

MONTGOMERY COUNTY RADON TESTING FOR HOME SALES

Generally the new Montgomery County radon law (§ 40-13C(b), Montgomery County Code), effective October 1, 2016, provides:

1. A single-family home located in Montgomery County must be tested for radon before completing a sale of the home.
2. The radon test must reflect an effective date within one year of the anticipated settlement.
3. The seller must either perform the test or permit the buyer to perform the test.

Both the seller and buyer must receive a copy of the results of the radon test. The seller must conduct a test, or permit the buyer to conduct a test. Ultimately, the seller has the responsibility to ensure testing for radon. The law applies to all home sales with a settlement date of October 1, 2016 or later—irrespective of contract ratification date (*e.g.*, the requirements apply to pending sales ratified prior to October 1, 2016 but settling on or after October 1, 2016).

Exemptions include: REOs, foreclosure auctions, estate sales, infill lots (*i.e.*, tear downs) and transactions not otherwise subject to transfer taxes (*e.g.*, removing/adding a spouse/child to title).

FREQUENTLY ASKED QUESTIONS

Q: When does the law take effect?

A: October 1, 2016.

Q: Does it apply to my listing/purchase?

A: It applies to Home sales **CLOSING** on or after October 1, 2016, regardless of whether you listed the property or ratified a contract on the property prior to October 1, 2016.

Q: What if listed the property before October 1, 2016 and ratified before October but intend to close on or after October 1, 2016?

A: The new law will apply to you. It applies to any sale that closes/settles on or after October 1, 2016.

Q: What if the seller conducted a radon test previously?

A: The seller must have conducted the radon test with an approved testing device within **one (1) year of closing** (*e.g.*, if you close on October 7, 2016, the radon test must have an effective date no earlier than October 8, 2015).

Q: What does “single-family home” mean in the context of the new radon law?

A: Single Family Homes, for purposes of this law, includes detached houses and townhomes but *not* to condominiums (including townhouse styled condominiums), cooperative housing and mobile homes.

Q: Does the Montgomery County radon law include any jurisdictional exemptions?

A: It applies everywhere in the county **EXCEPT** for the Town of Barnesville, the Town of Kensington, the Town of Poolesville and the City of Rockville.

Q: May a seller or buyer conduct the radon test him or herself, or does a licensed home inspector or radon testing professional have to conduct the test?

A: Yes, either a seller, buyer, or a third party, such as a home inspector or radon testing professional, may conduct the radon test, provided, however, they utilize an approved testing device.

Q: Can an individual, such as the seller/homeowner, conduct a radon test using a kit purchased from Home Depot or must one use an expensive professional kit?

A: The individual conducting the test must utilize a Montgomery County Department of Environmental Protection (DEP) approved device which may include any test device appearing on the National Radon Proficiency Program list (*see*: <http://aarst-nrpp.com/wp/approved-devices/>) or any device appearing on the list below (costs range from \$25.00 - \$45.00 and up).

Q: What if the radon test results indicate an elevated level of radon contamination in the house?

A: Technically, the results of the test do not matter, as the law does *not* require the seller to remediate or even provide an estimate from a contractor for remediation as originally proposed in an earlier version of the law.

Q: What purpose does the law serve if it does not require the seller to remediate for elevated levels of radon?

A: Simply to inform the buyer of the radon levels in the home.

Q: Does the law or contract, as written, allow the buyer to negotiate with the seller for radon remediation in the event test results indicate elevated levels of radon?

A: No. Neither the law nor the contract impose a responsibility upon the seller to remediate for elevated levels of radon nor does either provide a mechanism for the buyer to negotiate with the seller for radon remediation. If the buyer would like to require the seller to remediate for elevated levels of radon, the parties would have to agree to such a requirement *in writing* as part of the contract. If the buyer wishes to conduct the radon test himself/herself and negotiate for remediation in the event of elevated levels of radon, the parties will have to agree to the provisions of ¶ 4 of the Addendum of Clauses-A (Radon Inspection Contingency).

Q: What if the seller refuses to conduct the test?

A: The seller must permit the buyer to come and conduct the radon test.

Q: What if the buyer demands that the seller conduct the test?

A: The burden remains on the seller to test the property, and thus the seller must conduct the test or cannot settle.

Q: Who pays for the radon test?

A: The law does not identify which party pays for the test, but practically speaking, one can expect the party who conducts the test to pay for it. Ultimately, the seller would have to pay for testing if the buyer refuses since the seller cannot complete the sale of the home without a radon test.

Q: Does the law exempt any properties/transactions from radon testing?

A: The law exempts sales and/or transfers of condominiums (including townhouse-styled condominiums), cooperative housing, sheriff's sale, tax sale or sale by foreclosure, partition or by court appointed trustee, transfer by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust, and a transfer of a home to be converted by the buyer into a use other than residential or to be demolished.

Q: Where in the home must I conduct the test?

A: In the living quarters (*e.g.*, living room, family room, kitchen, bedrooms, but *not* garages, attics, sheds, *etc.*).

Q: What forms must I use to inform the buyer of the new Montgomery County radon law?

A: The revised REA Addendum (GCAAR Form 900) includes a new paragraph (§ 4) advising prospective buyers of the new law.

Q: Does Montgomery County, Maryland provide any additional information concerning the new radon law?

A: For additional information from Montgomery County, visit their website at:

<https://www.montgomerycountymd.gov/DEP/air/radon.html>.

SOME APPROVED TESTING DEVICES	
Accustar Alpha Track Test Kit AT 100	Kidde Radon Detection Kit
Accustar PicoCan - 275	PRO-LAB Long Term Radon Gas Test Kit RL116
Accustar PicoCan – 400	PRO-LAB Radon Gas Test Kit RA100
Air Check Radon Test Kit	Radata Radon Test Kit
First Alert RD1 Radon Gas Test Kit	