



**OFFICE OF COUNCILMEMBER ANITA BONDS**  
CHAIR, COMMITTEE ON HOUSING AND EXECUTIVE ADMINISTRATION  
THE JOHN A. WILSON BUILDING  
1350 PENNSYLVANIA AVENUE, NW  
WASHINGTON, DC 20004

July xx, 2022

Nyasha Smith, Secretary  
Council of the District of Columbia  
1350 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Dear Secretary Smith,

Today, I am filing B24-XXX, the “Condominium Warranty Claims Clarification Amendment Act of 2022.” The purpose of this legislation is to amend the Condominium Act of 1976 to clarify the standards and procedures governing the resolution of a claim filed upon a condominium developer’s warranty against structural defects, and to clarify the powers and responsibilities of the Mayor in such cases, among other technical changes to the law.

The issue of the Condominium Warranty Claims process has been a topic of Council concern for many years and has received heightened attention in recent years due to the growing number of new condominium developments and condominium conversion projects across the city. Uncertainty in procedures have led to unnecessary delays in the resolution of claims and have bedeviled negotiations on all sides in disputes totaling hundreds of thousands of dollars in claims.

In an effort to address some of these uncertainties, the Council enacted an earlier version of this bill in 2020 on an Emergency and Temporary basis. The “Condominium Warranty Claims Clarification Temporary Amendment Act of 2020,” expired on January 28, 2021.

On September 17, 2020, the Committee on Housing and Neighborhood Revitalization held a hearing on B23-601, the “Condominium Warranty Amendment Act of 2020,” and B23-623, the “Condominium Warranty Claims Clarification Amendment Act of 2020,” which touched on many of these issues. In essence, this legislation does the following:

- It clarifies the definition of a “structural defect,” for purposes of filing a claim upon a condominium developer, or “declarant’s” warranty;

- It clarifies the requirements of a condominium developer to post with the Mayor a warranty security payment in the amount of 10% of the estimated hard construction and conversion costs (labor and materials) to satisfy costs that arise from a declarant's failure to fulfill the requirements of this section;
- It requires the Mayor to maintain an online record of the warranty security amounts and the form of security being held, to be made available on a searchable website and upon request by any member of the public;
- It specifies the applicable timelines within which a claim may be made upon a warranty by a unit owner or owners association, and the amount of time a declarant has to respond to any claim, and clarifies the circumstances when the Mayor shall release the warranty security funds to the claimant;
- It clarifies that a claimant and/or declarant may request a de novo consideration of the findings of the Mayor by the Office of Administrative Hearings;
- It requires the Mayor to issue proposed rules to implement the provisions of this Act within 180 days of the effective date, and requires the Mayor to report to the Council on an annual basis on the use and effect of this section and the number of condominium units traded each year;
- It provides the timelines by which the declarant shall provide a copy of the bond, letter of credit, or other security to the purchaser and to the executive board of the unit owners' association, and establishes a fund for the purpose of providing financial assistance incurred by unit owners or unit owners' associations in the filing of a claim;
- It provides that any judicial, non-judicial, regulatory, or administrative proceeding for breach of a warrant that arises under this Act shall be commenced within 5 years after the date of commencement of the applicable warranty period;
- It provides for fines, or imprisonment, or both, for any person who knowingly or recklessly violates any provision of the act, or materially misrepresents the estimated construction or conversion costs in the posting of a bond or other form of security;
- It provides that the Mayor may suspend any declarant, officer, director, shareholder, partner, employee, or other individual associated with a declarant from participating in the sale or conveyance of a condominium unit upon receipt of facts that such person was directly involved in fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or otherwise engaging in any unfair or deceptive trade practice.

As the District now emerges from the public health emergency of the past two years, it is imperative to clarify the standards by which condominium developers and owners can resolve disputes affecting "structural defects." In these efforts, the District government must be a reliable and fair arbiter. This legislation will ensure that the playing field is level, and fair to all concerned in these important matters.

Should you have any questions, please contact my Committee Director, Ram Uppuluri at [rappuluri@dccouncil.us](mailto:rappuluri@dccouncil.us) or 202-724-8153.


Thank you,

Sincerely,


A handwritten signature in black ink, appearing to read 'ANB', with a stylized flourish at the end.

Anita Bonds, Chairperson  
Committee on Housing and Executive Administration


  
Chairman Mendelson


  
Councilmember Anita Bonds

  
Councilmember Janeese Lewis George

  
Councilmember Kenyan McDuffie

  
Councilmember Vincent C. Gray

  
Councilmember Christina Henderson

  
Councilmember Mary Cheh

  
Councilmember Brianne K. Nadeau

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A BILL

24-XXXX

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend the Condominium Act of 1976 to clarify standards and procedures governing the resolution of a claim filed upon a condominium developer’s warranty against structural defects; to provide that any judicial, non-judicial, regulatory, or administrative proceeding for breach of a warrant that arises under this Act shall be commenced within 5 years after the date the applicable warranty period began; to provide that the filing of a claim with the Mayor shall not preclude the claimant from also seeking to judicially enforce its claim; and to clarify the penalties for violating a provision of this act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this act may be cited as the “Condominium Warranty Claims Clarification Amendment Act of 2022”.

Sec. 2. The Condominium Act of 1976, effective March 29, 1977 (D.C. Law 8-233; D.C. Official Code § 42-1901.01 *et seq.*), is amended as follows:

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

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

24 “(a) For the purposes of this section, the term:

25 “(1) “Adjudication” shall have the meaning set forth in section 102(19) of the  
26 District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat.  
27 1204; D.C. Official Code § 2-502(19)).

28 “(2) “Claimant” means the unit owners association or a unit owner asserting a  
29 claim under the warranty for structural defects required by this section.

30 “(3) “Conveyance” or “convey” means the transfer of legal title to real estate by  
31 written instrument, which for purposes of warranty security reduction and calculating the  
32 two-year warranty against structural defects is deemed to be the date on which the  
33 applicable deed of conveyance is recorded with the Recorder of Deeds of the District of  
34 Columbia.

35 “(4) “Order” shall have the meaning set forth in section 102(11) of the District of  
36 Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C.  
37 Official Code § 2-502(11)).”

38 “(5) “Perfect claim” means a claim that contains all information and supporting  
39 proof required by this section or any other applicable law or regulation that a structural  
40 defect exists”

41 “(6) “Structural defect” means a defect in a component that constitutes a portion  
42 or all of either a unit or the common elements that:

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

45                   “(B) Restricts the normally intended use of all or part of the common  
46 elements of a unit and which requires repair, renovation, restoration, or replacement to serve the  
47 purpose for which it was intended.”.

48                   (2) A new subsection (a-1) is added to read as follows:

49                   “(a-1)(1) The failure to comply with the applicable building code in effect at the time of  
50 construction shall create a rebuttable presumption that the component falls below standards  
51 commonly accepted in the real estate market if:

52                   “(A) The failure to comply with building code requirements results in  
53 demonstrable harm to the health or safety of a unit owner, lawful unit inhabitant, or guest; or

54                   “(B) The units are conveyed prior to the issuance of a certificate of  
55 occupancy, or in the event that the developed condominium units do not require a certificate of  
56 occupancy to be occupied, prior to the date of substantial completion of condominium  
57 construction as certified by the condominium development architect.

58                   “(2) To the extent that a structural defect results in damage to a unit or to a  
59 portion of the common elements, repair of the structural defect (pursuant to the declarant’s  
60 common element warranty against structural defects) shall also require repair of the damage to a  
61 unit or a portion of the common elements resulting from the structural defect.

62                   “(3) Nothing in this section shall be construed to make a declarant responsible for  
63 any damage resulting from lack of proper maintenance of a unit or the common elements.”

64                   (3) Subsection (e) is amended to read as follows:

65                   “(e)(1)(A) At the time that the condominium registration order is issued by the Mayor  
66 pursuant to section 403, the declarant shall post with the Mayor a warranty security payment in

67 the form of a bond, letter of credit or any other form of security the Mayor may approve in the  
68 amount of 10% of the estimated hard construction and conversion costs (labor and materials) to  
69 satisfy costs that arise from a declarant's failure to fulfill the requirements of this section.

70                   “(B) If prior to the conveyance of the first residential unit to a purchaser,  
71 the declarant has not posted warranty security payment described in sub-paragraph (A) of this  
72 paragraph with the Mayor, the escrow agent for the sale of the residential unit shall collect the  
73 warranty security payment prior to closing and submit the warranty security payment to the  
74 Mayor on the settlement date.

75                   “(C) The bond, letter of credit or other security shall be in a form that is  
76 automatically renewable and can only expire with permission by the Mayor, unless a release or  
77 approval of revocation is granted by the Mayor.

78                   “(D) The amount of the bond, letter of credit or other form of warranty  
79 security shall be in the amount of the estimated hard construction and conversion costs (labor  
80 and materials) at the time of filing the Application for Condominium Registration. These costs  
81 shall be determined according to industry standards for estimating construction costs. In the  
82 event that the actual hard construction and conversion costs (labor and materials) as of the time  
83 of substantial completion of the condominium, as certified by the project architect, exceeds the  
84 previously estimated costs by more than ten percent (10%), the declarant shall post an additional  
85 bond, letter of credit or other form of warranty security in the amount of 10% of the difference  
86 between the estimated hard construction and conversion costs (labor and materials) and the  
87 actual hard construction and conversion costs (labor and materials) as of project substantial  
88 completion, as certified by the project architect.

89                               “(E) No condominium unit shall be conveyed to a purchaser until the  
90 bond, letter of credit or other warranty security has been posted in accordance with requirements  
91 set forth in this subsection.

92                               “(2) To support the amount of the warranty security posted by the declarant, a  
93 declarant shall provide a sworn statement attesting to cost estimates for the conversion  
94 construction work proposed, including the costs of materials and labor at the time of filing the  
95 Application for Condominium Registration, and at the time of substantial completion of the  
96 condominium, as certified by the project architect, if the costs have exceeded the estimates as set  
97 forth in (1)(C).

98                               “(3)(A) The bond, letter of credit, or other form of warranty security may be  
99 reduced at the declarant’s request in pro rata segments beginning (based on the residential unit’s  
100 percentage interest in the residential portion of the condominium) 2 years after the conveyance of  
101 each unit; provided, however, that in no event shall the warranty security be reduced below 50%  
102 of the original amount of the warranty security until one year after the transfer of control of the  
103 residential executive board of the unit owners’ association to residential unit owners other than  
104 the declarant, or an affiliate of the declarant.

105                               “(B) Pro rata segments shall be based on the residential unit’s percentage  
106 interest in the residential portion of the condominium.

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

110                               “(4) At the end of 5 years from the conveyance of the first residential unit to a  
111 purchaser, the declarant may sell unsold residential units as resale units, in which event no



112 warranty against structural defects in the units under this section shall be required and the bond  
113 shall be reduced pro rata as to those unsold units; provided, that one year has passed following  
114 transfer of control by the declarant.

115           “(5) The bonding requirements pursuant to this subsection and the warranties  
116 required under this section are applicable only to residential condominiums or the residential  
117 condominium portion of mixed-use condominiums or mixed-use projects which contain two or  
118 more types of uses, including residential, retail, and office. If a residential unit is part of a mixed-  
119 use condominium:

120                   “(A) The cost of the residential portion of the condominium shall include:

121                   “(i) The residential condominium units’ pro rata share of common  
122 elements, based on the residential condominium units’ percentage interest in the common  
123 elements; or

124                   “(ii) The residential condominium units’ pro rata share of those portions of  
125 the project directly supporting, enclosing, or servicing the residential condominium.

126           “(6) The Mayor shall maintain an online record of the warranty security amounts  
127 and the form of warranty security being held for each condominium project for which such  
128 security is required, which shall be available to the public on a searchable website.

129           “(7) A claimant asserting a claim of structural defect to a residential unit or a  
130 portion of the common elements shall notify the declarant in writing via certified mail and return  
131 receipt requested of the claimant’s intent to file a claim with the Mayor at least 30 calendar days  
132 prior to filing such a claim. The declarant shall have an opportunity to respond to the claimant  
133 during the 30 calendar days following the delivery of the notice required by this subsection.

134                   “(A) After 30 calendar days from delivery of the claimant’s notice of  
135 intent to file a claim, the claimant may file a claim of structural defect to a residential unit or  
136 portion of the common elements with the Mayor on a form prescribed by the Mayor. The  
137 claimant shall send a copy of the claim to the declarant via certified mail and return receipt  
138 requested on the same date the claimant files a claim with the Mayor.

139                   “(B) A declarant shall file with the Mayor (with a copy sent to the  
140 claimant via certified mail and return receipt requested) a written response to a structural defect  
141 claim filed with the Mayor within 30 calendar days of receipt of a copy of the claim

142                   “(C)(i) After receiving the unit owner’s or unit owners’ association’s  
143 structural defect claim and the declarant’s response, the Mayor shall make a final determination  
144 of whether the claim of structural defect is a perfected claim.

145                   “(ii) The Mayor’s determination that the structural defect claim is  
146 not perfected in a previous instance will have no bearing on any other current or future claim by  
147 a unit owner or the unit owners’ association based on additional or different information.

148                   “(D) Upon a final determination by the Mayor that the claim is perfected,  
149 the Mayor shall make a determination based on the materials provided in the claim of the cost to  
150 repair or replace the structural defects to be paid from the bond, letter of credit or other warranty  
151 security posted with the Mayor.

152                   “(E)(i) Upon the Mayor’s final determination of a perfected claim and  
153 determination of the amount of warranty security to be awarded for payment of the costs to  
154 repair or replace the structural defects, the declarant and the claimant shall complete all forms  
155 required by the Mayor to release the necessary funds.

156                                   “(ii) Upon receipt of all necessary completed forms, the Mayor  
157 shall release the funds to the claimant within 30 calendar days.

158                                   “(F) Any party aggrieved by the Mayor’s determination may submit a  
159 written request to OAH for a de novo consideration of the claim. Any award from the bond,  
160 letter of credit, or other warranty security posted by the Declarant shall be suspended pending the  
161 issuance of an order from OAH, in which case the decision of the OAH shall supersede any  
162 decision by the Mayor.

163                                   “(G) If a unit owners association or unit owner files suit in a court of  
164 competent jurisdiction for a breach of the warranties created by this Section, the prevailing party  
165 shall be entitled to an award of reasonable attorneys fees and costs as may be determined by the  
166 court. Any unit owners’ association or unit owner that files suit shall provide written notice to  
167 the Mayor, and the bond, letter of credit, or other warranty security posted by the Declarant shall  
168 not be reduced or released until a decision is rendered by the court.

169                                   “(8) If claims for structural defects under this section are pending at the time the  
170 bond, letter of credit, or other warranty security posted would otherwise be allowed to be  
171 reduced or no longer be required, then the bond, letter of credit or other warranty security shall  
172 be required to be maintained until the claims have been finally resolved, and the bond, letter of  
173 credit, or other warranty security has been made available to satisfy the declarant’s  
174 responsibilities to the unit owners and unit owners’ association under this section.

175                                   “(9) The bylaws or other condominium documents prepared by the declarant shall  
176 not restrict or hinder a unit owner or a unit owners’ association’s right to assert claims under this  
177 section.”

178                   “(10) The declarant, condominium association, or a unit owner may contest the  
179 Mayor’s final determination within 30 calendar days after the date of the final determination.

180                   “(A) The contesting party shall file its written request for a hearing with  
181 the District of Columbia Office of Administrative Hearings (“OAH”). The review by OAH shall  
182 be de novo.

183                   (4) A new subsection (e-1) is added to read as follows:

184                   “(e-1) The Mayor shall approve the release of the funds secured under subsection (e) of  
185 this section to satisfy any costs that arise from a declarant’s failure to satisfy the requirements of  
186 this section pursuant to:

187                   “(1) A written agreement between the declarant and claimant regarding the  
188 release of the warranty security in satisfaction of the claim, approved by the Mayor,

189                   “(2) An order issued by the Mayor pursuant to subsection (e)(7)(E) of this section,

190                   “(3) An order of the Office of Administrative Hearings issued following an appeal  
191 under subsection (e)(7)(F) of this section; or

192                   “(4) An order of a court of competent jurisdiction.”.

193                   (5) Subsection (g) is amended by striking the text and inserting the following  
194 in its place:

195                   “(g) (1) The Mayor shall issue proposed rules to implement the provisions of this Act  
196 within 180 days of the effective date of this Act, with such rules being published in the DC  
197 Register with a 60-day public comment period. The proposed rules shall be submitted to the  
198 Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of  
199 Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in

200 part, by resolution within this 45-day review period, the proposed rules shall be deemed  
201 approved.”

202 “(2) The Mayor shall report to the Council on an annual basis on the use and  
203 effect of this section and the number of condominium units traded each year.”.

204 (6) A new subsection (h) is added to read as follows:

205 “(h)(1) At least seven (7) calendar days prior to the initial conveyance of a  
206 residential unit, the declarant shall provide a copy of the bond, letter of credit, or other warranty  
207 security required under subsection(e)(1) of this section to the purchaser of such residential unit.

208 “(2) At any time prior to 30 calendar days after the date that the declarant’s  
209 control of the condominium expires, the declarant shall provide a copy of the bond, letter of  
210 credit, or other warranty security required under subsection (e)(1) of this section to the executive  
211 board of the unit owners’ association.”.

212 (7) A new subsection (i) is added to read as follows:

213 “(i) The Mayor shall establish a fund for the purpose of providing financial assistance,  
214 such as for inspections, cost estimates, and attorney costs, incurred by unit owners or unit  
215 owners’ associations in the filing of a claim for a condominium developer’s warranty against  
216 structural defects. The rules for determining eligibility shall provide for the distribution of  
217 financial assistance based on financial need, and shall be established through rulemaking. The  
218 fund shall be made available to unit owners or unit owners associations which undergo a special  
219 assessment on monthly condominium fees as a direct consequence of a unit owners association’s  
220 expenditures resulting from a structural defect(s) discovered within the warranty period.”.

221 (b) Section 317 (D.C. Official Code § 42-1903.17) is amended to read as follows:

222           “Any judicial, non-judicial, regulatory, or administrative proceeding for breach of a  
223 warranty that arises under section 316 shall be commenced within 5 years after the date the  
224 applicable warranty period began. Filing of a claim with the Mayor shall not preclude the  
225 claimant from also seeking to judicially enforce its claim. In the event that a breach of warranty  
226 claim is filed with a court of competent jurisdiction, the Mayor’s decision issued under this  
227 section will be stayed until the breach of warranty claim is resolved.

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

229           “(a) A person shall be fined not less than \$1,000 or double the amount of gain from the  
230 transaction, whichever is the larger, but not more than \$50,000, or may be imprisoned for not  
231 more than 6 months, or both, for each offense, who knowingly or recklessly:

232                   “(1) Violates any provision of this chapter or any rule adopted and published  
233 under or order issued pursuant to section 412;

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

236                   “(3) Materially misrepresents the estimated construction or conversion costs in the  
237 posting of a bond or letter of credit pursuant to section 316.

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

240           “(c)(1) Notwithstanding the provisions of subsection (a) of this section, the Mayor may  
241 suspend any declarant, officer, director, shareholder, partner, employee, or other individual  
242 associated with a declarant from: (i) participating in the recordation of any condominium  
243 instrument creating a condominium; and/or (ii) selling, conveying or participating in the sale or

244 conveyance of condominium units, upon receipt of facts that demonstrate to the satisfaction of  
245 the Mayor that such person was directly involved in any of the following:

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

249                   “(B) An unfair or deceptive trade practice pursuant to Chapter 39 of Title  
250 28;

251                   “(C) The knowing uttering of an untrue statement of material fact in  
252 connection with:

253                                   “(i) The creation or marketing of a condominium;

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

255 or

256                                   “(iii) Costs of construction to substantiate the amount of a bond,  
257 letter of credit or other security posted pursuant to section 316.

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

260                                   “(A) They have been suspended;

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

263                                   “(C) The person may within 30 calendar days after the mailing of the  
264 notice submit, in person, in writing, or through a representative, information and argument in  
265 opposition to the suspension, including any additional specific information that raises a genuine  
266 dispute over the material facts or the application of the law.

267                   “(3) If it is determined that the suspended person’s submission in opposition  
268 raises a genuine dispute over facts material to the suspension or the application of the law, the  
269 suspended person shall be afforded an opportunity to appear with counsel, submit documentary  
270 evidence, present witnesses, and confront any appearing witness.

271                   “(4) The Mayor:

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

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

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

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

284                                 “(B) Any officer, director, shareholder, partner, employee, or other  
285 individual associated with the declarant who participated in, knew of, or had reason to know of  
286 the declarant’s conduct.

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



289                   “(7) The declarant may appeal any determination by the Mayor under this section  
290 to the Office of Administrative Hearings.”

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

298                   Sec. 3. Fiscal impact statement.

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

302

303                   Sec. 4. Effective date.

304                   This act shall take effect following approval by the Mayor (or in the event of veto by the  
305 Mayor, action by the Council to override the veto), a 30-day period of congressional review as  
306 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
307 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
308 Columbia Register.