

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 740

(Delegate Braveboy)

Environmental Matters

Judicial Proceedings

Residential Condominiums - Governing Documents - Claims Provisions

This bill establishes that any provision of an instrument made by a developer in accordance with the Maryland Condominium Act (MCA) is unenforceable if the provision places specified limitations on warranty claims or other statutory or common law claims. The bill does not apply to a condominium that is (1) occupied and used solely for nonresidential purposes; or (2) sold by a developer at a discount “as is” and with no warranties.

Fiscal Summary

State Effect: The bill does not directly affect governmental operations and finances.

Local Effect: The bill does not directly affect local governmental operations and finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: Any provision of an instrument made by a developer, including a declaration, a bylaw, and a contract for the sale of a unit to a member of the public, is unenforceable if the provision:

- purports to shorten the statute of limitations applicable to any warranty claim or other statutory or common law claim;
- purports to waive the application of the “Discovery Rule” or other accrual date applicable to any warranty claim or other statutory or common law claim;

- operates to prevent a unit owner or the council of unit owners from filing a lawsuit, initiating arbitration proceedings, or otherwise asserting a claim within the applicable statute of limitations; or
- requires a unit owner or the council of unit owners to assert a claim subject to arbitration within a period of time that is shorter than the statute of limitations applicable to the claim.

Additionally, a provision that requires the council of unit owners to obtain a vote of unit owners or the approval of the developer or any nonunit owners as a precondition to the institution or maintenance of a lawsuit, arbitration, mediation, or a similar proceeding is unenforceable unless the council of unit owners adopts the provision on a date after the unit owners, other than the developer and its affiliates, first elect a controlling majority of the board of directors. The adoption of this provision must follow any procedures to amend the declaration or bylaws required by MCA.

Current Law: The governance of every condominium is determined by its bylaws, which must be recorded with the declaration. If the council of unit owners is incorporated, the bylaws must be the bylaws of that corporation. The bylaws also may contain a provision regarding the management and operation of the condominium, including any restriction on or requirement respecting the use and maintenance of the units and the common elements. Unless a higher percentage is required in the bylaws, the bylaws of a condominium may be amended by the affirmative vote of unit owners having at least two-thirds of the votes in the council of unit owners.

In contrast, the declaration of a condominium may be amended in specified circumstances only with the written consent of 80% of the unit owners listed on the current roster.

Additional Information

Prior Introductions: None.

Cross File: SB 725 (Senator Kelley) - Judicial Proceedings.

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

Fiscal Note History: First Reader - February 28, 2012
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