

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 167

(Senator Kelley)

Judicial Proceedings

Environmental Matters

Residential Condominiums - Governing Documents - Claims Provisions

This bill establishes that any provision of an instrument, such as a declaration, bylaw, or contract, made by a developer in accordance with the Maryland Condominium Act (MCA) is unenforceable if the provision places specified limitations on enforceable warranty claims or other statutory or common law claims. The bill does not apply to a condominium that is occupied and used solely for nonresidential purposes.

Fiscal Summary

State Effect: The bill does not directly affect State 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 enforceable 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 enforceable 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:

Warranties: Unless excluded or modified by contract, in a sale of a newly constructed private dwelling unit, warranties are implied that, at the time of the delivery of the deed to a completed improvement or at the time of completion of an improvement not completed when the deed is delivered, the improvement is (1) free from faulty materials; (2) constructed according to sound engineering standards; (3) constructed in a workmanlike manner; and (4) fit for habitation.

These warranties do not apply to any condition that an inspection of the premises would reveal to a reasonably diligent purchaser at the time the contract is signed.

These warranties expire:

- in the case of a dwelling completed at the time of the delivery of the deed to the original purchaser, one year after the delivery or after the taking of possession by the original purchaser, whichever occurs first;
- in the case of a dwelling not completed at the time of delivery of the deed to the original purchaser, one year after the date of the completion or taking of possession by the original purchaser, whichever occurs first; and

- in the case of structural defects, two years after the date of completion, delivery, or taking possession, whichever occurs first.

In addition to the implied warranties described above, there is an implied warranty on an individual condominium unit from a developer to a unit owner. The warranty on an individual unit commences with the transfer of title to that unit and extends for a period of one year. The warranty provides:

- that the developer is responsible for correcting any defects in materials or workmanship in the construction of walls, ceilings, floors, and heating and air conditioning systems in the unit; and
- that the heating and any air conditioning systems have been installed in accordance with acceptable industry standards and are warranted to maintain specified temperatures.

An implied warranty also exists on common elements conveyed from a developer to the council of unit owners. The warranty 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 warranty on common elements commences with the first transfer of title to a unit owner. The warranty of any common elements not completed at the first transfer of title to a unit owner commences with the completion of that element or with its availability for use by all unit owners, whichever occurs later. The warranty extends for a period of three years from commencement as described above or two years from the date on which the unit owners, other than the developer and its affiliates, first elect a controlling majority of the members of the board of directors for the council of unit owners, whichever occurs later.

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

Declaration and Bylaws: 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.

Background: The Secretary of State reports that 2,559 condominiums are registered in Maryland with a total of 165,437 units. For more information on common ownership communities, including the transition of control from developer to governing body, see the **Appendix – Common Ownership Communities**.

Additional Information

Prior Introductions: SB 725 of 2012 passed the Senate and passed the House, as amended, but received no further action. Its cross file, HB 740, passed with amendments in both the House and Senate; the House members of the conference committee were not appointed so no further action was taken.

Cross File: None.

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

Fiscal Note History: First Reader - January 29, 2013
ncs/kdm Revised - Senate Third Reader - March 21, 2013

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Appendix – Common Ownership Communities

When a person purchases a house, condominium, or an interest in a cooperative housing arrangement, he or she may also be required to join an association of owners which is intended to act in the common interests of the homeowners, condominium owners, or co-op owners in the community. These associations assess dues to property owners to achieve their goals and address community problems. Collectively, these associations are often referred to as common ownership communities (COCs). The Secretary of State reports that there were over 2,500 condominiums in the State of Maryland registered with the office in 2012. It is unclear how many homeowners associations (HOAs) and cooperatives are currently operating in the State, but the number is substantial.

With a growing number of Marylanders residing in COCs, and evidence that some COCs had issues with governance, dispute resolution, and financial stability, the General Assembly authorized the Task Force on Common Ownership Communities in June 2005 (Chapter 469 of 2005, SB 229). The issues addressed by the task force included the education and training needs of COC boards and prospective buyers, availability of alternative dispute resolution services, special considerations of aging COCs, collection of assessments, and resale of homes within COCs. The task force met 10 times, held 5 public hearings, and submitted its final report in December 2006. The report's findings and recommendations have served, in subsequent years, as the basis for numerous pieces of legislation, intended to improve the operation of COCs. This legislation, enacted from 2007 through 2011:

- authorized a group of three or more unit or lot owners in a condominium or HOA to petition a circuit court to appoint a receiver in specified situations frequently found in aging communities (Chapter 321 of 2007, SB 287);
- gave the Consumer Protection Division within the Office of the Attorney General increased authority over violations of the Maryland Homeowners Association Act (Chapter 593 of 2007, HB 183);
- eased restrictions on the ability of a COC to amend its governing documents by allowing an amendment at least once every five years (Chapters 144 and 145 of 2008, SB 101/HB 1129);
- strengthened the transition process from developer to COC governing body by allowing the governing body to terminate specified contracts and requiring the developer to provide specified documents (Chapters 95 and 96 of 2009, SB 742/HB 667);

- required the governing body of a COC to purchase fidelity insurance or a fidelity bond covering various acts of malfeasance by COC officers, directors, and other specified employees and agents (Chapters 77 and 78 of 2009, SB 541/HB 687 and Chapter 615 of 2010, HB 702); and
- granted a condominium or HOA priority over a specified portion of a lien in the event of a foreclosure of a mortgage or deed of trust on a unit or lot (Chapter 387 of 2011, HB 1246).

The task force's report also featured findings and recommendations relating to alternative dispute resolutions and the creation of an ombudsman in local governments. Montgomery County's Commission on Common Ownership Communities was referenced as an alternative dispute resolution model for future local offices. Since the report's release, Prince George's County created its Common Ownership Communities Program in 2007 with the stated purpose of assisting governing bodies as well as owners and residents of homeowners' residential condominiums and cooperative housing corporations with education, training, and alternative dispute resolution. Charles County also has an office dedicated to COCs which predates the task force.

Finally, findings and recommendations of the report which have not been codified in statute concern reserves of COCs, an insurance deductible cap for unit owners, the suspension of privileges of delinquent unit owners, uniformity of disclosure requirements and packages, and uniformity of COC depository requirements.