

SB485 FACT SHEET

When purchasing a home, do you think it is **more** important to be informed of a leaky roof or hazardous contamination on the Superfund National Priorities List that could cause a carcinogenic vapor intrusion risk into your home?

Current disclosure laws only mandate one of these disclosures uniformly across all residential property sales

Purpose

- ✓ Inform potential buyers of proximity of property to a Superfund National Priorities List (NPL) Site
- ✓ Disclose this information in a separate disclosure addendum that provides a link to the buyer to the EPA search by state and county site so buyers know where to look to complete their due diligence
- ✓ Assure that this addendum is signed and dated
- ✓ Allow a 5 day right of rescission after date of receipt of addendum
- ✓ Allow an unconditional right of rescission if this addendum is not provided

Definition

- ✓ Superfund is the informal name for the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). Established by Congress, it is a trust fund to handle emergency hazardous waste sites needing long term clean up (*e.g.*, Love Canal was the first Superfund Site).
- ✓ The National Priorities List (NPL) is a list of sites of national priority among the known releases or threatened releases of hazardous substances, pollutants, or contaminants across the United States. These are sites where releases of contamination pose significant human health and environmental risks. (EPA)

Current Protocol

- ✓ The Maryland Disclosure and Disclaimer Statement (10-702) is included in the contract.
- ✓ It exempts new builds, estate sales, and foreclosures
- ✓ It leaves it up the seller to disclose
- ✓ It defines latent defect as something actually known to the seller (they may be unaware)
- ✓ Item # 14 asks if there is any contamination (such as lead, or asbestos), but specifies “on the property” The nature of Superfund Site contamination sometimes poses risk such as vapor intrusion from off-site contamination.

Maryland Board of Realtors

- ✓ Code of Ethics states: *“Shall avoid misrepresentation or concealment of Material Facts”*
 - Material facts defined as: *“Information that if known, might cause a buyer to make a different decision”*
- ✓ Code of Ethics states: *“A seller is required to disclose the existence of Latent Defects”*
 - Latent Defects defined as: *“Material Defects in real property that a buyer would not be reasonably expected to ascertain or observe and would pose a direct threat to the health and safety of the buyer”*

Realtor Input

- ✓ Realtors only support including this information “in the contract.”
- ✓ We agree to that if:
 - It is a separate addendum signed and dated upon receipt
 - Covers all residential real estate sales including those sold by builders and developers
 - Includes a 5 day Right of Rescission based on the information
 - Includes an unconditional Right of Rescission if the disclosure addendum is not provided
 - Includes the URL to search

- ✓ Realtors do not support providing a URL in the statute, stating that they change
- ✓ Asked about URL longevity, the EPA and MDE replied:
 - EPA site has been in existence since 2015
 - If it were ever changed there would be an immediate redirect on their site
- ✓ We confirmed with the EPA that it is the most organized, up to date, thorough, all in one place, user friendly way to search for Superfund NPL Sites by state and county
- ✓ Realtors do not support a distance measurement (*e.g.*, .5 mile proximity)

We would compromise on this with:

- A disclosure addendum requirement “if there is a Superfund NPL Site in the county of purchase”; and
 - The disclosure required a signature and date
 - Included EPA URL we gave; and
 - Included both Rights of Rescission
- ✓ Realtors say disclosure already exists, referring to the MD 10-702 included already in the contract
 - ✓ However, the 10-702 includes loopholes, exemptions, and applies only to on–property (on–site) contamination
 - The most common types of Superfund contamination do not have to be directly on-site to pose a risk via their migration pathways such as air, groundwater, and soil.
 - Vapor intrusion is one such example - potential risk happens if the contaminant is within 100 feet and in a certain quantity - for example, TCE under one townhome poses risk to the next couple but wouldn’t have to be disclosed because the TCE would not be on property
 - Proximity matters when considering risk of certain contaminants. See our bibliography of studies
 - ✓ Realtors do not want a right of rescission
 - **We do not agree with this**

Maryland Building Industry Association

- ✓ Asserts that this Bill creates needless apprehension
 - Material facts exist regardless of their effect and would likely assure the buyer
- ✓ Assert this disclosure is not easily understood by buyers
 - Laws are created to protect people especially regarding things that aren’t easily understood
- ✓ Asserts this disclosure is prone to open up legal actions since information is not readily available to a realtor
 - Information is readily available and updated regularly by the EPA at the URL we provided.
 - We believe it will lessen the likelihood of disputes and liability for Realtors and clients by not concealing material facts and latent defects. Cases have been upheld in other states under Consumer Fraud for non-disclosure of proximity and devalued property.
- ✓ Asserts this Bill is likely to deter people from buying homes
 - We believe it could also assure others
- ✓ They mention this affecting low income housing
 - We believe this is an environmental justice issue
- ✓ They assert that the owner has a legal right to be informed if this is an issue
 - We agree, that is the purpose of this bill
- ✓ They assert “a vast majority of these investigations show no contamination.”
 - By the time there is a designation of Superfund NPL Site, by legal definition, it shows not only contamination, but some of the most hazardous conditions in terms of quantity and quality. MBIA’s assertion is irrelevant, the only sites we are asking disclosure for are Superfund NPL Sites.

Maryland Bar Association

- ✓ States that our bill includes no remedy if disclosure is not provided
- ✓ We added two rights of rescission in our amendments
- ✓ We agree with their language change to “voided” in section B
- ✓ We agree that the .5 mile measurement process would require more thought. Other states require similar, we can reach out to them, or we could compromise and require broader disclosure by county and provide the search tool and rights of rescission