
By: **Senator Baker**

Introduced and read first time: February 3, 1999

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property - New Home Warranty Security Plans**

3 FOR the purpose of transferring regulatory authority over new home warranty
4 security plans from the Department of Labor, Licensing, and Regulation to the
5 Maryland Insurance Administration; transferring certain powers and duties
6 from the Secretary of Labor, Licensing, and Regulation to the Maryland
7 Insurance Commissioner; expanding the coverage of new home warranty
8 security plans; defining certain terms; repealing certain definitions; altering
9 certain definitions; making certain technical and conforming changes; and
10 generally relating to new home warranty security plans.

11 BY repealing and reenacting, with amendments,
12 Article - Real Property
13 Section 10-601, 10-602, 10-604, 10-606, and 10-607
14 Annotated Code of Maryland
15 (1996 Replacement Volume and 1998 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 10-601.

20 (a) In this subtitle the following words have the meanings indicated.

21 (B) "ADMINISTRATION" MEANS THE MARYLAND INSURANCE
22 ADMINISTRATION.

23 [(b)] (C) "Appliances, fixtures, and items of equipment" means furnaces,
24 boilers, oil tanks and fittings, air purifiers, air handling equipment, ventilating fans,
25 air conditioning equipment, water heaters, pumps, stoves, refrigerators, garbage
26 disposals, compactors, dishwashers, automatic door openers, washers and dryers,
27 bathtubs, sinks, toilets, faucets and fittings, lighting fixtures, circuit breakers, and
28 other similar items.

1 [(c)] (D) "Builder" means any person, corporation, partnership or other legal
2 entity:

3 (1) That is engaged in the business of erecting or otherwise constructing
4 a new home; or

5 (2) That purchases a completed new home for resale in the course of its
6 business.

7 [(d)] "Department" means the Department of Labor, Licensing, and
8 Regulation.]

9 (E) "COMMISSIONER" MEANS THE MARYLAND INSURANCE COMMISSIONER OR
10 THE COMMISSIONER'S DESIGNEE.

11 [(e)] (F) "Electrical systems" means all wiring, electrical boxes, switches,
12 outlets and connections up to the public utility connection.

13 [(f)] (G) "Heating, cooling, and ventilating systems" means all duct work,
14 steam, water and refrigerant lines, registers, convectors, radiation elements and
15 dampers.

16 [(g)] (H) "Load-bearing portions of the home" means the load-bearing
17 portions of the:

18 (1) Foundation system and footings;

19 (2) Beams;

20 (3) Girders;

21 (4) Lintels;

22 (5) Columns;

23 (6) Walls and partitions;

24 (7) Floor systems; and

25 (8) Roof framing system.

26 [(h)] (I) "Local jurisdiction" means any county and any municipal corporation
27 in Maryland subject to the provisions of Article XI-E of the Constitution.

28 [(i)] (J) (1) "New home" means every newly constructed private dwelling
29 unit in the State and the fixtures and structure that are made a part of a newly
30 constructed private dwelling unit at the time of construction.

31 (2) "New home" does not include:

- 1 (i) Outbuildings, including detached garages and detached
2 carports, except outbuildings that contain plumbing, electrical, heating, cooling, or
3 ventilation systems serving the new home;
- 4 (ii) Driveways;
- 5 (iii) Walkways;
- 6 (iv) Patios and decks;
- 7 (v) Boundary walls;
- 8 (vi) Retaining walls not necessary for the structural stability of the
9 new home;
- 10 (vii) Landscaping;
- 11 (viii) Fences;
- 12 (ix) Off-site improvements;
- 13 (x) Appurtenant recreational facilities; and
- 14 (xi) Other similar items as determined by the Secretary.

15 [(j)] (K) "New home warranty" means a series of written promises made by a
16 builder that meets the requirements of this subtitle.

17 [(k)] (L) "New home warranty security plan" means a plan that meets the
18 requirements of § 10-606 of this title.

19 [(l)] (M) "Owner" means the purchaser of a new home who uses the home
20 primarily for residential purposes during the warranty period.

21 [(m)] (N) "Plumbing systems" means:

- 22 (1) Gas supply lines and fittings;
- 23 (2) Water supply, waste, and vent pipes and their fittings;
- 24 (3) Septic tanks and their drain fields; and
- 25 (4) (i) Water, gas, and sewer service piping and their extensions to the
26 tie-in of a public utility connection; or
- 27 (ii) On-site wells and sewage disposal systems.

28 [(n)] "Secretary" means the Secretary of Labor, Licensing, and Regulation or the
29 Secretary's designee.]

1 (o) (1) "Structural defect" means any defect in the load-bearing portions of a
2 new home that adversely affects its load-bearing function [to the extent that the
3 home becomes or is in serious danger of becoming unsafe, unsanitary, or otherwise
4 uninhabitable].

5 (2) "Structural defect" includes damage due to subsidence, expansion, or
6 lateral movement of soil that has been located or relocated by the builder.

7 (3) "Structural defect" does not include damage caused by movement of
8 the soil:

9 (i) Resulting from a flood or earthquake; or

10 (ii) For which compensation has been provided.

11 (p) "Warranty date" means the first day that the owner occupies the new
12 home, settles on the new home, makes the final contract payment on the new home,
13 or obtains an occupancy permit for the new home if the home is built on the owner's
14 property, whichever is earlier.

15 10-602.

16 (a) Prior to entering into a contract for sale or construction of a new home, the
17 builder shall disclose in writing to the owner whether:

18 (1) The builder participates in a new home warranty security plan
19 through which:

20 (i) The builder must provide the owner with a new home warranty;
21 or

22 (ii) The builder may provide a new home warranty to the owner at
23 the owner's option; or

24 (2) The builder does not participate in a new home warranty security
25 plan.

26 (b) The disclosure [will] SHALL be made on a form approved by the
27 [Secretary] COMMISSIONER.

28 10-604.

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

32 (I) THE NEW HOME MEETS THE APPLICABLE BUILDING AND
33 CONSTRUCTION CODES IN EFFECT IN THE LOCAL JURISDICTION ON THE WARRANTY
34 DATE; AND

1 [(i)] (II) 1. For 1 year, beginning on the warranty date, the new
2 home is free from any defects in materials and workmanship;

3 [(ii)] 2. For 2 years, beginning on the warranty date, the new
4 home is free from any defect in the electrical, plumbing, heating, cooling, and
5 ventilating systems, except that in the case of appliances, fixtures and items of
6 equipment, the warranty may not exceed the length and scope of the warranty offered
7 by the manufacturer; and

8 [(iii)] 3. For 5 years, beginning on the warranty date, the new
9 home is free from any structural defect.

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

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

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

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

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

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

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

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

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

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

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

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

33 (1) Furnish to the owner at the time of the purchase or construction
34 contract:

- 1 (i) The name and phone number of the builder's new home
2 warranty security plan;
- 3 (ii) Details of the warranty coverage provided under the plan; and
- 4 (iii) In a form to be determined by the [Secretary] COMMISSIONER,
5 evidence that:

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

8 2. The new home is eligible for registration or has been
9 registered in the builder's new home warranty security plan; and

10 (2) Either:

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

13 1. Requires the builder to register every new home that the
14 builder builds; or

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

17 (ii) If the builder belongs to a new home warranty security plan
18 that does not require the builder to register every new home and the builder has not
19 decided whether or not to sell the new home with a new home warranty, give the
20 owner the option of:

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

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

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

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

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

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

35 (i) Rescission of the contract; and

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

4 (d) (1) The builder shall notify the new home warranty security plan of each
5 new home being constructed by the builder on the earlier of the date of the purchase
6 or construction contract or the start of construction of the new home.

7 (2) Upon receipt of notification by the builder as required in paragraph
8 (1) of this subsection, the new home shall be eligible for registration in the builder's
9 new home warranty security plan.

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

15 (2) On the warranty date, the builder shall provide the owner with
16 evidence, in a form approved by the [Secretary] COMMISSIONER that the new home
17 is covered by a new home warranty that meets the requirements of this subtitle; and

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

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

23 10-606.

24 (a) A new home warranty security plan shall:

25 (1) Provide for the payment of claims against a builder for defects
26 warranted under this subtitle;

27 (2) Be operated by a corporation, partnership, or other legal entity
28 authorized to do business in Maryland;

29 (3) Demonstrate to the [Secretary] COMMISSIONER that the plan will
30 maintain financial security to cover the total number of claims that the plan
31 reasonably anticipates will be filed against participating builders;

32 (4) File with the [Secretary] COMMISSIONER a surety bond or an
33 irrevocable letter of credit from a federally insured financial institution in an amount
34 set by the [Secretary] COMMISSIONER, but not less than \$100,000, for the benefit of
35 owners injured by the failure of the new home warranty security plan to pay claims as
36 required under this subtitle;

1 (5) Provide within the new home warranty documents the performance
2 standards that describe the builder's obligations for defects warranted under this
3 subtitle;

4 (6) Provide for the mediation of disputes between an owner and a builder
5 before a claim will be paid by the builder's new home warranty security plan; and

6 (7) Meet any other requirements determined by the [Secretary]
7 COMMISSIONER and be approved by the [Secretary] COMMISSIONER.

8 (b) (1) The [Secretary] COMMISSIONER may revoke or suspend approval for
9 a new home warranty security plan if the [Secretary] COMMISSIONER determines
10 that the plan:

11 (i) Is unable to meet its obligations under a new home warranty; or

12 (ii) Is administered in a manner that denies owners the warranty
13 coverage required under this subtitle.

14 (2) Except for new homes that were registered in the new home warranty
15 security plan prior to the revocation or suspension and for which a purchase or
16 construction contract has been executed, during the time period that approval for a
17 new home warranty security plan is revoked or suspended by the Secretary, the new
18 home warranty security plan may not provide warranty coverage for any new homes
19 built in Maryland.

20 (c) (1) Unless the [Secretary] COMMISSIONER determines that a shorter
21 notice period is needed to protect the interests of the builders and owners, the
22 [Secretary] COMMISSIONER shall give a new home warranty security plan at least 90
23 days notice that the [Secretary's] COMMISSIONER'S approval of the plan is being
24 revoked or suspended; and

25 (2) A new home warranty security plan shall give to its participating
26 builders at least 60 days' notice of the plan's revocation or suspension, or such shorter
27 time as specified by the [Secretary] COMMISSIONER if the plan receives less than 90
28 days' notice.

29 10-607.

30 (a) If in accordance with § 10-604(b)(2) of this title an owner does not wish to
31 require that the new home be covered by a new home warranty, the owner shall make
32 an affirmative waiver of the coverage at the time of the purchase or construction
33 contract.

34 (b) Before an owner makes a waiver under this section, the owner must be
35 informed in writing by the builder of the cost, nature, and extent of warranty
36 coverage that would be provided under the builder's new home warranty security
37 plan if not waived by the owner.

1 (c) An owner who has made an affirmative waiver under this section may
2 rescind the waiver and request a new home warranty in accordance with the
3 provisions of this subtitle within 3 working days from the date of the contract by
4 providing the builder with written notice of the owner's rescission of the waiver.

5 (d) The waiver under this section shall be made on a form determined by the
6 [Secretary] COMMISSIONER and shall contain a section in which an owner who has
7 made a waiver may rescind the waiver pursuant to subsection (c) of this section.

8 (e) The form shall clearly and concisely explain in 12 point boldface type on a
9 separate piece of paper:

10 (1) The cost, nature, and extent of warranty coverage that would be
11 provided under the builder's new home warranty security plan if not waived by the
12 owner;

13 (2) That the failure of the owner to make a waiver requires the builder to
14 provide a new home warranty;

15 (3) That a builder may not refuse to build a new home for the owner
16 because the owner refuses to waive warranty coverage;

17 (4) That the owner should be aware that builders of new homes in the
18 State of Maryland are not required to be licensed by the State and most local
19 jurisdictions;

20 (5) Without a new home warranty or other express warranties, the
21 owner may be afforded only certain limited implied warranties as are provided by
22 law; and

23 (6) That an owner who has made an affirmative waiver of the warranty
24 coverage still may rescind the waiver and request a new home warranty in accordance
25 with the provisions of Title 10, Subtitle 6 of the Real Property Article, within 3
26 working days from the date of the contract by providing the builder with written
27 notice of the owner's rescission of the waiver.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 1999.