

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 412

(Delegates Kach and V. Clagett)

Environmental Matters

Judicial Proceedings

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

This bill requires a seller of single family residential real property to include specified information about latent defects in a disclaimer or disclosure given to a purchaser before entering into a sales contract.

Fiscal Summary

State Effect: Any change in State activities would not materially affect State finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: A disclaimer statement must disclose any latent defects of which the seller has actual knowledge that a purchaser would not reasonably be expected to ascertain by a careful visual inspection and that would pose a direct threat to the health or safety of the purchaser or an occupant. The bill specifies that the defects that may exist on "as is" property include latent defects.

A disclosure statement must include latent defects among the list of defects that must be disclosed.

Under the bill, a “latent defect” is a material defect that: (1) a purchaser would not reasonably be expected to ascertain or observe by a careful inspection; and (2) poses a direct threat to the health or safety of the purchaser or an occupant.

Current Law: Generally, a seller of single family residential real property must complete and give to the purchaser a written disclosure or disclaimer statement about the condition of the property before executing the contract of sale.

A disclaimer statement must state that the seller makes no representations or warranties as to the condition of the property or any improvements and that the purchaser will be receiving the property “as is.”

A disclosure statement must include information of which the seller has actual knowledge about: (1) water and sewer systems; (2) insulation; (3) structural systems; (4) plumbing, electrical heating, and air conditioning systems; (5) infestation of wood-destroying insects; (6) land use matters; (7) hazardous or regulated materials, such as asbestos or underground storage tanks; (8) any other material defects about which the seller knows; and (9) whether the smoke detectors will provide an alarm in the event of a power outage. The seller is not required to undertake or provide an independent investigation or inspection of the property in order to make the required disclosures.

A disclosure or disclaimer statement must be presented on a form provided by the State Real Estate Commission and must include a notice that the representations are those of the seller and not the real estate broker or salesperson.

Additional Information

Prior Introductions: Similar bills, HB 1036 and SB 371, were introduced during the 2004 session. SB 371 passed in the Senate and was referred to the Environmental Matters Committee in the House. Both bills received an unfavorable report from the Environmental Matters Committee.

Cross File: SB 192 (Senator Haines) – Judicial Proceedings.

Information Source(s): Department of Labor, Licensing, and Regulation; Office of the Attorney General (Consumer Protection Division); Department of Legislative Services

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