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February 12, 2020, noon

Maryland General Assembly Senate Judicial Proceedings Committee

Re: SB 471 Condominiums – Disclosures to Unit Owners and Prohibited Provisions in Instruments by Developers (Sunset Island Act)

Sponsor: Senator Katie Hester

Position: SUPPORT, with amendments

Thank you for the opportunity to testify in support of Senate Bill 471, the Sunset Island Act. While this bill will not change my outcome, the facts regarding Sunset Island condos emphasizes the importance of this Bill and why Maryland consumers need this protection.

I own a Sunset Island condo and along with 197 fellow condo owners will be paying a special assessment of \$50,000.00 each to repair building and safety deficiencies. These deficiencies were noted in reports that indicated failure to adhere to building codes and as built plans.

Some of these problems are not new. While the Buildings were still under warranty, some just built, the builder was notified of these deficiencies. The builder responded with a repair agreement in which all current and future common element warranty rights were waived and contained a nondisclosure provision which prevented the terms of the agreement, including the waiver of warranty rights, to be disclosed to the unit owners.

The then board signed this agreement on August 24, 2010. As of this date, Owners no longer had warranty rights in the common areas. Owners were unaware and had no way of finding out about this loss of rights.

On October 2, 2010, not quite two months after the signing of this agreement, a meeting was held with the unit owners where the builder and the then Board urged the owners to sign a release that would allow the builder to enter the condo unit to make repairs related to sound.

This release in no way indicated that warranty rights had been waived. Instead it stated that it was limited to the sound deficiencies only and that “nothing in the limited release shall be construed to release the builder’s continuing obligations under any unexpired portion of the Builder’s Homeowners Limited Warranty.”

An owner asked if by signing this release if the builder was removed from all liability. The response was, “This is a release from the sound issue only. Other issues, structural, water, you still have the warranties provided to owners at time of sale.....the release won’t void that warranty.”

As an owner, not privy to the terms of the agreement already signed and based on the above response, it would have been reasonable to have left that meeting thinking all warranty rights were intact. Not only were owners unaware of this loss of consumer rights, they were given a false impression by the lack of disclosure. Now they bear the financial cost. This is counter to any consumer protection laws.

These agreements are often required because of a failure to follow state and local required building and safety codes. Imagine a scenario where a builder who is still bound by a valid warranty when presented with problems to fix, instead offers the Board of Directors a waiver of all current and future warranties and then it's kept secret from the members of the association. Shouldn't these builders be required to honor warranties once these defects are known? Why should failure to build according to state and local law allow builders to negotiate a better deal for themselves when the victim (such as the 198 homeowners of Sunset Island in this case) gives up further rights, without their knowledge?

This bill not only protects consumers in their biggest purchase but also sets the stage for builders to adhere to state and local required building and safety codes in the first place.

When combined with the fact that the purchase of real estate is often the biggest investment a consumer will make, Senate Bill 471, also known as the Sunset Island Act, is a necessary protection to Maryland consumers. I urge the committee to vote to approve Senate Bill 471 allowing it to move to the full Senate for a vote.

Thank you for your time and attention to this very important issue.

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