
By: **Delegates Kach and V. Clagett**
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Assigned to: Environmental Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 15, 2005

CHAPTER _____

1 AN ACT concerning

2 **Real Property - Residential Property Disclaimer and Disclosure Statements**
3 **- Latent Defects**

4 FOR the purpose of requiring that a residential property disclaimer statement ~~to~~
5 ~~state that a vendor represents and warrants that~~ disclose certain latent defects
6 of which the vendor has ~~no~~ actual knowledge ~~of latent defects in the real~~
7 ~~property or improvements on the real property except as disclosed on the~~
8 ~~residential property disclaimer statement and~~ state that, except for latent
9 defects that are disclosed, the vendor makes no representations or warranties
10 and that a purchaser will receive the real property "as is", with all defects,
11 including latent defects, that may exist, except as otherwise provided in the
12 contract of sale of the real property; requiring a residential property disclosure
13 form to include a list of all defects, including latent defects, or information of
14 which the vendor has actual knowledge in relation to certain items; defining a
15 certain term; and generally relating to residential property disclaimer and
16 disclosure statements.

17 BY repealing and reenacting, with amendments,
18 Article - Real Property
19 Section 10-702
20 Annotated Code of Maryland
21 (2003 Replacement Volume and 2004 Supplement)

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

1 **Article - Real Property**

2 10-702.

3 (a) IN THIS SECTION, "LATENT DEFECTS" MEANS MATERIAL DEFECTS IN REAL
4 PROPERTY OR AN IMPROVEMENT TO REAL PROPERTY ~~OF WHICH THE VENDOR HAS~~
5 ~~ACTUAL KNOWLEDGE~~ THAT:

6 (1) A PURCHASER WOULD NOT REASONABLY BE EXPECTED TO
7 ASCERTAIN OR OBSERVE BY A CAREFUL VISUAL INSPECTION OF THE REAL
8 PROPERTY; AND

9 (2) WOULD POSE A DIRECT THREAT TO THE HEALTH OR SAFETY OF:

10 (I) THE PURCHASER; OR

11 (II) AN OCCUPANT OF THE REAL PROPERTY, INCLUDING A TENANT
12 OR INVITEE OF THE PURCHASER.

13 (B) (1) This section applies only to single family residential real property
14 improved by four or fewer single family units.

15 (2) This section does not apply to:

16 (i) The initial sale of single family residential real property:

17 1. That has never been occupied; or

18 2. For which a certificate of occupancy has been issued
19 within 1 year before the vendor and purchaser enter into a contract of sale;

20 (ii) A transfer that is exempt from the transfer tax under § 13-207
21 of the Tax - Property Article, except land installment contracts of sale under §
22 13-207(a)(11) of the Tax - Property Article and options to purchase real property
23 under § 13-207(a)(12) of the Tax - Property Article;

24 (iii) A sale by a lender or an affiliate or subsidiary of a lender that
25 acquired the real property by foreclosure or deed in lieu of foreclosure;

26 (iv) A sheriff's sale, tax sale, or sale by foreclosure, partition, or by
27 court appointed trustee;

28 (v) A transfer by a fiduciary in the course of the administration of a
29 decedent's estate, guardianship, conservatorship, or trust;

30 (vi) A transfer of single family residential real property to be
31 converted by the buyer into a use other than residential use or to be demolished; or

32 (vii) A sale of unimproved real property.

1 [(b)] (C) (1) A vendor of single family residential real property shall
2 complete and deliver to each purchaser:

3 (i) A written residential property condition disclosure statement on
4 a form provided by the State Real Estate Commission; or

5 (ii) A written residential property disclaimer statement on a form
6 provided by the State Real Estate Commission.

7 (2) The State Real Estate Commission shall develop by regulation a
8 single standardized form that includes the residential property condition disclosure
9 and disclaimer statements required by this subsection.

10 [(c)] (D) The residential property disclaimer statement shall ~~state~~ :

11 (1) DISCLOSE ANY LATENT DEFECTS OF WHICH THE VENDOR HAS
12 ACTUAL KNOWLEDGE THAT A PURCHASER WOULD NOT REASONABLY BE EXPECTED
13 TO ASCERTAIN BY A CAREFUL VISUAL INSPECTION AND THAT WOULD POSE A DIRECT
14 THREAT TO THE HEALTH OR SAFETY OF THE PURCHASER OR AN OCCUPANT; AND

15 (2) STATE that:

16 ~~(+)~~ (I) ~~[The] EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH~~
17 ~~FOR LATENT DEFECTS DISCLOSED UNDER ITEM (1) OF THIS SUBSECTION,~~ THE vendor
18 makes no representations or warranties as to the condition of the real property or any
19 improvements on the real property; and

20 ~~(II) THE VENDOR REPRESENTS AND WARRANTS:~~

21 ~~1. THAT THE VENDOR HAS NO ACTUAL KNOWLEDGE OF~~
22 ~~LATENT DEFECTS IN THE REAL PROPERTY OR AN IMPROVEMENT TO THE REAL~~
23 ~~PROPERTY EXCEPT AS DISCLOSED ON THE RESIDENTIAL PROPERTY DISCLAIMER~~
24 ~~STATEMENT;~~

25 ~~2. THAT A PURCHASER WOULD NOT REASONABLY BE~~
26 ~~EXPECTED TO ASCERTAIN OR OBSERVE THE LATENT DEFECTS BY A CAREFUL VISUAL~~
27 ~~INSPECTION OF THE REAL PROPERTY; AND~~

28 ~~3. THAT THE LATENT DEFECTS WOULD POSE A DIRECT~~
29 ~~THREAT TO THE HEALTH OR SAFETY OF THE PURCHASER OR AN OCCUPANT OF THE~~
30 ~~REAL PROPERTY, INCLUDING A TENANT OR INVITEE OF THE PURCHASER; AND~~

31 ~~(2)~~ (II) The purchaser will be receiving the real property "as is", with
32 all defects, INCLUDING LATENT DEFECTS, that may exist, except as otherwise
33 provided in the contract of sale of THE real property.

34 [(d)] (E) (1) The residential property disclosure statement shall disclose
35 those items that, to carry out the provisions of this section, the State Real Estate
36 Commission requires to be disclosed about the physical condition of the property.

1 (2) The disclosure form shall include a list of defects, INCLUDING
2 LATENT DEFECTS, or information of which the vendor has actual knowledge in
3 relation to the following:

4 (i) Water and sewer systems, including the source of household
5 water, water treatment systems, and sprinkler systems;

6 (ii) Insulation;

7 (iii) Structural systems, including the roof, walls, floors, foundation,
8 and any basement;

9 (iv) Plumbing, electrical, heating, and air conditioning systems;

10 (v) Infestation of wood-destroying insects;

11 (vi) Land use matters;

12 (vii) Hazardous or regulated materials, including asbestos,
13 lead-based paint, radon, underground storage tanks, and licensed landfills;

14 (viii) Any other material defects [known to the vendor] OF WHICH
15 THE VENDOR HAS ACTUAL KNOWLEDGE; and

16 (ix) Whether the smoke detectors will provide an alarm in the event
17 of a power outage.

18 (3) The disclosure form shall contain:

19 (i) A notice to prospective purchasers and vendors that the
20 prospective purchaser or vendor may wish to obtain professional advice about or an
21 inspection of the property;

22 (ii) A notice to prospective purchasers that disclosure by the seller
23 is not a substitute for an inspection by an independent home inspection company, and
24 that the purchaser may wish to obtain such an inspection;

25 (iii) A notice to purchasers that the information contained in the
26 disclosure statement is the representation of the vendor and is not the representation
27 of the real estate broker or salesperson, if any; and

28 (iv) A notice to purchasers that the information contained in the
29 disclosure statement is not a warranty by the vendor as to:

30 1. The condition of the property of which the vendor has no
31 actual knowledge; or

32 2. Other conditions of which the vendor has no actual
33 knowledge.

1 (4) The vendor is not required to undertake or provide an independent
2 investigation or inspection of the property in order to make the disclosures required
3 by this section.

4 [(e)] (F) (1) Except as provided in paragraphs (2) and (3) of this subsection,
5 the vendor shall deliver the completed disclosure or disclaimer statement required by
6 this section to the purchaser on or before entering into a contract of sale by the vendor
7 and the purchaser.

8 (2) The disclosure or disclaimer statement shall be delivered to each
9 purchaser before the execution of the contract of sale by the purchaser in the case of
10 a land installment contract, as defined in § 10-101 of this title.

11 (3) The disclosure or disclaimer statement shall be delivered to each
12 purchaser before the execution by the purchaser of an option to purchase agreement
13 or a lease agreement containing an option to purchase provision.

14 (4) At the time the disclosure or disclaimer statement is delivered, each
15 purchaser shall date and sign a written acknowledgment of receipt, which shall be
16 included in or attached to the contract of sale.

17 [(f)] (G) A purchaser who receives the disclosure or disclaimer statement on
18 or before entering into the contract of sale does not have the right to rescind the
19 contract of sale based upon the information contained in the statement.

20 [(g)] (H) (1) A purchaser who does not receive the disclosure or disclaimer
21 statement on or before entering into the contract of sale has the unconditional right,
22 upon written notice to the vendor or vendor's agent:

23 (i) To rescind the contract of sale at any time before the receipt of
24 the disclosure or disclaimer statement or within 5 days following receipt of the
25 disclosure or disclaimer statement; and

26 (ii) To the immediate return of any deposits made on account of the
27 contract.

28 (2) A purchaser's right to rescind the contract of sale under this
29 subsection terminates if not exercised:

30 (i) Before making a written application to a lender for a mortgage
31 loan, if the lender discloses in writing at or before the time application is made that
32 the right to rescind terminates on submission of the application; or

33 (ii) Within 5 days following receipt of a written disclosure from a
34 lender who has received the purchaser's application for a mortgage loan, if the
35 lender's disclosure states that the purchaser's right to rescind terminates at the end
36 of that 5-day period.

37 [(h)] (I) (1) A disclosure statement made under this section does not
38 constitute a warranty by the vendor as to:

1 (i) The condition of the property of which the vendor has no actual
2 knowledge; or

3 (ii) Other conditions of which the vendor has no actual knowledge.

4 (2) A vendor is not liable for an error, inaccuracy, or omission in a
5 disclosure statement made under this section if the error, inaccuracy, or omission was
6 based upon information that was:

7 (i) Not within the actual knowledge of the vendor;

8 (ii) Provided to the vendor by a unit or instrumentality of the State
9 government or of a political subdivision; or

10 (iii) Provided to the vendor by a report or opinion prepared by a
11 licensed engineer, land surveyor, geologist, wood-destroying insect control expert,
12 contractor, or other home inspection expert, dealing with matters within the scope of
13 the professional's license or expertise.

14 [(i)] (J) (1) A report or opinion prepared by an expert shall satisfy the
15 requirement of subsection [(h)(2)(iii)] (I)(2)(III) of this section if the information is
16 provided to the vendor pursuant to a written or oral request for the information.

17 (2) In responding to a request for information, the reporting party:

18 (i) May indicate, in writing, an understanding that the information
19 provided will be used in fulfilling the requirements of this section; and

20 (ii) If so indicating, shall indicate the required disclosures, or parts
21 of required disclosures, to which the information being provided is applicable.

22 (3) If the reporting party provides the statement under paragraph (2)(ii)
23 of this subsection, the reporting party is not responsible for any items of information,
24 or parts of items, other than those expressly set forth in the statement.

25 [(j)] (K) (1) The rights of a purchaser under this section may not be waived
26 in the contract of sale and any attempted waiver is void.

27 (2) Any rights of the purchaser to terminate the contract provided by this
28 section are waived conclusively if not exercised before:

29 (i) Closing or occupancy by the purchaser, whichever occurs first,
30 in the event of a sale; or

31 (ii) Occupancy, in the event of a lease with option to purchase.

32 [(k)] (L) Each contract of sale shall include a conspicuous notice advising the
33 purchaser of the purchaser's rights as set forth in this section.

1 (1) (M) (1) The real estate licensee representing a vendor of residential
2 real property as the listing broker has a duty to inform the vendor of the vendor's
3 rights and obligations under this section.

4 (2) The real estate licensee representing a purchaser of residential real
5 property, or, if the purchaser is not represented by a licensee, the real estate licensee
6 representing an owner of residential real estate and dealing with the purchaser, has
7 a duty to inform the purchaser of the purchaser's rights and obligations under this
8 section.

9 (3) If a real estate licensee performs the duties specified in this
10 subsection, the licensee:

11 (i) Shall have no further duties under this section to the parties to
12 a residential real estate transaction; and

13 (ii) Is not liable to any party to a residential real estate transaction
14 for a violation of this section.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2005.