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HB 719/95 - ECM

1996 Regular Session  
6r1175  
CF 6r1174

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**By:** ~~Delegate Kach~~ Delegates Kach, Barve, Boston, Krysiak, Walkup, Frank, Pendergrass, and Exum

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

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: February 15, 1996

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CHAPTER \_\_\_\_

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; providing that the requirements of this  
6 Act are intended to be in addition to the requirements of any other ordinance,  
7 resolution, law, or rule and that this Act may not be construed to preempt or prevail  
8 over any ordinance, resolution, law, or rule more stringent than this Act; making  
9 stylistic changes; and generally relating to the disclosure of certain hazardous  
10 materials by builders to certain persons.

11 BY repealing and reenacting, with amendments,  
12 Article - Real Property  
13 Section 10-603, 10-604, and 10-607(a)  
14 Annotated Code of Maryland  
15 (1988 Replacement Volume and 1995 Supplement)

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

18 **Article - Real Property**

19 10-603.

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

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

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

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

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

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

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

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

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

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

27 10-604.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (1) Furnish to the owner at the time of the purchase or construction  
23 contract:

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

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

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

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

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

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

4

1 (II) DISCLOSE TO THE OWNER 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; AND

4 (3) Either:

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

7 1. Requires the builder to register every new home that the  
8 builder builds; or

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

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

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

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

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

22 (i) The builder was not a participant in good standing on the date of  
23 the contract with a new home warranty security plan that satisfies the requirements of §  
24 10-606(a) of this subtitle; or

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

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

29 (i) Rescission of the contract; and

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

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

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

1 (e) (1) Upon registration of the new home in the new home warranty security  
2 plan, warranty coverage which has not been waived by the owner shall be provided  
3 beginning on the warranty date for the new home constructed by the builder, provided  
4 that the builder was in good standing with the new home warranty security plan at the  
5 time of the contract;

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

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

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

13 10-607.

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

18 SECTION 2. AND BE IT FURTHER ENACTED, That the requirements of this  
19 Act are intended to be in addition to the requirements of any other ordinance, resolution,  
20 law, or rule and that this Act may not be construed to preempt or prevail over any  
21 ordinance, resolution, law, or rule more stringent than this Act.

22 SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
23 October 1, 1996.