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Economic Matters Committee

Subcommittees

Banking, Consumer Protection,
and Commercial Law

Property and Casualty Insurance

Vice Chair, Democratic Caucus

THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

March 23, 2022

HB 0040 – Condominiums - Disclosures to Unit Owners and Prohibited Provisions in Instruments by Developers

SPONSOR: Delegate Courtney Watson

POSITION: Favorable as amended

Good afternoon Chairman Smith, Vice Chairman Waldstreicher, and members of the committee.

Thank you for the opportunity to provide testimony on House Bill 40, which deals with condominium law and seeks to protect the legal rights of unit owners.

This bill, as amended, passed unanimously out of the House Environment and Transportation Committee by a vote of 25-0, and it passed the House of Delegates unanimously on third reader by a vote of 139-0.

This bill is very simple. If passed it will prevent a condominium board from waiving the legal rights of the unit owners without their knowledge. This is the same bill that I introduced in 2020 (HB 30) as amended in the House. The bill passed the House that year but did not make it through the Senate due to the shortened session.

The bill is offered to prevent the situation many of you have heard about from your constituents across the state who reside in or own vacation condominiums in the Sunset Island development, a 198-unit condominium complex on the bay side at 67th street in Ocean City. At the Environment and Transportation Committee hearing, we heard about what happened there and why it is imperative that legislators pass this bill to prevent the situation from happening again somewhere else.

In the Sunset Island matter, building deficiencies were discovered while the buildings were under warranty. The builder responded with a repair agreement to the Board of Directors 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. 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.

I was moved to reintroduce the bill this year after the Surfside condominium disaster in Miami, Florida in June. I am not suggesting that this was the same situation, as we do not have all the information about what happened there. I am suggesting, however, that a resolution to a structural deficiency which waives all future claims for a building should not be secretly agreed to without the unit owners' consent.

This year's bill includes amendments offered in 2020 by the Community Associations Institute, Maryland Legislative Action Committee which:

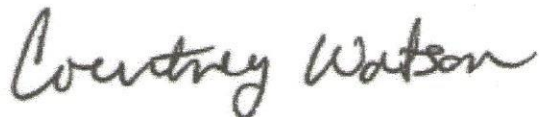
- Specifies that restrictions contained in the bill apply to vendors and developers to allow for such things as personnel matters which are routinely handled by boards without member involvement.
- Also specifies that the requirement extends the new provisions to lot owners, not just unit owners.

This session, additional amendments were added in order to disclose warranty settlement agreements to unit owners 21 days prior to execution and to provide for disclosure to potential unit buyers of an executed agreement.

These amendments are the result of discussions with the stakeholders including Karen Straughn in the Attorney General's office, representatives from the Community Associations Institute (CAI) and the Maryland Builders Industry Association (MBIA), and homeowners from the Sunset Island community.

To provide background on this matter, I am attaching two articles from 2019 published in the *Salisbury Daily Times*, detailing problems at Sunset Island in Ocean City.

Thank you for your consideration of this bill. I am happy to answer any questions.

A handwritten signature in cursive script that reads "Courtney Watson".

Delegate Courtney Watson
Howard County District 9B

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 Prenskey 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

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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."

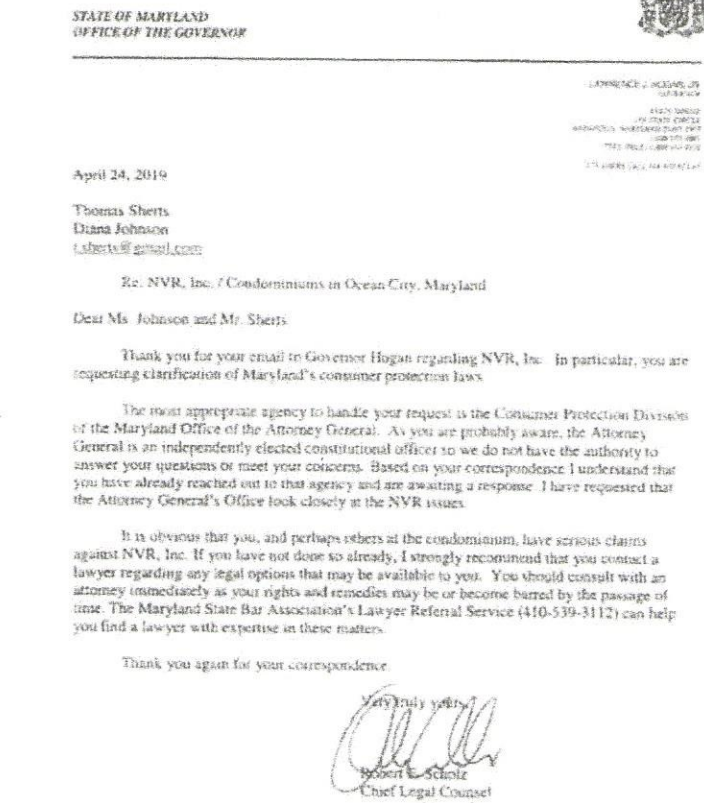
In the letter, the senators warned NVR that they were referring the company's use of forced arbitration and nondisclosure agreements to the Consumer Financial Protection Bureau to confirm if the actions are illegal. The senators called on NVR to "immediately" stop using its arbitration tactics and nondisclosure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



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

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.

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

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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.

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)

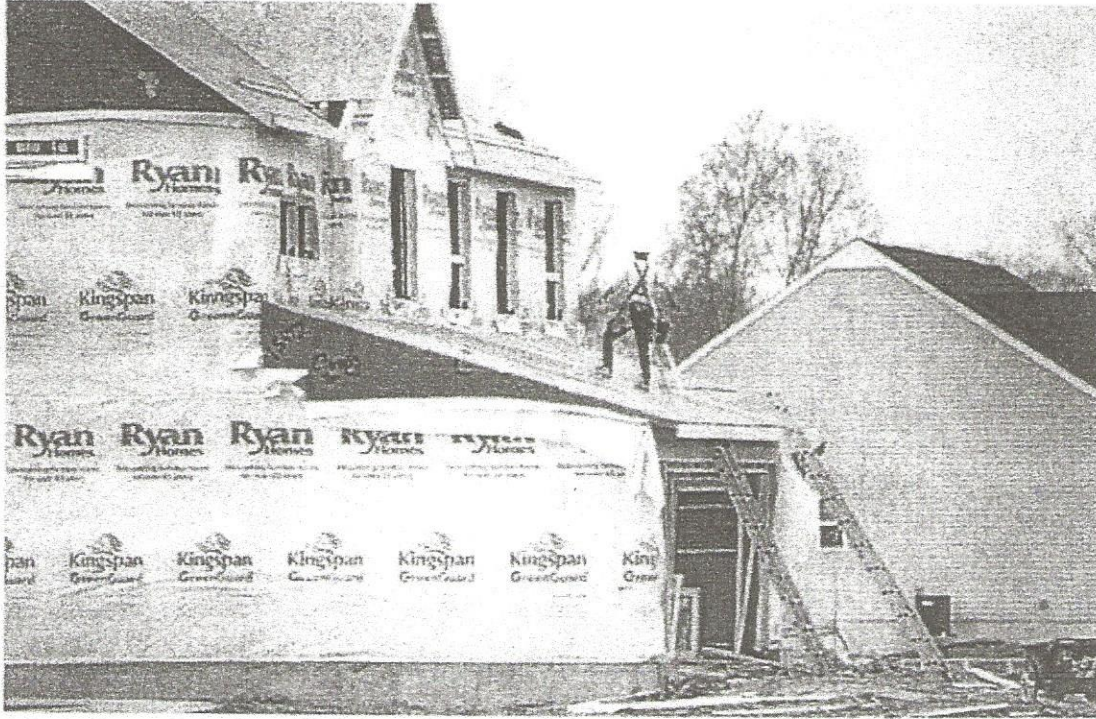
The office received 39 complaints about Ryan Homes since 2016 and 53 when including all complaints across the conglomerate of NVR's brands, according to the attorney general's office.

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.

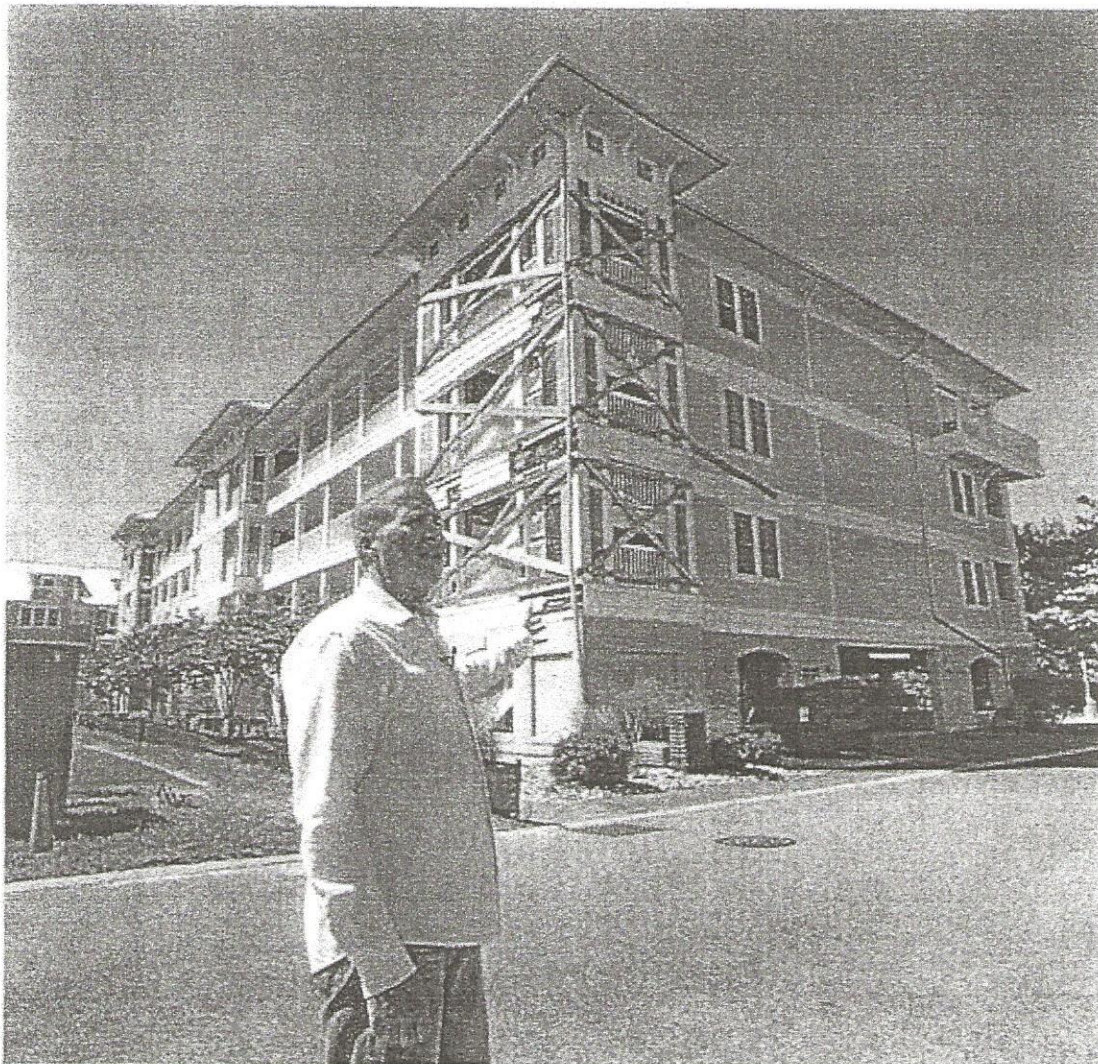
In Milford, Ohio, Michael and Tasha Amos moved into their new Ryan Homes' house with their two young children. Defects included uneven floors. The faulty repairs in which floor joists were cut caused the structural integrity of the home to come into question.

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 Prenskey 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.