

[Md. Real Property Code Ann. § 10-702](#)

Current through all acts of the 2024 Regular Session

*Michie's™ Annotated Code of Maryland > Real Property (Titles 1 – 15) > Title 10. Sales of Property. (Subts. 1 – 8) > Subtitle 7. Contracts of Sale – Miscellaneous Provisions. (§§ 10-701 – 10-714)*

**§ 10-702. Single family residential real property disclosure requirements.**

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(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 alarms:

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

2. Are over 10 years old; and

3. If battery operated, are sealed, tamper resistant units incorporating a silence/hush button and use

long-life batteries as required in all Maryland homes by 2018; 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.

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

(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 requirements 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.

(1) 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.

## History

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[1993, ch. 640](#); [1994, ch. 3, § 1](#); [1995, ch. 3, § 1](#); [ch. 384](#); [2001, ch. 636](#); [2005, chs. 135, 548](#); [2007, ch. 401](#); [2011, ch. 156](#); [2013, chs. 594, 595](#).

Annotations

## Notes

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### Effect of amendments. —

Chapter 401, Acts 2007, effective October 1, 2007, reenacted (c) without change; added (e)(2)(x) and made related changes.

Chapter 156, Acts 2011, effective October 1, 2011, added (h)(3).

Chapters 594 and 595, Acts 2013, effective July 1, 2013, made identical changes. Each substituted "alarms" for "detectors" in the introductory language of (e)(2)(ix); added the (e)(2)(ix)1 designation; added (e)(2)(ix)2 and (e)(2)(ix)3; and made a stylistic change.

### Editor's note. —

As to application to contracts of sale of real property, land installment contracts, option to purchase agreements, and lease agreements entered into on or after January 1, 1994, see § 2, [ch. 640, Acts 1993](#).

As to prospective application and inapplicability to lease or residential property disclosure statement for existing

residential dwelling unit executed before October 1, 2001, see § 2, [ch. 636, Acts 2001](#).

**Purpose. –**

The main purpose of this section is to provide the buyer with information that permits an informed decision whether to make an offer or, if an offer was already made and accepted, to rescind the contract. 79 Md. Op. Att'y Gen. 402 (March 11, 1994).

A related purpose of the time frames in this section is to ensure finality in transactions by putting limits on the buyer's ability to rescind. 79 Md. Op. Att'y Gen. 402 (March 11, 1994).

**Construction of section. –**

This section should be construed to apply the same time frames to a disclaimer statement as are expressly applied to a disclosure statement; hence, a seller's delivery of a disclaimer statement after the execution of the contract would leave the buyer and the seller in the same position as if the seller delivered a disclosure statement at that time. 79 Md. Op. Att'y Gen. 402 (March 11, 1994).

In addition to outlining the contents of the disclosure and disclaimer statements, this section also attempts to lay out the details of the delivery of the statements, the rights of the buyer upon receipt of a statement, and certain deadlines; unfortunately, the seeming statutory objective, to make uniform the procedures governing disclosure statements and disclaimer statements, given that seller has the freedom to choose which statement to deliver, is not fully carried out in the drafting of the provisions. 79 Md. Op. Att'y Gen. 402 (March 11, 1994).

**Rescission rights at option of purchasers only. –**

Clear legislative intent of this section is to require sellers to deliver a disclosure or disclaimer statement and to grant rescission rights at the option of the purchasers only; a literal interpretation of the term "void" would grant sellers a right of rescission, allow them to benefit from non-compliance with the duty to prepare a disclosure or disclaimer statement, create a new class of option contracts, and alter the common law – results

that are unreasonable and inconsistent with the General Assembly's intention in passing this section. [Romm v. Flax, 340 Md. 690, 668 A.2d 1, 1995 Md. LEXIS 164 \(1995\).](#)

**Disclosure and disclaimer statements distinguished. –**

Nothing in the legislative history suggests a decision by the General Assembly to differentiate disclosure and disclaimer statements in contexts where no reasoned distinction appears to exist; to the contrary, the legislative history suggests that the omission of a reference to a disclaimer statement in (f) and (g) was the result of an amendment process that focused on policy issues rather than drafting details. 79 Md. Op. Att'y Gen. 402 (March 11, 1994).

**Applicability of (g). –**

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 (g)(2) just as if the seller delivered a disclosure statement at that time; if a seller delivers a disclaimer statement after that time, (g)(1) applies to the contract, just as it would if a disclosure statement were delivered that late. 79 Md. Op. Att'y Gen. 402 (March 11, 1994).

**Failure to provide constituted breach of contract. –**

Auctioneer, who contracted with seller of real property to provide all forms necessary to produce a sale, breached the auction contract by failing to provide to the buyer of the property the standardized disclaimer or disclosure form created and distributed by the State Real Estate Commission pursuant to this section. [Auction & Estate Representatives, Inc. v. Ashton, 354 Md. 333, 731 A.2d 441, 1999 Md. LEXIS 326 \(1999\).](#)

**Attorney fee award. –**

Trial court properly awarded attorney fees to the seller after the trial court granted summary judgment in the sellers' favor on the buyers' complaint against the sellers regarding the buyers' purchase of the sellers' residence; even though the State residential property disclosure statement that contained the purported misrepresentations and which was given to the buyers by

the sellers was not part of the real estate sales contract, the real estate sales contract only stated that the relevant dispute had to "arise out of" the real estate sales contract to recover attorney fees, and without the purported misrepresentations on the disclosure statement provided as part of the real estate sales transaction, the dispute would not have arisen. [Stratakos v. Parcels, 172 Md. App. 464, 915 A.2d 1022, 2007 Md. App. LEXIS 15 \(2007\)](#).

## **Research References & Practice Aids**

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### **Maryland Law Review.**

For article, "Let the Buyer Be Well Informed? – Doubting the Demise of Caveat Emptor," see [55 Md. L. Rev. 387 \(1996\)](#).

### **University of Baltimore Law Forum.**

Recent Developments: Romm v. Flax: Court of Appeals Rejects Literal Definition of "Void" as It Appears in the Context of the Real Property Article, 26.3 U. Balt. Law F. 55 (1996).

### **Hierarchy Notes:**

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