

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

Senate Bill 248 (Senator Kelley, *et al.*)
Judicial Proceedings

Real Property - Common Ownership Communities - Disclosures

This bill alters the disclosure requirements for the resale of a unit in a condominium, and the initial sale or resale of a lot subject to a homeowners association if the lot is intended for residential use. The bill also establishes disclosure requirements for the resale of a cooperative interest by a member of a cooperative housing corporation.

Fiscal Summary

State Effect: The bill would not directly affect governmental operations or finances.

Local Effect: None – see above.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Condominiums

For the resale of a condominium when the seller is someone other than the developer, the bill provides that the contract is not enforceable unless the seller furnishes the buyer with specified documents no later than 20 calendar days after entering into the contract (changed from 15 days prior to closing).

The bill shortens the period (from 20 to 15 days after receiving a written request from a unit owner) that the council of unit owners must furnish the unit owner information necessary to enable the unit owner to comply with the disclosure requirements.

Homeowners Associations

For the sale of a lot in a development, the bill lengthens the time period (from 5 to 15 days following the receipt of the required information) during which a purchaser may cancel the contract of sale without stating a reason and without liability. A purchaser may cancel the contract within five days (lengthened from three days) after receiving notice about a change in mandatory fees and payments exceeding 5% (lowered from 10%) of the amount previously stated to exist.

The information that has to be given to a purchaser of a lot in a development must also include a statement of any unsatisfied judgments against the homeowners association and the existence of any pending lawsuits to which the association is a party.

For the resale of a lot in a development (regardless of size) or the initial sale of lot in a development with 12 or fewer lots, the information must also include the homeowners association's current operating budget, including information concerning the reserve fund or a statement that there is no reserve fund.

Both Condominiums and Homeowners Associations

The bill makes conforming changes to the disclosure statements that must be given to the purchaser of a condominium unit or lot in a development.

Cooperative Housing Corporations

For the resale of a cooperative interest in a cooperative housing corporation by a member other than the developer, the contract is not enforceable against the purchaser unless the purchaser is given, within 20 days after entering into the contract:

- copies of the membership certificate, property lease, articles of incorporation, bylaws, rules (if any), and blanket encumbrances;
- the current annual operating budget, including specified information; and
- specified statements and descriptions about the form of ownership, subletting units or selling interests, voting and other rights, treatment of member interests under federal and State tax laws, common charges, fees, insurance, management of the corporation, specified leases to third parties, and judgments and lawsuits.

Current Law:

Condominiums

The contract for the resale of a unit in a condominium with seven or more units by someone other than the developer is not enforceable unless the owner gives the purchaser (no later than 15 days prior to closing):

- a copy of the declaration;

- the bylaws;
- the rules or regulations;
- a certificate from the council of unit owners containing specified information, statements, and disclosures about restraints on alienability, the amount of common monthly expenses, other fees, capital expenditures, the current operating budget, balance sheet, insurance policies, judgments, the council of unit owners' knowledge of alterations to the unit, violations of health or building codes, the remaining term of a leasehold estate in the unit, and recreation or other facilities; and
- a statement by the unit owner containing specified information about the unit.

The council of unit owners must provide information necessary to comply within 20 days after receiving a written request and the appropriate fee (if any).

The contract for the resale of a unit in a condominium with fewer than seven units by someone other than the developer is not enforceable unless the owner gives the purchaser (no later than 15 days prior to closing):

- a copy of the declaration;
- the bylaws; the rules and regulations; and
- a statement by the unit owner of the owners expenses during the preceding 12 months relating to the common elements.

A purchaser may cancel the contract in writing within seven days after receiving the required information without stating any reason and without any liability.

Homeowners Associations

For the initial sale of a lot in a development, the seller must provide the purchaser with:

- specified information about the seller and the declarant;
- specified information about the homeowners association;
- a description containing specified information about the size and potential expansion of the development;
- copies of specified documents concerning the primary and other related developments, and the bylaws and rules of the primary and other related developments;
- a description or statement of any property to be owned by the homeowners association;
- a copy of the estimated proposed or actual annual budget for the current fiscal year, including a description of replacement reserves for common area

improvements, if any, and a copy of the projected budget based on a fully expanded development;

- a statement containing specified information about current or anticipated mandatory fees or assessments;
- specified information about zoning and other land use requirements;
- a statement containing specified information regarding fees and assessments;
- specified information about money other than prorated fees or assessments to be collected at settlement for contribution to the homeowners association; and
- a description of special rights or exemption reserved by or for the benefit of the declarant or vendor, including specified information.

For the resale of a lot within a development, or for the initial sale of a lot in a development with 12 or fewer lots, the seller must include:

- a statement about whether the lot is located within a development;
- specified information about fees and assessments;
- specified contact information about the association's management agent or similar person;
- a statement as to the owner's actual knowledge of any unsatisfied judgments and any pending claims, covenant violation actions or notices of default against the lot; and
- a copy of specified documents, including the articles of incorporation, the declaration, recorded covenants, bylaws, and rules.

A purchaser may cancel a contract of sale without stating a reason and without liability within five days after receiving the required information. A purchaser may also cancel the contract within three days after receiving notice about a change in mandatory fees and payment that exceeds previously stated amount by 10% or more.

Cooperative Housing Corporations

For a contract for the initial sale of a cooperative interest in a cooperative housing corporation, the purchaser must be given (at or before the contract is entered into) a public offering statement containing:

- the name and address of the developer;
- a survey or description of the project containing specified information;
- statements containing specified information about the form of ownership, the streets abutting the corporation, completion dates, subletting units or selling cooperative interests, voting and other rights, treatment of member interests under

federal and State tax laws, deposits, fees and other charges, the cooperative interests of members, insurance, the state of repair of specified older buildings, and warranties and disclaimers;

- copies of the proposed or final contract of sale, membership certificate, proprietary lease, articles of incorporation, bylaws, rules, floor plan, blanket encumbrances, specified loan documents, specified leases, management contracts, and employment contracts;
- a copy of the projected annual operating budget, including specified information; and
- a copy of the notice and other materials required if a conversion from a rental facility is involved.

Background: Chapter 469 of 2005 established the Task Force on Common Ownership Communities. The full task force met 10 times during 2006 and conducted 5 public hearings, at which public comments were solicited. In addition, subcommittees comprising task force members met several times. The task force made several recommendations on various topics. The bill reflects one of the task force recommendations.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation; Department of Labor, Licensing, and Regulation; Secretary of State; Department of Legislative Services

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