

**SB485 FACT SHEET-3.pdf**

Uploaded by: Jen Peppe Hahn

Position: FAV

## 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

# **SB485 Residential Property - Sales Contracts - Dis**

Uploaded by: Karen Lewis Young

Position: FAV

KAREN LEWIS YOUNG  
Legislative District 3  
Frederick County

Committee on Education, Energy,  
and the Environment



James Senate Office Building  
11 Bladen Street, Room 302  
Annapolis, Maryland 21401  
410-841-3575 · 301-858-3575  
800-492-7122 Ext. 3575  
Karen.Young@senate.state.md.us

THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

March 6th, 2023

Support of SB 485 – Residential Property - Sales Contracts - Disclosures

The Honorable Senator William C. Smith

Judicial Proceedings Committee

Maryland Senate

11 Bladen Street, Room 302

Annapolis, MD 21401

Chair Smith, Vice-Chair Waldstreicher, and Esteemed Members of the Senate Judicial Proceedings Committee:

I am presenting Senate Bill 485, Residential Property Sales Contracts and Disclosures, in order to properly inform residential property buyers of the location of superfund sites if they are within one-half of a mile of a potential property they are seeking to purchase. Residential purchase contracts are incredibly complex. Therefore, it is important to give potential homebuyers the necessary information in order to make an informed decision in a timely and transparent manner.

Thousands of contaminated sites exist nationally due to hazardous waste being dumped, left out in the open, or otherwise improperly managed. These include manufacturing facilities, processing plants, landfills, and mining sites. In response, Congress established the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in 1980.

Superfund policy allows the Environmental Protection Agency (EPA) to clean up contaminated sites. It also forces the parties responsible for the contamination to either perform cleanups or reimburse the government for EPA-led cleanup work. Superfund requirements also give EPA the funds and authority to clean up contaminated sites when there is no viable responsible party.

These sites are documented on the EPA Superfund National Priorities list, including a search function and map feature to see where superfund sites are located. Currently, there are 26 sites in Maryland listed by the EPA, one of which is located in my home district in Frederick County.

My office, our cross-file, and stakeholders have been working on a compromise to clarify when and how a buyer would be informed of superfund sites. However, there is agreement among all parties that this information is necessary to be shared with potential homeowners so they can

make an informed decision during the home buying process and not be surprised by discovering that their home is located next to a superfund site after purchase.

To ensure that residential property buyers are given a timely and transparent picture of the potential environmental impact of their homes, I urge the committee to give a favorable report for Senate Bill 485.

I urge a favorable report.

Sincerely,

A handwritten signature in blue ink that reads "Karen Lewis Young". The signature is written in a cursive style with a large, stylized initial "K".

Senator Karen Lewis Young

# **SB485 Superfund Disclosure Presentation .pptx.pdf**

Uploaded by: Karen Lewis Young

Position: FAV



# SB485 PURPOSE

- **INFORM POTENTIAL HOME BUYERS THAT a property is within .5 Mile from a Superfund NPL Site**
- **Include PROXIMITY INFORMATION in LISTING disclosures**
- **Disclosure addendum must be provided, signed and dated before or within 5 days of a ratified contract**
- **Bill guarantees a Right of Rescission to the buyer within 5 days of receipt of the addendum**
- **Bill guarantees an unconditional Right of Rescission if no disclosure was given**

# CURRENT DISCLOSURE PROTOCOL

MARYLAND'S PROPERTY CONDITION DISCLOSURE LAW AKA  
MARYLAND DISCLOSURE AND DISCLAIMER FORM 10-702

This disclosure is included in the contract and:

- Exempts New Builds
- Exempts Estate Sales
- Would only apply if the contamination is “on-site”

**Contamination from a Superfund does not have to be on-site to pose a risk via vapor intrusion, airborne mechanisms, and other pathways**

**MARYLAND RESIDENTIAL PROPERTY DISCLOSURE AND DISCLAIMER STATEMENT**

Property Address: \_\_\_\_\_

Legal Description: \_\_\_\_\_

**NOTICE TO SELLER AND PURCHASER**

Section 10-702 of the Real Property Article, *Annotated Code of Maryland*, requires the seller of certain residential real property to furnish to the purchaser either (a) a RESIDENTIAL PROPERTY DISCLAIMER STATEMENT stating that the seller is selling the property "as is" and makes no representations or warranties as to the condition of the property or any improvements on the real property, except as otherwise provided in the contract of sale, or in a listing of latent defects; or (b) a RESIDENTIAL PROPERTY DISCLOSURE STATEMENT disclosing defects or other information about the condition of the real property actually known by the seller. Certain transfers of residential property are excluded from this requirement (see the exemptions listed below).

10-702. EXEMPTIONS. The following are specifically excluded from the provisions of §10-702:

1. The initial sale of single family residential real property:
  - A. that has never been occupied; or
  - B. for which a certificate of occupancy has been issued within 1 year before the seller and buyer enter into a contract of sale;
2. A transfer that is exempt from the transfer tax under §13-207 of the Tax-Property Article, except land installment contracts of sales under §13-207(a) (11) of the Tax-Property Article and options to purchase real property under §13-207(a)(12) of the Tax-Property Article;
3. A sale by a lender or an affiliate or subsidiary of a lender that acquired the real property by foreclosure or deed in lieu of foreclosure;
4. A sheriff's sale, tax sale, or sale by foreclosure, partition, or by court appointed trustee;
5. A transfer by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
6. A transfer of single family residential real property to be converted by the buyer into use other than residential use or to be demolished; or
7. A sale of unimproved real property.

Section 10-702 also requires the seller to disclose information about latent defects in the property that the seller has actual knowledge of. The seller must provide this information even if selling the property "as is." "Latent defects" are defined as: Material defects in real property or an improvement to real property that:

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

NOTICE TO SELLER(S): Sign this statement only if you elect to sell the property without representations and warranties as to its condition, except as otherwise provided in the contract of sale and in the listing of latent defects set forth below; otherwise, complete and sign the RESIDENTIAL PROPERTY DISCLOSURE STATEMENT.

Except for the latent defects listed below, the undersigned seller(s) of the real property make no representations or warranties as to the condition of the real property or any improvements thereon, and the purchaser will be receiving the real property "as is" with all defects, including latent defects, which may exist, except as otherwise provided in the real estate contract of sale. The seller(s) acknowledge having carefully examined this statement and further acknowledge that they have been informed of their rights and obligations under §10-702 of the Maryland Real Property Article.

Section 10-702 also requires the seller to disclose information about latent defects in the property that the seller has actual knowledge of. The seller must provide this information even if selling the property "as is." "Latent defects" are defined as: Material defects in real property or an improvement to real property that:

- (1) A purchaser would not reasonably be expected to ascertain or observe by a careful visual inspection of the real property; and
- (2) Would pose a direct threat to the health or safety of:
  - (i) the purchaser; or
  - (ii) an occupant of the real property, including a tenant or invitee of the purchaser.

Does the seller(s) have actual knowledge of any latent defects?  Yes  No If yes, specify:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

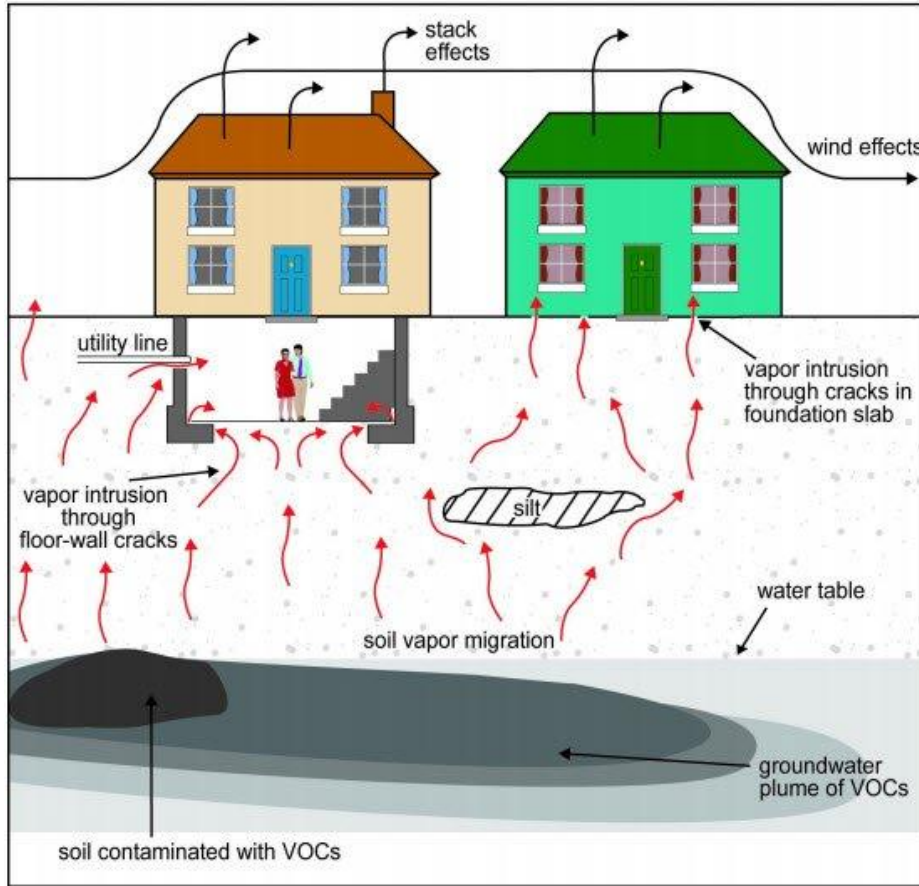
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Seller \_\_\_\_\_

Date \_\_\_\_\_



## Why .5 Mile Proximity is Important

- THE REMEDIAL INVESTIGATION PHASE OF CERCLA creates loops of incoming data requiring further testing, which can reveal/map more hot spots
- Hot spots can move the current known Superfund boundary closer to a property
- Until the Remedial Investigation complete, there is not a full data set
- This means it is crucial to disclose proximity within a half mile because
- The current known and documented perimeter of the Superfund NPL Site may come closer to a property as the Remedial Investigation progresses

PROXIMITY ENDS WHERE THE INFLUENCE OF CONTAMINATION ENDS



## Superfund

[CONTACT US](#)

[Superfund Home](#)

**[Learn About Superfund](#)**

[What is Superfund?](#)

**[Site Search](#)**

[Superfund News](#)

[Cleanup Process](#)

[Superfund History](#)

[Success Stories](#)

[Superfund: CERCLA  
Overview](#)

[Community Involvement](#)

[Cleanup Support](#)

# Search for Superfund Sites Where You Live

***Search for Superfund Sites Where You Live | US EPA***

On this page:

- [National Priorities List and Superfund Alternative Approach Sites](#)
- [Superfund National Priorities List \(NPL\) Where You Live Map](#)
- [Advanced Search: For National Priorities List and Non-NPL Sites](#)
- [Cleanups in My Community Mapped Search](#)

## National Priorities List and Superfund Alternative Approach Sites

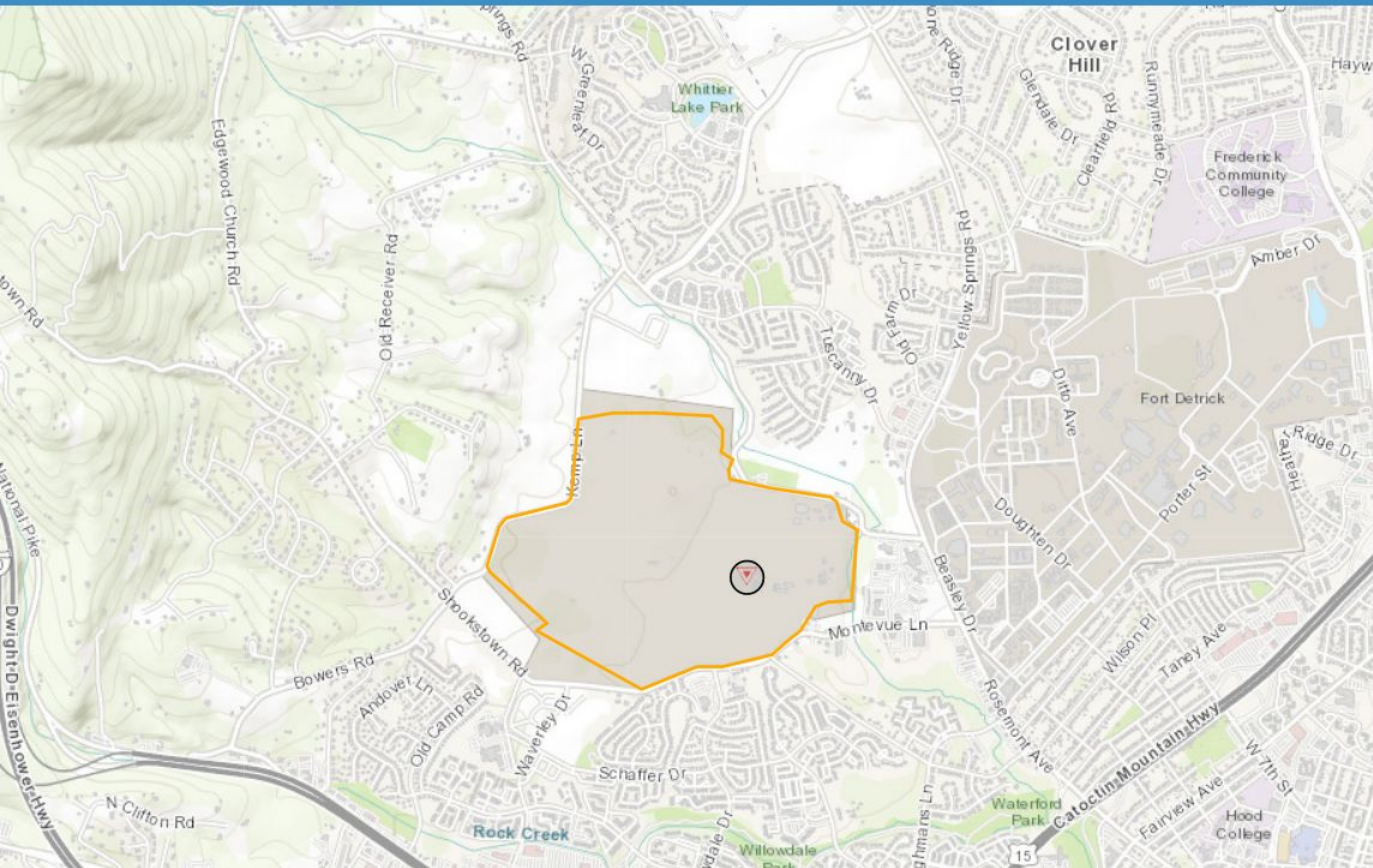
Search for sites proposed to, currently on, and deleted from Superfund's [National Priorities List \(NPL\)](#), as well as sites being addressed under the [Superfund Alternative Approach \(SAA\)](#).

# Cleanups In My Community Map

Brownfields Grants

Latest Sites in CIMC

Layers, Legend, & Print



- Define your Community
- Layers
- Legend

## Cleanups Sites

- Incidents of National Significance
- Federal Facility Docket/Superfund NPL/RCRA
- Federal Facility Docket/Brownfields/RCRA RCRA Corrective
- Action/Superfund NPL RCRA Corrective
- Action/Superfund Non-NPL
- Federal Facility Docket/Superfund NPL
- Federal Facility Docket/Superfund Non-NPL
- Federal Facility Docket/Superfund Non-NPL/RCRA CA
- Federal Facility Docket/RCRA CA
- Brownfields Properties/RCRA CA
- Brownfields/RCRA CA/Superfund Non-NPL
- Federal Facility Docket
- Brownfields Properties

# SUMMARY

- BY LEGAL DEFINITION AND FEDERALLY MANDATED TESTING A SUPERFUND NPL SITE POSES RISK
- THE MD REALTORS CODE OF ETHICS REQUIRES DISCLOSURE OF MATERIAL FACTS
- MATERIAL FACTS INCLUDE ANYTHING THAT WOULD AFFECT THE VALUE OF THE PROPERTY OR A BUYERS DECISION TO PURCHASE THE PROPERTY
- CONTAMINATION DOES NOT HAVE TO BE ON SITE TO POSE A POTENTIAL RISK
- STUDIES CONFIRMING ADVERSE HEALTH EFFECTS ARE TYPICALLY DONE USING  $\leq 1$  MILE OF CONTAMINATION
- SB285
  - A) TAKES OUT THE CURRENT LOOPHOLES IN DISCLOSURE
  - B) PROTECTS ALL PARTIES

# HB281 Reprint

Uploaded by: William Folden

Position: FAV



UNOFFICIAL COPY OF HOUSE BILL 281

HOUSE BILL 281

N1

3lr2535  
CF 3lr1395

By: **Delegate Fair**

Introduced and read first time: January 25, 2023

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 ~~Residential Property Sales Contracts Disclosures~~ Frederick County - Residential  
3 Property Sales - Contract Disclosures

4 FOR the purpose of requiring in Frederick County, a contract for the sale of residential real property  
5 located

6 within a certain distance of a ~~site listed on the Superfund Enterprise Management~~  
7 ~~System~~ National Priorities List (NPL) Superfund site to contain a certain notice include a  
8 certain addendum; establishing that a contract for the sale of  
9 ~~residential real property may not be voided under certain circumstances;~~ and  
10 generally relating to disclosure requirements for a contract for the sale of residential  
11 real property.

12 BY adding to

13 Article - Real Property

14 Section 10-713

15 Annotated Code of Maryland

16 (2015 Replacement Volume and 2022 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

18 That the Laws of Maryland read as follows:

19 **Article - Real Property**

20 **10-713.**

21 ~~(A) A CONTRACT OF SALE FOR RESIDENTIAL REAL PROPERTY LOCATED~~  
22 ~~WITHIN 0.5 MILES OF A SITE LISTED ON THE SUPERFUND ENTERPRISE~~  
23 ~~MANAGEMENT SYSTEM SHALL INCLUDE A NOTICE SIGNED BY THE HOMEOWNER~~  
24 ~~DISCLOSING THE PROXIMITY OF THE PROPERTY TO A SITE LISTED ON THE~~  
25 ~~SUPERFUND ENTERPRISE MANAGEMENT SYSTEM, TO BE INITIALED BY THE BUYER.~~

26 ~~(B) A CONTRACT SUBJECT TO THE REQUIREMENTS OF SUBSECTION (A) OF~~  
27 ~~THIS SECTION MAY NOT BE VOIDED SOLELY BECAUSE:~~

2

UNOFFICIAL COPY OF HOUSE BILL 281

1 ~~(1) THE NOTICE REQUIRED UNDER SUBSECTION (A) OF THIS SECTION~~  
2 ~~IS NOT INCLUDED IN THE CONTRACT; OR~~

3 ~~(2) THE BUYER DOES NOT INITIAL THE NOTICE REQUIRED UNDER~~  
4 ~~SUBSECTION (A) OF THIS SECTION. THIS SECTION APPLIES ONLY IN FREDERICK COUNTY.~~

**(B) THE SELLER OF RESIDENTIAL PROPERTY THAT IS LOCATED WITHIN 0.5 MILES OF A NATIONAL PRIORITIES LIST (NPL) SUPERFUND SITE SHALL PROVIDE THE BUYER WITH AN ADDENDUM TO THE CONTRACT FOR THE SALE OF THE PROPERTY THAT CONTAINS, IN CONSPICUOUS TYPE:**

**(1) IDENTIFICATION OF THE SUPERFUND SITE AND ITS PROXIMITY TO THE PROPERTY;**

**(2) THE DEFINITION OF A NATIONAL PRIORITIES LIST (NPL) SUPERFUND SITE UNDER U.S. ENVIRONMENTAL PROTECTION AGENCY GUIDELINES; AND**

**(3) THE UNIFORM RESOURCE LOCATOR (URL) FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY SEARCH FOR SUPERFUND SITES WHERE YOU LIVE WEBSITE.**

**(C) AN ADDENDUM UNDER SUBSECTION (B) OF THIS SECTION SHALL BE SIGNED BY THE SELLER AND INITIALED BY THE BUYER.**

**(D) IF A BUYER ENTERS INTO A PURCHASE OR CONSTRUCTION CONTRACT THAT DOES NOT INCLUDE AN ADDENDUM REQUIRED UNDER SUBSECTION (B) OF THIS SECTION, THE BUYER:**

**(1) MAY VOID THE CONTRACT; AND**

**(2) ON RESCISSION OF THE CONTRACT, SHALL BE ENTITLED TO A REFUND OF ANY MONEY PAID TO THE SELLER OR BUILDER.**

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
6 October 1, 2023.

# **SB485 Delegation Letter**

Uploaded by: William Folden

Position: FAV

DELEGATE JESSE T. PIPPY  
DELEGATION CHAIR  
SENATOR WILLIAM G. FOLDEN  
DELEGATION VICE CHAIR



THE MARYLAND GENERAL ASSEMBLY  
ANNAPOLIS, MARYLAND 21401  
FREDERICK COUNTY DELEGATION

SENATORS  
PAUL D. CORDERMAN  
KAREN LEWIS YOUNG  
JUSTIN READY

DELEGATES  
CHRISTOPHER ERIC BOUCHAT  
BARRIE S. CILIBERTI  
KRIS FAIR  
KENNETH P. KERR  
APRIL FLEMING MILLER  
APRIL ROSE  
KAREN SIMPSON  
CHRIS TOMLINSON  
WILLIAM VALENTINE  
WILLIAM WIVELL

3/23/2023

Chair Smith and Vice Waldstreicher,

SB485/HB0281 Frederick County Residential Property - Sales Contracts - Disclosures (as Amended 893729/1) was voted on by the Frederick County Delegation on March 23rd, 2023 and received support from the majority of the Delegation (13-1).\* A voting list for the bill is attached to this letter. The Frederick County Delegation asks for a favorable report from the Judicial Proceedings Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Jesse T. Pippy".

Del. Jesse T. Pippy – Chair

A handwritten signature in black ink, appearing to read "William G. Folden".

Sen. William Folden – Vice Chair

\*YEAs: Del. Pippy, Sen. Folden, Del. Bouchat, Del. Ciliberti, Sen. Corderman, Del. Fair, Del. Kerr, Sen. Lewis-Young, Sen. Ready, Del. Rose, Del. Simpson, Del. Valentine, Del. Wivell  
NAYs: Del. Tomlinson  
Absent: Del. Miller

# **SB485 Frederick County Senators**

Uploaded by: William Folden

Position: FAV

WILLIAM G. FOLDEN  
*Legislative District 4*  
Frederick County

Judicial Proceedings Committee



James Senate Office Building  
11 Bladen Street, Room 414  
Annapolis, Maryland 21401  
410-841-3704 · 301-841-3704  
800-492-7122 Ext. 3704  
William.Folden@senate.state.md.us

THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

March 22, 2023

Chairman Will Smith  
Judicial Proceedings Committee  
Miller Senate Bldg. 2 East  
Annapolis, MD 21401

Dear Chairman Smith,

On behalf of the Frederick County Senators, Senator Karen Lewis Young, Senator Paul Corderman and Senator Justin Ready, we unanimously support SB 485 Residential Property – Sales Contracts – Disclosures.

Thank you for your consideration and timely movement on this very important local bill.

Sincerely,

A handwritten signature in black ink, appearing to read "William G. Folden".

Senator William G. Folden

# **Testimony SB 485-7MAR2023.pdf**

Uploaded by: Elizabeth Law

Position: FWA

## **HB 485 – Residential Property – Sales Contract - with Disclosures**

I support bill SB 485 and its companion bill HB

281. These bills will ensure fairness and transparency for the home buyer who may be choosing a home within a half mile limit of a Superfund National Priorities List Superfund Site.

When scientists have determined that a toxic site is hazardous enough to public health the site attains National Priorities List (NPL) status beyond “Superfund Site Status”. NPL status creates government funding for the cleanup of the site and for continuing investigation and monitoring to determine if contamination has extended beyond the site.

There are 26 Superfund NPL Sites in Maryland which can be found by simply typing in Google: “Search for Superfund Sites Where You Live”.

Due to housing shortages developers are building ever closer to these Superfund Sites including in Frederick County, the impetus for these bills. From World War II through the Vietnam era, Ft. Detrick conducted research in biological and chemical weapons. Debris from the experiments were deposited in unlined pits in an area called “Area B”.

Incomplete if any records were kept. Eventually when mitigation was initiated it was determined to be too dangerous to remove most of the contamination. The pits were merely capped and thereafter monitored. Eventually, water leaching from the unlined pits contaminated the groundwater.

It is the contaminated groundwater that is the EPA Superfund NPL Site. As with many landfills, the groundwater (or “plume”) flowed beyond the fort boundaries and into existing neighborhoods and Carroll Creek as well as open land being developed. Currently a developer wishes to build townhouses where the Army Corps of Engineers has found contaminated groundwater beyond acceptable measures for human safety.

This is a situation that is not covered by current disclosure requirements. Isn't it serious enough to warrant notification to the people who wish to buy these townhouses that their home is in proximity to an EPA NPL Superfund Site? Isn't it fair to give sufficient time for the buyer to consider this information so that a decision can be made based on facts?

### Inadequacies of Current Disclosure Requirements

THE MARYLAND RESIDENTIAL PROPERTY DISCLOSURE AND DISCLAIMER STATEMENT (MD 10-702), is inadequate to properly inform a buyer that a National Priorities List Superfund Site is within one-half mile of their chosen property. This document only describes hazards on the property but not in the vicinity. Superfund NPL Sites have toxic materials that can spread beyond the Superfund Site boundary via contaminated groundwater (called plumes). This spread may continue outward over time.

Moreover, the current method of disclosing is lacking in transparency because it is provided at the time of closing on the sale for contract. It is easy to miss this information during the flurry of



papers during closing on the contract. Currently there is no requirement that the realtor or seller highlight the presence of a Superfund NPL Site with an addendum and EPA website address.

The current practice can obfuscate the facts. How easy is it for the seller to misrepresent intentionally or unintentionally the level of environmental hazard? What is the enforcement or oversight to ensure that these few lines are even completed? This is unethical.

The purpose of Bills SB 0485 and HB 0281 is to improve the process by increasing transparency by providing notice to the homebuyer that gives the buyer time to digest the information, go to the appropriate EPA website to learn about their particular site and then to decide whether to close on the deal (sale of contact). I believe the home buyer deserves to know this information and I ask you to approve Bill SB 485.

Thank you.

Elizabeth J. Law

Frederick, Maryland

**SB 485\_realtors\_fwa.pdf**

Uploaded by: William Castelli

Position: FWA



## **Senate Bill 485 – Residential Property – Sales Contracts - Disclosures**

### **Position: Support with Amendment**

Maryland REALTORS® support SB 485 with an important amendment to conform the legislation to other disclosure legislation passed by the Maryland General Assembly.

SB 485 seeks to ensure that homebuyers receive information about locations on the National Priorities List (so called Superfund sites). Superfund sites are contaminated with hazardous waste. Federal law, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), authorizes EPA to clean these sites and helps fund the cleanup. EPA also maintains the Superfund Enterprise Management System (EMS) which is a repository of information on these sites and is accessible online.

The REALTOR® amendment make two notable changes. First, it would make the disclosure a buyer notice rather than the responsibility of the seller to disclose this information. If a property is impacted by a Superfund site, existing Maryland law already requires the owner of the property to specifically disclose that fact to the buyer under Maryland's Property Condition Disclosure Law.

The REALTOR® amendment requires the base real estate contract to contain a buyer notice about the EMS so buyers can explore nearby Superfund sites for themselves. As drafted, the legislation only requires the disclosure of sites within a half mile (which can be hard for a seller to determine). The REALTOR® amendment would allow a buyer to view any sites regardless of their distance from the property and regardless of whether the site has been determined to be actionable. The vast majority of sites listed on the EMS in Maryland are not designated Superfund sites.

The second major change in the amendment is to ensure that if the information about EMS is not given to the buyer before the buyer enters into a contract with a seller that the buyer would have right to rescind five days after receiving the information about EMS.

The Legislature has passed other legislation that follows the model outlined in the REALTOR® amendment and with these changes, the Maryland REALTORS® support SB 485.

**For more information contact [lisa.mays@mdrealtor.org](mailto:lisa.mays@mdrealtor.org) or  
[christa.mcgee@mdrealtor.org](mailto:christa.mcgee@mdrealtor.org)**

**SB 485 – Residential Property – Sales Contracts - Disclosures  
REALTOR® Amendment**

**AMENDMENT #1**

On page 1, strike lines 15 through line 21 and substitute:

**§ 10-713. SUPERFUND SITE DISCLOSURE**

**“SUPERFUND ENTERPRISE MANAGEMENT SYSTEM” DEFINED**

**(A) IN THIS SECTION, “SUPERFUND ENTERPRISE MANAGEMENT SYSTEM” MEANS THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY’S SUPERFUND ENTERPRISE MANAGEMENT SYSTEM**

**APPLICATION OF SECTION**

**(B) THIS SECTION APPLIES ONLY TO THE SALE OF RESIDENTIAL REAL PROPERTY.**

**NOTICE**

**(C) A CONTRACT FOR THE SALE OF REAL PROPERTY SHALL INCLUDE, THE FOLLOWING BUYER NOTICE IN THE CONTRACT:**

**“NOTICE ON SUPERFUND HAZARDOUS WASTE SITES**

**A PURCHASER OF REAL PROPERTY IS ADVISED TO ACCESS THE WEBSITE OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY’S SUPERFUND ENTERPRISE MANAGEMENT SYSTEM TO DETERMINE IF A SUPERFUND HAZARDOUS WASTE SITE IS LOCATED NEAR THE PROPERTY.”.**

**RIGHTS OF RESCISSION**

**(D)(1) A PURCHASER THAT RECEIVES THE NOTICE REQUIRED UNDER SUBSECTION (C) OF THIS SECTION ON OR BEFORE ENTERING INTO A CONTRACT OF SALE DOES NOT HAVE THE RIGHT TO RESCIND THE CONTRACT OF SALE BASED ON THE INFORMATION RECEIVED FROM THE VENDOR UNDER SUBSECTION (C) OF THIS SECTION.**

**(2)(I) A PURCHASER THAT DOES NOT RECEIVE THE NOTICE REQUIRED UNDER SUBSECTION (C) OF THIS SECTION ON OR BEFORE ENTERING INTO A CONTRACT OF SALE, ON WRITTEN NOTICE TO THE VENDOR OR THE VENDOR'S AGENT:**

- 1. HAS THE UNCONDITIONAL RIGHT TO RESCIND THE CONTRACT AT ANY TIME BEFORE, OR WITHIN 5 DAYS AFTER, RECEIPT OF THE NOTICE REQUIRED UNDER SUBSECTION (C) OF THIS SECTION; AND**
- 2. IS ENTITLED TO THE IMMEDIATE RETURN OF ANY DEPOSITS MADE IN ACCORDANCE WITH THE CONTRACT.**

**(II) THE RETURN OF ANY DEPOSITS HELD IN TRUST BY A LICENSED REAL ESTATE BROKER TO A PURCHASER UNDER SUBPARAGRAPH (I)2 OF THIS PARAGRAPH SHALL COMPLY WITH THE PROCEDURES SET FORTH IN § 17-505 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.**

**MBIA Letter of Opposition SB 485.pdf**

Uploaded by: Lori Graf

Position: UNF

March 6, 2023

The Honorable William C. Smith Jr.  
Senate Judicial Proceedings Committee  
Miller Senate Office Building,  
2 East Wing 11 Bladen St.,  
Annapolis, MD, 21401

**RE: Letter of Opposition SB 0485 Residential Property - Sales Contracts - Disclosure**

Dear Chairman Smith:

The Maryland Building Industry Association, representing 100,000 employees statewide, appreciates the opportunity to participate in the discussion surrounding **SB 0485 Residential Property - Sales Contracts - Disclosure**. MBIA **opposes** the Act in its current version.

This bill is designed to create needless apprehension regarding homes in a specific area. The required disclosure is not something homeowners can easily understand the reason for and is prone to opening up legal actions and disputes since this information may not be readily available to the realtor. This bill is likely to deter people from purchasing these homes and attach an unwarranted stigma to homes in a time when Maryland is there are currently 640 SEMs sites in the state of Maryland and it is the broadest category of SEM. This means that this would create a housing stigma on thousands of homes while Maryland is trying to supply a state wide 97,000 unit low income housing and 85,000 rental units over the next 10 years. Now is not the time to needlessly deter people from buying homes.

This requirement is especially egregious because if there is a problem at an existing superfund site there are already disclosure requirements in place. Meaning if this information is relevant to the homeowner they already have a legal right to be informed. The vast majority of these investigations show no contamination and are only added to the list as a site previously investigated creating an unfair stigma for no benefit.

For these reasons, MBIA respectfully requests the Committee give this measure an **unfavorable** report. Thank you for your consideration.

For more information about this position, please contact Lori Graf at 410-800-7327 or [lgraf@marylandbuilders.org](mailto:lgraf@marylandbuilders.org).

cc: Members of the Senate Judicial Proceedings Committee