
Judiciary Committee

HB 2771

Title: An act relating to condominium purchases.

Brief Description: Resolving disputes concerning condominium purchases.

Sponsors: Representatives Reardon, Barlean, Cooper, Benson, Edwards and Ogden.

Brief Summary of Bill

- Makes filing of a lawsuit against a condominium builder subject to any agreement between the builder and a purchaser where the agreement allows the builder an opportunity to cure alleged defects or requires the purchaser to accept the builder's reasonable measures to cure the defects;
- With exceptions, allows the waiver of a builder's implied warranties of quality in the construction of a residential condominium through the use of a general disclaimer such as "as is" or "with all faults."

Hearing Date: 2/5/02

Staff: Bill Perry (786-7123).

Background:

A condominium consist of real property that has individually owned units and also has commonly held elements in which all the individual unit owners have an undivided common interest. A condominium may be created for any of a number of purposes, including residential use. A condominium is created by the recording of a declaration. The person creating a condominium is referred to as the "declarant."

The state's Condominium Act controls the creation, construction, sale, financing, management, and termination of condominiums. The act also creates specific rights and responsibilities. Among other things, the act authorizes or creates warranties both express and implied regarding the quality of construction of a condominium. It gives unit owners individually, and collectively through their associations, rights regarding these warranties.

Express warranties are assertions that are made by a declarant with respect to the

condominium and that are relied upon by a buyer.

Implied warranties are statutorily created. Implied warranties by the seller of a condominium include warranties that:

- The units and common areas are suitable for the ordinary uses of real estate of that type;
- Any construction is free from defective materials; and
- Construction is in accordance with sound engineering and construction standards, and has been done in a workmanlike manner and in compliance with applicable laws.

Implied warranties generally may be waived by the written agreement of the parties or by a general disclaimer such as declaring that the sale of a unit is to be "as is" or "with all faults."

Implied warranties in the sale of a residential unit, however, may not be waived by such a general disclaimer. A disclaimer of implied warranties regarding a residential unit must:

- Be signed by the purchaser;
- Specify the defect or noncompliance with the law that is the subject of the waived warranty; and
- Be with respect to a defect or failure to comply that became a part of the basis of the bargain between the seller and buyer.

Under the Condominium Act, generally a lawsuit for a breach of warranties must be brought within four years after the cause of action accrues. With some exceptions, such a cause of action accrues, whether or not the purchaser knows of the breach, at the following times:

- As to a unit, on the date the first purchaser of the unit takes possession; and
- As to a common element, on the latest of the following dates: (1) when the first unit was conveyed to a bona fide purchaser; (2) when the common element was completed; or (3) when the common element was added to the condominium.

The Condominium Act provides that without express authority to do so under the act, no provision of the act may be varied by agreement of the parties and no right conferred by the act may be waived by agreement of the parties.

Alternatives to litigation exist for resolving disputes. Generally, parties to any transaction or dispute may agree to submit their disagreements to arbitration or mediation. The Condominium Act does not expressly provide for alternative dispute resolution.

Summary of Bill:

Five changes are made to the Condominium Act. Four of these changes apply to all types of

condominiums. One of the changes applies only to residential condominiums.

The four changes that apply to all types of condominiums, including residential, are:

- If a declarant and purchaser have agreed that the declarant will be given an opportunity to cure a breach of an express or implied warranty, then the filing of any lawsuit based on that breach is "subject to:" (1) The purchaser giving the declarant reasonable notice; and (2) The purchaser accepting the declarant's reasonable measures to cure.
- Any agreement between a declarant and all of the original unit owners is binding on the owners' association and all subsequent unit owners.
- Any right under the act that can be enforced by a lawsuit may be made subject to arbitration either by agreement with a unit owner or by inclusion of an arbitration provision in the declaration creating the condominium.
- The four year statute of limitations is made to apply to arbitration proceedings as well as to lawsuits.

The one change that applies only to residential condominiums has to do with the ability to modify or waive an implied warranty of quality or compliance. A general disclaimer of implied warranties that uses language such as "as is" or "with all faults" is permissible, with some exceptions, if the disclaimer:

- Is in an instrument signed by the buyer; and
- Was part of the basis of the bargain for purchasing a unit.

There are exceptions to the permissibility of general waivers of warranties in residential condominiums. In these cases a disclaimer must specify the defect, the noncompliance, or the category of construction with regard to which the warranty of quality is being waived. The cases in which this specificity is required include disclaimers relating to:

- Structural elements of the condominium; and
- Building code provisions affecting life, safety or habitability.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.