



OFFICE OF THE
SECRETARY
2020 JAN 22 PM 1:46

MURIEL BOWSER

MAYOR

JAN 22 2020

The Honorable Phil Mendelson, Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council of the District of Columbia ("Council") is the "Condominium Warranty Claims Clarification Emergency Amendment Act of 2020," the "Condominium Warranty Claims Clarification Temporary Amendment Act of 2020," and "Condominium Warranty Claims Clarification Amendment Act of 2020". This legislation will amend the Condominium Act of 1976 to establish a timeframe and process to resolve warranty claims that arise under the act.

This legislation clarifies that the Mayor may refer disputed claims to the Office of Administrative Hearings for resolution. The legislation also clarifies that the Mayor shall release the funds from the bond or other security to satisfy any costs that arise from the declarant's failure to satisfy the requirements of the bill by settlement agreement between the Association, unit owner and the declarant or by an order of the court.

I urge the Council to take prompt and favorable action on the proposed legislation.

Sincerely,

A handwritten signature in black ink that reads "Muriel Bowser".

Muriel Bowser

Enclosures


Chairman Phil Mendelson
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Condominium Act of 1976 to clarify standards and procedures governing a condominium declarant's warranty against structural defects and to establish a process to resolve certain warranty claims that arise under the 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 2019".

Sec. 2. Section 316 of the Condominium Act of 1976, effective March 29, 1977 (D.C. Law 1-89; D.C. Official Code § 42-1903.16), is amended as follows:

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

“(a) As used in this section, the term:

“(1) “Adjudication” shall have the 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) “Conveyance” means the transfer of title by written instrument.

“(3) “Order” shall have the 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)).

1 “(4) “Perfected claim” means a claim that contains all required information or
2 proof and for which all requirements of this section and any other applicable law or regulation
3 are satisfied.

4 “(5) “Structural defect” means a defect in a component that constitutes any unit or
5 portion of the common elements that reduces the stability or safety of the structure below
6 standards commonly accepted in the real estate market or restricts the normally intended use of
7 all or part of the structure and which requires repair, renovation, restoration, or replacement. The
8 term “structural defect” does not include items of maintenance relating to the units or common
9 elements.”.

10 (b) New subsections (e-1) and (e-2) are added to read as follows:

11 “(e-1)(1) A declarant or person filing a claim (“claimant”) shall notify the Mayor of each
12 claim filed under the warranty for structural defects required by this section. The declarant shall
13 so notify the Mayor within five (5) business days after receiving a notice of structural defect.

14 “(2) If a notice of a structural defect filed with a declarant under the warranty
15 required by this section is not resolved to the satisfaction of the claimant, the claimant may file
16 the claim with the Mayor.

17 “(3) After receipt of a claim filed by a claimant, the Mayor shall determine
18 whether the claim is perfected and, if the claim is perfected, adjudicate the claim on the merits
19 and issue an order setting forth the decision of the Mayor.

20 “(4) The order of the Mayor may be appealed by the declarant or claimant to the
21 Office of Administrative Hearings no later than thirty (30) days after the order is issued by the
22 Mayor. Review of the Mayor’s order by the Office of Administrative Hearings shall be de novo.

1 “(e-2) The Mayor shall approve the release of the funds secured under subsection (e) of
2 this section to satisfy any costs that arise from a declarant’s failure to satisfy the requirements of
3 this section, pursuant to:

4 “(1) A written agreement between the declarant and claimant approved by the
5 Mayor.”.

6 “(2) An order issued by the Mayor in an adjudication pursuant to subsection (e-
7 1)(3)(A) of this section, after the expiration of the applicable appeal period;

8 “(3) An order of the Office of Administrative Hearings (“Office”) issued on
9 appeal under subsection (e-1)(4) of this section, after the expiration of the applicable appeal
10 period;

11 “(4) An order of a court of competent jurisdiction, after the expiration of the
12 applicable appeal period.

13 (c) Subsection (f) is repealed.

14 Sec. 3. Fiscal impact statement.

15 The Council adopts the fiscal impact statement in the committee report as the fiscal
16 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
17 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(3)).

18 Sec. 4. Effective date.

19 This act shall take effect following approval by the Mayor (or in the event of veto by the
20 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
21 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
22 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(1)), and publication in the District of
23 Columbia Register.

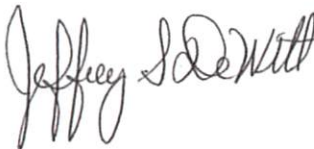
Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: October 17, 2019

SUBJECT: Fiscal Impact Statement – Condominium Warranty Claims Clarification
Amendment Act of 2019 (and emergency and temporary versions of
the bill)

REFERENCE: Draft legislation sent to the Office of Revenue Analysis on October 11,
2019

Conclusion

Funds are sufficient in the fiscal year 2020 through fiscal year 2023 budget and financial plan to implement the bill.

Background

Condominium developers are required by law¹ to provide buyers with a two-year warranty against structural defects in the unit and common areas. To fund the warranty, the developer must post a bond, letter of credit, or cash with the Department of Housing and Community Development (DHCD) in the amount of 10 percent of the estimated construction or conversion costs. The bill clarifies² how warranty claims are processed and paid out.

If a buyer and developer cannot independently come to an agreement, the buyer can submit to DHCD a letter making a formal claim along with information proving the claim.³ The bill clarifies that DHCD⁴ will evaluate the information to determine if a claim is “perfected”, meaning all the information necessary to prove the claim has been submitted. DHCD will then issue a final determination letter.

¹ § 42-1901.01 *et. seq.*

² By amending Section 316 of the Condominium Act of 1976, effective March 29, 1977 (D.C. Law 1-89; D.C. Official Code § 42-1903.16).

³ For a list of information that needs to be submitted with a claim see “How to File a Condominium Structural Deficit Warranty Claim,” available at <https://bit.ly/2MYUavs> (last visited October 17, 2019).

⁴ Or the Mayor or another agency designated by the Mayor.

The Honorable Phil Mendelson

FIS: "Condominium Warranty Claims Clarification Amendment Act of 2019" and emergency and temporary versions of the bill; Draft legislation sent to the Office of Revenue Analysis on October 11, 2019

If the buyer or developer does not dispute DHCD's determination, DHCD will pay out the claim if it determined one was due. If the buyer or developer disputes DHCD's determination, the Office of Administrative Hearings (OAH) will have jurisdiction over the claim⁵, and OAH will decide the appeal. At any time, the buyer or developer may also take their case to District court. The bill clarifies that claims decided by OAH or District court, as well as agreements between buyers and developers that require no intervention, will be paid by DHCD.⁶

The bill also requires the Mayor to be notified if a claim is pending when the two-year warranty period expires. In these cases, DHCD will continue to hold the deposit made by the developer until the claim is settled.

Financial Plan Impact

Funds are sufficient in the fiscal year 2020 through fiscal year 2023 budget and financial plan to implement the bill. DHCD has sufficient staff and resources to determine if condominium warranty claims are perfected, refer cases to OAH if necessary, and payout justified claims. Approximately \$20,000 was transferred from DHCD to OAH in the fiscal year 2020 so OAH can decide appeals of DHCD's warranty claim determinations.

⁵ See the Office of Administrative Hearings Jurisdiction Expansion Amendment Act of 2019, effective June 9, 2019 (D.C. Law 22-112; 65 DCR 4600) and § 7147 of the Fiscal Year 2020 Budget Support Act of 2019, effective September 11, 2019 (D.C. Law 23-16; 66 DCR 12631).

⁶ Or by the Mayor or another designated agency.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



Legal Counsel Division

MEMORANDUM

TO: Gianelle Rivera
Deputy Director
Office of Policy and Legislative Affairs

FROM: Brian K. Flowers
Deputy Attorney General
Legal Counsel Division

DATE: October 23, 2019

RE: Legal Sufficiency Certification of Draft Legislation, the “Condominium
Warranty Claims Clarification Amendment Act of 2019”, Emergency and
Temporary Versions, and Emergency Resolution
(AL-19-596 B)

This is to Certify that this Office has reviewed the above-referenced legislation and found it to be legally unobjectionable. If you have any questions, please do not hesitate to call me at 724-5524.

A handwritten signature in black ink, appearing to read 'Brian K. Flowers', written over a horizontal line.

Brian K. Flowers