

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



Glen Lee
Chief Financial Officer

MEMORANDUM


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

FROM: Glen Lee
Chief Financial Officer

DATE: October 13, 2022

SUBJECT: Fiscal Impact Statement – Condominium Warranty Claims Clarification
Amendment Act of 2022

REFERENCE: Bill 24-934, Committee Print as provided to the Office of Revenue
Analysis on October 11, 2022



Conclusion

Funds are not sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill. This bill will cost \$200,000 in fiscal year 2023 and a total of \$824,000 over the four year financial plan.

Background

Condominium developers are required by law¹ to provide buyers with a two-year warranty against structural defects in the unit and common areas. The developer must provide a warranty security payment by posting a bond, letter of credit, or other approved security with the Department of Housing and Community Development (DHCD) in the amount of ten percent of the estimated construction or conversion costs. The bill makes a number of clarifications to the current law that include:

- Expanding the definition of structural defect, including to create a rebuttable presumption that the building falls below standards common to the real estate market when the construction did not comply with the applicable building code;
- Clarifying that repair of structural defects includes repairing damage in units and common areas caused by a structure defect;

¹ D.C. Official Code § 42-1901.01 *et. seq.*

- Specifying that materials and labor costs are to be included when calculating the required value of the security, that cost must be determined based on industry standards, and that the security must increase if final construction or conversion costs are more than ten percent higher than estimated when the security was first posted;
- Specifying that claims under the warranty must be delivered to the developer via certified mail thirty days prior to being filed with the Mayor, the developer must be notified upon claim to the Mayor, and the developer must file a response to the claim within thirty days thereafter.
- Requiring the Mayor to decide if the claim is perfected (i.e., contains all necessary information and supporting proof);
- Upon determination of a perfected claim in favor of the claimant, requiring the claimant and developer to sign all necessary forms for payment of a claim and for the Mayor to release funds from the security within thirty days thereafter;
- Allowing for either party to appeal the Mayor's determination to the Office of Administrative Hearings (OAH); and
- Allowing for award of reasonable attorney's fees in the event of a successful claim in court.

The bill requires the Mayor to maintain a publicly searchable online database of warranty security amounts and the form of security being held for each condominium project for which such security is required.

The bill clarifies penalties and fines for violating provisions of the condominium warranty, including specifying penalties for misrepresentation of construction or conversion costs upon posting of the warranty security. The Mayor may suspend developers, including their officers, directors, shareholders and employees, from participating in the recording a condominium or any condominium sale offering for up to 36 months if the Mayor has found the person has participated in fraud, theft or a similar crime, has engaged in unfair trade practices, or has misrepresented material facts in the sale of a condominium or posting of a warranty security.

Finally, the bill establishes a fund to assist condominium unit owners or associations with the costs associated with filing a claim against the warranty, including inspections, cost estimates and attorney's fees. The Mayor must issue rules that include establishment of eligibility for such financial assistance.

Financial Plan Impact

Funds are not sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill. This bill will cost \$200,000 in fiscal year 2023 and a total of \$824,000 over the four year financial plan.

DHCD will require annual funding to establish a fund that can assist condominium unit owners and associations with the costs associated with filing a warranty claim when structural defects arise. DHCD will propose rules to establish eligibility for assistance from the fund, and assistance will be limited through these rules. Funding of \$200,000 beginning in fiscal year 2023 is estimated to allow DHCD to assist approximately 20 condominiums with \$10,000 toward owners' cost estimates and engineering analyses. DHCD has sufficient staff and resources to administer the remainder of the condominium warranty claim program as proposed under the bill, including determining if claims are perfected and maintaining an online database of warranty security amounts.

The Honorable Phil Mendelson

FIS: Bill 24-934, "Condominium Warranty Claims Clarification Act of 2022," Draft Committee Print as provided to the Office of Revenue Analysis on October 11, 2022

The bill also increases caseloads at OAH, however, it does so on a marginal basis and would not amount to full-time for the positions required (an administrative law judge and a legal assistant). OAH will absorb the increased workload at the current time, however its rate of case closure may be negatively impacted.

Condominium Warranty Claims Clarification Amendment Act of 2022					
Total Cost (\$ in thousands)					
	FY 2023	FY2024	FY2025	FY2026	Total
Warranty Claim Assistance Fund	\$200	\$204	\$208	\$212	\$824