

SENATE BILL 597

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CF HB 620

By: **Senator Rosapepe**

Introduced and read first time: February 5, 2010

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Condominiums and Homeowners Associations – Common Elements and**
3 **Common Areas – Implied Warranties**

4 FOR the purpose of requiring the description of the common elements in a
5 condominium declaration that is recorded on or after a certain date to include
6 certain improvements; prohibiting under certain circumstances the amending of
7 the description and designation of the common elements in a condominium
8 declaration that is recorded after a certain date; altering the duration of a
9 certain implied warranty on the common elements of a condominium; altering
10 the duration of a certain implied warranty on the common areas of a
11 homeowners association; making stylistic changes; providing for the application
12 of this Act; and generally relating to implied warranties on common elements in
13 condominiums and common areas in homeowners associations.

14 BY repealing and reenacting, with amendments,
15 Article – Real Property
16 Section 11–103(a), 11–131(d), and 11B–110(a)
17 Annotated Code of Maryland
18 (2003 Replacement Volume and 2009 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article – Real Property**

22 11–103.

23 (a) The declaration shall express at least the following particulars:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (1) The name by which the condominium is to be identified, which
2 name shall include the word “condominium” or be followed by the phrase “a
3 condominium”.

4 (2) A description of the condominium sufficient to identify it with
5 reasonable certainty together with a statement of the owner’s intent to subject the
6 property to the condominium regime established under this title.

7 (3) A general description of each unit, including its perimeters,
8 location, and any other data sufficient to identify it with reasonable certainty. As to
9 condominiums created on or after July 1, 1981, except as provided by the declaration
10 or the plat **AND SUBJECT TO PARAGRAPH (4)(II) OF THIS SUBSECTION:**

11 (i) If walls, floors, or ceilings are designated as boundaries of a
12 unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper,
13 paint, finished flooring, and any other materials constituting any part of the finished
14 surfaces thereof are a part of the unit, and all other portions of the walls, floors, or
15 ceilings are a part of the common elements.

16 (ii) If any chute, flue, duct, wire, conduit, or any other fixture
17 lies partially within and partially outside the designated boundaries of a unit, any
18 portion thereof serving only that unit is a part of that unit, and any portion thereof
19 serving more than one unit or any portion of the common elements is a part of the
20 common elements.

21 (iii) Subject to the provisions of subparagraph (ii) of this
22 paragraph, all spaces, interior partitions, and other fixtures and improvements within
23 the boundaries of a unit are a part of the unit.

24 (iv) Any shutters, awnings, window boxes, doorsteps, stoops,
25 porches, balconies, patios, and all exterior doors and windows or other fixtures
26 designed to serve a single unit, but located outside the unit’s boundaries, are limited
27 common elements allocated exclusively to that unit.

28 (4) **(I)** A general description of the common elements together with
29 a designation of those portions of the common elements that are limited common
30 elements and the unit to which the use of each is restricted initially.

31 **(II) 1. THIS SUBPARAGRAPH APPLIES TO ANY**
32 **CONDOMINIUM FOR WHICH A DECLARATION, BYLAWS, AND PLAT ARE**
33 **RECORDED IN THE LAND RECORDS OF THE COUNTY WHERE THE PROPERTY IS**
34 **LOCATED ON OR AFTER OCTOBER 1, 2010.**

35 **2. THE DESCRIPTION OF THE COMMON ELEMENTS**
36 **SHALL INCLUDE THE FOLLOWING IMPROVEMENTS TO THE EXTENT THAT THE**
37 **IMPROVEMENTS ARE SHARED BY OR SERVE MORE THAN ONE UNIT OR SERVE**
38 **ANY PORTION OF THE COMMON ELEMENTS:**

- 1 **A. ROOFS;**
2 **B. FOUNDATIONS;**
3 **C. EXTERNAL AND SUPPORTING WALLS;**
4 **D. MECHANICAL, ELECTRICAL, AND PLUMBING**
5 **SYSTEMS; AND**
6 **E. OTHER STRUCTURAL ELEMENTS.**

7 **3. THE DESCRIPTION AND DESIGNATION OF THE**
8 **COMMON ELEMENTS REQUIRED UNDER SUBSUBPARAGRAPH 2 OF THIS**
9 **SUBPARAGRAPH MAY NOT BE AMENDED UNTIL AFTER THE DATE ON WHICH THE**
10 **DEVELOPER TRANSFERS CONTROL OF THE COUNCIL OF UNIT OWNERS UNDER §**
11 **11-109(C)(16) OF THIS TITLE.**

12 (5) The percentage interests appurtenant to each unit as provided in §
13 11-107 of this title.

14 (6) The number of votes at meetings of the council of unit owners
15 appurtenant to each unit.
16 11-131.

17 (d) (1) In addition to the implied warranties set forth in § 10-203 of this
18 article there shall be an implied warranty on common elements from a developer to
19 the council of unit owners. The warranty shall apply to: the roof, foundation, external
20 and supporting walls, mechanical, electrical, and plumbing systems, and other
21 structural elements.

22 (2) The warranty shall provide that the developer is responsible for
23 correcting any defect in materials or workmanship, and that the specified common
24 elements are within acceptable industry standards in effect when the building was
25 constructed.

26 (3) **(I)** The warranty on common elements commences with the
27 first transfer of title to a unit owner.

28 **(II)** The warranty of any common elements not completed at
29 that time shall commence with the completion of that element or with its availability
30 for use by all unit owners, whichever occurs later.

31 **(III)** The warranty extends for a period of [3] **THREE** years
32 **FROM COMMENCEMENT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH OR**

1 **TWO YEARS FROM THE DATE ON WHICH THE DEVELOPER TRANSFERS CONTROL**
 2 **OF THE COUNCIL OF UNIT OWNERS UNDER § 11-109(C)(16) OF THIS TITLE,**
 3 **WHICHEVER OCCURS LATER.**

4 (4) A suit for enforcement of the warranty on general common
 5 elements shall be brought only by the council of unit owners. A suit for enforcement of
 6 the warranty on limited common elements may be brought by the council of unit
 7 owners or any unit owner to whose use it is reserved.

8 11B-110.

9 (a) (1) In addition to the implied warranties on private dwelling units
 10 under § 10-203 of this article and the express warranties on private dwelling units
 11 under § 10-202 of this article, there shall be an implied warranty to the homeowners
 12 association that the improvements to common areas are:

13 (i) Free from faulty materials;

14 (ii) Constructed in accordance with sound engineering
 15 standards; and

16 (iii) Constructed in a workmanlike manner.

17 (2) (i) Subject to the provisions of subparagraph (ii) of this
 18 paragraph, if the improvements to the common areas were constructed by the vendor,
 19 its agents, servants, employees, contractors, or subcontractors, then the warranty on
 20 improvements shall be from the vendor of the lots within the development.

21 (ii) If the improvements to the common areas were constructed
 22 on the common areas prior to its conveyance to the homeowners association, then the
 23 warranty on improvements shall be from the grantor of the common areas.

24 (3) **(I)** The warranty on improvements to the common areas begins
 25 with the first transfer of title to a lot to a member of the public by the vendor of the lot.

26 **(II)** The warranty on improvements to common areas not
 27 completed at that time shall begin with the completion of the improvement or with its
 28 availability for use by lot owners, whichever occurs later.

29 **(III)** The warranty extends for a period of [one year] **TWO YEARS**
 30 **FROM COMMENCEMENT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH OR**
 31 **TWO YEARS FROM THE DATE ON WHICH THE DECLARANT TRANSFERS CONTROL**
 32 **OF THE HOMEOWNERS ASSOCIATION UNDER § 11B-106.1 OF THIS TITLE,**
 33 **WHICHEVER OCCURS LATER.**

1 (4) Suit for enforcement of the warranty on improvements to the
2 common areas may be brought by either the homeowners association or by an
3 individual lot owner.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
5 construed to apply only prospectively and may not be applied or interpreted to have
6 any effect on or application to any condominium or homeowners association for which
7 a declaration, bylaws, and plat have been recorded in the land records of the county
8 where the property is located before the effective date of this Act.

9 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2010.