

HOUSE BILL 1183

N1

71r3175

By: **Delegates Branch, Barve, and Jones**
Introduced and read first time: February 20, 2007
Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Residential Real Property – Inspection and Disclosure – Mold**

3 FOR the purpose of requiring that a residential property disclaimer statement include
4 information on abnormal levels of mold spores under certain circumstances;
5 requiring a vendor to provide an independent investigation or inspection of the
6 property to determine whether abnormal levels of mold spores exist; requiring a
7 vendor to disclose the result of the inspection to the purchaser if abnormal
8 levels of mold spores exist; and generally relating to investigation or inspection
9 of a certain property for mold spores and disclosure of the result of the
10 inspection to certain real property purchasers.

11 BY repealing and reenacting, with amendments,
12 Article – Real Property
13 Section 10–702
14 Annotated Code of Maryland
15 (2003 Replacement Volume and 2006 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 10–702.

20 (a) In this section, “latent defects” means material defects in real property or
21 an improvement to real property that:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (1) A purchaser would not reasonably be expected to ascertain or
2 observe by a careful visual inspection of the real property; and

3 (2) Would pose a direct threat to the health or safety of:

4 (i) The purchaser; or

5 (ii) An occupant of the real property, including a tenant or
6 invitee of the purchaser.

7 (b) (1) This section applies only to single family residential real property
8 improved by four or fewer single family units.

9 (2) This section does not apply to:

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

11 1. That has never been occupied; or

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

14 (ii) A transfer that is exempt from the transfer tax under §
15 13–207 of the Tax – Property Article, except land installment contracts of sale under §
16 13–207(a)(11) of the Tax – Property Article and options to purchase real property
17 under § 13–207(a)(12) of the Tax – Property Article;

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

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

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

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

26 (vii) A sale of unimproved real property.

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

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

5 (ii) A written residential property disclaimer statement on a
6 form 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 (d) The residential property disclaimer statement shall:

11 (1) Disclose any latent defects of which the vendor has actual
12 knowledge that a purchaser would not reasonably be expected to ascertain by a careful
13 visual inspection and that would pose a direct threat to the health or safety of the
14 purchaser or an occupant; and

15 (2) State that:

16 (i) Except for latent defects disclosed under item (1) of this
17 subsection, the vendor makes no representations or warranties as to the condition of
18 the real property or any improvements on the real property; and

19 (ii) The purchaser will be receiving the real property “as is”,
20 with all defects, including latent defects, that may exist, except as otherwise provided
21 in the contract of sale of the real property.

22 (e) (1) The residential property disclosure statement shall disclose those
23 items that, to carry out the provisions of this section, the State Real Estate
24 Commission requires to be disclosed about the physical condition of the property.

25 (2) The disclosure form shall include a list of defects, including latent
26 defects, or information of which the vendor has actual knowledge in relation to the
27 following:

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

30 (ii) Insulation;

- 1 (iii) Structural systems, including the roof, walls, floors,
2 foundation, and any basement;
- 3 (iv) Plumbing, electrical, heating, and air conditioning systems;
- 4 (v) Infestation of wood-destroying insects;
- 5 (vi) **ABNORMAL LEVELS OF MOLD SPORES;**
- 6 **(VII)** Land use matters;
- 7 [[vii]] **(VIII)** Hazardous or regulated materials, including asbestos,
8 lead-based paint, radon, underground storage tanks, and licensed landfills;
- 9 [[viii]] **(IX)** Any other material defects of which the vendor has
10 actual knowledge; and
- 11 [[ix]] **(X)** Whether the smoke detectors will provide an alarm in
12 the event of a power outage.
- 13 (3) The disclosure form shall contain:
- 14 (i) A notice to prospective purchasers and vendors that the
15 prospective purchaser or vendor may wish to obtain professional advice about or an
16 inspection of the property;
- 17 (ii) A notice to prospective purchasers that disclosure by the
18 seller is not a substitute for an inspection by an independent home inspection
19 company, and that the purchaser may wish to obtain such an inspection;
- 20 (iii) A notice to purchasers that the information contained in the
21 disclosure statement is the representation of the vendor and is not the representation
22 of the real estate broker or salesperson, if any; and
- 23 (iv) A notice to purchasers that the information contained in the
24 disclosure statement is not a warranty by the vendor as to:
- 25 1. The condition of the property of which the vendor has
26 no actual knowledge; or
- 27 2. Other conditions of which the vendor has no actual
28 knowledge.

1 (4) (I) [The] **SUBJECT TO SUBPARAGRAPH (II) OF THIS**
2 **PARAGRAPH, THE** vendor is not required to undertake or provide an independent
3 investigation or inspection of the property in order to make the disclosures required by
4 this section.

5 **(II) 1. THE VENDOR SHALL PROVIDE AN INDEPENDENT**
6 **INVESTIGATION OR INSPECTION OF THE PROPERTY TO DETERMINE WHETHER**
7 **ABNORMAL LEVELS OF MOLD SPORES EXIST.**

8 **2. IF ABNORMAL LEVELS OF MOLD SPORES EXIST,**
9 **THE VENDOR SHALL DISCLOSE THE RESULT OF THE INSPECTION TO THE**
10 **PURCHASER IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION.**

11 (f) (1) Except as provided in paragraphs (2) and (3) of this subsection, the
12 vendor shall deliver the completed disclosure or disclaimer statement required by this
13 section to the purchaser on or before entering into a contract of sale by the vendor and
14 the purchaser.

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

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

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

24 (g) A purchaser who receives the disclosure or disclaimer statement on or
25 before entering into the contract of sale does not have the right to rescind the contract
26 of sale based upon the information contained in the statement.

27 (h) (1) A purchaser who does not receive the disclosure or disclaimer
28 statement on or before entering into the contract of sale has the unconditional right,
29 upon written notice to the vendor or vendor's agent:

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

1 (ii) To the immediate return of any deposits made on account of
2 the contract.

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

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

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

12 (i) (1) A disclosure statement made under this section does not constitute
13 a warranty by the vendor as to:

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

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

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

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

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

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

28 (j) (1) A report or opinion prepared by an expert shall satisfy the
29 requirement of subsection (i)(2)(iii) of this section if the information is provided to the
30 vendor pursuant to a written or oral request for the information.

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

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

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

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

9 (k) (1) The rights of a purchaser under this section may not be waived in
10 the contract of sale and any attempted waiver is void.

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

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

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

16 (l) Each contract of sale shall include a conspicuous notice advising the
17 purchaser of the purchaser's rights as set forth in this section.

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

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

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

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

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

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2007.