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By: **Senator Haines**

Introduced and read first time: January 21, 2005

Assigned to: Judicial Proceedings

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A BILL ENTITLED

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

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

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

22 **Article - Real Property**

23 10-702.

24 (a) IN THIS SECTION, "LATENT DEFECTS" MEANS MATERIAL DEFECTS IN REAL  
25 PROPERTY OR AN IMPROVEMENT TO REAL PROPERTY OF WHICH THE VENDOR HAS  
26 ACTUAL KNOWLEDGE THAT:

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

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

2 (I) THE PURCHASER; OR

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

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

7 (2) This section does not apply to:

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

9 1. That has never been occupied; or

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

12 (ii) A transfer that is exempt from the transfer tax under § 13-207  
13 of the Tax - Property Article, except land installment contracts of sale under §  
14 13-207(a)(11) of the Tax - Property Article and options to purchase real property  
15 under § 13-207(a)(12) of the Tax - Property Article;

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

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

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

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

24 (vii) A sale of unimproved real property.

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

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

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

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

1 [(c)] (D) The residential property disclaimer statement shall state that:

2 (1) (I) [The] EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH,  
3 THE vendor makes no representations or warranties as to the condition of the real  
4 property or any improvements on the real property; and

5 (II) THE VENDOR REPRESENTS AND WARRANTS:

6 1. THAT THE VENDOR HAS NO ACTUAL KNOWLEDGE OF  
7 LATENT DEFECTS IN THE REAL PROPERTY OR AN IMPROVEMENT TO THE REAL  
8 PROPERTY EXCEPT AS DISCLOSED ON THE RESIDENTIAL PROPERTY DISCLAIMER  
9 STATEMENT;

10 2. THAT A PURCHASER WOULD NOT REASONABLY BE  
11 EXPECTED TO ASCERTAIN OR OBSERVE THE LATENT DEFECTS BY A CAREFUL VISUAL  
12 INSPECTION OF THE REAL PROPERTY; AND

13 3. THAT THE LATENT DEFECTS WOULD POSE A DIRECT  
14 THREAT TO THE HEALTH OR SAFETY OF THE PURCHASER OR AN OCCUPANT OF THE  
15 REAL PROPERTY, INCLUDING A TENANT OR INVITEE OF THE PURCHASER; AND

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

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

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

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

27 (ii) Insulation;

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

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

31 (v) Infestation of wood-destroying insects;

32 (vi) Land use matters;

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

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

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

5 (3) The disclosure form shall contain:

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

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

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

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

17 1. The condition of the property of which the vendor has no  
18 actual knowledge; or

19 2. Other conditions of which the vendor has no actual  
20 knowledge.

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

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

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

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

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

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

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

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

10 (ii) To the immediate return of any deposits made on account of the  
11 contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 [(l)] (M) (1) The real estate licensee representing a vendor of residential  
22 real property as the listing broker has a duty to inform the vendor of the vendor's  
23 rights and obligations under this section.

24 (2) The real estate licensee representing a purchaser of residential real  
25 property, or, if the purchaser is not represented by a licensee, the real estate licensee  
26 representing an owner of residential real estate and dealing with the purchaser, has  
27 a duty to inform the purchaser of the purchaser's rights and obligations under this  
28 section.

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

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

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

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

