in subsection
11 (a)(2) of this section may rescind the contract within 5 working days from the date of the
12 contract by providing the builder with written notice of the owner's rescission of the
13 contract; and

14 (2) Upon rescission, the owner shall be entitled to a refund of any money
15 paid to the builder for the new home.

16 10-604.

17 (a) (1) Except for coverage excluded under paragraph (2) of this subsection, a
18 new home warranty provided under a new home warranty security plan shall warrant at a
19 minimum that:

20 (i) For 1 year, beginning on the warranty date, the new home is free
21 from any defects in materials and workmanship;

22 (ii) For 2 years, beginning on the warranty date, the new home is free
23 from any defect in the electrical, plumbing, heating, cooling, and ventilating systems,
24 except that in the case of appliances, fixtures and items of equipment, the warranty may
25 not exceed the length and scope of the warranty offered by the manufacturer; and

26 (iii) For 5 years, beginning on the warranty date, the new home is free
27 from any structural defect.

28 (2) A new home warranty provided under a new home warranty security
29 plan may exclude the following:

30 (i) Damage to real property that is not part of the home covered by
31 the warranty or that is not included in the purchase price of the home;

32 (ii) Bodily injury or damage to personal property;

33 (iii) Any defect in materials supplied or work performed by anyone
34 other than the builder or the builder's employees, agents, or subcontractors;

35 (iv) Any damage that the owner has not taken timely action to
36 minimize or for which the owner has failed to provide timely notice to the builder;

37 (v) Normal wear and tear or normal deterioration;

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1 (vi) Insect damage, except where the builder has failed to use proper
2 materials or construction methods designed to prevent insect infestation;

3 (vii) Any loss or damage that arises while the home is being used
4 primarily for nonresidential purposes;

5 (viii) Any damage to the extent it is caused or made worse by negligence,
6 improper maintenance or improper operations by anyone other than the builder or its
7 employees, agents, or subcontractors;

8 (ix) Any damage to the extent it is caused or made worse by changes of
9 the grading of the ground by anyone other than the builder, its employees, agents, or
10 subcontractors; and

11 (x) Any loss or damage caused by acts of God.

12 (b) A builder who has disclosed that the builder participates in a new home
13 warranty security plan shall:

14 (1) Furnish to the owner at the time of the purchase or construction
15 contract:

16 (i) The name and phone number of the builder's new home warranty
17 security plan;

18 (ii) Details of the warranty coverage provided under the plan; and

19 (iii) In a form to be determined by the Secretary, evidence that:

20 1. The builder currently is a participant in good standing with a
21 plan that satisfies the requirements of § 10-606(a) of this subtitle; and

22 2. The new home is eligible for registration or has been
23 registered in the builder's new home warranty security plan; [and]

24 (2) (I) DISCLOSE TO THE OWNER ANY ACTUAL KNOWLEDGE THAT
25 THE BUILDER HAS OF ANY HAZARDOUS OR REGULATED MATERIALS, INCLUDING
26 ASBESTOS, LEAD-BASED PAINT, RADON, UNDERGROUND STORAGE TANKS,
27 LICENSED LANDFILLS, OR OTHER ENVIRONMENTAL HAZARDS PRESENT ON THE
28 SITE OF THE NEW HOME; OR

29 (II) DISCLOSE TO THE OWNER THAT THE BUILDER IS MAKING NO
30 REPRESENTATIONS OR WARRANTIES AS TO WHETHER THERE IS ANY HAZARDOUS
31 OR REGULATED MATERIAL ON THE SITE OF THE NEW HOME; AND

32 (3) Either:

33 (i) Provide the new home with a new home warranty if the builder
34 belongs to a new home warranty security plan that:

35 1. Requires the builder to register every new home that the
36 builder builds; or

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1 2. Does not require the builder to register every newhome but
2 the builder has decided to sell the new home with a new home warranty; or

3 (ii) If the builder belongs to a new home warranty security plan that
4 does not require the builder to register every new home and the builderhas not decided
5 whether or not to sell the new home with a new home warranty, give the owner the option
6 of:

7 1. Purchasing the new home with the new home warranty
8 provided by the builder's new home warranty security plan; or

9 2. Waiving the right to warranty coverage by making the
10 affirmative waiver described in § 10-607 of this subtitle.

11 (c) (1) If the purchase or construction contract provides that the new home
12 shall be covered by a new home warranty under a new home warranty security plan it shall
13 constitute a material breach of the contract if either:

14 (i) The builder was not a participant in good standing on the date of
15 the contract with a new home warranty security plan that satisfies the requirements of §
16 10-606(a) of this subtitle; or

17 (ii) The new home has not been registered in the plan on or before the
18 warranty date.

19 (2) If there has been a material breach of the contract, the owner shall be
20 entitled to whatever remedies are provided by law including, but not limited to:

21 (i) Rescission of the contract; and

22 (ii) Except in the case of a construction contract for a new home built
23 on the owner's property, a refund of any money paid to the builder for the new home.

24 (d) (1) The builder shall notify the new home warranty security planof each
25 new home being constructed by the builder on the earlier of the date ofthe purchase or
26 construction contract or the start of construction of the new home.

27 (2) Upon receipt of notification by the builder as required in [subsection]
28 PARAGRAPH (1) of this [section] SUBSECTION, the new home shall be eligible for
29 registration in the builder's new home warranty security plan.

30 (e) (1) Upon registration of the new home in the new home warranty security
31 plan, warranty coverage which has not been waived by the owner shall beprovided
32 beginning on the warranty date for the new home constructed by the builder, provided
33 that the builder was in good standing with the new home warranty security plan at the
34 time of the contract;

35 (2) On the warranty date, the builder shall provide the owner with evidence,
36 in a form approved by the Secretary that the new home is covered by a new home
37 warranty that meets the requirements of this subtitle; and

38 (3) Within 60 days from the warranty date, the builder's new home warranty
39 security plan shall provide the owner with validated new home warranty documents.

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1 (f) A new home warranty shall benefit any successor in title to the owner who
2 occupies the home for residential purposes during the warranty period.

3 10-607.

4 (a) If in accordance with § [10-604(b)(2)] 10-604(B)(3) of this title an owner does
5 not wish to require that the new home be covered by a new home warranty, the owner
6 shall make an affirmative waiver of the coverage at the time of the purchase or
7 construction contract.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 1996.