



West's Annotated Code of Maryland [Currentness](#)

Real Property

▢ [Title 10](#). Sales of Property ([Refs & Annos](#))

▢ [Subtitle 7](#). Contracts of Sale--Miscellaneous Provisions

→ **§ 10-702. Single family homes; mandatory disclosure**

(a) In this section, “latent defects” means 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.

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

(2) This section does not apply to:

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

1. That has never been occupied; or

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

(ii) A transfer that is exempt from the transfer tax under [§ 13-207 of the Tax--Property Article](#), except land installment contracts of sale 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](#);

(iii) 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;

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

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

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

(vii) A sale of unimproved real property.

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

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

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

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

(d) The residential property disclaimer statement shall:

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

(2) State that:

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

(ii) The purchaser will be receiving the real property "as is", with all defects, including latent defects, that

may exist, except as otherwise provided in the contract of sale of the real property.

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

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

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

(ii) Insulation;

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

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

(v) Infestation of wood-destroying insects;

(vi) Land use matters;

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

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

(ix) Whether the smoke detectors will provide an alarm in the event of a power outage; and

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

(3) The disclosure form shall contain:

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

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

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

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

1. The condition of the property of which the vendor has no actual knowledge; or
2. Other conditions of which the vendor has no actual knowledge.

(4) The vendor is not required to undertake or provide an independent investigation or inspection of the property in order to make the disclosures required by this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) May indicate, in writing, an understanding that the information provided will be used in fulfilling the re-

quirements of this section; and

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

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

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

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

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

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

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

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

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

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

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

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

CREDIT(S)

Acts 1993, c. 640; Acts 1994, c. 3, § 1, eff. Feb. 28, 1994; Acts 1995, c. 3, § 1, eff. March 7, 1995; Acts 1995, c. 384, § 1, eff. Oct. 1, 1995; Acts 2001, c. 636, § 1, eff. Oct. 1, 2001; [Acts 2005, c. 135, § 1, eff. Oct. 1, 2005](#); [Acts 2005, c. 548, § 1, eff. Oct. 1, 2005](#). Amended by [Acts 2007, c. 401, § 1, eff. Oct. 1, 2007](#).

## HISTORICAL AND STATUTORY NOTES

### 2001 Legislation

Acts 2001, c. 636, § 2 provides:

“SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any lease or residential property disclosure statement for an existing residential dwelling unit executed before the effective date of this Act.”

### 2005 Legislation

Acts 2005, c. 135, § 1, in subsec. (d)(1), contained the text “Disclose any latent defects of which the vendor has actual knowledge”. Acts 2005, c. 548, § 1, in subsec. (d)(1), contained the text “Disclose any latent defects of which the vendor has actual knowledge that a purchaser would not reasonably be expected to ascertain by a careful visual inspection and that would pose a direct threat to the health or safety of the purchaser or an occupant”. Pursuant to [Md. Code, Art. 1, § 17](#), the text as added by Acts 2005, c. 548, § 1, has been given effect.

Acts 2005, c. 135, § 2, provides:

“SECTION 2. AND BE IT FURTHER ENACTED, That, when the State Real Estate Commission revises the standardized residential property condition disclosure and disclaimer statement form to reflect the provisions of this Act, the Commission shall include a definition or explanation of the term ‘latent defects.’”

## CROSS REFERENCES

Real estate brokers, duties and obligations, see [Business Occupations and Professions, § 17-532](#).

## ADMINISTRATIVE CODE REFERENCES

Department of Labor, Licensing, and Regulation

Real Estate Commission, residential property disclosure/disclaimer statement, see [COMAR 09.11.07.01 et seq.](#)

## LAW REVIEW AND JOURNAL COMMENTARIES

Let the Buyer Be [Well Informed?](#)-Doubting the Demise of Caveat Emptor. Alan M. Weinberger, 55 Md. L. Rev. 387 (1996).

Practice Tips: Maryland Consumer Protection Developments. Wingrove S. Lynton and Catherine M. Brennan, 39 Md. B.J. 54 (Sept./Oct. 2006).

Radon: Is Legislation the Answer? Kevin L. Shepherd, 22 Md. B.J. 6 (July/Aug. 1989).

#### LIBRARY REFERENCES

Consumer Protection  8.

Westlaw Key Number Search: 92Hk8.

[C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 237 to 238.](#)

#### RESEARCH REFERENCES

Encyclopedias

[93 Am. Jur. Proof of Facts 3d 293](#), Real Estate Purchaser's Recovery of Damages for Seller's Nondisclosure of Dangerous Condition of Land.

[Maryland Law Encyclopedia Costs § 10](#), Attorney's Fees, Generally.



#### NOTES OF DECISIONS


In general [1](#)

Attorneys fees [3](#)

Rescission [2](#)

##### 1. In general

Since auctioneer hired by vendor to sell certain real property explicitly agreed to provide all necessary forms to produce a high quality sale, and vendor was statutorily obliged to provide purchaser with a standardized disclosure or disclaimer form, the auctioneer was required to provide the form as vendor's agent, even if it was not required to do so in its capacity as auctioneer. Code, Real Property, § 10-702. [Auction & Estate Representatives, Inc. v. Ashton](#), 1999, 731 A.2d 441, 354 Md. 333. [Auctions And Auctioneers](#)  8; [Auctions And Auctioneers](#)  9

Residential real estate vendor's failure to provide disclosure or disclaimer statement to purchaser did not make contract void, rather contract was voidable at the option of the purchaser. Code, Real Property, § 10-702. [Romm v. Flax](#), 1995, 668 A.2d 1, 340 Md. 690. [Antitrust And Trade Regulation](#)  401

##### 2. Rescission

If a seller delivers a disclaimer statement to a buyer after the execution of the contract but not later than three days after execution, the buyer has a right of rescission as specified in § 10-702(g)(2), just as if the seller delivered a disclosure statement at that time. 79 Op.Atty.Gen. No. 94-017, March 11, 1994.

If a seller delivers a disclaimer statement later than after three days after execution, § 10-702(g)(1) applies to the contract, just as it would if a disclosure statement were delivered that late. 79 Op.Atty.Gen. No. 94-017, March 11, 1994.

### 3. Attorneys fees

False or negligent misrepresentation and breach of warranty action brought by purchasers of residential property against vendors, alleging that vendors misrepresented condition of home in statutorily required disclosure statement, arose out of the parties' contract to sell real estate, and thus vendors were entitled to their attorney fees as the prevailing party in the action pursuant to provision in contract stating that the prevailing party in a dispute arising out of the contract was entitled to reasonable attorney fees; though the disclosure statement was not part of the contract, absent the contract for the sale of real property purchasers' claims could not have existed, and vendors had a duty to provide the disclosure to purchasers because the parties had entered into the contract. [Stratakos v. Parcels, 2007, 915 A.2d 1022, 172 Md.App. 464. Costs ↪ 194.36](#)

MD Code, Real Property, § 10-702, MD REAL PROP § 10-702

The statutes and Constitution are current through all chapters of the 2009 Regular Session of the General Assembly effective July 1, 2009.

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