

1 S.256

2 Introduced by Senators Sirotkin, Balint and Benning

3 Referred to Committee on

4 Date:

5 Subject: Housing; common interest communities; statute of limitations

6 Statement of purpose of bill as introduced: This bill proposes to ensure that
7 the discovery rule applies in civil actions relating to warranty claims in
8 condominiums and other common interest communities.

9 An act relating to applying the discovery rule to civil actions relating to
10 warranty claims in common interest communities

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 Sec. 1. 27A V.S.A. § 4-116 is amended to read:

13 § 4-116. STATUTE OF LIMITATIONS FOR WARRANTIES

14 (a) Unless a period of limitation is tolled under section 3-111 of this title or
15 affected by subsection ~~(d)~~(c) of this section, a judicial proceeding for breach of
16 any obligation arising under section 4-113 or 4-114 of this title shall be
17 commenced within six years after the cause of action accrues, but the parties
18 may agree to reduce the period of limitation to not less than two years. An
19 agreement to reduce the six-year period shall be evidenced by a separate
20 instrument executed by the purchaser.

1 ~~(b) Subject to subsection (c) of this section, a cause of action for breach of~~
2 ~~warranty of quality, regardless of the purchaser's lack of knowledge of the~~
3 ~~breach, accrues:~~

4 ~~(1) as to a unit, at the time the purchaser to whom the warranty is first~~
5 ~~made enters into possession if a possessory interest was conveyed or at the~~
6 ~~time of acceptance of the instrument of conveyance if a nonpossessory interest~~
7 ~~was conveyed; and~~

8 ~~(2) as to each common element, at the time the common element is~~
9 ~~completed or, if later, as to:~~

10 ~~(A) a common element that may be added to the common interest~~
11 ~~community or portion of it, at the time the first unit is conveyed to a bona fide~~
12 ~~purchaser; or~~

13 ~~(B) a common element within any other portion of the common~~
14 ~~interest community, at the time the first unit is conveyed to a bona fide~~
15 ~~purchaser.~~

16 ~~(c) If a warranty of quality explicitly extends to future performance or~~
17 ~~duration of any improvement or component of the common interest~~
18 ~~community, the cause of action accrues at the time the breach is discovered or~~
19 ~~at the end of the period for which the warranty explicitly extends, whichever is~~
20 ~~earlier.~~

1 (b) A cause of action for breach of warranty of quality accrues at the time
2 the person who suffered injury discovered, or reasonably should have
3 discovered, the breach.

4 ~~(d)~~(c) During the period of declarant control, the association may authorize
5 an independent committee of the executive board to evaluate and enforce by
6 any lawful means warranty claims involving the common elements, and to
7 compromise those claims. Only members of the executive board elected by
8 unit owners other than the declarant and other persons appointed by those
9 independent members may serve on the committee, and the committee's
10 decision must be free of any control by the declarant or any member of the
11 executive board or officer appointed by the declarant. All costs reasonably
12 incurred by the committee, including attorney's fees, are common expenses,
13 and must be added to the budget annually adopted by the association under
14 section 3-115 of this title. If the committee is so created, the period of
15 limitation for a warranty claim considered by the committee begins to run from
16 the date of the first meeting of the committee.

17 Sec. 2. 27A V.S.A. § 4-114(d) is amended to read:

18 (d) Warranties imposed by this section may be excluded or modified as
19 specified in section ~~4-113~~ 4-115 of this title.

1 Sec. 3. 27 V.S.A. § 1357 is amended to read:

2 § 1357. PROTECTION OF PURCHASING LEASEHOLDERS

3 (a) Express warranties of quality:

4 (1) Express warranties made by a declarant to a purchasing leaseholder
5 of a site, if relied upon by the purchasing leaseholder, are created as follows:

6 (A) Any affirmation of fact or promise ~~which~~ that relates to the site,
7 its use or rights appurtenant to it, area improvements to the mobile home park
8 that would directly benefit the site, or the right to use or have the benefit of
9 facilities not located in the mobile home park; warranties conformity of the site
10 and related rights and uses.

11 (B) Any model or description of the physical characteristics of the
12 mobile home park, including plans and specifications for improvement,
13 warranties conformance of the mobile home park to the model or description.

14 (C) Any description of the quantity or extent of the real estate
15 comprising the mobile home park, including plats or surveys, warranties
16 conformity of the mobile home park to the description, subject to customary
17 tolerances.

18 (D) Any provisions that a purchasing leaseholder may put a site only
19 to specified use warranty the legality of the specific use.

20 (2) Neither the use of “warranty” or “guarantee,” nor a specific intention
21 to make a warranty, are necessary to create an express warranty of quality, but

1 a statement purporting to be merely an opinion or commendation of the real
2 estate or its value does not create a warranty.

3 (3) A conveyance of a site transfers to the purchasing leaseholder all
4 express warranties of quality made by previous declarants.

5 (b) Implied warranties of quality:

6 (1) A declarant and any dealer warrant that a site will be in at least as
7 good condition at the time of the conveyance or delivery of possession,
8 whichever is earlier, as it was at the time of contracting, reasonable wear and
9 tear excepted.

10 (2) A declarant and any dealer impliedly warrant that a site and the
11 common elements in the mobile home park are suitable for the ordinary uses of
12 real estate of its type and that any improvements made or contracted for by him
13 or her, or made by any person before the creation of the mobile home park,
14 will be:

15 (A) free from defective materials; and

16 (B) constructed in accordance with applicable law, according to
17 sound engineering and construction standards, and in a workerlike manner.

18 (3) In addition, a declarant and any dealer warrant to a purchasing
19 leaseholder of a site that may be used for residential use that an existing use,
20 continuation of which is contemplated by the parties, does not violate

1 applicable law at the time of conveyance or delivery of possession, whichever
2 is earlier.

3 (4) Warranties imposed by this subsection may be excluded or modified
4 as specified in subsection (c) of this section.

5 (5) For purposes of this section, improvements made or contracted for
6 by an affiliate of the declarant are made or contracted for by the declarant.

7 (6) A conveyance of a site transfers to the purchasing leaseholder all the
8 declarant's implied warranties of quality.

9 (c) Exclusion or modification of implied warranties of quality:

10 (1) Except as limited by subdivision (2) of this subsection, with respect
11 to a purchasing leaseholder of a site that may be used for residential use,
12 implied warranties of quality:

13 (A) may be excluded or modified by agreement of the parties; and

14 (B) are excluded by express disclaimer, such as "as is," "with all
15 faults," or other language that implies the exclusion of warranties.

16 (2) With respect to a purchasing leaseholder of a site that may be
17 occupied for residential use, no general disclaimer of implied warranties of
18 quality is effective, but a declarant and any dealer may disclaim liability in an
19 instrument signed by the purchasing leaseholder for a specified defect or
20 specified failure to comply with applicable law, if the defect or failure was part
21 of the basis of the bargain.

1 (d) Statute of limitations for warranties:

2 (1) A judicial proceeding for breach of any obligation arising under
3 subsection (a) or (b) of this section shall be commenced within six years after
4 the cause of action accrues. In the case of a site that may be occupied for
5 residential use, an agreement to reduce the six-year period shall be evidenced
6 by separate instrument executed by the purchasing leaseholder.

7 ~~(2) Subject to subdivision (3) of this subsection, a cause of action for~~
8 ~~breach of warranty of quality, regardless of the purchasing leaseholder's lack~~
9 ~~of knowledge of the breach, accrues:~~

10 ~~(A) as to a site, at the time the purchasing leaseholder to whom the~~
11 ~~warranty is first made enters into possession if a possessory interest was~~
12 ~~conveyed or at the time of acceptance of the instrument of conveyance if a~~
13 ~~nonpossessory interest was conveyed; and~~

14 ~~(B) as to each common element, at the time the common element is~~
15 ~~completed or, if later, as to~~

16 ~~(i) a common element that may be added to the mobile home park~~
17 ~~or portion of it, at the time the first site is conveyed to a bona fide purchasing~~
18 ~~leaseholder; or~~

19 ~~(ii) a common element within any other portion of the common~~
20 ~~interest community, at the time the first site is conveyed to a bona fide~~
21 ~~purchasing leaseholder.~~

1 ~~(3) If a warranty of quality explicitly extends to future performance or~~
2 ~~duration of any improvement or component of the mobile home park, the cause~~
3 ~~of action accrues at the time the breach is discovered or at the end of the period~~
4 ~~for which the warranty explicitly extends, whichever is earlier.~~

5 (2) A cause of action for breach of warranty of quality accrues at the
6 time the person who suffered injury discovered, or reasonably should have
7 discovered, the breach.

8 Sec. 4. EFFECTIVE DATE

9 This act shall take effect on July 1, 2022.