

**ENROLLED BILL**

-- Judicial Proceedings/Environmental Matters --

Introduced by **Senator Haines**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_ M.

\_\_\_\_\_  
President.

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 any latent defect  
6 defects 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; requiring the State Real Estate Commission to include certain  
16 information in a certain form; and generally relating to residential property  
17 disclaimer and disclosure statements.

1 BY repealing and reenacting, with amendments,  
2 Article - Real Property  
3 Section 10-702  
4 Annotated Code of Maryland  
5 (2003 Replacement Volume and 2004 Supplement)

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

8 **Article - Real Property**

9 10-702.

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

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

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

17 (I) THE PURCHASER; OR

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

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

22 (2) This section does not apply to:

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

24 1. That has never been occupied; or

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

27 (ii) A transfer that is exempt from the transfer tax under § 13-207  
28 of the Tax - Property Article, except land installment contracts of sale under §  
29 13-207(a)(11) of the Tax - Property Article and options to purchase real property  
30 under § 13-207(a)(12) of the Tax - Property Article;

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

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

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

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

5 (vii) A sale of unimproved real property.

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

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

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

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

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

16 (1) DISCLOSE ANY LATENT DEFECTS OF WHICH THE VENDOR HAS  
17 ACTUAL KNOWLEDGE; AND

18 (2) STATE that:

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

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

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

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

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

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

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

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

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

9 (ii) Insulation;

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

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

13 (v) Infestation of wood-destroying insects;

14 (vi) Land use matters;

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

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

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

21 (3) The disclosure form shall contain:

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

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

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

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

33 1. The condition of the property of which the vendor has no  
34 actual knowledge; or



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34        [(k)]     (L)     Each contract of sale shall include a conspicuous notice advising the  
35 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, when the State Real  
16 Estate Commission revises the standardized residential property condition disclosure  
17 and disclaimer statement form to reflect the provisions of this Act, the Commission  
18 shall include a definition or explanation of the term "latent defects".

19        SECTION ~~2.~~3. AND BE IT FURTHER ENACTED, That this Act shall take  
20 effect October 1, 2005.