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7 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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11 To amend, on a temporary basis, the Condominium Act of 1976 to clarify standards and
12 procedures governing the resolution of a claim filed upon a condominium developer's
13 warranty against structural defects; to provide that any judicial, non-judicial, regulatory,
14 or administrative proceeding for breach of a warrant that arises under this Act shall be
15 commenced within 5 years after the date the applicable warranty period began; to provide
16 that the filing of a claim with the Mayor shall not preclude the claimant from also seeking
17 to judicially enforce its claim; and to clarify the penalties for violating a provision of this
18 act.

19 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
20 act may be cited as the "Condominium Warranty Claims Clarification Temporary Amendment
21 Act of 2022".

22 Sec. 2. The Condominium Act of 1976, effective March 29, 1977 (D.C. Law 8-233; D.C.
23 Official Code § 42-1901.01 *et seq.*), is amended as follows:

24 (a) Section 316 (D.C. Official Code § 42-1903.16) is amended as follows:

25 (1) Subsection (a) is repealed

26 (2) A new subsection (a-1) is added to read as follows:

27 "(a-1)(1) The failure to comply with the applicable building code in effect at the time of
28 construction shall create a rebuttable presumption that an affected component of a unit or
29 common area falls below standards commonly accepted in the real estate market if:

30 "(A) The failure to comply with building code requirements results in
31 demonstrable harm to the health or safety of a unit owner, lawful unit inhabitant, or guest; or

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

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

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

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

43 “(e)(1)(A) At the time that the condominium registration order is issued by the Mayor
44 the declarant shall post with the Mayor a warranty security payment in the form of a bond, letter
45 of credit, or any other form of security the Mayor may approve in the amount of 10% of the
46 estimated hard construction and conversion costs, including labor and materials, to satisfy costs
47 that arise from a declarant’s failure to fulfill the requirements of this section.

48 “(B) If prior to the conveyance of the first residential unit to a purchaser,
49 the declarant has not posted warranty security payment described in sub-paragraph (A) of this
50 paragraph with the Mayor, the escrow agency for the sale of the residential unit shall collect the
51 warranty security payment prior to closing and submit the warranty security payment to the
52 Mayor on the settlement date.

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

56 “(D) The amount of the bond, letter of credit, or other form of warranty
57 security shall be based on the estimated hard construction and conversion costs, including labor
58 and materials, at the time of filing the Application for Condominium Registration. These costs
59 shall be determined according to industry standards for estimating construction costs. In the
60 event that the actual hard construction and conversion costs, including labor and materials, as of
61 the time of substantial completion of the condominium, as certified by the project architect,
62 exceeds the previously estimated costs by more than 10%, the declarant shall post an additional
63 bond, letter of credit, or other form of warranty security in the amount of 20% of the difference
64 between the estimated hard construction and conversion costs, including labor and materials, and
65 the actual hard construction and conversion costs, including labor and materials, as of project
66 substantial completion, as certified by the project architect.

67 “(E) No condominium unit shall be conveyed to a purchaser until the
68 bond, letter of credit, or other warranty security has been posted in accordance with requirements
69 set forth in this subsection.

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

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

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

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

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

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

98 “(A) The residential condominium units’ pro rata share of common

elements, based on the residential condominium units' percentage interest in the common elements; or

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

Paragraph (6) skipped

“(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 of 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 of whether the claim of structural defect is a perfected claim.

“(ii) The Mayor’s determination that the structural defect claim is 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 bond, letter of credit, or other 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 bond, letter of credit, or other 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 attorneys fees and costs as may be determined by the court. Any unit owners’ association or unit owner that files suit shall provide written notice to

the Mayor, and the bond, letter of credit, or other 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 bond, letter of credit, or other warranty security posted would otherwise be allowed to be reduced or no longer be required, then the bond, letter of credit, or other warranty security shall be required to be maintained until the claims have been finally resolved, and the bond, letter of credit, or other 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.”.

(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:

“(1) A written agreement between the declarant and claimant regarding the release of the warranty security in satisfaction of the claim, 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 as follows:

(a) A new paragraph (2) is added to read as follows:

“(2)

(b) A new paragraph (3) is added to read as follows

“(3) The Mayor shall report to the Council on an annual basis on the use and effect of this section and the number of condominium units traded each year.”.

(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 such 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 bond, letter of credit, or other warranty security required under subsection (e)(1) of this section to the executive board of the unit owners’ association.”.

(8)

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

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

“(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 two-

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.”.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of Budget Director 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. 4. 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

214 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
215 Columbia Register. (b) This act shall expire after 225 days of its having taken effect.