

HOUSE BILL 1508

N1

6lr3224

By: **Delegates Frush and Pena-Melnyk**

Introduced and read first time: February 15, 2016

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Single Family Residential Real Property Disclosure and Disclaimer Statements**
3 **– Disclosure of Home Improvements**

4 FOR the purpose of requiring the disclaimer and disclosure statements required for the
5 sale of certain single family residential real property to include certain information
6 and documents relating to certain home improvements made to the property; and
7 generally relating to single family residential real property disclosure requirements.

8 BY repealing and reenacting, without amendments,

9 Article – Business Regulation

10 Section 8–101(g)

11 Annotated Code of Maryland

12 (2015 Replacement Volume and 2015 Supplement)

13 BY repealing and reenacting, with amendments,

14 Article – Real Property

15 Section 10–702

16 Annotated Code of Maryland

17 (2015 Replacement Volume)

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

19 That the Laws of Maryland read as follows:

20 **Article – Business Regulation**

21 8–101.

22 (g) (1) “Home improvement” means:

23 (i) the addition to or alteration, conversion, improvement,
24 modernization, remodeling, repair, or replacement of a building or part of a building that

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 is used or designed to be used as a residence or dwelling place or a structure adjacent to
2 that building; or

3 (ii) an improvement to land adjacent to the building.

4 (2) "Home improvement" includes:

5 (i) construction, improvement, or replacement, on land adjacent to
6 the building, of a driveway, fall-out shelter, fence, garage, landscaping, deck, pier, porch,
7 or swimming pool;

8 (ii) a shore erosion control project, as defined under § 8-1001 of the
9 Natural Resources Article, for a residential property;

10 (iii) connection, installation, or replacement, in the building or
11 structure, of a dishwasher, disposal, or refrigerator with an icemaker to existing exposed
12 household plumbing lines;

13 (iv) installation, in the building or structure, of an awning, fire
14 alarm, or storm window; and

15 (v) work done on individual condominium units.

16 (3) "Home improvement" does not include:

17 (i) construction of a new home;

18 (ii) work done to comply with a guarantee of completion for a new
19 building project;

20 (iii) connection, installation, or replacement of an appliance to
21 existing exposed plumbing lines that requires alteration of the plumbing lines;

22 (iv) sale of materials, if the seller does not arrange to perform or does
23 not perform directly or indirectly any work in connection with the installation or application
24 of the materials;

25 (v) work done on apartment buildings that contain four or more
26 single-family units; or

27 (vi) work done on the commonly owned areas of condominiums.

28 Article – Real Property

29 10-702.

1 (a) (1) In this section[, “latent defects”] **THE FOLLOWING WORDS HAVE THE**
2 **MEANINGS INDICATED.**

3 (2) **“HOME IMPROVEMENT” HAS THE MEANING STATED IN § 8–101 OF**
4 **THE BUSINESS REGULATION ARTICLE.**

5 (3) **“LATENT DEFECTS”** means material defects in real property or an
6 improvement to real property that:

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

9 [(2)] (II) Would pose a direct threat to the health or safety of:

10 [(i)] 1. The purchaser; or

11 [(ii)] 2. An occupant of the real property, including a tenant or
12 invitee of the purchaser.

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

15 (2) This section does not apply to:

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

17 1. That has never been occupied; or

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

20 (ii) A transfer that is exempt from the transfer tax under § 13–207
21 of the Tax – Property Article, except land installment contracts of sale under §
22 13–207(a)(11) of the Tax – Property Article and options to purchase real property under §
23 13–207(a)(12) of the Tax – Property Article;

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

26 (iv) A sheriff’s sale, tax sale, or sale by foreclosure, partition, or by
27 court appointed trustee;

28 (v) A transfer by a fiduciary in the course of the administration of a
29 decedent’s estate, guardianship, conservatorship, or trust;

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

3 (vii) A sale of unimproved real property.

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

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

8 (ii) A written residential property disclaimer statement on a form
9 provided by the State Real Estate Commission.

10 (2) The State Real Estate Commission shall develop by regulation a single
11 standardized form that includes the residential property condition disclosure and
12 disclaimer statements required by this subsection.

13 (d) The residential property disclaimer statement shall:

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

18 **(2) (I) DISCLOSE WHETHER ANY HOME IMPROVEMENTS WERE**
19 **MADE TO THE REAL PROPERTY DURING THE PERIOD THAT THE VENDOR OWNED THE**
20 **REAL PROPERTY; AND**

21 **(II) IF ANY HOME IMPROVEMENTS WERE MADE TO THE REAL**
22 **PROPERTY DURING THE PERIOD THAT THE VENDOR OWNED THE REAL PROPERTY,**
23 **INCLUDE, FOR EACH HOME IMPROVEMENT:**

24 **1. A COPY OF THE BUILDING PERMIT AND INSPECTION**
25 **CERTIFICATE ISSUED BY THE COUNTY OR MUNICIPAL CORPORATION FOR THE WORK**
26 **DONE; OR**

27 **2. AN AFFIDAVIT SIGNED BY THE VENDOR STATING**
28 **THAT A PERMIT AND AN INSPECTION WERE NOT REQUIRED FOR THE WORK DONE;**
29 **AND**

30 **[(2)] (3)** State that:

31 (i) Except for latent defects disclosed under item (1) of this
32 subsection **OR HOME IMPROVEMENTS DISCLOSED UNDER ITEM (2) OF THIS**

1 **SUBSECTION**, the vendor makes no representations or warranties as to the condition of
2 the real property or any improvements on the real property; and

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

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

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

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

14 (ii) Insulation;

15 (iii) Structural systems, including the roof, walls, floors, foundation,
16 and any basement;

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

18 (v) Infestation of wood–destroying insects;

19 (vi) Land use matters;

20 (vii) Hazardous or regulated materials, including asbestos,
21 lead–based paint, radon, underground storage tanks, and licensed landfills;

22 (viii) Any other material defects of which the vendor has actual
23 knowledge;

24 (ix) Whether the smoke alarms:

25 1. Will provide an alarm in the event of a power outage;

26 2. Are over 10 years old; and

27 3. If battery operated, are sealed, tamper resistant units
28 incorporating a silence/hush button and use long–life batteries as required in all Maryland
29 homes by 2018; and

1 (x) If the property relies on the combustion of a fossil fuel for heat,
2 ventilation, hot water, or clothes dryer operation, whether a carbon monoxide alarm is
3 installed on the property.

4 **(3) THE DISCLOSURE FORM SHALL:**

5 **(I) DISCLOSE WHETHER ANY HOME IMPROVEMENTS WERE**
6 **MADE TO THE REAL PROPERTY DURING THE PERIOD THAT THE VENDOR OWNED THE**
7 **REAL PROPERTY; AND**

8 **(II) IF ANY HOME IMPROVEMENTS WERE MADE TO THE REAL**
9 **PROPERTY DURING THE PERIOD THAT THE VENDOR OWNED THE REAL PROPERTY,**
10 **INCLUDE, FOR EACH HOME IMPROVEMENT:**

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12 **CERTIFICATE ISSUED BY THE COUNTY OR MUNICIPAL CORPORATION FOR THE WORK**
13 **DONE; OR**

14 **2. AN AFFIDAVIT SIGNED BY THE VENDOR STATING**
15 **THAT A PERMIT AND AN INSPECTION WERE NOT REQUIRED FOR THE WORK DONE.**

16 **[(3)] (4) The disclosure form shall contain:**

17 (i) A notice to prospective purchasers and vendors that the
18 prospective purchaser or vendor may wish to obtain professional advice about or an
19 inspection of the property;

20 (ii) A notice to prospective purchasers that disclosure by the seller is
21 not a substitute for an inspection by an independent home inspection company, and that
22 the purchaser may wish to obtain such an inspection;

23 (iii) A notice to purchasers that the information contained in the
24 disclosure statement is the representation of the vendor and is not the representation of
25 the real estate broker or salesperson, if any; and

26 (iv) A notice to purchasers that the information contained in the
27 disclosure statement is not a warranty by the vendor as to:

28 1. The condition of the property of which the vendor has no
29 actual knowledge; or

30 2. Other conditions of which the vendor has no actual
31 knowledge.

1 ~~[(4)]~~ (5) The vendor is not required to undertake or provide an
2 independent investigation or inspection of the property in order to make the disclosures
3 required by this section.

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

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

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

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

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

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

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

26 (ii) To the immediate return of any deposits made on account of the
27 contract.

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

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

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

1 (3) The return of any deposits held in trust by a licensed real estate broker
2 to a purchaser under this subsection shall comply with the procedures set forth in § 17-505
3 of the Business Occupations and Professions Article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (i) Closing or occupancy by the purchaser, whichever occurs first, in
4 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 purchaser
7 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 and
10 obligations under this section.

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

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

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

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

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2016.