

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 143

(Delegate Foley, *et al.*)

Environment and Transportation

Judicial Proceedings

Condominiums - Sales Contracts - Asbestos Disclosure

This bill establishes that a contract for the sale of a condominium unit is unenforceable if the contract does not contain specified notices related to the presence of asbestos.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

Initial Contracts of Sale

Under current law, a contract for the initial sale of a condominium unit to a member of the public is not enforceable by the vendor unless:

- the purchaser is given – on or before the time a contract is entered into between the vendor and the purchaser – a current public offering statement (as amended and registered with the Secretary of State) containing specified information; and
- the contract of sale, in conspicuous type, contains a notice of (1) the purchaser’s right to receive a public offering statement and the purchaser’s rescission right, as specified and (2) specified warranties provided under § 11-131 of the Real Property

Article, and whether the council of unit owners has entered into any agreement that settles or releases the council of unit owners' claims related to these warranties.

The bill adds that the notice must include a statement as to whether the vendor has actual knowledge of the presence of asbestos in the condominium, including a description of the location of the asbestos and whether abatement has been performed (including the date of any abatement).

Certificates and Notices for the Resale of Condominiums

Under current law, a contract for the resale of a unit by a unit owner other than the developer is not enforceable unless the owner provides specified information (within a required certificate/notice) to the purchaser no later than 15 days prior to closing. For example, in addition to other items, the unit owner must provide a certificate containing:

- a statement detailing the common expense assessment and any unpaid common expense or special assessment adopted by the council of unit owners that is due;
- a statement of any other fees payable by the unit owners to the council of unit owners;
- the most recent regularly prepared balance sheet and income expense statement, if any, of the condominium;
- a statement of any judgments or pending lawsuits to which the council of unit owners is a party, excluding assessment collection actions; and
- a statement as to whether the council of unit owners has knowledge of any violation of the health or building codes, as specified. The bill specifies that this statement must include any violation of health or building codes related to asbestos.

The bill adds that the required information provided to the purchaser must also include a statement as to whether the unit owner has knowledge of the presence of asbestos in the unit (including a description of the location), and whether abatement has been performed during the occupancy of the owner.

For more information on condominiums, which, along with cooperative housing corporations and homeowners associations are commonly known as common ownership communities, see the **Appendix – Common Ownership Communities**.

Similar Disclosure Requirements

Statute includes additional provisions specifically regarding the disclosure of asbestos in other types of residential property contracts. For example, § 10-702 of the Real Property Article (which generally governs single family residential real property disclosure

requirements) specifies that the residential property disclosure statement required to be provided to a purchaser must include a specified list of defects of which the vendor has actual knowledge. Among those items that must be disclosed are defects related to hazardous or regulated materials, including *asbestos*, lead-based paint, radon, underground storage tanks, and licensed landfills.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 52 of 2023.

Designated Cross File: SB 46 (Senator Waldstreicher) - Judicial Proceedings.

Information Source(s): Baltimore City; Howard and Prince George's counties; Office of the Attorney General (Consumer Protection Division); Department of Legislative Services

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Appendix – Common Ownership Communities

When a person purchases a single-family home, condominium, or an interest in a cooperative housing corporation, he or she may also be required to join an association of owners, which is intended to act in the common interests of all the homeowners, condominium unit owners, or cooperative owners in the community. Collectively, these associations are often referred to as common ownership communities (COCs). In Maryland, a growing number of newly constructed or newly converted residences are located in some form of a COC. Because registration of the various COCs is not required statewide, the exact number of COCs in Maryland is unknown. However, the Foundation for Community Association Research estimated that there were 7,100 community associations with an estimated 1 million residents in these associations in the State in 2023.

The affairs of a condominium are governed by a council of unit owners, which comprises all unit owners. Among other powers, the council of unit owners has the power to impose assessments on the unit owners to pay common expenses. A council of unit owners may delegate its powers to a board of directors, officers, or a managing agent. Condominiums are governed under Title 11 of the Real Property Article.

Many new housing developments are subject to a homeowners association (HOA) that is created by a governing document and has the authority to impose mandatory fees on lots in the development in connection with the provision of services or for the benefit of the lots, the lot owners, or the common areas. HOAs are governed under Title 11B of the Real Property Article.

A cooperative housing corporation or “cooperative” is a corporation that owns real property. A resident of a cooperative does not own his or her unit; instead, the person owns an interest in the corporation, which leases the unit to the person for residential use. Cooperatives are governed by the laws in Title 5, Subtitle 6B of the Corporations and Associations Article.

Condominiums and HOAs may be authorized by their governing documents to impose liens on units or lots to collect unpaid assessments or fees. In a cooperative, the governing documents usually provide for the collection of delinquent fees, and evictions for outstanding fees are generally pursued by way of a landlord-tenant action.

Task Force on Common Ownership Communities

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 created the Task Force on Common Ownership Communities in 2005 (Chapter 469 of 2005). The issues addressed by the task force included the 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 five 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.

The task force's report also featured findings and recommendations relating to the creation of an ombudsman in local governments. 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 HOAs, residential condominiums, and cooperative housing corporations, with education, training, and alternative dispute resolution. Charles and Montgomery counties have offices dedicated to COCs that predate the task force.