



SPONSOR: Sen. Bushweller & Rep. B. Short

DELAWARE STATE SENATE
146th GENERAL ASSEMBLY

SENATE BILL NO. 104

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO SELLER FINANCING FOR CONSUMER PURPOSE PROPERTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 314(c) of Title 25 of the Delaware Code by deleting the words “improved or unimproved residential real estate” and inserting in their place the following:

“consumer purpose property”.

Section 2. Further amend § 314(c) of Title 25 of the Delaware Code by adding the following at the end thereof:

“For purposes of this subsection ‘consumer purpose property’ shall mean 1-to-4-family residential real property used primarily for personal, family or household purposes, and shall not include any other property, including multi-unit residential property such as an apartment building, office property, commercial property or industrial property.”.

Section 3. This Act shall be effective as of the date of its enactment, and shall also be effective as to all contracts entered into before the date of enactment of this Act but which (a) have not yet reached final settlement and (b) do not expressly refer to § 314(c) of Title 25 of the Delaware Code as of the date of enactment of this Act. For purposes of this Section, “final settlement” shall mean a transaction wherein the seller conveys or sellers convey a deed to the real estate to the buyer or buyers in return for payment amounting to the purchase price, which may include a mortgage in the amount of any financing extended by the seller or sellers.

SYNOPSIS

As currently drafted, § 314(c) of Title 25 of the Delaware Code sets forth limitations on the time within which a contract for the sale of “improved or unimproved residential real estate” may remain executory. The primary purpose of the statute is the protection of single-family residential purchasers from entering into predatory installment sale contracts couched as seller financing. However, the term “improved or unimproved residential real estate” could be interpreted to include multi-unit residential property, such as an apartment building, or even unimproved land currently zoned or approved only for residential use but upon which office, commercial or industrial uses may be contemplated in the future. In commercial transactions, in which contracts for the sale of real property are often contingent upon the receipt of approvals necessary to develop the property, obtaining such approvals can take three or more years. Applying § 314(c) of Title 25 of the Delaware Code to such transactions, thereby limiting the period within which contracts involving seller financing may remain executory to periods of six to twelve months, may allow a party to such a contract to void the contract where the other party has not yet been able to obtain the necessary approvals, thus allowing such voiding party to relieve itself of contractual obligations and in some cases receive a windfall by entering into a new contract with a different party at a higher price. Several Delaware laws distinguish between 1-to-4-family residential real property used primarily for personal, family or household purposes and other types of property. The purpose of these changes is to give certainty that § 314(c) of Title 25 of the Delaware Code applies only to such residential real property in accordance with the intended purpose of such subsection.

