

Cynthia D. Penny-Ardinger, Esq.
2317 Old Maple Court
Ellicott City MD 21042
410-456-8955
cardinger@verizon.net

January 13, 2022

Maryland General Assembly Environment and Transportation Committee hearing

Re: HB0040 Condominiums – Disclosures to Unit Owners and Prohibited Provisions in Instruments

Position: **SUPPORT**

Chairman Kumar Barve, Vice Chair Dana Stein, and Members of the Committee,

Thank you for the opportunity to testify in support of Delegate Watson's bill, HB40. When I testified in 2020 on then HB30 which did not pass due to a shortened session, my testimony was based on a what if - what if shoddy construction is not properly corrected in time and there is loss of life. What if municipalities don't properly oversee construction of buildings. What if the ability of builders to be held responsible for failure to adhere to construction requirements is limited. What if the consumer must take a chance on their largest expenditure, risking bankruptcy and loss of life. The collapse of the Surfside Condominium in June 2021 brought many of these questions to the forefront. When it appears that construction does not meet basic building requirements but somehow passes inspection, we must ask questions and hold those responsible accountable.

My husband and I purchased a condo in Sunset Island, Ocean City. We, along with other Sunset Island owners, relied on adherence to building codes and as built plans in the construction of the condos. According to inspection reports presented to the Sunset Island condo owners, this did not occur. Because of these failures, repairs are currently being made to the condo buildings with owners paying an assessment that exceeds \$50,000.00 per owner.

In the Sunset Island matter, some of these building deficiencies were discovered while the buildings were under warranty, some just built. 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.”

In summary, not only did the construction of the Sunset Island condominiums fail to meet certain building requirements, when it was brought to the attention of the builder, the result was a waiver of all future rights of the owners without their knowledge. Now it has come to light that not all deficiencies were found and the repairs that were made have failed, resulting in special assessments for all condominium owners. Thank goodness these deficiencies were found before loss of life.

With House Bill 40-2022, Maryland legislators have an opportunity to address the important issue of protection of a consumer in one of their largest purchases, real estate. House Bill 40-2022 is a necessary protection to Maryland consumers. I urge the committee to vote to approve House Bill 40-2022, allowing it to move to the full House and Senate for a vote.

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

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I have attached my testimony for HB30 (2020) as information.

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January 28, 2020 1:00 pm

Maryland General Assembly Environment and Transportation
Committee hearing

***Re: HB 30 Condominiums – Disclosures to Unit Owners and
Prohibited Provisions in Instruments by Developers (Sunset Island
Act)***

Position: SUPPORT with sponsor's amendments

Chairman Kumar Barve, Vice Chair Dana Stein, and Members of the Committee,

Thank you for the opportunity to testify in support of House Bill 30-2020, the Sunset Island Act. While this bill will not change my outcome, the facts regarding Sunset Island 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.

When combined with the fact that the purchase of real estate is often the biggest investment a consumer will make, House Bill 30-2020, also known as the Sunset Island Act, is a necessary protection to Maryland consumers. I urge the committee to vote to approve House Bill 30-2020, allowing it to move to the full House for a vote.

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

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