

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 642

(Prince George's County Delegation)

Economic Matters

Judicial Proceedings

Prince George's County - Real Property - Home Builders - Community Amenities
PG 407-10

This bill requires a home builder that agrees to furnish a “community amenity” to a development located in Prince George’s County to include a specified disclosure statement in the sales contract and any advertisement for the community development.

The bill applies prospectively to contracts of sale for property in a Prince George’s County community development entered into on or after October 1, 2010.

Fiscal Summary

State Effect: If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources. No effect on revenues.

Local Effect: The bill does not directly affect Prince George’s County finances or operations.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: In Prince George’s County, a residential property sales contract that contains an agreement by the home builder to furnish a “community amenity” must include a disclosure statement that identifies the promised amenity and the date it will be completed. A “community amenity” includes a country club, golf course, health club, park, swimming pool, tennis court, and walking trail. The required disclosure statement

must be dated and signed by the purchaser and the home builder and included in or attached to the sales contract.

If a purchaser does not receive the disclosure statement on or before the execution of the sales contract, the purchaser has the unconditional right, upon providing the home builder with written notice, to rescind the sales contract at any time before receipt of the disclosure statement or within five days after receipt.

A home builder in Prince George's County that fails to make the community amenity available as specified in the sales contract may be liable for breach of contract.

Current Law: Contracts for the sale of real property are subject to specific disclosure requirements. For example, a contract must include, if applicable, information about property subject to a ground rent, water and sewer costs, development impact fees in Prince George's County, agriculturally assessed property in St. Mary's and Charles counties, and the cost of recordation or transfer taxes.

A seller of single-family residential real property must also complete and give the purchaser a written disclosure or disclaimer statement about the condition of the property prior to executing the sales contract. A disclaimer statement must include that the seller makes no representations or warranties as to the condition of the property or any improvements, and that the purchaser will be receiving the property "as is." A disclosure statement must include information about which the seller has actual knowledge:

- water and sewer systems;
- insulation;
- structural systems;
- plumbing, electrical, and heating and air conditioning systems;
- infestation of wood-destroying insects;
- land use matters;
- hazardous or regulated materials;
- any other material defects about which the seller knows; and
- whether the smoke detectors will provide an alarm in the event of a power outage.

In most jurisdictions, a contract for the sale of residential real property must contain a disclosure advising the buyer that the property may be located near a military installation that may result in high noise levels.

Home builders operating in the State, except those building exclusively in Montgomery County, are required to register with the Home Builder Registration Unit in the Consumer
HB 642 / Page 2

Protection Division of the Office of the Attorney General. In addition to other disclosures, a contract for the sale of a new home in all jurisdictions, except Montgomery County, must include the home builder's registration number, a provision about the home being constructed in accordance with applicable building codes, a provision referring to applicable performance standards and guidelines, and a provision detailing the purchaser's right to receive a consumer information pamphlet under the Home Builder Registration Act.

Generally, the failure to comply with one of the disclosure or disclaimer requirements results in the buyer having a right to pursue monetary damages and does not void the contract of sale. However, a purchaser who does not receive a standard disclosure or disclaimer statement on or before entering into the sales contract may void the contract under specified circumstances.

Background: In a real estate market that has been challenging for new home developers for several years, it is not unusual for developers to try to entice prospective home buyers with amenities exclusive to the development, such as swimming pools, a club house, or tennis courts. These types of features may contribute to a feeling of community and help maintain or even increase home values. However, the same challenges that have made it more difficult to sell new homes have also made it more difficult for developers to deliver amenities when promised, or to deliver them at all. Homeowners are sometimes required to pay additional "amenities" or "activities" fees in addition to their mortgages even if the promised amenities are not delivered to the development. The Home Builder Registration Unit reported 3,936 home builders registered in the State as of June 30, 2008.

According to the Delmarva Media Group, in February 2010, the Delaware Attorney General brought suit against Ryan Homes on behalf of the Odessa National Golf Community. The suit alleged that promised amenities were never built, but the buyers were required, nevertheless, to pay \$1,200 annually for the amenities. The suit alleges 39 violations of the Delaware Consumer Fraud Act. Each violation carries a civil penalty of \$10,000. Delaware has also enacted legislation that prohibits home developers from charging fees for nonexistent amenities.

Additional Information

Prior Introductions: A similar bill, HB 1496 of 2009, received a hearing in the House Economic Matters Committee, but no further action was taken. Another similar bill, HB 1052 of 2008, passed the House as amended and was referred to the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Department of Labor, Licensing, and Regulation; Delmarva Media Group; Department of Legislative Services

Fiscal Note History: First Reader - February 22, 2010
ncs/kdm Revised - House Third Reader - March 29, 2010

Analysis by: Jason F. Weintraub

Direct Inquiries to:
(410) 946-5510
(301) 970-5510