STATE OF NEW YORK

3373

2017-2018 Regular Sessions

IN SENATE

January 23, 2017

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the private housing finance law, in relation to creating the New York City department of housing preservation and development homeowners improvement trust fund and the HPD homeowner standard warranty

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The private housing finance law is amended by adding a new article 28 to read as follows:

ARTICLE XXVIII

NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT HOMEOWNERS IMPROVEMENT TRUST FUND

Section 1233. Definitions.
1234. New York City department of housing preservation and development homeowners improvement trust fund.
1235. Written warranty; contents.
1236. Powers of the commissioner.
1237. Resolution of disputes regarding HPD projects.
1238. Penalties for violation of this article.

§ 1233. Definitions. For the purposes of this article the following terms shall have the following meanings:

1. "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

2. "Delivered condition" means the physical condition of the home after delivery and installation at the home site has been completed.

3. "Department" means the New York State Community Homes & Renewal program.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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4. "Fund" means the New York City department of housing preservation and development homeowners improvement trust fund created pursuant to the provisions of section twelve hundred thirty-four of this article.

5. "Sponsor" means any person or business entity, including, but not limited to, a sponsor, developer, mortgagor, applicant, or general contractor as defined in section 1-16, 29-01, 30-01, 34-01, and 35-01 of title twenty-eight of the rules of the city of New York who develops a home through an HPD project for sale to a buyer.

6. "HPD project" means any construction of rehabilitation of any residential dwelling, in whole or in part, through the programs set forth in chapters twenty-nine, thirty, thirty-four and thirty-five of title twenty-eight of the rules of the city of New York.

7. "Commissioner" means the commissioner of the New York State Community Homes & Renewal.

8. "Service" means the construction, rehabilitation, modification, alteration, or repair of an HPD project.

9. "State administrative agency" or "SAA" means the New York State Community Homes & Renewal.

10. "Building code" means the uniform fire prevention and building code promulgated under section three hundred seventy-seven of the executive law, local building code standards approved by the uniform fire prevention and building code council under section three hundred seventy-nine of the executive law, and the building code of the city of New York, as defined in title twenty-seven of the administrative code of the city of New York.

11. "Constructed in a skillful manner" means that workmanship and materials meet or exceed the specific standards of the applicable building code. When the applicable building code does not provide a relevant specific standard, such term means that workmanship and materials meet or exceed the standards of locally accepted building practices.

12. "Material defect" means actual physical damage to the following load-bearing portions of the home caused by failure of such load-bearing portions which affects their load-bearing functions to the extent that the home becomes unsafe, unsanitary or otherwise unliveable: foundation systems and footings, beams, girders, lintels, columns, walls and partitions, floor systems, and roof framing systems.

13. "New home" or "home" means any single family house or for-sale unit in a multi-unit residential structure constructed or rehabilitated through an HPD project in which title to the individual units is transferred to owners under a condominium, cooperative, or individual ownership regime. Such terms do not include dwellings constructed solely for lease.

14. "Owner" means the first person to whom the home is sold and, during the unexpired portion of the warranty period, each successor in title to the home and any mortgagee in possession. Owner does not include the builder of the home or any firm under common control of the builder.

15. "Plumbing, electrical, heating, cooling and ventilation systems" shall mean:

a. in the case of plumbing systems: gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; water, gas and sewer service piping, and their extensions to the tie-in of a public utility connection, or on-site well and sewage disposal system;

b. in the case of electrical systems: all wiring, electrical boxes, switches, outlets and connections up to the public utility connection; and

c. in the case of heating, cooling and ventilation systems: all duct work, steam, water and refrigerant lines, registers, convectors, radiation elements and dampers.

16. "Warranty date" means the date of the passing of title to the first owner for occupancy by such owner or such owner's family as a residence, or the date of first occupancy of the home as a residence, whichever first occurs.

17. "HPD owner warranty" means the warranty required to be provided to each owner of a home.

§ 1234. New York City department of housing preservation and development homeowners improvement trust fund. 1. A New York City department of housing preservation and development homeowners improvement trust fund (hereinafter, "the fund") is hereby established to provide for the payment of approved repairs to aggrieved homeowners who are victims of substandard housing built by a sponsor on an HPD project. The fund shall be administered by the commissioner of New York State Community Homes & Renewal.

2. a. A sponsor of an HPD project shall be required to participate in the fund unless a sponsor provides a bond or otherwise meets the warranties set forth in section twelve hundred thirty-five of this article.

b. Any sponsor who is granted or receives the right to develop an HPD project must participate in the fund by submitting to the commissioner a check in the amount of not less than five percent of the total value of the HPD project before an HPD project may be awarded to a sponsor.

c. The commissioner may, from time to time, amend this section to require such additional contributions by participants in the fund as the commissioner determines to be necessary to maintain an amount in the fund which is adequate to fulfill its purposes and to counteract depletion of the fund resulting from payments made out of the fund pursuant to subdivision three of this section.

d. Fund participants may discontinue their participation in the fund at any time by filing a bond in accordance with regulations promulgated by the commissioner and in effect.

e. The funds will be returned to the sponsor as follows: (1) fifty percent returned after thirty months after completion of the project so long as there are no unresolved warranty issues; and (2) fifty percent returned after sixty months after completion of the project so long as there are no unresolved warranty issues. Under no circumstances shall funds be returned if there are any outstanding unresolved warranty issues.

f. Participation in the fund does not relieve a sponsor of any obligation to pay awards or fines imposed by the department or judgments or arbitration awards rendered against a sponsor by a court of competent jurisdiction.

3. a. The commissioner may require that disbursements be made from the fund to pay outstanding awards to an owner, on behalf of an owner when:

(1) the department has conducted an administrative hearing that results in a decision that a sponsor is in violation of a law, ordinance or regulation enforced by the department or the HPD owner warranty;

(2) the sponsor is ordered by the department to pay an award to an owner;

(3) the sponsor has failed to pay such award to an owner within thirty days of the date of the department's order; and

(4) the sponsor has conducted an administrative hearing that results in a decision that a sponsor has not remedied material defects in construction or rehabilitation of an HPD project and is in violation of the HPD owner warranty.

b. Disbursements from the fund will be made at the discretion of the commissioner or his or her designee.

c. The commissioner or his or her designee may order that partial payment of awards be made from the fund.

d. Nothing contained in this subdivision shall be construed to:

(1) limit the rights and remedies of any party, including the department, to pursue a cause of action against a sponsor who is a participant in the fund;

(2) create a right of any person to a portion of any of the fund, except in the case of an award duly made by the commissioner pursuant to the provisions herein; or

(3) provide for the payment of awards or judgments rendered against fund participants in personal injury actions.

4. The commissioner shall, by January thirty-first of each year, cause an accounting to be made of all of the fund's activities during the preceding calendar year.

§ 1235. Written warranty; contents. 1. The HPD owner warranty shall be provided to the owner that accords with the provisions of article thirty-six-B of the general business law, including the following:

a. One year from and after the warranty date the home will be free from defects due to a failure to have been constructed in a skillful manner;

b. Two years from and after the warranty date the plumbing, electrical, heating, cooling and ventilation systems of the home will be free from defects due to a failure by the builder to have installed such systems in a skillful manner; and

c. Six years from and after the warranty date the home will be free from material defects, including, but not limited to, any construction that is not in compliance with the building code or the zoning resolution of the city of New York.

2. a. The sponsor shall take appropriate corrective action within sixty days of receipt of written notification at the site of the home in instances of substantial defects in materials or workmanship, which become evident within one year from the date of the delivery of the home to the owner, provided the owner or his transferee gives written notice of such defects to the sponsor at their business address not later than one year and ten days after date of delivery.

b. The sponsor will, as a minimum remedy, make repairs or indemnify the owner for the actual cost of repairing any rust damage covered by the warranty.

c. The sponsor will honor all valid claims under the warranty regardless of their number.

d. Nothing contained in this section shall be deemed to preclude a sponsor from entering into a contract requiring a financially solvent contractor who worked on the home to be initially responsible for the cost of any corrective action as a result of the negligence of the contractor.

3. a. The warranty under this article shall be in addition to and not in derogation of all other rights and privileges which such owner may have under any other law or instrument. Waiver of any rights by the owner under this article shall be deemed contrary to public policy and shall be unenforceable and void.

b. The provisions of this article shall preempt any local law inconsistent with the provisions of this article. This article shall not preempt any builder subject to its provisions from complying with any local law with respect to the regulation of sponsors except as expressly provided herein.

c. Nothing in this article shall be construed to repeal, invalidate, supersede or restrict any right, liability or remedy provided by any other statute of the state, except where such construction would, as a matter of law, be unreasonable.

§ 1236. Powers of the commissioner. The commissioner shall have the following powers and duties with respect to HPD projects:

1. To create and maintain a registry accessible to the public which shall include, but not be limited to the following information:

a. a listing of all pre-approved, pre-qualified, or approved sponsors for HPD projects and all sponsors awarded HPD projects; and

b. records of all violations issued, disciplinary action taken and penalties paid and levied pursuant to this article;

2. To retain records and all application materials submitted to it;

3. To receive complaints, conduct investigations and establish procedures for the resolution of disputes relating to the construction of HPD projects and to resolve such complaints and disputes pursuant to section twelve hundred thirty-four of this article;

4. To promulgate rules and regulations relating to the provisions of this article;

5. To conduct adjudicatory hearings, pursuant to the state administrative procedure act to resolve violations of this article and the rules and regulations promulgated thereunder;

6. To seek injunctive relief in the supreme court in the county where the complainant resides; and

7. To promulgate rules and regulations to require bonding, minimum capital requirements or other reasonable methods to ensure that sponsors are financially responsible to fully comply with this article and have the financial resources to meet their warranty, contractual and other obligations required under this section. In connection therewith, the commissioner may require the posting of surety bonds to ensure the satisfactory completion of HPD projects.

§ 1237. Resolution of disputes regarding HPD projects. 1. Any owner may file a complaint with the commissioner as a state administrative agency seeking resolution of an allegation that a substantial defect exists in the delivered condition, installation, service or construction of an HPD project. The commissioner shall promulgate forms for such complaints and such forms shall also be available on the department's web-site. For the purpose of this article, a substantial defect shall be a defect or a number of defects or other conditions which collectively can reasonably be expected to cost one thousand dollars or more to cure.

2. Complaints filed with the commissioner relating to the delivered condition or construction of an HPD project shall be made within one year and ten days after the date of the delivery of title, or of a certificate of occupancy, or the expiration of any applicable provision of a contract or warranty, whichever is later.

3. a. Upon the department's determination that a complaint, on its face, alleges a substantial defect in the delivered condition or construction of an HPD project, the department shall notify the owner and sponsor.

b. Initially, the department may attempt to informally resolve the complaint. If informal resolution of the complaint is unsuccessful, the

department shall resolve such complaints and disputes by administrative hearing, pursuant to the state administrative procedure act.

c. The decision shall provide compensation to the aggrieved party in an amount which shall include, but not be limited to:

(1) Filing and recording fees, inspection fees and other required costs that the aggrieved party would not have incurred had the home met applicable standards; and

(2) The cost of conforming repairs or replacements.

d. The department may apportion liability between two or more parties or business entities where appropriate.

e. The decision resolving the complaint shall be in writing and shall provide the reason therefor, a copy of the decision shall be provided to all interested parties, including the sponsor and owner.

f. Any party may seek judicial review of the administrative determination pursuant to article seventy-eight of the civil practice law and rules.

§ 1238. Penalties for violation of this article. Any person or business entity found guilty, after a hearing, of a violation of this article, may be required to pay a civil penalty of not more than ten thousand dollars for each such violation, but not more than fifty thousand dollars for more than one violation relating to each HPD project. Such fine shall be collected and deposited in the fund.

§ 2. This act shall take effect on the first of January next succeeding the date upon which it shall have become a law.