

AN ACT

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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 a 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(1) Subsection (a) is repealed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 demonstrable harm to the health or safety of a unit owner, lawful unit inhabitant, or guest; or

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

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

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

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

“(e)(1)(A) At the time that the condominium registration order is issued by the Mayor, the declarant shall post with the Mayor a warranty security in the amount of 10% of the estimated hard construction and conversion costs, including labor and materials, to satisfy costs that arise from a declarant’s failure to fulfill the requirements of this section.

“(B) If prior to the conveyance of the first residential unit to a purchaser, the declarant has not posted warranty security as required by subparagraph (A) of this paragraph, the escrow agent for the sale of the residential unit shall collect the warranty security payment prior to closing and submit the warranty security payment to the Mayor on the settlement date.

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

“(D) The amount of the warranty security shall be based on the estimated hard construction and conversion costs, including labor and materials, at the time of filing the application for condominium registration. These costs shall be determined according to industry standards for estimating construction costs. If the actual hard construction and conversion costs, including labor and materials, as of the time of substantial completion of the condominium, as certified by the project architect, exceeds the previously estimated costs by more than 10%, the declarant shall post an additional warranty security in the amount of 10% of the difference between the estimated hard construction and conversion costs, including labor and materials, and the actual hard construction and conversion costs, including labor and materials, as of project substantial completion, as certified by the project architect.

“(E) No condominium unit shall be conveyed to a purchaser until the warranty security has been posted in accordance with requirements set forth in this subsection.

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

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

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

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

“(5) The bonding requirements pursuant to this subsection and the warranties required under this section are applicable only to residential condominiums or the residential condominium portion of mixed-use condominiums or mixed-use projects that contain 2 or more types of uses, including residential, retail, or office. If a residential unit is part of a mixed-use condominium, the cost of the residential portion of the condominium shall include:

“(A) The residential condominium unit’s pro rata share of common elements, based on the residential condominium unit’s percentage interest in the common elements; or

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

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

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

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

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

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

“(ii) The Mayor’s determination that the structural defect claim is

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not perfected in a previous instance will have no bearing on any other current or future claim by a unit owner or the unit owners' association based on additional or different information.

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

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

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

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

“(H) If a unit owners association or unit owner files suit in a court of competent jurisdiction for a breach of the warranties created by this section, the prevailing party shall be entitled to an award of reasonable attorney fees and costs as may be determined by the court. A unit owners' association or unit owner that files suit shall provide written notice to the Mayor, and the warranty security posted by the declarant shall not be reduced or released until a decision is rendered by the court.

“(8) If claims for structural defects under this section are pending at the time the warranty security that is posted would otherwise be allowed to be reduced or no longer be required, then the warranty security shall be required to be maintained until the claims have been finally resolved, and the warranty security has been made available to satisfy the declarant's responsibilities to the unit owners and unit owners' association under this section.

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

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

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

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

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

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

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

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

(5) Subsection (f) is repealed.

(6) Subsection (g) is amended by adding a new paragraph (1A) to read as follows:

“(1A)(A) The Mayor shall issue proposed rules to implement the provisions of the Condominium Warranty Claims Clarification Amendment Act of 2022, passed on 2nd reading November 15, 2022 (enrolled version of Bill 24-934) (“Amendment Act of 2022”), within 180 days after the effective date of the Amendment Act of 2022 .

“(B) The proposed rules shall be published in the District of Columbia Register with a 60-day public comment period. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.”.

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

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

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

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

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

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

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

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

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

“(3) “Conveyance” or “convey” means the transfer of legal title to real estate by written instrument, which for purposes of warranty security reduction and calculating the 2-year warranty against structural defects is deemed to be the date on which the applicable deed of conveyance is recorded with the Recorder of Deeds of the District of Columbia.

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

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

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

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

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

“(7) Warranty security” means a payment in the form of a bond, letter of credit, or other form approved by the Mayor that is required to be posted with the Mayor.”.

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

“(a) A judicial, non-judicial, regulatory, or administrative proceeding for breach of a warranty that arises under section 316 shall be commenced within 5 years after the date the applicable warranty period began.

“(b) Filing of a claim with the Mayor shall not preclude the claimant from also seeking to judicially enforce its claim. If a breach of warranty claim is filed with a court of competent jurisdiction, the Mayor’s decision issued under this section will be stayed until the breach of warranty claim is resolved.”.

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

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

“(1) Violates any provision of this act or any rule adopted and published

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under or order issued pursuant to section 412;

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

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

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

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

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

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

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

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

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

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

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

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

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

“(A) The person has been suspended;

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

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

“(3) If it is determined that the suspended person’s submission in opposition

raises a genuine dispute over facts material to the suspension or the application of the law, the suspended person shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any appearing witness.

“(4) The Mayor:

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

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

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

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

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

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

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

“(d)(1) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this title, or any rules or regulations issued under the authority of this title, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*).

“(2) Adjudication of any infraction of this title shall be pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*)”.

### Sec. 3. Applicability.

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

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

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



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

**Sec. 4. Fiscal impact statement.**

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

**Sec. 5. Effective date.**

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

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia