

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 52
Economic Matters

(Delegate Foley)

Judicial Proceedings

Condominiums - Sales Contracts - Asbestos Disclosure

This bill establishes that a contract for the initial sale or resale of a condominium unit is unenforceable if the contract does not contain specified notices related to the presence of asbestos.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

Initial Contracts of Sale

Under current law, a contract for the initial sale of a condominium unit to a member of the public is not enforceable by the vendor unless:

- the purchaser is given on or before the time a contract is entered into between the vendor and the purchaser, a current public offering statement (as amended and registered with the Secretary of State) containing specified information; and

- the contract of sale, in conspicuous type, contains a notice of (1) the purchaser's right to receive a public offering statement and the purchaser's rescission right, as specified and (2) specified warranties provided under § 11-131 of the Real Property Article, and whether the council of unit owners has entered into any agreement that settles or releases the council of unit owners' claims related to common element warranties under §11-131 of the Real Property Article.

The bill adds that the notice must include a statement as to whether the vendor has actual knowledge of the presence of asbestos on the site, including a description of the location of the asbestos, whether abatement has been performed, and the date of any abatement.

Certificates and Notices for the Resale of Condominiums

Under current law, a contract for the resale of a unit by a unit owner other than the developer is not enforceable unless the owner provides specified information (within a required certificate/notice) to the purchaser no later than 15 days prior to closing. For example, in addition to other items, the unit owner must provide a certificate containing:

- a statement detailing the common expense assessment and any unpaid common expense or special assessment adopted by the council of unit owners that is due;
- a statement of any other fees payable by the unit owners to the council of unit owners;
- the most recent regularly prepared balance sheet and income expense statement, if any, of the condominium;
- a statement of any unsatisfied judgments or pending lawsuits to which the council of unit owners is a party, excluding assessment collection actions; and
- a statement as to whether the council of unit owners has actual knowledge of any violation of the health or building codes with respect to the common elements of the condominium.

The bill adds that the required information provided to the purchaser must also include statements as to whether the council of unit owners and the unit owner have actual knowledge of the presence of asbestos on or in the site/unit, including a description of the location of the asbestos and specific information regarding any asbestos abatement.

For more information on condominiums, which, along with cooperative housing corporations and homeowners associations are commonly known as common ownership communities, see the **Appendix – Common Ownership Communities**.

Similar Disclosure Requirements

Statute includes additional provisions specifically regarding the disclosure of asbestos in other types of residential property contracts. For example, § 10-702 of the Real Property Article (which generally governs single family residential real property disclosure requirements) specifies that the residential property disclosure statement required to be provided to a purchaser must include a specified list of defects of which the vendor has actual knowledge. Among those items that must be disclosed are defects related to hazardous or regulated materials, including *asbestos*, lead-based paint, radon, underground storage tanks, and licensed landfills.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Frederick, and Montgomery counties; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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Appendix – Common Ownership Communities

When a person purchases a single-family home, condominium, or an interest in a cooperative housing corporation, he or she may also be required to join an association of owners, which is intended to act in the common interests of all the homeowners, condominium unit owners, or cooperative owners in the community. Collectively, these associations are often referred to as common ownership communities (COCs). In Maryland, a growing number of newly constructed or newly converted residences are located in some form of a COC.

The affairs of a condominium are governed by a council of unit owners, which comprises all unit owners. Among other powers, the council of unit owners has the power to impose assessments on the unit owners to pay common expenses. A council of unit owners may delegate its powers to a board of directors, officers, or a managing agent. Condominiums are governed under Title 11 of the Real Property Article.

Many new housing developments are subject to a homeowners association (HOA) that is created by a governing document and has the authority to impose mandatory fees on lots in the development in connection with the provision of services or for the benefit of the lots, the lot owners, or the common areas. HOAs are governed under Title 11B of the Real Property Article.

A cooperative housing corporation or “cooperative” is a corporation that owns real property. A resident of a cooperative does not own his or her unit; rather, the person owns an interest in the corporation, which leases the unit to the person for residential use. Cooperatives are governed by the laws in Title 5, Subtitle 6B of the Corporations and Associations Article.

Condominiums and HOAs may be authorized by their governing documents to impose liens on units or lots to collect unpaid assessments or fees. In a cooperative, the governing documents usually provide for the collection of delinquent fees, and evictions for unpaid fees are generally pursued by way of a landlord-tenant action.

Since registration of the various COCs is not required statewide, the exact number of COCs in Maryland is unknown. However, public offering statements for condominium regimes are required by law to be registered with the Secretary of State (SOS). SOS registration records show that, as of December 2022, 2,788 condominium regimes have been registered with the State. The State Department of Assessments and Taxation, which maintains assessment records based on class of property, reports that there are more than 227,000 condominium units in the State as of July 2022. The Foundation for Community

Association Research estimated that there were 6,910 community associations with an estimated 1 million residents in these associations in the State in 2021, the most recent information available.

Task Force on Common Ownership Communities

With a growing number of Marylanders residing in COCs, and evidence that some COCs had issues with governance, dispute resolution, and financial stability, the General Assembly created the Task Force on Common Ownership Communities in 2005 (Chapter 469 of 2005). The issues addressed by the task force included the education and training needs of COC boards and prospective buyers, availability of alternative dispute resolution services, special considerations of aging COCs, collection of assessments, and resale of homes within COCs. The task force met 10 times, held five public hearings, and submitted its final report in December 2006. The report's findings and recommendations have served, in subsequent years, as the basis for numerous pieces of legislation intended to improve the operation of COCs. For example, legislation enacted from 2007 through 2022:

- authorized a group of three or more unit or lot owners in a condominium or HOA to petition a circuit court to appoint a receiver in specified situations frequently found in aging communities (Chapter 321 of 2007);
- gave the Consumer Protection Division within the Office of the Attorney General increased authority over violations of the Maryland Homeowners Association Act (Chapter 593 of 2007);
- eased restrictions on the ability of condominiums and HOAs to amend their governing documents (Chapters 144 and 145 of 2008 and Chapter 480 of 2017);
- strengthened the transition process from developer to the governing body of a condominium or HOA by allowing the governing body to terminate specified contracts and requiring the developer to provide specified documents (Chapters 95 and 96 of 2009);
- required the governing body of a COC to purchase fidelity insurance or a fidelity bond covering various acts of malfeasance by COC officers, directors, and other specified employees and agents (Chapters 77 and 78 of 2009 and Chapter 615 of 2010);
- granted priority to a specified portion of a lien of a condominium or HOA over the claim of a holder of a first mortgage or first deed of trust in the event of a foreclosure on a unit or lot (Chapter 387 of 2011);
- limited the amount of damages for which the governing body of a condominium or HOA may foreclose on a lien against a unit owner or lot owner (Chapters 448 and 449 of 2013);

- expanded the purposes for which a condominium’s board of directors may hold a closed meeting, similar to the law for an HOA, by allowing a meeting to be closed to consider terms or conditions of a business transaction in the negotiation stage if disclosure could adversely affect the economic interests of the council of unit owners (Chapter 110 of 2013);
- established meeting standards and standards for late charges for delinquent payments, eviction restrictions, an auditing process for books and records, and a dispute settlement mechanism for cooperatives under specified circumstances (Chapter 567 of 2014);
- altered the contents of a required disclosure for the resale of a condominium unit, authorized the assessment of specified fees by a condominium council of unit owners or an HOA for providing specified information, and required the Department of Housing and Community Development to adjust the maximum authorized fees every two years (Chapter 735 of 2016 and Chapter 817 of 2017);
- increased to \$10,000 the maximum amount of the council of unit owners’ property insurance deductible for which a specific unit owner is responsible if the cause of any damage to or destruction of the common elements or units of a condominium originates from an event inside that owner’s unit (Chapters 56 and 57 of 2020); and
- established that specified COCs in the State must conduct a reserve study satisfying specified requirements every five years to determine the amount and necessity of reserves for anticipated capital replacements, repairs, and improvements. COCs must also adequately fund the recommended reserves, as specified (Chapter 138 of 2020; Chapter 433 of 2021; and Chapter 664 of 2022).

The task force’s report also featured findings and recommendations relating to the creation of an ombudsman in local governments. Since the report’s release, Prince George’s County created its Common Ownership Communities Program in 2007 with the stated purpose of assisting governing bodies, as well as owners and residents of HOAs, residential condominiums, and cooperative housing corporations, with education, training, and alternative dispute resolution. Charles and Montgomery counties have offices dedicated to COCs that predate the task force.