



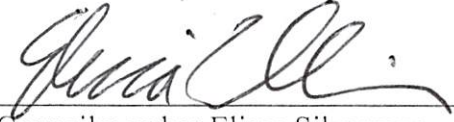
Councilmember David Grosso



Councilmember Mary M. Cheh



Councilmember Anita Bonds



Councilmember Elissa Silverman



Councilmember Brianne K. Nadeau

A Bill

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Condominium Act of 1976 to clarify the implementation of the condominium warranty against structural defects and to transfer the administration of the warranty to the Department of Consumer and Regulatory Affairs.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Condominium Warranty Amendment Act of 2020".

Sec. 2 The Condominium Act of 1976, effective March 29, 1977 (D.C. Law 1-89; D.C. Official Code § 42-1901.01 *et seq.*), is amended as follows:

(a) Section 313(c)(4)(B)(ii) (D.C. Code Official § 42-1903.13(c)(4)(B)(ii)) is repealed.

(b) Section 316 (D.C. Code Official § 42-1903.16) is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a)(1) As used in this section, the term "structural defect" means a defect in a component that constitutes a portion or all of either a unit or of the common elements that:

24 “(A) Reduces the stability or safety of the unit or common elements below
25 standards commonly accepted in the real estate market;

26 “(B) Fails to comply with applicable building code requirements; or

27 “(C) Restricts the normally intended use of all or part of the common
28 elements or of a unit, and which requires repair, renovation, restoration, or replacement to serve
29 the purpose for which it was intended.

30 “(2) To the extent that a structural defect results in damage to a unit or to a
31 portion of the common elements, repair of the structural defect shall also require repair of the
32 damage to a unit or a portion of the common elements resulting from the structural defect.

33 “(3) Nothing in this section shall be construed to make a declarant responsible for
34 items of maintenance relating to a unit or the common elements.”.

35 (2) Subsection (e) is amended to read as follows:

36 “(e)(1)(A) Prior to a declarant’s first conveyance of a residential unit to a purchaser, the
37 declarant shall post a bond or letter of credit with the Mayor or any other form of security the
38 Mayor may approve in the amount of 10% of the estimated construction and conversion costs to
39 satisfy costs that arise from a declarant’s failure to fulfill the requirements of this section.

40 “(B) The bond or letter of credit or other security shall be in a form that is
41 automatically renewable unless revoked.

42 “(2)(A) A declarant shall provide a sworn statement from a contractor licensed in
43 the District of cost estimates for the work proposed in the permit, including the costs of materials
44 and labor.

45 “(B) The sworn statement of estimated costs and the bond or letter of
46 credit shall be updated with any changes submitted for plan approval to the Department of

47. Consumer and Regulatory Affairs (“DCRA”) or at any time actual costs exceed the cost estimate
48 by more than 10%.

49 “(3) Prior to the issuance of a certificate of occupancy, a declarant shall submit a
50 final accounting of costs and update the bond or letter of credit to reflect 10% of the actual cost
51 of construction or conversion, including the actual costs of materials and labor.

52 “(4)(A) Provided that no claim has been filed pursuant to paragraph (8) of this
53 subsection, the bond, letter of credit, or other security may be reduced at a declarant’s request in
54 pro rata segments beginning 2 years after the transfer of control of the residential executive
55 board of the condominium association to purchasing residential unit owners other than the
56 declarant.

57 “(B) If a claim has been filed pursuant to paragraph (8) of this subsection,
58 then the bond, letter of credit, or other security may not be reduced until the full amount of the
59 claim has been established, and then only in an amount that leaves sufficient funds available to
60 satisfy the full amount of the claim.

61 “(C) Pro rata segments shall be based on the residential unit’s percentage
62 interest in the residential portion of the condominium.

63 “(D) For purposes of this subsection, “transfer of control” shall have
64 occurred when 51% or more of the residential executive board is composed of residential unit
65 owners other than the declarant, successor declarant, or the declarant’s selections or nominees.

66 “(5) At the end of 5 years from the conveyance of the first residential unit to a
67 purchaser, the declarant may sell unsold residential units as resale units, in which event no
68 warranty against structural defects in the units under this section shall be required and the bond
69 shall be reduced pro rata as to those unsold units; provided, that one year has passed following

70 transfer of control by the declarant.

71 “(6) The bonding requirements pursuant to this subsection and the warranties
72 required under this section are applicable only to residential condominiums or the residential
73 condominium portion of mixed-use condominiums or mixed-use projects. If a residential
74 condominium is part of:

75 “(A) A mixed-use condominium, the cost of the residential portion of the
76 condominium shall include the residential condominium units’ pro rata share of common
77 elements, based on the residential condominium units’ percentage interest in the common
78 elements; or

79 “(B) A mixed-use project, the cost of the residential condominium
80 includes its pro rata share of those portions of the project directly supporting, enclosing, or
81 servicing the residential condominium.

82 “(7) DCRA shall maintain an online record of the warranty security amounts and
83 the form of security being held for each condominium project for which such security is
84 required, which shall be available to the public on a searchable website.

85 “(8) Notice of a defect to a unit or a portion of the common elements shall be filed
86 by a condominium association or a unit owner with DCRA in order to perfect a claim against the
87 warranty security being held.

88 “(A) A declarant shall respond to the notice within 30 days of the date of
89 receipt of the notice.

90 “(B) Failure to timely respond to the notice shall be a presumption that the
91 defects identified in the notice are valid.

92 “(C)(i) If there is a dispute as to any defect identified in the notice, DCRA

93 shall retain an independent engineer, licensed and approved by DCRA, to inspect the
94 condominium and issue a report as to whether a defect complies with this section and therefore
95 constitutes a valid claim against the bond or letter of credit or other warranty security.

96 “(ii) The engineer’s inspection and report shall be completed
97 within 60 days after the declarant’s response.

98 “(iii) DCRA shall issue a final determination based on the
99 engineer’s report within 15 days after the issuance of such engineer’s report.

100 “(iv) The declarant, condominium association, or a unit owner may
101 file an appeal of DCRA’s final determination within 15 days after the date of the final
102 determination.

103 “(v) The appeal shall be submitted and heard by the District of
104 Columbia Office of Administrative Hearing (“OAH”).

105 “(D)(i) Upon a finding by DCRA or by OAH that a defect exists and shall
106 be paid from the bond, letter of credit, or other security, the condominium association or unit
107 owner shall complete all forms required by DCRA to release the necessary funds.

108 “(ii) Upon completion of the necessary form, the funds shall be
109 released to the condominium association or unit owner within 60 days.

110 “(E) Upon a finding by DCRA that a defect exists and shall be paid from
111 the bond, letter of credit or other security, or upon issuance of an order from OAH or any court
112 of competent jurisdiction hearing a matter pursuant to subsection (h) of this section confirming
113 that a defect exists, the amount awarded to the association shall include an award of the
114 reasonable legal fees and costs incurred by the association in perfecting its claim with DCRA or
115 pursuing its claim in any court of competent jurisdiction.

116 “(9) If claims for structural defects under this section are pending at the time the
117 bond, letter of credit, or other security posted would otherwise no longer be required, then the
118 bond, letter of credit or other security shall be required to be maintained in the amount of the
119 claim, until the claims have been finally resolved and the bond, letter of credit, or other security
120 has been made available to satisfy the declarant’s responsibilities to the unit owners and
121 association under this section.

122 “(10) The bylaws or other condominium documents prepared by the declarant
123 shall not restrict or hinder an executive board’s right to assert claims under this section.”.

124 (3) Subsection (f) is amended to read as follows:

125 “(f) For the purposes of this section, the terms “convey”, “conveying”, or “conveyance”
126 shall mean the transfer of title by written instrument.”.

127 (4) Subsection (g) is amended by striking the phrase “the effective date of the
128 Condominium Act of 1999” and inserting the phrase “the effective date of the Condominium
129 Warranty Amendment Act of 2020, as introduced on MONTH DATE, 2020 (B23-XXX)” in its
130 place.

131 (5) New subsection (h) and (i) are added to read as follows:

132 “(h)(1) Any judicial, non-judicial, regulatory, or administrative proceeding for breach of
133 a warranty that arises under this section shall be commenced within 5 years after the date the
134 warranty period began.

135 “(2) Prior to the conveyance of a residential unit, the declarant shall provide a
136 copy of the bond, letter of credit, or other security required under subsection(e)(1) of this section
137 to the purchaser of such residential unit.

138 “(3) Within 30 days after the date that the declarant’s control of the condominium

139. expires, the declarant shall provide a copy of the bond, letter of credit, or other security required
140 under subsection (e)(1) of this section to the executive board of the unit owners' association.

141 “(i) (1) All positions, property, records, and unexpended balances of appropriations,
142 allocations, assessments, and other funds available or to be made available to the Department of
143 Housing and Community Development (“DHCD”) relating to the duties and functions assigned
144 to the DHCD pursuant to this section are transferred to DCRA.

145 “(2) In the event the duties and functions of DCRA are significantly reorganized,
146 the administration of the warranty against structural defects shall be transferred to the successor
147 entity primarily responsible for issuing permits to ensure competent construction, inspecting the
148 built environment, and enforcing the regulations and codes governing building construction,
149 building maintenance and building safety.”.

150 (b) Section 417 (D.C. Official Code § 42-1904.17) is amended to read as follows:

151 “(a) A person shall be fined not less than \$1,000 or double the amount of gain from the
152 transaction, whichever is the larger, but not more than \$50,000; or such person may be
153 imprisoned for not more than 6 months; or both, for each offense, who willfully:

154 “(1) Violates any provision of this chapter or any rule adopted under or order
155 issued pursuant to section 412;

156 “(2) Makes any untrue statement of a material fact or omits to state a material fact
157 in an application for registration; or

158 “(3) Misrepresents the estimated construction or conversion costs in the posting of
159 a bond or letter of credit pursuant to section 316.

160 “(b) Prosecution for violations of this chapter shall be brought in the name of the District
161 of Columbia by the Attorney General.

162 “(c)(1) Notwithstanding the provisions of subsection (a) of this section, the Mayor may
163 suspend any declarant, officer, director, shareholder, partner, employee, or other individual
164 associated with a declarant from participating in the recordation of any condominium instrument
165 creating a condominium, selling conveying, or participating in the sale or conveyance of,
166 condominium units upon receipt of facts that demonstrate to the satisfaction of the commission
167 the following:

168 “(A) Fraud, embezzlement, theft, forgery, bribery, falsification or
169 destruction of records, making false statements, tax evasion, violating criminal tax evasion,
170 violating criminal tax laws;

171 “(B) An unfair or deceptive trade practice pursuant to Chapter 39 of Title
172 28;

173 “(C) The uttering of an untrue statement of material fact in connection
174 with:

175 “(i) The creation of a condominium;

176 “(ii) Estimated construction or conversion costs of a condominium;

177 or

178 “(iii) Costs of the posting of a bond or letter of credit pursuant to
179 section 316.

180 “(2) The Mayor shall advise by certified mail, return receipt requested, a person
181 that suspended pursuant to this subsection, that:

182 “(A) They have been suspended;

183 “(B) The suspension shall remain pending the completion of an
184 investigation; and

185 “(C) The person may within 30 days after the mailing of the notice
186 submit, in person, in writing, or through a representative, information and argument in
187 opposition to the suspension, including any additional specific information that raises a genuine
188 dispute over the material facts.

189 “(3) If it is determined that the suspended person’s submission in opposition
190 raises a genuine dispute over facts material to the suspension, the suspended person shall be
191 afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses,
192 and confront any appearing witness.

193 “(4) The Mayor:

194 “(A) Shall render a decision based on all the information in the
195 administrative record, including any submission made by the suspended person, after the
196 conclusion of the proceedings; and

197 “(B) May terminate, modify or leave in force the suspension for a period
198 up to, but not to exceed, 36 months. Prompt written notice of the decision shall be sent to the
199 suspended person by certified mail, return receipt requested.

200 “(5) The fraudulent, criminal, or other seriously improper conduct of any officer,
201 director, shareholder, partner, employee, or other individual associated with a declarant may be
202 imputed to:

203 “(A) The declarant when the conduct occurred in connection with the
204 individual’s performance of duties for or on behalf of the declarant, or with the declarant’s
205 knowledge, approval, or acquiescence; or

206 “(B) Any officer, director, shareholder, partner, employee, or other
207 individual associated with the declarant who participated in, knew of, or had reason to know of

208 the declarant's conduct.

209 “(6) The acceptance of a benefit derived from fraudulent, criminal, or other
210 seriously improper conduct shall be evidence of such knowledge, approval, or acquiescence.

211 “(d) Civil fines, penalties, and fees may be imposed as alternative sanctions for any
212 infraction of the provisions of this title, or any rules or regulations issued under the authority of
213 this title, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act
214 of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*) .
215 Adjudication of any infraction of this title shall be pursuant to the Department of Consumer and
216 Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42;
217 D.C. Official Code § 2-1801.01 *et seq.*)”.

218 Sec. 2. Applicability.

219 Section 316(i) shall apply as of October 1, 2020.

220 Sec. 3. Fiscal impact statement.

221 The Council adopts the fiscal impact statement in the committee report as the fiscal
222 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
223 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

224 Sec. 4. Effective date.

225 This act shall take effect following approval by the Mayor (or in the event of veto by the
226 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
227 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
228 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
229 Columbia Register.