Unofficial Copy N1 HB 719/95 - ECM

By: Senator Boozer

Introduced and read first time: January 12, 1996 Assigned to: Judicial Proceedings

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 1219 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

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

1996 Regular Session 6lr1174 CF 6lr1175 2. STATES THAT THE BUILDER IS MAKING NO
 REPRESENTATIONS OR WARRANTIES AS TO WHETHER THERE IS ANY HAZARDOUS
 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 money15 paid to the builder for the new home.

16 10-604.

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(a) (1) Except for coverage excluded under paragraph (2) of this subsection, a
new home warranty provided under a new home warranty security plan shall warrant at a
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;

(ii) For 2 years, beginning on the warranty date, the new home is free
from any defect in the electrical, plumbing, heating, cooling, and ventilating systems,
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 newhome is free 27 from any structural defect.

(2) A new home warranty provided under a new home warranty securityplan may exclude the following:

30 (i) Damage to real property that is not part of the home covered by31 the warranty or that is not included in the purchase price of the home;

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

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

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

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(v) Normal wear and tear or normal deterioration;

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1 (vi) Insect damage, except where the builder has failed touse 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 worseby 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.
(b) A builder who has disclosed that the builder participates in a new homewarranty security plan shall:
14 (1) Furnish to the owner at the time of the purchase or construction15 contract:
16 (i) The name and phone number of the builder's new home warranty17 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:
201. The builder currently is a participant in good standing with a21 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]
 (2) (I) DISCLOSE TO THE OWNER ANY ACTUAL KNOWLEDGE THAT THE BUILDER HAS OF ANY HAZARDOUS OR REGULATED MATERIALS, INCLUDING ASBESTOS, LEAD-BASED PAINT, RADON, UNDERGROUND STORAGE TANKS, LICENSED LANDFILLS, OR OTHER ENVIRONMENTAL HAZARDS PRESENT ON THE SITE OF THE NEW HOME; OR
 (II) DISCLOSE TO THE OWNER THAT THE BUILDER IS MAKING NO REPRESENTATIONS OR WARRANTIES AS TO WHETHER THERE IS ANY HAZARDOUS OR REGULATED MATERIAL ON THE SITE OF THE NEW HOME; AND
32 (3) Either:
(i) Provide the new home with a new home warranty if the builderbelongs to a new home warranty security plan that:
351. Requires the builder to register every new home that the36 builder builds; or

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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 (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: 1. Purchasing the new home with the new home warranty 8 provided by the builder's new home warranty security plan; or 2. Waiving the right to warranty coverage by making the 10 affirmative waiver described in § 10-607 of this subtitle. (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: (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 (ii) The new home has not been registered in the plan on or before the 18 warranty date. (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: (i) Rescission of the contract; and (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. (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 of the purchase or 26 construction contract or the start of construction of the new home. (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. (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: (2) On the warranty date, the builder shall provide the owner with evidence,

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warranty that meets the requirements of this subtitle; and 37 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.

36 in a form approved by the Secretary that the new home is covered by a new home

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.

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