

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 597

(Senator Rosapepe)

Judicial Proceedings

Environmental Matters

Condominiums and Homeowners Associations - Common Elements and Common
Areas - Implied Warranties

This bill requires the description of a condominium's common elements contained in the declaration to include certain improvements that are shared by or serve more than one unit, or serve any portion of the common elements. The bill also prohibits the description and designation of the common elements from being amended until after the date the unit owners, other than the developer and its affiliates, first elect a controlling majority of the board of directors for the council of unit owners.

The bill applies prospectively to any condominium or homeowners association for which a declaration, bylaws, and plat are recorded among the local land records on or after October 1, 2010.

Fiscal Summary

State Effect: If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources. No effect on revenues.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill extends the developer's implied warranty on the condominium's common elements to the later of (1) three years from the first transfer of title to a unit owner; or (2) two years from the date the unit owners, other than the developer and its affiliates, first elect a controlling majority of the board of directors for the council of unit

owners. Likewise, the bill extends a declarant's implied warranty on improvements to a homeowners association's common areas to the later of (1) two years from the first transfer of title to a lot to a member of the public; or (2) two years from the date on which the lot owners, other than the declarant and its affiliates, first elect a controlling majority of the governing body of the homeowners association.

Current Law: An owner of property or lessee under a lease exceeding 60 years may subject the property to a condominium regime by recording a declaration, bylaws, and plat in the land records for the county where the property is located.

A condominium's declaration must contain specific information, including (1) the name of the condominium; (2) a description of the condominium and a statement of the owner's intent to subject the property to a condominium regime; (3) a general description of each unit including its perimeters and location; (4) a general description of the condominium's common elements and limited common elements; (5) each unit owner's undivided percentage interest in the common elements; and (6) the votes apportioned to each unit at meetings of the council of unit owners.

In every sale of any improved real property, warranties are implied that, at the time the deed is delivered to a completed improvement or at the time of completion of an improvement not completed when the deed is delivered, the improvement is:

- free from faulty materials;
- constructed according to sound engineering standards;
- constructed in a workmanlike manner; and
- fit for habitation.

However, these warranties do not apply to any condition that an inspection of the premises would reveal to a reasonably diligent purchaser at the time of signing the contract. The Maryland Condominium Act (MCA) provides for an additional implied warranty on the common elements from a developer to the council of unit owners. The implied warranty on the common elements applies to the roof, foundation, external and supporting walls, mechanical, electrical, and plumbing systems, and other structural elements.

The warranty must provide that the developer is responsible for correcting any defect in materials or workmanship and that the specified common elements are within acceptable industry standards in effect when the building was constructed. The implied warranty on the common elements commences with the first transfer of title to a unit owner and extends for a period of three years. A suit for enforcement of the warranty on general common elements may be brought only by the condominium's council of unit owners.

However, any unit owner may bring a suit to enforce the warranty on that owner's reserved use of limited common elements.

Notice of any defect must be given during the warranty period, and a suit for enforcement must be brought within one year of the end of the warranty period.

For a homeowners association, the warranty on improvements to the common areas begins with the first transfer of title to a lot to a member of the public. The warranty on improvements not completed at that time begins with the later of the completion of the improvement or its availability for use by lot owners. The warranty extends for one year.

Background: This bill extends implied warranty protections beyond the period of developer control of a condominium and declarant control of a homeowners association. Under current law, implied warranties on the common areas and common elements often expire prior to the transfer of control of the council of unit owners or the homeowners association by the developer to the homeowners.

Furthermore, the bill intends to close a statutory loophole whereby some developers define common elements such as a roof, external walls, or other structural elements as being part of specified units rather than the common shared elements of the entire condominium or homeowner's association. These developers have crafted condominium and homeowners association documents in this fashion to defeat implied warranties applicable to common structures such as roofs and external walls.

Additional Information

Prior Introductions: None.

Cross File: HB 620 (Delegate Frush, *et al.*) - Environmental Matters.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2010
ncs/kdm Revised - Senate Third Reader - April 5, 2010

Analysis by: Jason F. Weintraub

Direct Inquiries to:
(410) 946-5510
(301) 970-5510