

StanleyAbrams_FWA_SB471

Uploaded by: Abrams, Stanley

Position: FAV

STANLEY D. ABRAMS

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Maryland Senate Judicial Proceedings Committee
Senate Bill 471 – Condominiums – Disclosures to Unit Owners and Prohibited Provisions in
Instruments by Developers (Sunset Island Act)
Hearing: Wednesday, February 12 at noon

Position: SUPPORT, with amendments

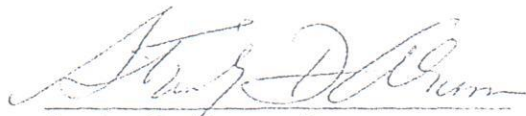
Thank you for the opportunity to comment in support of Senate Bill 471-2020, the Sunset Island Act. By way of introduction, I represented the City of Gaithersburg as its City Attorney for 25 years, the Town of Laytonsville as its Town Counsel for 15 years and earlier in my legal career as an Assistant County Attorney for Montgomery County. I drafted the Consumer Protection Law for Montgomery County and worked for its passage.

I am one of many condominium unit owners in the Sunset Island, condominiums in Ocean City, Maryland who are faced with a \$50,000.00 special assessment to correct building and safety code violations by the builder of our community. This Bill will not directly affect our current situation but will protect future condo purchasers and owners from having their rights adversely impacted by "non-disclosure" provisions in agreements by condominium boards with builders, contractors and others.

A non-disclosure provision between our building and our original condominium board insisted upon by the builder as part of an agreement to undertake repairs to safety and code violation has harmed many unit owners who were unaware that their home warranty rights had been bargained away by the original condo board. Likewise, they were not and could not be informed of the building deficiencies due to the non-disclosure provisions. Since the agreement was not recorded, they had no independent way of knowing of the agreement in a title search prior to closing. In short, we had no actual or constructive notice of the agreement or reasons leading up to the agreement. The condo board was contractually precluded from informing anyone of The Agreement.

The foundation for consumer protection is transparency and fair dealing. This Bill will ensure that condo boards must act responsibly and fully inform their constituency of any pending agreement that may bind them to their detriment.

Thank you for considering these comments.



Stanley D. Abrams, Esq.

cc: Roger Williams
Cindy Ardinger

CindyArdinger_FWA_SB471

Uploaded by: Ardinger, Cynthia

Position: FAV

Cynthia D. Penny-Ardinger, Esq.
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February 12, 2020, noon

Maryland General Assembly Senate Judicial Proceedings Committee

Re: SB 471 Condominiums – Disclosures to Unit Owners and Prohibited Provisions in Instruments by Developers (Sunset Island Act)

Sponsor: Senator Katie Hester

Position: SUPPORT, with amendments

Thank you for the opportunity to testify in support of Senate Bill 471, the Sunset Island Act. While this bill will not change my outcome, the facts regarding Sunset Island condos emphasizes the importance of this Bill and why Maryland consumers need this protection.

I own a Sunset Island condo and along with 197 fellow condo owners will be paying a special assessment of \$50,000.00 each to repair building and safety deficiencies. These deficiencies were noted in reports that indicated failure to adhere to building codes and as built plans.

Some of these problems are not new. While the Buildings were still under warranty, some just built, the builder was notified of these deficiencies. The builder responded with a repair agreement in which all current and future common element warranty rights were waived and contained a nondisclosure provision which prevented the terms of the agreement, including the waiver of warranty rights, to be disclosed to the unit owners.

The then board signed this agreement on August 24, 2010. As of this date, Owners no longer had warranty rights in the common areas. Owners were unaware and had no way of finding out about this loss of rights.

On October 2, 2010, not quite two months after the signing of this agreement, a meeting was held with the unit owners where the builder and the then Board urged the owners to sign a release that would allow the builder to enter the condo unit to make repairs related to sound.

This release in no way indicated that warranty rights had been waived. Instead it stated that it was limited to the sound deficiencies only and that “nothing in the limited release shall be construed to release the builder’s continuing obligations under any unexpired portion of the Builder’s Homeowners Limited Warranty.”

An owner asked if by signing this release if the builder was removed from all liability. The response was, “This is a release from the sound issue only. Other issues, structural, water, you still have the warranties provided to owners at time of sale.....the release won’t void that warranty.”

As an owner, not privy to the terms of the agreement already signed and based on the above response, it would have been reasonable to have left that meeting thinking all warranty rights were intact. Not only were owners unaware of this loss of consumer rights, they were given a false impression by the lack of disclosure. Now they bear the financial cost. This is counter to any consumer protection laws.

These agreements are often required because of a failure to follow state and local required building and safety codes. Imagine a scenario where a builder who is still bound by a valid warranty when presented with problems to fix, instead offers the Board of Directors a waiver of all current and future warranties and then it's kept secret from the members of the association. Shouldn't these builders be required to honor warranties once these defects are known? Why should failure to build according to state and local law allow builders to negotiate a better deal for themselves when the victim (such as the 198 homeowners of Sunset Island in this case) gives up further rights, without their knowledge?

This bill not only protects consumers in their biggest purchase but also sets the stage for builders to adhere to state and local required building and safety codes in the first place.

When combined with the fact that the purchase of real estate is often the biggest investment a consumer will make, Senate Bill 471, also known as the Sunset Island Act, is a necessary protection to Maryland consumers. I urge the committee to vote to approve Senate Bill 471 allowing it to move to the full Senate for a vote.

Thank you for your time and attention to this very important issue.

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Position: FAV

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February 12, 2020

will.smith@senate.state.md.us
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Hon. Senator William C. Smith
Chair, Judicial Proceedings Committee
Hon. Senator Jeff Waldstreicher
Vice Chair, Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, MD 21401

Re: House Bill 0471
Condominiums – Disclosures to Unit Owners and Prohibited Provisions in
Instruments by Developers
Hearing Date: February 12, 2020
Position: Support with Amendment

Dear Chairman Smith, Vice Chairman Waldstreicher, and Committee Members:

This letter is submitted on behalf of the Maryland Legislative Action Committee (“MD-LAC”) of the Community Associations Institute (“CAI”). CAI represents individuals and professionals who reside in or work with condominiums, homeowners’ associations and cooperatives throughout the State of Maryland.

MD-LAC supports HB 0471 as much needed legislation to protect purchasers of condominium units, with the following requested amendment to Page 2, line 26 to add the words “with a developer or vendor, as defined in section 10-201 of this article,” as follows:

26 INFORMATION ABOUT ANY LEGAL AGREEMENT WITH A DEVELOPER OR VENDOR, AS DEFINED IN SECTION 10-201 OF THIS ARTICLE, TO WHICH THE BOARD IS A PARTY.

We support the amendment to include Homeowners Associations as well.

The reason for the suggested amendment is that there are times when settling matters with parties (other than the developer or vendor), that a confidentiality clause in a settlement agreement may be appropriate. For example, if the settlement has necessary compromising terms that may result in further litigation with other parties if revealed, or if it is a settlement of a sensitive matter with an adversarial party that may cause harm or unwarranted public embarrassment. We do not want the provision proposed at paragraph (c) Section 11-109.1 of the Act to work to prevent these settlements or to act to require the Board to provide to all unit owners any and all information about any legal agreement.

We are available to answer any questions the Committee Members may have. Please feel free to contact Lisa Harris Jones, lobbyist for the MD-LAC, at 410-366-1500, or by e-mail at lisa.jones@mdlobbyist.com, or Steven Randol, Chair of the MD-LAC, 410-279-8054, or by e-mail at srandol@pineorchard.com, or Kathleen M. Elmore, Esquire, Ass't Treasurer of the MD-LAC, at 410-544-6644, or by e-mail at kelfmore@elmore-throop.com.

Sincerely,

Kathleen M. Elmore

Kathleen M. Elmore
Ass't Treasurer, CAI MD-LAC

Steven Randol

Steven Randol
Chair, CAI MD-LAC

SenatorHester_FWA_SB471

Uploaded by: Hester, Senator

Position: FAV

KATIE FRY HESTER
Legislative District 9
Carroll and Howard Counties

Education, Health, and
Environmental Affairs Committee

Chair, Joint Committee on
Cybersecurity, Information Technology
and Biotechnology



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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 12, 2020

Maryland General Assembly Senate Judicial Proceedings Committee

Re: SB 471 Condominiums – Disclosures to Unit Owners and Prohibited Provisions in Instruments by Developers (Sunset Island Act)

Position: Favorable with amendments

Good afternoon, Chairman Smith, Vice Chairman Waldstreicher and members of the Judicial Proceedings committee:

Thank you for the opportunity to provide testimony on Senate Bill 431, which pertains to condominium law and seeks to protect the legal rights of unit owners.

This bill is very simple. If passed, this bill will prevent a condominium board from waiving the legal rights of the unit owners without their knowledge.

The bill is offered to prevent the situation many of you have heard about from your constituents across the state who own condominiums in the Sunset Island development, a 198 unit condominium complex on the bayside at 67th street in Ocean City.

You will hear from the Vice President of the condominium association and unit owners today via written and oral testimony about what happened there, and why it is imperative that legislators pass this bill to prevent the situation from happening again somewhere else.

There are three amendments to the bill which we have provided to you. The first two amendments were requested by the Community Associations Institute and the Maryland Legislative Action Committee.

- The first specifies that the restrictions contained in the bill apply to vendors and developers to allow for such things as personnel matters which are routinely handled by boards without member involvement.
- The second is to extend the new provisions to lot owners, not just unit owners.

- The third amendment suggested by the Attorney General's office, would replace "Board of Directors" with the specific legal term "Council of Unit Owners" in the bill.

I'm pleased to present a letter of support for HB30, the cross file of SB431, from United States Senator Christopher Van Hollen. Senator Van Hollen has expressed his concerns about home construction warranties and non-disclosure agreements directly to NVR, Inc. I have also attached his November 6, 2019 letter to Mr. Paul Saville, President and CEO of NVR, Inc. also signed by Senators Brown, Blumenthal and Cardin.


To provide further background on this matter, I have also attached two articles from this fall published in the Salisbury Daily Times, detailing problems at Sunset Island.

Our panel consists of:

- Mary Meloni, Vice President of Council of Unit Owners of Garden Condominium II;
- Cynthia Ardinger, a unit owner of 6 Hidden Cove Way in Ocean City;
- Kathleen Elmore representing the Maryland Legislative Action Committee of the Community Associations Institute;
- Karen Straughn Assistant Attorney General Director, Mediation Unit, Consumer Protection Division

Thank you for your attention to this matter. I am happy to answer any questions or provide additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Katie Fry Hester".

Senator Katie Fry Hester
Howard and Carroll Counties

SenatorVanHollen_FWA_SB471

Uploaded by: Hester, Senator

Position: FAV

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United States Senate

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ENVIRONMENT AND
PUBLIC WORKS

January 27, 2020

The Honorable Kumar P. Barve
Chairman of the Environment and Transportation Committee,
Maryland House of Delegates
House Office Building Room 251
Annapolis, MD 21401

Dear Chairman Barve,

I write to express my support for HB 30-2020, the Sunset Island Act, which will stop condominium boards from withholding important information from homeowners in their communities. The bill was introduced earlier this month by Delegate Courtney Watson and is being considered before your Committee on January 28, 2020.

The Sunset Island Act is designed to prevent the reoccurrence of the kind of awful situation we witnessed in Ocean City where residents are seeking compensation for the cost of repairs caused by a developer's shoddy construction. These residents cannot get the developer to pay for these repairs because the previous condominium board waived rights to future repairs and did not disclose this agreement to their homeowners. As a result, the current owners are having to pay more than \$50,000 per unit because these undisclosed deals were not prohibited.

Sadly, the experiences of the Ocean City homeowners are not unique. Indeed, this same builder used arbitration provisions in agreements and other legal strategies to immunize it from any fault attributable to negligent, faulty, or deficient building practices in other developments. A home is typically an American family's most valuable asset. Buying a home is one of the most important financial decisions one can make. All the more reason that the decision should not be made in the dark. Requiring a homebuyer to agree to arbitration and non-disclosure provisions is simply unfair and abusive. Americans homebuyers should not have to forfeit their day in court when the matter at stake is the safety and soundness of their home. Nor should their complaints about shoddy construction and building code violations be muzzled by abusive legal tactics.

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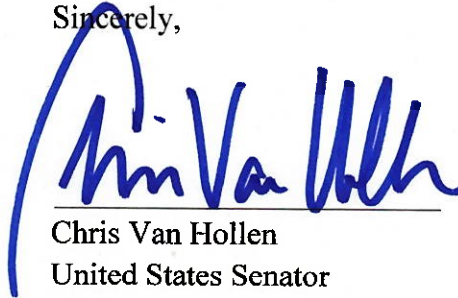
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This legislation cannot fix what's already been done to the residents of Sunset Island. Because of this hard truth, I commend these residents all the more for their perseverance in working to ensure that what happened to them does not happen to others. Finally, I commend Delegate Watson for introducing this needed legislation, and I support its swift passage.

Sincerely,

A handwritten signature in blue ink, reading "Chris Van Hollen", is written over a horizontal line. The signature is stylized with a large initial "C" and "H".

Chris Van Hollen
United States Senator

Supplementary Materials - B_FAV_SB471

Uploaded by: Hester, Senator

Position: FAV

Ryan Homes buyers in Maryland say builder costing them thousands in repairs

Matthew Prensky, Salisbury Daily Times

Published 1:33 pm ET October 31, 2019 Updated 10:45 am ET Nov. 1, 2019

From water damage to Ocean City condos to a Prince George's home built on an underground stream, complaints against company mount.

On its website, national homebuilder NVR Inc. sells customers on the notion of "unparalleled" customer service and quality construction.

Homeowners in Maryland and other states say the company didn't deliver on that service.

A USA Today Network investigation shows that Ryan Homes, and its larger conglomerate NVR Inc., cut corners during construction and left homeowners to deal with the defects. When concerns were raised, homeowners say the company would ignore its warranties, refuse to fix the problem, leverage any repairs into nondisclosure agreements or force customers into lengthy fights, costing them thousands of dollars.

These issues stem from how Ryan Homes builds its homes, owners said.

Roger Williams, who owns a Ryan Homes-built condo in Ocean City, Maryland, said all 11 condo buildings in his association suffer from extensive water damage in each of the stairwells. The damage — once repaired by Ryan Homes but now has failed — could now cost homeowners an extra tens of thousands to repair.

"It makes me angry and it makes me sad. Angry that they are a multibillion-dollar company that markets itself (as) building world-class, quality homes, yet when we have a situation like we do here and we didn't get that quality end (result), they aren't willing to make good on it," Williams said.

In Maryland, [Delmarva Now](#) found Ryan Homes had the highest number of homebuilder complaints of any single builder in the three years since 2016, according to the Maryland Office of the Attorney General.



Buy Photo

Roger Williams, president of the ownership association at Sunset Island Condominiums, in Ocean City, Maryland talks about water damage/construction issues that they have had with the complex on Aug. 29, 2019. Here is some of the wood he has saved from the complex that has just rotted away. (Photo: Todd Dudek photo)

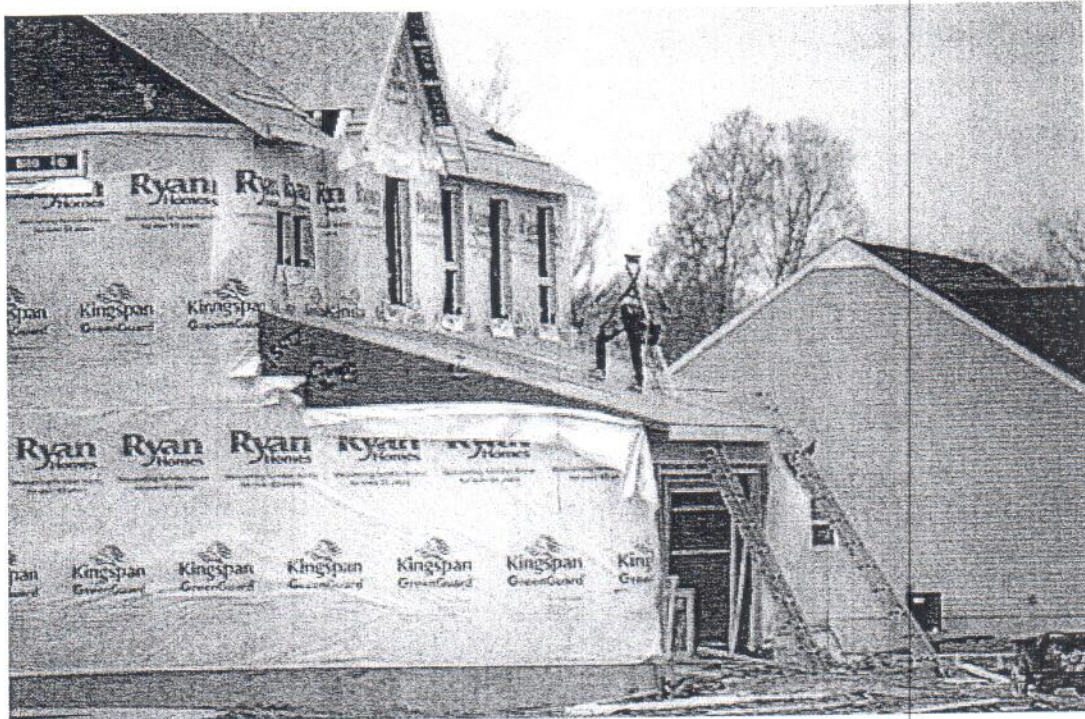
The office received 39 complaints about Ryan Homes since 2016 and 53 when including all complaints across the conglomerate of NVR's brands, according to the attorney general's office.

Such complaints stretch beyond Maryland.

In South Carolina, toilets weren't connected properly, leading to waste flowing under a woman's home. In Ohio, poor construction and botched repairs are forcing a family to live in a home that may not be structurally sound.

NVR Inc. declined to comment for this report. Curt McKay, vice president of business planning and investor relations at NVR, said it's the company's policy to not issue statements to the press.

What is Ryan Homes?



Building continues on homes in the Ryan Homes Pine Bluff subdivision in Milford, Ohio. Ryan Homes has been in business since 1948 and operates in 14 states. It's a subsidiary of NVR, Inc. Mike and Tasha Amos purchased a home in this subdivision in late 2017. From the beginning, they say there were problems. The biggest issue are the floor joists that workmen cut to repair uneven flooring after they moved in. A private building inspector hired by the Amoses says the home is now structurally unstable and the family of five shouldn't be living there. Officials with Ryan Homes and its parent company declined comment. (Photo: Liz Dufour/Cincinnati Enquirer)

NVR Inc. is a conglomerate of three brands: Ryan Homes, NV Homes and Heartland Homes, according to company's [website](#).

The company is headquartered in Reston, Virginia, and builds houses, townhomes and condominiums in 32 metro areas and 14 states including Delaware, Maryland, Virginia and others, according to the company's website.

Ryan Homes advertises its one-year warranty for any material or workmanship defects along with a two-year warranty on mechanical defects and 10 years for any structural issues, according to the company's website.

"At Ryan Homes, we are proud of the care and quality built into each of our homes," according to some of the company's marketing materials. "We stand behind our homes and our warranty coverage provides our homeowners the peace of mind they expect."

Ryan Homes issues across Maryland

What Williams experienced in his Ocean City condo is not an isolated experience.

In Prince George's County, Maryland, Aprile Belk said Ryan Homes built her home on an underground stream.

It took 15 years of working with Prince George's County and Ryan Homes to manage the water flow, and Belk said the homebuilder never admitted that there was a stream flowing under her home.

Angie Gray, who also lives in Prince George's County but in a Ryan Homes' townhome, said it took a letter from Congress for NVR to step in and fix the HVAC unit in her home. The unit was hooked up to her neighbor's home rather than hers.

The issue wasn't resolved for eight years. Gray said the defect cost her thousands of dollars, some of which she was never able to get back.

Representatives from NVR told her she should have noticed her HVAC unit was improperly installed.

"If I'm not the expert in that area, how would I know how to go look? This is a brand-new house so you're expecting that everything is going to be OK," Gray said.

Elsewhere, Veronica Stevens, a Ryan Homes' homeowner in Columbia, South Carolina, learned two of her toilets were not properly hooked to discharge pipes after hosting a Christmas party with 125 guests, many of whom used those bathrooms.

The Stevens' fought the company for more than a year before suing them. The case ended in a settlement that rewarded the couple more than \$100,000, but the Stevens' couldn't specify how much because of a nondisclosure agreement.

In Milford, Ohio, Michael and Tasha Amos moved into their new Ryan Homes' house with their two young children. Defects included uneven floors. The faulty repairs in which floor joists were cut caused the structural integrity of the home to come into question.

In Ocean City, \$8 million in additional repairs for one HOA

In the case of Sunset Island in Ocean City, Maryland, the water damage is widespread, said Williams, who also serves as president of the condo association.

"Each building has stair towers on either end of the building and those stair towers are where most of the water infiltration deficiencies have occurred. So basically it's a matter of stripping off all the siding, getting to the water-damaged support columns and beams under

there, replacing them with pressure-treated members or other materials and sealing everything up tight," Williams said.



Buy Photo

Roger Williams, president of the ownership association at Sunset Island Condominiums in Ocean City, Maryland, talks about water damage/construction issues that they have had with the complex on Aug. 29, 2019. Previous leadership signed an agreement with NVR/Ryan Homes to fix the problems but there are still issues. Here is one of the buildings that is in the process of being fixed. (Photo: Todd Dudek photo)

When the condo association brought the issue to Ryan Homes years ago, it leveraged any repairs into the association signing a nondisclosure agreement. The agreement would have cleared the company of any future obligations, Williams said.

The association signed, but the repairs didn't last. When the issue came back, Williams said, the condo association again brought the problem to Ryan Homes. This time, the builder refused to make repairs, claiming it wasn't responsible.

Williams said condo owners in Sunset Island will now have to pay for the additional fixes themselves, a bill that will add onto the \$11,500 each homeowner had to pay.

"More recently to complete full repairs of the buildings, we've informed the owners that the cost is going to be in total \$8 million, which works out to be roughly \$40,000 (additionally) per homeowner to make these repairs," Williams said.

What can be done to fix the problem?

In Maryland, homeowners are protected by the Home Builder Registration Act, which was passed in 2001, according to the attorney general's office. The law requires homebuilders to register with the state in order to build.

It also allows the Home Builder Registration Unit, under the attorney general's office, to enforce the law to make sure homebuilders are following all state laws.

Karen Valentine, director of the Home Builder Registration Unit, could not confirm if the office was taking any action against NVR.

As a policy, the attorney general's office doesn't "confirm or deny the existence of investigations," Aleithea Warmack, a deputy director communications for the Office of the Attorney General, wrote in an email.

One remedy Maryland homeowners may be able to use is the Home Builder Guaranty Fund, Valentine said. The program is funded by homebuilders and administrated by the attorney general's office.

"If at some point during the process they (the homeowner) has a problem — either the home is not finished, the build is not finished or there are defects or issues with particular aspects of the home after the consumer has moved in into the home — they can go to the (Home Builder) Guaranty Fund to hold the builder accountable for any acts or omissions by the builder that caused an actual loss to the consumer," Valentine said.

To date, Warmack said the Home Builder Guaranty Fund has paid out \$43,364.47 through mediation cases to NVR complainants.

In the meantime, Williams said NVR's actions weren't fair to him and the other Sunset Island residents.

"I really feel like we've been significantly misled ... when the problems were identified, Ryan (Homes) had a chance to make good on it and they refused to do it, so they really have us over a barrel," Williams said.

Williams, like other Ryan Homes homeowners, has complained to the Maryland attorney general's office.

Williams is working with the attorney general's office and members of the Legislature to try and remedy his current situation and prevent others from going through similar situations.

"I feel that it's unfair in the sense that me and the other 197 owners really have done nothing wrong," Williams said. "When anyone purchases a home that has been presumably built per code and inspected whether it be by the town or others, there's the assumption that it was built correctly."

James Pilcher and Liz Dufour report from The Cincinnati Enquirer.

My name is Matthew Prensky and I serve as the Ocean City news reporter for Delmarva Now. My stories focus on business, government and community concerns for Ocean City and the rest of Worcester County. I keep doing what I do every day because of your support. If you subscribe, thank you. If not, and you want to see me unearth more stories, subscribe to Delmarva Now today.

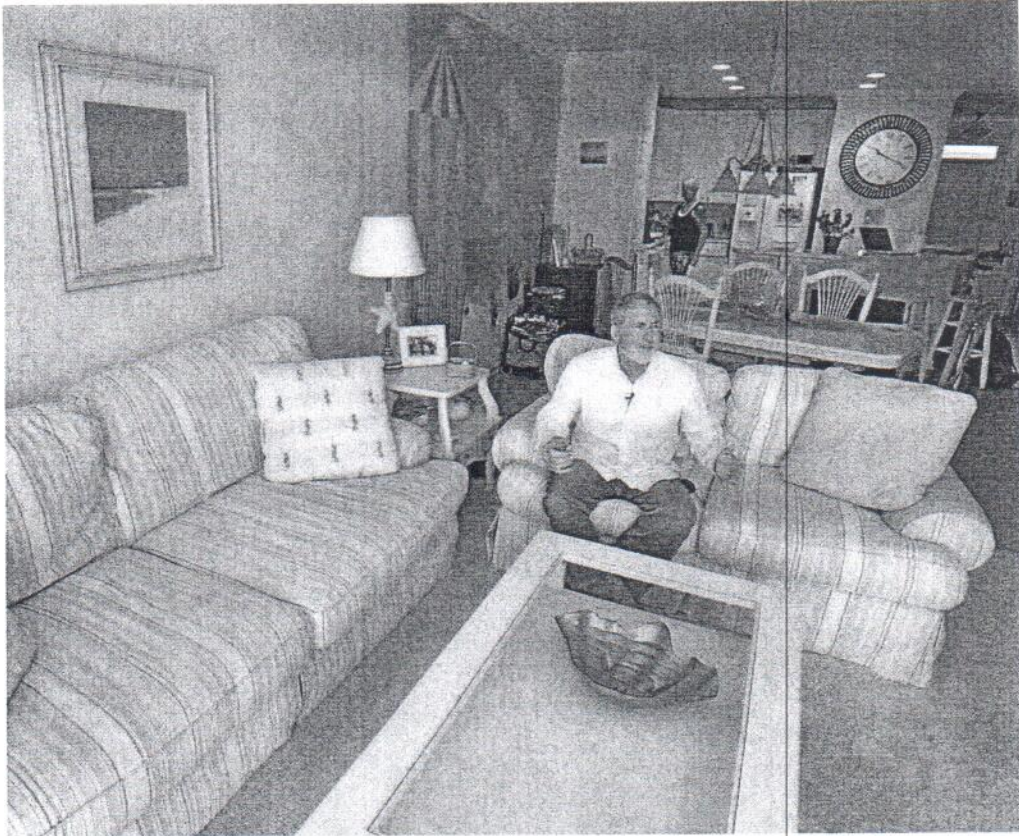
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Uploaded by: Hester, Senator

Position: FAV

HOMEOWNER COMPLAINTS

RYAN HOMES FACES BACKLASH



Roger Williams, president of the ownership association at Sunset Island Condominium, talks about water damage and construction issues that they have had with the complex. TODD DUDEK PHOTO

Federal, Maryland leaders call for action vs. 'questionable' practices

Matthew Prensley Salisbury Daily Times
USA TODAY NETWORK - DELMARVA

America's fourth-largest homebuilder, NVR Inc., is facing mounting pressure from state and federal officials for what they consider questionable business practices against homeowners across the country, including in Ocean City.

Four U.S. senators, including Maryland's Ben Cardin and Chris Van Hollen, are calling on NVR to stop using mandatory arbitration and nondisclosure agreements as tools to leverage construction defect repairs, according to a copy of the letter sent to company CEO Paul Saville. Ohio Sen. Sherrod Brown and Connecticut Sen. Richard Blumenthal also signed the letter.

"Forcing homebuyers into arbitration and nondisclosure agreements is unfair, unjust and abusive," according to the letter, dated Nov. 6. "NVR's reliance on mandatory arbitration provisions to evade accountability is unconscionable — and it may also be illegal."

NVR is a publicly traded company

headquartered in Reston, Virginia, according to the company's website. The company constructs single-family homes, townhomes and condos in 14 states and 32 metro areas around the country through three brands: Ryan Homes, NV Homes and Heartland Homes.

The company declined to comment for this report. Curt McKay, vice president of business planning and investor relations at NVR, previously said the company has a policy to not issue statements to the press.

Previous reporting by Delmarva Now and the USA TODAY Network showed Ryan Homes and its conglomerate, NVR, cut corners during construction, then left customers to fight to resolve the defects. Cardin and Van Hollen's letter cited that reporting by The Daily Times in Salisbury (which is part of Delmarva Now) and the Cincinnati Enquirer in their letter to NVR.

The pressure stems, in part, from the actions of Ocean City residents.

Roger Williams, Cindy Ardinger and residents of Ocean City's Sunset Island

have dealt with Ryan Homes-related construction defects for almost a decade.

There, 11 Ryan Homes' condo buildings sustained extensive water damage due to improper waterproofing during construction, according to Williams, condo association president.

Sunset Island owners have spent tens of thousands on emergency repairs, Williams said. Previous fixes cost each resident \$11,500, but new repairs are needed, which could cost upward of \$8 million, or about \$40,000 per condo owner.

Ardinger said after the water issues resurfaced in 2017, she and other residents began reaching out for help.

NVR is also facing backlash at the state level.

Gov. Larry Hogan's office and state legislators have urged the Maryland Office of the Attorney General to investigate NVR and its three brands, according to letters shared with Delmarva Now on Nov. 1.

Hogan's chief legal counsel Robert Scholz requested the attorney general's office begin an investigation in April, according to a copy of the letter.

In Maryland, Delmarva Now found

See BACKLASH, Page 2A

Backlash

Continued from Page 1A

that Maryland's attorney general's office received 53 complaints about NVR and its three brands in the three years since 2016, according to the office.

Despite the complaints filed against the company, the attorney general's office renewed NVR's homebuilder registration Feb. 5, allowing it to continue building in Maryland through March 2021 under the Maryland Home Builder Registration Act.

Aleitha Warmack, a spokesperson for the attorney general's office, said the office could not comment on why NVR's registration was renewed.

U.S. Senate steps in

In a joint statement to Delmarva Now, Sens. Cardin and Van Hollen said they were joining Brown to push NVR.

"Reports of NVR's poor construction standards are deeply concerning and signal a betrayal of consumer trust," according to a Nov. 6 statement. "We will continue working to shine a light here and to ensure people in Maryland and across the country are protected and can seek the restitution they deserve."

In the letter, the senators warned NVR that they were referring the company's use of forced arbitration and nondisclosure agreements to the Consumer Financial Protection Bureau to confirm if the actions are illegal. The senators called on NVR to "immediately" stop using its arbitration tactics and nondisclosure agreements.

"If NVR and Ryan Homes truly stand behind the quality of the construction of the homes they build, they would honor their warranty agreement instead of trying to lock homebuyers out of the courthouse and coerce them into silence," according to the letter.

In a separate interview Friday, Van Hollen called the situation "outrageous" and NVR's behavior "fraudulent misconduct" in a separate interview Friday. He added the company should "step up" and compensate homeowners for losses they've endured.

When companies use mandatory arbitration it's "like tying consumers' hands behind their backs," he said. Because of that, Van Hollen has worked to prohibit mandatory arbitration for years and to make sure consumers keep their legal rights.

"This is clearly a company trying to cheat Maryland consumers and homeowners. If you have shoddy building

practices, you need to own up to them and repair them and fix them instead of trying to deprive Maryland consumers of their rights," Van Hollen said.

Maryland leaders call for investigation

Maryland state Delegate Julie Palakovich-Carr and state Sen. Mary Beth Carozza, who represents Ocean City, have both urged the attorney general's office to investigate NVR.

In an emailed statement Friday, Carozza said she's been in contact with Maryland Attorney General Brian Frosh about the construction defects at Sunset Island. Carozza added she'll work with the governor and legislature to make sure help the Sunset Island residents and protect homeowners across the state.

"This has been an extremely frustrating and expensive experience for my constituents who have been pursuing multiple options to hold Ryan Homes/NVR responsible for the costs to repair their homes," according to the statement.

Palakovich-Carr, who represents part of Montgomery County, said she became involved in the situation after Sunset Island residents reached out to her.

Maryland Delegate Courtney Watson, who represents part of Howard County said that after she met with Sunset Island residents, she was "really surprised that this level of a construction defect could get to this point." Like Palakovich-Carr, some of Watson's constituents use those condos while vacationing or as second homes in Ocean City.



STATE OF MARYLAND
OFFICE OF THE GOVERNOR

LAWRENCE J. HOGAN, JR.
GOVERNOR
ELECT 2018
ANNAPOLIS, MARYLAND 21401-1000
(410) 326-7000
WWW.GOV.MD

April 24, 2019

Thomas Sherts
Diana Johnson
t.sherts@gmail.com

Re: NVR, Inc. / Condominiums in Ocean City, Maryland

Dear Ms. Johnson and Mr. Sherts:

Thank you for your email to Governor Hogan regarding NVR, Inc. In particular, you are requesting clarification of Maryland's consumer protection laws.

The most appropriate agency to handle your request is the Consumer Protection Division of the Maryland Office of the Attorney General. As you are probably aware, the Attorney General is an independently elected constitutional officer so we do not have the authority to answer your questions or meet your concerns. Based on your correspondence I understand that you have already reached out to that agency and are awaiting a response. I have requested that the Attorney General's Office look closely at the NVR issues.

It is obvious that you, and perhaps others at the condominium, have serious claims against NVR, Inc. If you have not done so already, I strongly recommend that you contact a lawyer regarding any legal options that may be available to you. You should consult with an attorney immediately as your rights and remedies may be or become barred by the passage of time. The Maryland State Bar Association's Lawyer Referral Service (410-539-3112) can help you find a lawyer with expertise in these matters.

Thank you again for your correspondence.

Very truly yours,

Robert E. Scholz
Chief Legal Counsel

In April of this year, Robert Scholz from Gov. Larry Hogan's office instructed Maryland's Attorney General's Office to investigate Ryan Homes for complaints against the homebuilder. IMAGE COURTESY OF ROGER WILLIAMS

In conversations she's had with the attorney general's office, Watson said it may be hard to "pursue NVR" because of the "secret" agreement the company had a previous Sunset Island condo association board sign without the knowledge of residents.

What could be done?

In Maryland, NVR could face sanctions from the attorney general's office. Under Maryland's Home Builder Registration Act, the attorney general's Home Builder Registration Unit is tasked with regulating the industry.

This unit can investigate a homebuilder, "who establish a bad track record or engage in violations of the law from continuing to build in Maryland," according to the 2018 annual report from the Home Builder Registration Unit.

Possible penalties could include the attorney general revoking or suspending NVR's ability to build in Maryland.

The attorney general's office didn't confirm if it is investigating NVR, saying its office policy is to not "confirm or deny the existence of investigations," Warmack said.

Another option could involve the Home Builder Registration Unit investigating NVR on the grounds that it violated building code when constructing Sunset Island. That too could lead to sanctions, but in an email, Warmack wrote the attorney general's office doesn't have the authority to identify building code violations. Those violations must come from the local level before the office steps in.

In Sunset Island's case, the town of Ocean City decided not to become involved.

"The town is aware of the dispute between Sunset Island and the builder of the property. Although the town has met with representatives from the affected Sunset Island Condo Association, the town regards this as a private civil matter," according to an emailed statement Monday from Jessica Waters, communications manager for Ocean City.

State legislators are also considering the idea of new legislation that could prevent situations like Sunset Island from happening again.

Watson said she plans to introduce changes in January that would address how NVR used nondisclosure agreements. She also mentioned the idea of reexamining state law to make sure the Home Builder Registration Unit has enough authority to properly regulate

See BACKLASH, Page 3A

Backlash

Continued from Page 2A

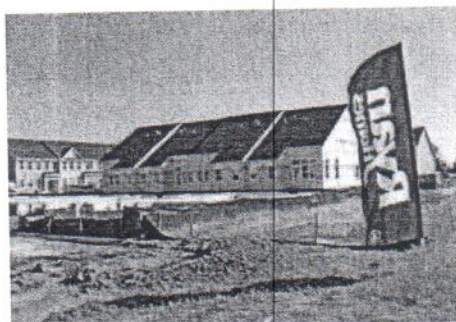
homebuilders.

In an emailed statement, the attorney general's office stated in part, "Consumer protection laws can always be strengthened, and our office would welcome the General Assembly providing additional protections for Maryland homebuyers."

But some legislators think new laws isn't the way to solve the situation at Sunset Island and elsewhere.

Wayne Hartman, a state delegate who represents Ocean City, views the situation at Sunset Island as a civil issue and something that could be handled in court, but not the general assembly.

"If there is a pattern of a particular builder doing poor construction or something like that, then the attorney general is the person in the state of Maryland who registers the homebuilders and it's in their power to take action with the way it's already established in the state of Maryland," said Hartman, a former Ocean City councilman.



Homebuilder Ryan Homes is building more villa townhouses in its Somerset Green development in Lewes.

TAYLOR GOEBEL/SALISBURY DAILY TIMES

Still, Van Hollen isn't finished. The senator said he will continue to pursue NVR and stop the use of mandatory arbitration agreements, adding he plans to speak to the state attorney general about this issue.

"The state needs to use the full power of state law to protect these consumers and, if current state law is inadequate to address the injustices here, then the legislature should look at ways to change the law to provide adequate protections," Van Hollen said.

Supplementary Materials A_FAV_SB471

Uploaded by: Hester, Senator

Position: FAV

United States Senate

WASHINGTON, DC 20510

November 6, 2019

Mr. Paul Saville
President and Chief Executive Officer
NVR, Inc.
11700 Plaza American Dr., Suite 500
Reston, VA 20190

Dear Mr. Saville:

We write to express our concern about NVR, Inc.'s (NVR) use of mandatory arbitration provisions in its new home construction warranties, as well as its use of non-disclosure agreements. These anti-consumer tactics attempt to shield NVR, your subsidiary Ryan Homes, and affiliated entities from accountability and scrutiny over homebuyers' complaints about negligent, faulty, or deficient home construction. We ask that you immediately remove the arbitration provisions from your agreements and stop requiring homebuyers to sign non-disclosure agreements in order to resolve disputes.

In recent articles, the Cincinnati Enquirer and Salisbury Daily Times shed light on how NVR has used mandatory arbitration provisions and non-disclosure agreements when responding to homebuyers' warranty claims about faulty or defective home construction.¹ The articles detail, for example, the ordeal the Amos family from Milford, Ohio went through after they purchased a newly-built home from Ryan Homes in 2017. Two years after they moved in, their home still has floors that are uneven, electric wiring that is not up to code, and structural issues that Ryan Home caused when its workers improperly cut floor joists in the basement. Instead of repairing its shoddy construction and fixing its mistakes, Ryan Homes demanded that the Amoses enter into binding arbitration and sign a non-disclosure agreement that would prevent them from publicly discussing their experience with Ryan Homes. The Amos family now finds itself stuck in a home that is unrepaired, that they cannot sell, and that the county found is "not approved for occupancy."

¹ James Pilcher and Liz Dufour, "What did we do to deserve this? Ohio family recounts dream home nightmare," (Oct. 31, 2019), *available at* <https://www.cincinnati.com/in-depth/news/2019/10/31/ryan-homes-ohio-family-dream-home-nightmare/3929627002/>; James Pilcher, Liz Dufour, Sara Taddeo, and Matthew Prensky, "Dream home nightmares: Ryan Homes buyers face delays, hassles as repairs lag," (Oct. 31, 2019), *available at* <https://www.cincinnati.com/in-depth/news/2019/10/31/ryan-homes-construction-building-warranty-claims/3929496002/>; " (Oct. 31, 2019), *available at* <https://www.delmarvanow.com/story/news/local/maryland/2019/10/31/maryland-ryan-homes-buyers-say-builder-cost-them-thousands-repairs/4097348002/>.

This Ohio family's experience with NVR and Ryan Homes is not unique. NVR's standard warranty agreement includes a mandatory arbitration provision.² The investigative reporting by the Cincinnati Enquirer and Salisbury Daily Times indicates that NVR's general practice in Ohio, Maryland, and the other states in which it builds homes is to refuse to honor its home construction warranty and make repairs unless the homebuyer agrees to arbitrate any disputes and sign a non-disclosure agreement.³

Forcing homebuyers into arbitration and non-disclosure agreements is unfair, unjust, and abusive. It is corporate blackmail. Homebuyers should not have to give up their rights to their day in court just to ensure that they can live in a home that is safe, structurally sound, and meets minimum code requirements. Nor should homebuyers have to give up their voice to complain or discuss their experience with NVR and Ryan Homes. If NVR and Ryan Homes truly stand behind the quality of the construction of the homes they build, they would honor their warranty agreement instead of trying to lock homebuyers out of the courthouse and coerce them into silence.

Consumer Financial Protection Bureau (CFPB) data demonstrates the chilling effect of mandatory arbitration clauses. Each year roughly 32 million consumers are found to be eligible for approximately \$2.7 billion in redress through federal class action lawsuits.⁴ By contrast, during the CFPB's two-year study period, consumers were able to file only 1,060 arbitration cases with the American Arbitration Association (AAA)—the same arbitrator NVR uses—received relief in just 78 cases, and recovered less than \$400,000.⁵ AAA arbitrators awarded companies more than \$2.8 million during that time period.⁶

NVR's reliance on mandatory arbitration provisions to evade accountability is unconscionable—and it may also be illegal. The company's home construction warranties appear to be part of the documentation for the home purchase agreement.⁷ Section 1414(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 amended the Truth in Lending Act (TILA) to outlaw the use of mandatory arbitration provisions in residential mortgage loans.⁸ Pursuant to the Act, in 2013 the CFPB promulgated rules that prohibit mandatory arbitration agreements to

² See, e.g., http://www.myryanhome.com/pdf/September_1_2018_Ryan%20Homes%20Warranty.pdf.

³ See *supra* n. 1 and Prensky, Matthew, "Ryan Homes buyers in Maryland say builder costing them thousands in repairs," (Oct. 31, 2019), *available at* <https://www.delmarvanow.com/story/news/local/maryland/2019/10/31/maryland-ryan-homes-buyers-say-builder-cost-them-thousands-repairs/4097348002/>.

⁴ Consumer Financial Protection Bureau Study Finds that Arbitration Agreements Limit Relief for Consumers," *available at* https://files.consumerfinance.gov/f/201503_cfpb_factsheet_arbitration-study.pdf.

⁵ *Id.*

⁶ *Id.*

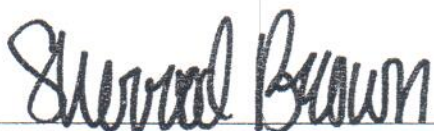
⁷ See *supra* n. 2 at 2.

⁸ Codified at 15 U.S.C. § 1639c(e).

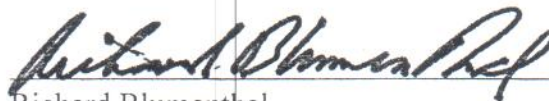
resolve “any controversy or settle any claims” arising out of a “consumer credit transaction secured by a dwelling.”⁹ We are therefore sending a copy of this letter to the CFPB to consider whether NVR’s use of a mandatory arbitration agreement in its home construction warranty agreement violates TILA.

NVR and Ryan Homes do not need to wait until the CFPB acts to do right by its customers and honor its warranty. We ask you to immediately remove and agree not to enforce arbitration provisions from NVR’s warranty agreements with homebuyers and cease the use of and agree not to enforce any non-disclosure agreements with homebuyers. We ask that you respond to this request by November 19, 2019.

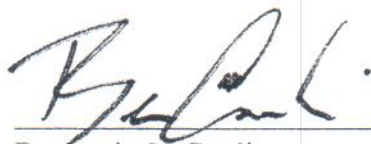
Sincerely,



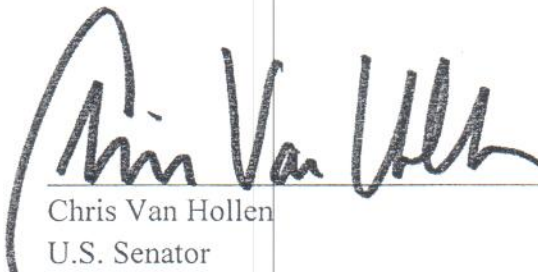
Sherrod Brown
U.S. Senator



Richard Blumenthal
U.S. Senator



Benjamin L. Cardin
U.S. Senator



Chris Van Hollen
U.S. Senator

⁹ 12 C.F.R. 1026.36(h).

MaryMeloni_FWA_SB471

Uploaded by: Meloni, Mary

Position: FAV

Mary Lynn Meloni
127 Megan Drive
Bear, DE 19701
marymeloni@comcast.net

February 12, 2020, noon

Maryland General Assembly Senate Judicial Proceedings Committee

Re: SB 471 Condominiums – Disclosures to Unit Owners and Prohibited Provisions in Instruments by Developers (Sunset Island Act)

Sponsor: Senator Katie Hester

Position: SUPPORT, with amendments

Good afternoon, Chairman Smith and members of the Committee.

My name is Mary Lynn Meloni. I am Vice President of the Garden Condominium II Association at Sunset Island. I am here today representing the 198 condominium owners of Sunset Island who, through no fault of their own, have had to endure the financial hardship of two special assessments totaling well over \$50,000 due to water infiltration issues and building code violations that the builder has steadfastly refused to accept responsibility for. In total, we are spending \$10 MM to repair 11 buildings.

I support the passage of Senate Bill 471, the Sunset Island Act, which will prevent the board of directors of future homeowners' associations from giving away homeowners' rights without their knowledge, which is what happened at Sunset Island.

My husband David and I purchased our home in 2013. I can attest to the fact that no disclosure was made of a 2010 release agreement between the builder and the association.

We had zero knowledge of the confidential release agreement that was agreed to with Ryan Homes and which released Ryan Homes from all future responsibility for making repairs. This agreement was not part of our conveyancing documents and there was no possibility of discovery through a search of the public records because the document was never recorded.

I truly hope that this new law will prevent future homeowners from experiencing the horror that we are still going through. Unfortunately, it comes too late to help the 198 victims of Sunset Island.

In closing, each of you here today should be thinking about what you would want done if this happened to you, your children or your grandchildren, because it could easily be one of you the next time. The builder has still not been held accountable.

I greatly appreciate the effort of the legislators who have introduced this bill. I ask for your support for Senate Bill 471. Thank you for your time.

CAI_FWA_SB471

Uploaded by: Elmore, Kathleen

Position: FWA

Charlene Morazzani Hood, MS, CMCA, AMS, PCAM, Vice Chair
Steven Randol, Chair
Vicki Caine, Secretary

Marie Fowler, PCAM, Treasurer
Susan Rapaport, Esq., Asst. Secretary
Kathleen M. Elmore, Esq., Asst. Treasurer

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Brenda Reiber, Member
Susan Saltsman, Member
Thomas C. Schild, Esq., CCAL, Member
John Taylor, Member
Aimee Winegar, CMCA, LSM, PCAM, Member

February 12, 2020

will.smith@senate.state.md.us
jeff.waldstreicher@senate.state.md.us

Hon. Senator William C. Smith
Chair, Judicial Proceedings Committee
Hon. Senator Jeff Waldstreicher
Vice Chair, Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, MD 21401

Re: Senate Bill 0471
Condominiums – Disclosures to Unit Owners and Prohibited Provisions in
Instruments by Developers
Hearing Date: February 12, 2020
Position: Support with Amendment

Dear Chairman Smith, Vice Chairman Waldstreicher, and Committee Members:

This letter is submitted on behalf of the Maryland Legislative Action Committee (“MD-LAC”) of the Community Associations Institute (“CAI”). CAI represents individuals and professionals who reside in or work with condominiums, homeowners’ associations and cooperatives throughout the State of Maryland.

MD-LAC supports SB 0471 as much needed legislation to protect purchasers of condominium units, with the following requested amendment to Page 2, line 26 to add the words “with a developer or vendor, as defined in section 10-201 of this article,” as follows:

26 INFORMATION ABOUT ANY LEGAL AGREEMENT WITH A DEVELOPER OR VENDOR, AS DEFINED IN SECTION 10-201 OF THIS ARTICLE, TO WHICH THE BOARD IS A PARTY.

We support the amendment to include Homeowners Associations as well.

The reason for the suggested amendment is that there are times when settling matters with parties (other than the developer or vendor), that a confidentiality clause in a settlement agreement may be appropriate. For example, if the settlement has necessary compromising terms that may result in further litigation with other parties if revealed, or if it is a settlement of a sensitive matter with an adversarial party that may cause harm or unwarranted public embarrassment. We do not want the provision proposed at paragraph (c) Section 11-109.1 of the Act to work to prevent these settlements or to act to require the Board to provide to all unit owners any and all information about any legal agreement.

We are available to answer any questions the Committee Members may have. Please feel free to contact Lisa Harris Jones, lobbyist for the MD-LAC, at 410-366-1500, or by e-mail at lisa.jones@mdlobbyist.com, or Steven Randol, Chair of the MD-LAC, 410-279-8054, or by e-mail at srandel@pineorchard.com, or Kathleen M. Elmore, Esquire, Ass't Treasurer of the MD-LAC, at 410-544-6644, or by e-mail at kelfmore@elmore-throop.com.

Sincerely,

Kathleen M. Elmore

Steven Randol

Kathleen M. Elmore
Ass't Treasurer, CAI MD-LAC

Steven Randol
Chair, CAI MD-LAC

MBIA_FWA_sb471

Uploaded by: Graf, Lori

Position: FWA

February 12, 2020

The Honorable William C. Smith, Jr.
Chairman, Judicial Proceedings Committee
Miller Senate Office Building, 2E
11 Bladen Street
Annapolis, MD 21401

RE: Opposition of Senate Bill 471 (Condominiums - Disclosures to Unit Owners and Prohibited Provisions in Instruments by Developers (Sunset Island Act))

Dear Chairman Smith:

The Maryland Building Industry Association (MBIA), representing 100,000 employees of the building industry across the State of Maryland, opposes Senate Bill 471 (Condominiums - Disclosures to Unit Owners and Prohibited Provisions in Instruments by Developers (Sunset Island Act)) but offers an amendment.

This bill clarifies that a board of directors of a condominium may not withhold or agree to withhold from the unit owners information about any legal agreements to which the board is a party. This kind of disclosure is good practice and MBIA has no objection.

However, we are concerned with the language that changes the circumstances under which certain settlement provisions of disputed claims are unenforceable. The addition of “an agreement for the purpose of settling a disputed claim” in paragraph (c)(1) combined with (c)(1)(iv) means that the defendant developer cannot settle a condo defect case and get a release of all future claims. The addition of this language defeats the purpose of any settlement agreement and will make it virtually impossible to resolve condo defects cases. The amendment proffered by would alleviate this concern, and MBIA encourages the Committee to adopt it.

We also have concerns with any mention of “Prospective buyer”. While we do not oppose such information being disclosed in a disclosure packet, we do not think it is prudent to make available to all potential buyers. Specifically, if the defect has been corrected, this could unfairly hurt sales.

MBIA respectfully requests the Committee adopt these amendments and give this measure an favorable report. Thank you for your consideration.

For more information about this position, please contact Lori Graf at 410-800-7327 or lgraf@marylandbuilders.org.

cc: Senate Judicial Proceedings Committee Members

CPD_FWA_SB 471

Uploaded by: Straughn, Karen

Position: FWA

BRIAN E. FROSH
Attorney General

ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General



WILLIAM D. GRUHN
Chief
Consumer Protection Division

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION
February 12, 2020

Writer's Direct Dial No.
410-576-7942
Fax: 410-576-6566

To: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

From: Karen S. Straughn
Consumer Protection Division

Re: Senate Bill 471 – Condominiums – Disclosures to Unit Owners and Prohibited Provisions
in Instruments by Developers (SUPPORT WITH AMENDMENTS)

The Consumer Protection Division of the Office of the Attorney General submits the following written testimony in support of Senate Bill 471 submitted by Senator Katie Fry Hester. This bill, with amendments proposed by the Division, would require the board of directors of a condominium association to disclose agreements, other than agreements related to personnel matters, to unit owners and prospective unit owners, and to prevent the governing body from entering into agreements that prohibit the disclosure of any terms of the agreement to settle a disputed claim.

A condominium purchaser is not only responsible for the maintenance of their own unit, but is financially committed to the maintenance of the common elements of the condominium as well. To make a reasoned decision, it is important that the purchaser be made aware of any lawsuits or settlements that could impact their ownership interest. To ensure that the purchase of a condominium unit is fair and that relevant information is disclosed, governing documents and other relevant documents are statutorily required to be provided to the purchaser by the seller. The board of directors should not be permitted to enter into agreements that withhold important information which could materially alter this information without the knowledge of the owner of the property. This bill ensures that the board of directors is required to disclose to unit owners relevant information contained in a settlement agreement or an order of a court which may impact their ownership interest.

The amendments to the bill require disclosure to prospective unit owners as well as current unit owners and thereby mandates transparency to all those affected by the agreement or order. In addition, due to the potential harm that could result from disclosure of personal information regarding an employee, the proposed amendments would exempt agreements related to a personnel matter from those that must be disclosed.

The Honorable William C. Smith, Jr.
Senate Bill 471
February 12, 2020
Page Two

For these reasons, we ask that the Judicial Proceedings Committee return a favorable report on this bill with the amendments suggested.

cc: The Honorable Katie Fry Hester
Members, Judicial Proceedings Committee

OAG_KStraughn_FWA_SB471pdf

Uploaded by: Straughn, Karen

Position: FWA

BRIAN E. FROSH
Attorney General

ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General



WILLIAM D. GRUHN
Chief
Consumer Protection Division

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

February 12, 2020

Writer's Direct Dial No.

410-576-7942

Fax: 410-576-7040

To: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

From: Karen S. Straughn
Consumer Protection Division

Re: Senate Bill 471 – Condominiums – Disclosures to Unit Owners and Prohibited Provisions
in Instruments by Developers (SUPPORT WITH AMENDMENTS)

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200 Saint Paul Place ♦ Baltimore, Maryland 21202-2021

Main Office (410) 576-6300 ♦ Main Office Toll Free (888) 743-0023

Consumer Complaints and Inquiries (410) 528-8662 ♦ Health Advocacy Unit/Billing Complaints (410) 528-1840

Health Advocacy Unit Toll Free (877) 261-8807 ♦ Home Builders Division Toll Free (877) 259-4525 ♦ Telephone for Deaf (410) 576-6372

www.marylandattorneygeneral.gov



For these reasons, we ask that the Judicial Proceedings Committee return a favorable report on this bill with the amendments suggested.

cc: The Honorable Katie Fry Hester
 Members, Judicial Proceedings Committee