

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

Re-referred to: Environmental Matters, February 26, 2007

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 27, 2007

CHAPTER _____

1 AN ACT concerning

2 **Residential Real Property – ~~Inspection and Disclosure~~ Mold Assessment**
3 **Standards – Task Force**

4 FOR the purpose of ~~requiring that a residential property disclaimer statement include~~
5 ~~information on abnormal levels of mold spores under certain circumstances;~~
6 ~~requiring a vendor to provide an independent investigation or inspection of the~~
7 ~~property to determine whether abnormal levels of mold spores exist; requiring a~~
8 ~~vendor to disclose the result of the inspection to the purchaser if abnormal~~
9 ~~levels of mold spores exist; and generally relating to investigation or inspection~~
10 ~~of a certain property for mold spores and disclosure of the result of the~~
11 ~~inspection to certain real property purchasers~~ establishing the Task Force on
12 the Development of Mold Assessment Standards in Residential Real Property;
13 providing for the membership of the Task Force; providing for the designation of
14 the chair of the Task Force; providing for staff for the Task Force; prohibiting a
15 member of the Task Force from receiving certain compensation; providing for
16 the duties of the Task Force; requiring the Task Force to report to certain
17 agencies and the General Assembly on or before a certain date; providing for the
18 termination of this Act; and generally relating to the Task Force on the
19 Development of Mold Assessment Standards in Residential Real Property.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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 2006 Supplement)~~

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

8 (a) There is a Task Force on the Development of Mold Assessment Standards
9 in Residential Real Property.

10 (b) The Task Force consists of the following members:

11 (1) one member of the Senate of Maryland, appointed by the President
12 of the Senate;

13 (2) one member of the House of Delegates, appointed by the Speaker of
14 the House;

15 (3) the Secretary of Health and Mental Hygiene, or the Secretary's
16 designee;

17 (4) the Secretary of the Maryland Department of the Environment, or
18 the Secretary's designee; and

19 (5) the following three members, jointly appointed by the President of
20 the Senate and the Speaker of the House:

21 (i) one member of the Legislative Liaison Committee of the
22 Section of Real Property, Planning and Zoning of the Maryland State Bar Association;
23 and

24 (ii) two individuals with knowledge of assessment and
25 remediation of mold in indoor environments in residential real property.

26 (c) The President of the Senate and the Speaker of the House shall jointly
27 designate the chair of the Task Force.

28 (d) The Department of Health and Mental Hygiene shall provide staff for the
29 Task Force.

30 (e) A member of the Task Force:

1 (1) may not receive compensation as a member of the Task Force; but

2 (2) is entitled to reimbursement for expenses under the Standard
3 State Travel Regulations, as provided in the State budget.

4 (f) The Task Force shall:

5 (1) study the feasibility of adopting standards for quantities of mold in
6 indoor environments in residential real property that do not cause adverse effects on
7 health or property value; and

8 (2) make recommendations to the Department of Health and Mental
9 Hygiene and the Maryland Department of the Environment on the development of
10 standards for quantities of mold in indoor environments in residential real property
11 that do not cause adverse effects on health or property value.

12 (g) On or before December 31, 2008, the Task Force shall report its findings
13 and recommendations to the Department of Health and Mental Hygiene, the
14 Maryland Department of the Environment and, in accordance with § 2–1246 of the
15 State Government Article, the General Assembly.

16 **~~Article—Real Property~~**

17 ~~10–702.~~

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

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

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

23 (i) ~~The purchaser; or~~

24 (ii) ~~An occupant of the real property, including a tenant or~~
25 ~~invitee of the purchaser.~~

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

28 (2) ~~This section does not apply to:~~

- 1 (i) ~~The initial sale of single family residential real property;~~
- 2 ~~1. That has never been occupied; or~~
- 3 ~~2. For which a certificate of occupancy has been issued~~
- 4 ~~within 1 year before the vendor and purchaser enter into a contract of sale;~~
- 5 (ii) ~~A transfer that is exempt from the transfer tax under §~~
- 6 ~~13-207 of the Tax Property Article, except land installment contracts of sale under §~~
- 7 ~~13-207(a)(11) of the Tax Property Article and options to purchase real property~~
- 8 ~~under § 13-207(a)(12) of the Tax Property Article;~~
- 9 (iii) ~~A sale by a lender or an affiliate or subsidiary of a lender~~
- 10 ~~that acquired the real property by foreclosure or deed in lieu of foreclosure;~~
- 11 (iv) ~~A sheriff's sale, tax sale, or sale by foreclosure, partition, or~~
- 12 ~~by court appointed trustee;~~
- 13 (v) ~~A transfer by a fiduciary in the course of the administration~~
- 14 ~~of a decedent's estate, guardianship, conservatorship, or trust;~~
- 15 (vi) ~~A transfer of single family residential real property to be~~
- 16 ~~converted by the buyer into a use other than residential use or to be demolished; or~~
- 17 (vii) ~~A sale of unimproved real property.~~
- 18 (e) (1) ~~A vendor of single family residential real property shall complete~~
- 19 ~~and deliver to each purchaser:~~
- 20 (i) ~~A written residential property condition disclosure~~
- 21 ~~statement on a form provided by the State Real Estate Commission; or~~
- 22 (ii) ~~A written residential property disclaimer statement on a~~
- 23 ~~form provided by the State Real Estate Commission.~~
- 24 (2) ~~The State Real Estate Commission shall develop by regulation a~~
- 25 ~~single standardized form that includes the residential property condition disclosure~~
- 26 ~~and disclaimer statements required by this subsection.~~
- 27 (d) ~~The residential property disclaimer statement shall:~~

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

5 ~~(2) State that:~~

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

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

12 ~~(c) (1) The residential property disclosure statement shall disclose those~~
13 ~~items that, to carry out the provisions of this section, the State Real Estate~~
14 ~~Commission requires to be disclosed about the physical condition of the property.~~

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

18 ~~(i) Water and sewer systems, including the source of household~~
19 ~~water, water treatment systems, and sprinkler systems;~~

20 ~~(ii) Insulation;~~

21 ~~(iii) Structural systems, including the roof, walls, floors,~~
22 ~~foundation, and any basement;~~

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

24 ~~(v) Infestation of wood-destroying insects;~~

25 ~~(vi) **ABNORMAL LEVELS OF MOLD SPORES;**~~

26 ~~(vii) Land use matters;~~

27 ~~[(viii)] (viii) Hazardous or regulated materials, including asbestos,~~
28 ~~lead-based paint, radon, underground storage tanks, and licensed landfills;~~

1 ~~[(viii)] (IX) Any other material defects of which the vendor has~~
 2 ~~actual knowledge; and~~

3 ~~[(ix)] (X) Whether the smoke detectors will provide an alarm in~~
 4 ~~the event 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~~
 10 ~~seller is not a substitute for an inspection by an independent home inspection~~
 11 ~~company, and 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~~
 18 ~~no actual knowledge; or~~

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

21 ~~(4) (I) [The] SUBJECT TO SUBPARAGRAPH (H) OF THIS~~
 22 ~~PARAGRAPH, THE vendor is not required to undertake or provide an independent~~
 23 ~~investigation or inspection of the property in order to make the disclosures required by~~
 24 ~~this section.~~

25 ~~(H) 1. THE VENDOR SHALL PROVIDE AN INDEPENDENT~~
 26 ~~INVESTIGATION OR INSPECTION OF THE PROPERTY TO DETERMINE WHETHER~~
 27 ~~ABNORMAL LEVELS OF MOLD SPORES EXIST.~~

28 ~~2. IF ABNORMAL LEVELS OF MOLD SPORES EXIST,~~
 29 ~~THE VENDOR SHALL DISCLOSE THE RESULT OF THE INSPECTION TO THE~~
 30 ~~PURCHASER IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION.~~

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

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

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

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

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

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

20 ~~(i) To rescind the contract of sale at any time before the receipt~~
21 ~~of the disclosure or disclaimer statement or within 5 days following receipt of the~~
22 ~~disclosure or disclaimer statement; and~~

23 ~~(ii) To the immediate return of any deposits made on account of~~
24 ~~the contract.~~

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

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

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

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

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

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

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

10 (i) ~~Not within the actual knowledge of the vendor;~~

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

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

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

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

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

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

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

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

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

3 ~~(i) Closing or occupancy by the purchaser, whichever occurs~~
4 ~~first, in the event of a sale; or~~

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

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

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

11 ~~(2) The real estate licensee representing a purchaser of residential~~
12 ~~real property, or, if the purchaser is not represented by a licensee, the real estate~~
13 ~~licensee representing an owner of residential real estate and dealing with the~~
14 ~~purchaser, has a duty to inform the purchaser of the purchaser's rights and obligations~~
15 ~~under this section.~~

16 ~~(3) If a real estate licensee performs the duties specified in this~~
17 ~~subsection, the licensee:~~

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

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

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 ~~October~~ July 1, 2007. It shall remain effective for a period of 18 months and, at the
24 end of December 31, 2008, with no further action required by the General Assembly,
25 this Act shall be abrogated and of no further force and effect.