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A BILL
24-934

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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:

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

(1) Subsection (a) is repealed

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

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

“(A) The failure to comply with building code requirements results in

28 demonstrable harm to the health or safety of a unit owner, lawful unit inhabitant, or guest; or

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

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

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

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

40 “(e)(1)(A) At the time that the condominium registration order is issued by the Mayor,
41 the declarant shall post with the Mayor a warranty security payment in the form of a bond, letter
42 of credit, or any other form of security the Mayor may approve in the amount of 10% of the
43 estimated hard construction and conversion costs, including labor and materials, to satisfy costs
44 that arise from a declarant’s failure to fulfill the requirements of this section.

45 “(B) If prior to the conveyance of the first residential unit to a purchaser,
46 the declarant has not posted warranty security payment described in sub-paragraph (A) of this
47 paragraph with the Mayor, the escrow agent for the sale of the residential unit shall collect the

48 warranty security payment prior to closing and submit the warranty security payment to the
49 Mayor on the settlement date.

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

53 “(D) The amount of the bond, letter of credit, or other form of warranty
54 security shall be based on the estimated hard construction and conversion costs, including labor
55 and materials, at the time of filing the Application for Condominium Registration. These costs
56 shall be determined according to industry standards for estimating construction costs. In the
57 event that the actual hard construction and conversion costs, including labor and materials, as of
58 the time of substantial completion of the condominium, as certified by the project architect,
59 exceeds the previously estimated costs by more than 10%, the declarant shall post an additional
60 bond, letter of credit, or other form of warranty security in the amount of 10% of the difference
61 between the estimated hard construction and conversion costs, including labor and materials, and
62 the actual hard construction and conversion costs, including labor and materials, as of project
63 substantial completion, as certified by the project architect.

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

67 “(2) To support the amount of the warranty security posted by the declarant, a
68 declarant shall provide a sworn statement attesting to cost estimates for the conversion
69 construction work proposed, including the costs of materials and labor at the time of filing the
70 Application for Condominium Registration, and at the time of substantial completion of the
71 condominium, as certified by the project architect, if the costs have exceeded the estimates as set
72 forth in paragraph (1)(D) of this subsection.

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

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

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

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

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

90 “(5) The bonding requirements pursuant to this subsection and the warranties
91 required under this section are applicable only to residential condominiums or the residential
92 condominium portion of mixed-use condominiums or mixed-use projects which contain two or
93 more types of uses, including residential, retail, or office. If a residential unit is part of a mixed-
94 use condominium, the cost of the residential portion of the condominium shall include:

95 “(A) The residential condominium units’ pro rata share of common
96 elements, based on the residential condominium units’ percentage interest in the common
97 elements; or

98 “(B) The residential condominium units’ pro rata share of those portions
99 of the project directly supporting, enclosing, or servicing the residential condominium.

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

103 “(7)(A) A claimant asserting a claim of structural defect to a residential unit or a
104 portion of the common elements shall notify the declarant in writing via certified mail and return
105 receipt requested of the claimant’s intent to file a claim with the Mayor at least 30 calendar days
106 prior to filing such a claim. The declarant shall have an opportunity to respond to the claimant

107 during the 30 calendar days following the date the declarant receives the notice required by this
108 subsection.

109 “(B) After 30 calendar days from the date the declarant receives the
110 claimant’s notice of intent to file a claim, the claimant may file a claim of structural defect to a
111 residential unit or portion of the common elements with the Mayor on a form prescribed by the
112 Mayor. The claimant shall send a copy of the claim to the declarant via certified mail and return
113 receipt requested on the same date the claimant files a claim with the Mayor.

114 “(C) A declarant shall file with the Mayor a written response to a structural
115 defect claim filed with the Mayor within 30 calendar days of receipt of a copy of the claim. The
116 declarant shall also send a copy to the claimant via certified mail with return receipt requested.

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

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

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

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

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

133 “(G) Any party aggrieved by the Mayor’s determination may submit a
134 written request to the Office of Administrative Hearings (“OAH”) within 30 calendar days after
135 the date of the Mayor’s final determination for a de novo consideration of the claim. Any award
136 from the bond, letter of credit, or other warranty security posted by the declarant shall be
137 suspended pending the issuance of an order from OAH, in which case the decision of the OAH
138 shall supersede any decision by the Mayor.

139 “(H) If a unit owners association or unit owner files suit in a court of
140 competent jurisdiction for a breach of the warranties created by this section, the prevailing party
141 shall be entitled to an award of reasonable attorneys fees and costs as may be determined by the
142 court. Any unit owners’ association or unit owner that files suit shall provide written notice to the
143 Mayor, and the bond, letter of credit, or other warranty security posted by the declarant shall not
144 be reduced or released until a decision is rendered by the court.

145 “(8) If claims for structural defects under this section are pending at the time the
146 bond, letter of credit, or other warranty security posted would otherwise be allowed to be reduced

147 or no longer be required, then the bond, letter of credit, or other warranty security shall be
148 required to be maintained until the claims have been finally resolved, and the bond, letter of
149 credit, or other warranty security has been made available to satisfy the declarant's
150 responsibilities to the unit owners and unit owners' association under this section.

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

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

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

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

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

161 “(3) An order of the Office of Administrative Hearings issued following an appeal
162 under subsection (e)(7)(G) of this section; or

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

164 (5) Subsection (f) is repealed.

165 (6) Subsection (g) is amended as follows:

166 (a) A new paragraph (2) is added to read as follows:

167 “(2) The Mayor shall issue proposed rules to implement the provisions of the
168 Condominium Warranty Claims Clarification Amendment Act of 2022 (B24-934) within 180
169 days of the effective date of the Condominium Warranty Claims Clarification Amendment Act of
170 2022 (B24-934), with such rules being published in the District of Columbia Register with a 60-
171 day public comment period. The proposed rules shall be submitted to the
172 Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of
173 Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in
174 part, by resolution within this 45-day review period, the proposed rules shall be deemed
175 approved.”

176 (b) A new paragraph (3) is added to read as follows

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

179 (7) A new subsection (h) is added to read as follows:

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

183 “(2) At any time prior to 30 calendar days after the date that the declarant’s

184 control of the condominium expires, the declarant shall provide a copy of the bond, letter of
185 credit, or other warranty security required under subsection (e)(1) of this section to the executive
186 board of the unit owners' association.”.

187 (8) A new subsection (i) is added to read as follows:

188 “(i)(1) The Mayor shall establish a fund for the purpose of providing financial assistance,
189 such as for inspections, cost estimates, and attorney costs, incurred by unit owners or unit
190 owners' associations in the filing of a claim for a condominium developer's warranty against
191 structural defects. The rules for determining eligibility shall provide for the distribution of
192 financial assistance based on financial need, and shall be established through rulemaking. The
193 fund shall be made available to unit owners or unit owners associations which undergo a special
194 assessment on monthly condominium fees as a direct consequence of a unit owners association's
195 expenditures resulting from a structural defect discovered within the warranty period.”.

196 (9) A new subsection (j) is added to read as follows:

197 “(j) For the purposes of this section, the term:

198 “(1) “Adjudication” shall have the same meaning set forth in section 102(19) of
199 the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat.
200 1204; D.C. Official Code § 2-502(19)).

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

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

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

210 “(5) “Perfect claim” means a claim that a structural defect exists, which
211 contains all information and supporting proof required by this section or any other applicable law
212 or regulation.

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

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

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

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

221 “Any judicial, non-judicial, regulatory, or administrative proceeding for breach of a
222 warranty that arises under section 316 shall be commenced within 5 years after the date the

223 applicable warranty period began. Filing of a claim with the Mayor shall not preclude the
224 claimant from also seeking to judicially enforce its claim. In the event that a breach of warranty
225 claim is filed with a court of competent jurisdiction, the Mayor’s decision issued under this
226 section will be stayed until the breach of warranty claim is resolved.

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

228 “(a) Notwithstanding Section 101 of the Criminal Fine Proportionality Amendment Act
229 of 2012 (D.C. Official Code § 22-3571.01), a person shall be fined not less than \$1,000 or double
230 the amount of gain from the transaction, whichever is the larger, but not more than \$50,000, or
231 may be imprisoned for not more than 6 months, or both, for each offense, who knowingly or
232 recklessly:

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

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

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

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

241 “(c)(1) Notwithstanding the provisions of subsection (a) of this section, the Mayor may
242 suspend any declarant, officer, director, shareholder, partner, employee, or other individual
243 associated with a declarant from:

244 “(A) Participating in the recordation of any condominium instrument
245 creating a condominium; or

246 “(B) Selling, conveying, or participating in the sale or conveyance of
247 condominium units, upon receipt of facts that demonstrate to the satisfaction of the Mayor that
248 such person was directly involved in any of the following:

249 “(i) Fraud, embezzlement, theft, forgery, bribery, falsification or
250 destruction of records, making false statements, tax evasion, violating criminal tax evasion,
251 violating criminal tax laws;

252 “(ii) An unfair or deceptive trade practice pursuant to Chapter 39
253 of Title 28 of the District of Columbia Official Code;

254 “(iii) The knowing uttering of an untrue statement of material fact
255 in connection with:

256 “(I) The creation or marketing of a condominium;

257 “(II) Estimated construction or conversion costs of a
258 condominium; or

259 “(III) Costs of construction to substantiate the amount of a
260 bond, letter of credit or other security posted pursuant to section 316.

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

263 “(A) He or she has been suspended;

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

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

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

274 “(4) The Mayor:

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

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

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

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

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

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

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

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

301 Sec. 3. Applicability.

302 (a) Section 2(a)(8) of this act shall apply upon the date of inclusion of its fiscal effect in
303 an approved budget and financial plan.

304 (b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in
305 an approved budget and financial plan, and provide notice to the Budget Director of the Council
306 of the certification.

307 (c)(1) The Budget Director shall cause the notice of the certification to be published in
308 the District of Columbia Register.

309 (2) The date of publication of the notice of the certification shall not affect the
310 applicability of this act.

311 Sec. 4. Fiscal impact statement.

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

315 Sec. 5. Effective date.

316 This act shall take effect following approval by the Mayor (or in the event of veto by the
317 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
318 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
319 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
320 Columbia Register.