

SENATE BILL 568

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2004 Regular Session  
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By: **Senators Green, Forehand, and Frosh**  
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Committee Report: Favorable  
Senate action: Adopted  
Read second time: February 24, 2004

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CHAPTER 286

1 AN ACT concerning

2                                   **Cooperative Housing Corporations, Condominiums, and Homeowners**  
3                                   **Associations - Electronic Transmission of Notices and Votes**

4 FOR the purpose of authorizing a cooperative housing corporation, to provide notice of  
5 a meeting or deliver information to a member by electronic transmission if  
6 certain conditions are met; providing that notice or delivery by electronic  
7 transmission by a cooperative housing corporation shall be considered  
8 ineffective if certain conditions are met; providing that the inadvertent failure to  
9 deliver notice by electronic transmission to a member does not invalidate any  
10 meeting or other action of the cooperative housing corporation; authorizing the  
11 board of directors of a cooperative housing association to authorize members to  
12 submit a vote or proxy by electronic transmission if the electronic transmission  
13 contains certain information; prohibiting a regular or special meeting of a  
14 council of unit owners of a condominium from being held without certain notice;  
15 requiring that notice of special meetings of the board of directors of a council of  
16 unit owners be given in a certain manner; requiring that certain notice be  
17 delivered, mailed, or sent by electronic transmission if certain requirements are  
18 met, to each unit owner; providing that only a unit owner voting in person or by  
19 electronic transmission or a certain proxy may vote for officers and members of  
20 the board of directors if certain requirements are met; authorizing a council of  
21 unit owners to provide notice of a meeting or deliver information to a unit owner  
22 by electronic transmission if certain conditions are met; providing that notice or  
23 delivery by electronic transmission by a council of unit owners shall be  
24 considered ineffective if certain conditions are met; providing that the  
25 inadvertent failure to deliver notice to a unit owner by electronic transmission  
26 does not invalidate any meeting or other action of the council of unit owners;  
27 authorizing the board of directors of a council of unit owners to authorize unit  
28 owners to submit a vote or proxy by electronic transmission if the electronic

1 transmission contains certain information; authorizing a homeowners  
2 association to provide notice of a meeting or deliver information to a lot owner by  
3 electronic transmission if certain conditions are met; providing that notice or  
4 delivery by electronic transmission by a homeowners association shall be  
5 considered ineffective if certain conditions are met; providing that the  
6 inadvertent failure to deliver notice by electronic transmission to a lot owner  
7 does not invalidate any meeting or other action of the homeowners association;  
8 authorizing the board of directors or other governing body of a homeowners  
9 association to authorize lot owners to submit a vote or proxy by electronic  
10 transmission if the electronic transmission contains certain information;  
11 defining certain terms; and generally relating to the authority of cooperative  
12 housing corporations, units of council owners of condominiums, and  
13 homeowners associations to provide notices and authorize voting by electronic  
14 transmission.

15 BY repealing and reenacting, with amendments,  
16 Article - Corporations and Associations  
17 Section 5-6B-01  
18 Annotated Code of Maryland  
19 (1999 Replacement Volume and 2003 Supplement)

20 BY adding to  
21 Article - Corporations and Associations  
22 Section 5-6B-18.3 and 5-6B-18.4  
23 Annotated Code of Maryland  
24 (1999 Replacement Volume and 2003 Supplement)

25 BY repealing and reenacting, with amendments,  
26 Article - Real Property  
27 Section 11-101, 11-109(c), and 11B-101  
28 Annotated Code of Maryland  
29 (2003 Replacement Volume and 2003 Supplement)

30 BY adding to  
31 Article - Real Property  
32 Section 11-139.1, 11-139.2, 11B-113.1, and 11B-113.2  
33 Annotated Code of Maryland  
34 (2003 Replacement Volume and 2003 Supplement)

35 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
36 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Corporations and Associations**

2 5-6B-01.

3 (a) In this subtitle the following terms have the meanings indicated.

4 (b) "Articles of incorporation" means the charter by which a cooperative  
5 housing corporation becomes incorporated under this article.

6 (c) "Blanket encumbrance" means any contract binding on a cooperative  
7 housing corporation and creating a lien or security interest or other encumbrance or  
8 imposing restrictions on any real or personal property owned by the cooperative  
9 housing corporation.

10 (d) "Bylaws" means the document which details and governs the internal  
11 organization and operation of the cooperative housing corporation.

12 (e) "Conversion" means the creation of a cooperative housing corporation from  
13 a property which was immediately previously a residential rental facility.

14 (f) "Cooperative housing corporation" means a domestic or foreign corporation  
15 qualified in this State, either stock or nonstock, having only one class of stock or  
16 membership, in which each stockholder or member, by virtue of such ownership or  
17 membership, has a cooperative interest in the corporation.

18 (g) "Cooperative interest" means the ownership interest in a cooperative  
19 housing corporation which is coupled with a possessory interest in real or personal  
20 property or both and evidenced by a membership certificate.

21 (h) "Cooperative project" means all the real and personal property in this  
22 State owned or leased by the cooperative housing corporation for the primary purpose  
23 of residential use.

24 (i) (1) "Developer" means a person who:

25 (i) Owns an equitable interest, including a cooperative interest, in  
26 a unit prior to its initial sale to a member of the public;

27 (ii) Exercises control over cooperative interests before they are  
28 transferred to initial purchasers, excluding management agents and sales agents  
29 acting in their capacities as such; or

30 (iii) Receives a material portion of the sales proceeds, not including  
31 customary brokerage commissions or payment for indebtedness to an institutional  
32 banker, from the initial sale of a cooperative interest to a member of the public.

33 (2) "Developer" does not include a cooperative housing corporation.

34 (j) "ELECTRONIC TRANSMISSION" MEANS ANY FORM OF COMMUNICATION,  
35 NOT DIRECTLY INVOLVING THE PHYSICAL TRANSMISSION OF PAPER, THAT CREATES  
36 A RECORD THAT:

1 (1) MAY BE RETAINED, RETRIEVED, AND REVIEWED BY A RECIPIENT OF  
2 THE COMMUNICATION; AND

3 (2) MAY BE REPRODUCED DIRECTLY IN PAPER FORM BY A RECIPIENT  
4 THROUGH AN AUTOMATED PROCESS.

5 (K) "Initial purchaser" means a member of the public, not an affiliate of or a  
6 successor to the developer, who, for value, acquires a cooperative interest as part of  
7 the initial sale of a cooperative interest which is used for residential purposes.

8 [(k)] (L) "Initial sale" means the first transfer of a cooperative interest to an  
9 initial purchaser.

10 [(l)] (M) "Member" means a person who owns a cooperative interest.

11 [(m)] (N) "Membership certificate" means:

12 (1) A document, including a stock certificate issued by a cooperative  
13 housing corporation, evidencing ownership of a cooperative interest; or

14 (2) If there is no other document which satisfies paragraph (1) of this  
15 subsection, a proprietary lease.

16 [(n)] (O) "Moving expenses" means costs incurred to:

17 (1) Hire contractors, labor, trucks, or equipment for the transportation of  
18 personal property;

19 (2) Pack and unpack personal property;

20 (3) Disconnect and install personal property;

21 (4) Insure personal property to be moved; and

22 (5) Disconnect and reconnect utilities such as telephone service, gas,  
23 water, and electricity.

24 [(o)] (P) "No-impact home-based business" means a business that:

25 (1) Is consistent with the residential character of the dwelling unit;

26 (2) Is subordinate to the use of the dwelling unit for residential purposes  
27 and requires no external modifications that detract from the residential appearance  
28 of the dwelling unit;

29 (3) Uses no equipment or process that creates noise, vibration, glare,  
30 fumes, odors, or electrical or electronic interference detectable by neighbors; and

31 (4) Does not involve use, storage, or disposal of any grouping or  
32 classification of materials that the United States Secretary of Transportation or the  
33 State or any local governing body designates as a hazardous material.

1 [(p)] (Q) (1) "Proprietary lease" means an agreement with the cooperative  
2 housing corporation under which a member has an exclusive possessory interest in a  
3 unit and a possessory interest in common with other members in that portion of a  
4 cooperative project not constituting units and which creates a legal relationship of  
5 landlord and tenant between the cooperative housing corporation and the member,  
6 respectively.

7 (2) "Proprietary lease" includes, if there is no other document that  
8 satisfies paragraph (1) of this subsection, a membership certificate.

9 [(q)] (R) "Residential rental facility" means property containing at least 10  
10 dwelling units leased for residential purposes.

11 [(r)] (S) "Unit" means a portion of the cooperative project leased for exclusive  
12 occupancy by a member under a proprietary lease.

13 5-6B-18.3.

14 (A) NOTWITHSTANDING LANGUAGE CONTAINED IN THE GOVERNING  
15 DOCUMENTS OF A COOPERATIVE HOUSING CORPORATION, THE COOPERATIVE  
16 HOUSING CORPORATION MAY PROVIDE NOTICE OF A MEETING OR DELIVER  
17 INFORMATION TO A MEMBER BY ELECTRONIC TRANSMISSION IF:

18 (1) THE BOARD OF DIRECTORS OF THE COOPERATIVE HOUSING  
19 CORPORATION GIVES THE COOPERATIVE HOUSING CORPORATION THE AUTHORITY  
20 TO PROVIDE NOTICE OF A MEETING OR DELIVER INFORMATION BY ELECTRONIC  
21 TRANSMISSION;

22 (2) THE MEMBER GIVES THE COOPERATIVE HOUSING CORPORATION  
23 PRIOR WRITTEN AUTHORIZATION TO PROVIDE NOTICE OF A MEETING OR DELIVER  
24 INFORMATION BY ELECTRONIC TRANSMISSION; AND

25 (3) AN OFFICER OR AGENT OF THE COOPERATIVE HOUSING  
26 CORPORATION CERTIFIES IN WRITING THAT THE COOPERATIVE HOUSING  
27 CORPORATION HAS PROVIDED NOTICE OF A MEETING OR DELIVERED INFORMATION  
28 TO THE MEMBER.

29 (B) NOTICE OR DELIVERY BY ELECTRONIC TRANSMISSION SHALL BE  
30 CONSIDERED INEFFECTIVE IF:

31 (1) THE COOPERATIVE HOUSING CORPORATION IS UNABLE TO DELIVER  
32 TWO CONSECUTIVE NOTICES; AND

33 (2) THE INABILITY TO DELIVER THE ELECTRONIC TRANSMISSION  
34 BECOMES KNOWN TO THE PERSON RESPONSIBLE FOR THE SENDING OF THE  
35 ELECTRONIC TRANSMISSION.

36 (C) THE INADVERTENT FAILURE TO DELIVER NOTICE BY ELECTRONIC  
37 TRANSMISSION DOES NOT INVALIDATE ANY MEETING OR OTHER ACTION.

1 5-6B-18.4.

2 (A) NOTWITHSTANDING LANGUAGE CONTAINED IN THE GOVERNING  
3 DOCUMENTS OF A COOPERATIVE HOUSING CORPORATION, THE BOARD OF  
4 DIRECTORS OF THE COOPERATIVE HOUSING CORPORATION MAY AUTHORIZE  
5 MEMBERS TO SUBMIT A VOTE OR PROXY BY ELECTRONIC TRANSMISSION IF THE  
6 ELECTRONIC TRANSMISSION CONTAINS INFORMATION THAT VERIFIES THAT THE  
7 VOTE OR PROXY IS AUTHORIZED BY THE MEMBER OR THE MEMBER'S PROXY.

8 (B) IF THE GOVERNING DOCUMENTS OF THE COOPERATIVE HOUSING  
9 CORPORATION REQUIRE VOTING BY SECRET BALLOT AND THE ANONYMITY OF  
10 VOTING BY ELECTRONIC TRANSMISSION CANNOT BE GUARANTEED, VOTING BY  
11 ELECTRONIC TRANSMISSION SHALL BE PERMITTED IF MEMBERS HAVE THE OPTION  
12 OF CASTING ANONYMOUS PRINTED BALLOTS.

13 **Article - Real Property**

14 11-101.

15 (a) In this title the following words have the meanings indicated unless  
16 otherwise apparent from context.

17 (b) (1) "Board of directors" means the persons to whom some or all of the  
18 powers of the council of unit owners have been delegated under this title or under the  
19 condominium bylaws.

20 (2) "Board of directors" includes any reference to "board".

21 (c) (1) "Common elements" means all of the condominium except the units.

22 (2) "Limited common elements" means those common elements  
23 identified in the declaration or on the condominium plat as reserved for the exclusive  
24 use of one or more but less than all of the unit owners.

25 (3) "General common elements" means all the common elements except  
26 the limited common elements.

27 (d) "Common expenses and common profits" means the expenses and profits of  
28 the council of unit owners.

29 (e) "Condominium" means property subject to the condominium regime  
30 established under this title.

31 (f) "Council of unit owners" means the legal entity described in § 11-109 of  
32 this title.

33 (g) "Developer" means any person who subjects his property to the  
34 condominium regime established by this title.

1 (h) "ELECTRONIC TRANSMISSION" MEANS ANY FORM OF COMMUNICATION,  
2 NOT DIRECTLY INVOLVING THE PHYSICAL TRANSMISSION OF PAPER, THAT CREATES  
3 A RECORD THAT:

4 (1) MAY BE RETAINED, RETRIEVED, AND REVIEWED BY A RECIPIENT OF  
5 THE COMMUNICATION; AND

6 (2) MAY BE REPRODUCED DIRECTLY IN PAPER FORM BY A RECIPIENT  
7 THROUGH AN AUTOMATED PROCESS.

8 (I) "Governing body" means the council of unit owners, board of directors, or  
9 any committee of the council of unit owners or board of directors.

10 [(i)] (J) "Housing agency" means a housing agency of a county or  
11 incorporated municipality or some other agency or entity of a county or incorporated  
12 municipality designated as such by law or ordinance.

13 [(j)] (K) "Mortgagee" means the holder of any recorded mortgage, or the  
14 beneficiary of any recorded deed of trust, encumbering one or more units.

15 [(k)] (L) "Moving expenses" means costs incurred to:

16 (1) Hire contractors, labor, trucks, or equipment for the transportation of  
17 personal property;

18 (2) Pack and unpack personal property;

19 (3) Disconnect and install personal property;

20 (4) Insure personal property to be moved; and

21 (5) Disconnect and reconnect utilities such as telephone service, gas,  
22 water, and electricity.

23 [(l)] (M) "Occupant" means any lessee or guest of a unit owner.

24 [(m)] (N) "Percentage interests" means the interests, expressed as a  
25 percentage, fraction or proportion, established in accordance with § 11-107 of this  
26 title.

27 [(n)] (O) "Property" means unimproved land, land together with  
28 improvements thereon, improvements without the underlying land, or riparian or  
29 littoral rights associated with land. Property may consist of noncontiguous parcels or  
30 improvements.

31 [(o)] (P) "Rental facility" means property containing dwelling units intended  
32 to be leased to persons who occupy the dwellings as their residences.

33 [(p)] (Q) "Unit" means a three-dimensional space identified as such in the  
34 declaration and on the condominium plat and shall include all improvements  
35 contained within the space except those excluded in the declaration, the boundaries of

1 which are established in accordance with § 11-103(a)(3) of this title. A unit may  
2 include 2 or more noncontiguous spaces.

3 [(q)] (R) "Unit owner" means the person, or combination of persons, who hold  
4 legal title to a unit. A mortgagee or a trustee designated under a deed of trust, as  
5 such, may not be deemed a unit owner.

6 11-109.

7 (c) (1) A meeting of the council of unit owners or board of directors may not  
8 be held on less notice than required by this section.

9 (2) The council of unit owners shall maintain a current roster of names  
10 and addresses of each unit owner to which notice of meetings of the board of directors  
11 shall be sent at least annually.

12 (3) Each unit owner shall furnish the council of unit owners with his  
13 name and current mailing address. A unit owner may not vote at meetings of the  
14 council of unit owners until this information is furnished.

15 (4) A regular or special meeting of the council of unit owners may not be  
16 held on less than 10 nor more than 90 days':

17 (I) [written] WRITTEN notice delivered or mailed to each unit  
18 owner at the address shown on the roster on the date of the notice; OR

19 (II) NOTICE SENT TO EACH UNIT OWNER BY ELECTRONIC  
20 TRANSMISSION, IF THE REQUIREMENTS OF § 11-139.1 OF THIS SUBTITLE ARE MET.

21 (5) Notice of special meetings of the board of directors shall be given:

22 (I) [as] AS provided in the bylaws; OR

23 (II) IF THE REQUIREMENTS OF § 11-139.1 OF THIS SUBTITLE ARE  
24 MET, BY ELECTRONIC TRANSMISSION.

25 (6) Except as provided in § 11-109.1 of this title, a meeting of a  
26 governing body shall be open and held at a time and location as provided in the notice  
27 or bylaws.

28 (7) (i) This paragraph does not apply to any meeting of the governing  
29 body that occurs at any time before the meeting at which the unit owners elect  
30 officers or a board of directors in accordance with paragraph (16) of this subsection.

31 (ii) Subject to subparagraph (iii) of this paragraph and to  
32 reasonable rules adopted by the governing body under § 11-111 of this title, a  
33 governing body shall provide a designated period of time during a meeting to allow  
34 unit owners an opportunity to comment on any matter relating to the condominium.

1 (iii) During a meeting at which the agenda is limited to specific  
2 topics or at a special meeting, the unit owners' comments may be limited to the topics  
3 listed on the meeting agenda.

4 (iv) The governing body shall convene at least one meeting each  
5 year at which the agenda is open to any matter relating to the condominium.

6 (8) (i) Unless the bylaws provide otherwise, a quorum is deemed  
7 present throughout any meeting of the council of unit owners if persons entitled to  
8 cast 25 percent of the total number of votes appurtenant to all units are present in  
9 person or by proxy.

10 (ii) If the number of persons present in person, or by proxy, at a  
11 properly called meeting of the council of unit owners is insufficient to constitute a  
12 quorum, another meeting of the council of unit owners may be called for the same  
13 purpose if:

14 1. The notice of the meeting stated that the procedure  
15 authorized by this paragraph might be invoked; and

16 2. By majority vote, the unit owners present in person or by  
17 proxy call for the additional meeting.

18 (iii) 1. Fifteen days' notice of the time, place, and purpose of the  
19 additional meeting shall be delivered, [or] mailed, OR SENT BY ELECTRONIC  
20 TRANSMISSION IF THE REQUIREMENTS OF § 11-139.2 ARE MET, to each unit owner at  
21 the address shown on the roster maintained under paragraph (2) of this subsection.

22 2. The notice shall contain the quorum and voting provisions  
23 of subparagraph (iv) of this paragraph.

24 (iv) 1. At the additional meeting, the unit owners present in  
25 person or by proxy constitute a quorum.

26 2. Unless the bylaws provide otherwise, a majority of the  
27 unit owners present in person, or by proxy:

28 A. May approve or authorize the proposed action at the  
29 additional meeting; and

30 B. May take any other action that could have been taken at  
31 the original meeting if a sufficient number of unit owners had been present.

32 (v) This paragraph may not be construed to affect the percentage of  
33 votes required to amend the declaration or bylaws or to take any other action required  
34 to be taken by a specified percentage of votes.

35 (9) At meetings of the council of unit owners each unit owner shall be  
36 entitled to cast the number of votes appurtenant to his unit. Unit owners may vote by

1 proxy, but the proxy is effective only for a maximum period of 180 days following its  
2 issuance, unless granted to a lessee or mortgagee.

3 (10) Any proxy may be revoked at any time at the pleasure of the unit  
4 owner or unit owners executing the proxy.

5 (11) A proxy who is not appointed to vote as directed by a unit owner may  
6 only be appointed for purposes of meeting quorums and to vote for matters of business  
7 before the council of unit owners, other than an election of officers and members of  
8 the board of directors.

9 (12) Only a unit owner voting in person OR BY ELECTRONIC  
10 TRANSMISSION IF THE REQUIREMENTS OF § 11-139.2 ARE MET or a proxy voting for  
11 candidates designated by a unit owner may vote for officers and members of the board  
12 of directors.

13 (13) Unless otherwise provided in the bylaws, a unit owner may nominate  
14 himself or any other person to be an officer or member of the board of directors. A call  
15 for nominations shall be sent to all unit owners not less than 45 days before notice of  
16 an election is sent. Only nominations made at least 15 days before notice of an  
17 election shall be listed on the election ballot. Candidates shall be listed on the ballot  
18 in alphabetical order, with no indicated candidate preference. Nominations may be  
19 made from the floor at the meeting at which the election to the board is held.

20 (14) Election materials prepared with funds of the council of unit owners  
21 shall list candidates in alphabetical order and may not indicate a candidate  
22 preference.

23 (15) Unless otherwise provided in this title, and subject to provisions in  
24 the bylaws requiring a different majority, decisions of the council of unit owners shall  
25 be made on a majority of votes of the unit owners listed on the current roster present  
26 and voting.

27 (16) A meeting of the council of unit owners shall be held within 60 days  
28 from the date that units representing 50 percent of the votes in the condominium  
29 have been conveyed by the developer to the initial purchasers of units to elect officers  
30 or a board of directors for the council of unit owners, as provided in the condominium  
31 declaration or bylaws.

32 11-139.1.

33 (A) NOTWITHSTANDING LANGUAGE CONTAINED IN THE GOVERNING  
34 DOCUMENTS OF A COUNCIL OF UNIT OWNERS, THE COUNCIL OF UNIT OWNERS MAY  
35 PROVIDE NOTICE OF A MEETING OR DELIVER INFORMATION TO A UNIT OWNER BY  
36 ELECTRONIC TRANSMISSION IF:

37 (1) THE GOVERNING BODY OF THE COUNCIL OF UNIT OWNERS GIVES  
38 THE COUNCIL OF UNIT OWNERS THE AUTHORITY TO PROVIDE NOTICE OF A MEETING  
39 OR DELIVER INFORMATION BY ELECTRONIC TRANSMISSION;

1 (2) THE UNIT OWNER GIVES THE COUNCIL OF UNIT OWNERS PRIOR  
2 WRITTEN AUTHORIZATION TO PROVIDE NOTICE OF A MEETING OR DELIVER  
3 INFORMATION BY ELECTRONIC TRANSMISSION; AND

4 (3) AN OFFICER OR AGENT OF THE COUNCIL OF UNIT OWNERS  
5 CERTIFIES IN WRITING THAT THE COUNCIL OF UNIT OWNERS HAS PROVIDED  
6 NOTICE OF A MEETING OR DELIVERED MATERIAL OR INFORMATION AS AUTHORIZED  
7 BY THE UNIT OWNER.

8 (B) NOTICE OR DELIVERY BY ELECTRONIC TRANSMISSION SHALL BE  
9 CONSIDERED INEFFECTIVE IF:

10 (1) THE COUNCIL OF UNIT OWNERS IS UNABLE TO DELIVER TWO  
11 CONSECUTIVE NOTICES; AND

12 (2) THE INABILITY TO DELIVER THE ELECTRONIC TRANSMISSION  
13 BECOMES KNOWN TO THE PERSON RESPONSIBLE FOR THE SENDING OF THE  
14 ELECTRONIC TRANSMISSION.

15 (C) THE INADVERTENT FAILURE TO DELIVER NOTICE BY ELECTRONIC  
16 TRANSMISSION DOES NOT INVALIDATE ANY MEETING OR OTHER ACTION.

17 11-139.2.

18 (A) NOTWITHSTANDING LANGUAGE CONTAINED IN THE GOVERNING  
19 DOCUMENTS OF THE COUNCIL OF UNIT OWNERS, THE BOARD OF DIRECTORS OF THE  
20 COUNCIL OF UNIT OWNERS MAY AUTHORIZE UNIT OWNERS TO SUBMIT A VOTE OR  
21 PROXY BY ELECTRONIC TRANSMISSION IF THE ELECTRONIC TRANSMISSION  
22 CONTAINS INFORMATION THAT VERIFIES THAT THE VOTE OR PROXY IS AUTHORIZED  
23 BY THE UNIT OWNER OR THE UNIT OWNER'S PROXY.

24 (B) IF THE GOVERNING DOCUMENTS OF THE COUNCIL OF UNIT OWNERS  
25 REQUIRE VOTING BY SECRET BALLOT AND THE ANONYMITY OF VOTING BY  
26 ELECTRONIC TRANSMISSION CANNOT BE GUARANTEED, VOTING BY ELECTRONIC  
27 TRANSMISSION SHALL BE PERMITTED IF UNIT OWNERS HAVE THE OPTION OF  
28 CASTING ANONYMOUS PRINTED BALLOTS.

29 11B-101.

30 (a) In this title the following words have the meanings indicated, unless the  
31 context requires otherwise.

32 (b) "Common areas" means property which is owned or leased by a  
33 homeowners association.

34 (c) "Declarant" means any person who subjects property to a declaration.

35 (d) (1) "Declaration" means an instrument, however denominated, recorded  
36 among the land records of the county in which the property of the declarant is located,  
37 that creates the authority for a homeowners association to impose on lots, or on the

1 owners or occupants of lots, or on another homeowners association, condominium, or  
2 cooperative housing corporation any mandatory fee in connection with the provision  
3 of services or otherwise for the benefit of some or all of the lots, the owners or  
4 occupants of lots, or the common areas.

5 (2) "Declaration" includes any amendment or supplement to the  
6 instruments described in paragraph (1) of this subsection.

7 (3) "Declaration" does not include a private right-of-way or similar  
8 agreement unless it requires a mandatory fee payable annually or at more frequent  
9 intervals.

10 (e) "Depository" or "homeowners association depository" means the document  
11 file created by the clerk of the court of each county and the City of Baltimore where a  
12 homeowners association may periodically deposit information as required by this  
13 title.

14 (f) (1) "Development" means property subject to a declaration.

15 (2) "Development" includes property comprising a condominium or  
16 cooperative housing corporation to the extent that the property is part of a  
17 development.

18 (3) "Development" does not include a cooperative housing corporation or  
19 a condominium.

20 (g) "ELECTRONIC TRANSMISSION" MEANS ANY FORM OF COMMUNICATION,  
21 NOT DIRECTLY INVOLVING THE PHYSICAL TRANSMISSION OF PAPER, THAT CREATES  
22 A RECORD THAT:

23 (1) MAY BE RETAINED, RETRIEVED, AND REVIEWED BY A RECIPIENT OF  
24 THE COMMUNICATION; AND

25 (2) MAY BE REPRODUCED DIRECTLY IN PAPER FORM BY A RECIPIENT  
26 THROUGH AN AUTOMATED PROCESS.

27 (H) "Governing body" means the homeowners association, board of directors, or  
28 other entity established to govern the development.

29 [(h)] (I) (1) "Homeowners association" means a person having the authority  
30 to enforce the provisions of a declaration.

31 (2) "Homeowners association" includes an incorporated or  
32 unincorporated association.

33 [(i)] (J) (1) "Lot" means any plot or parcel of land on which a dwelling is  
34 located or will be located within a development.

1 (2) "Lot" includes a unit within a condominium or cooperative housing  
2 corporation if the condominium or cooperative housing corporation is part of a  
3 development.

4 [(j)] (K) "Primary development" means a development such that the  
5 purchaser of a lot will pay fees directly to its homeowners association.

6 [(k)] (L) "Recorded covenants and restrictions" means any instrument of  
7 writing which is recorded in the land records of the jurisdiction within which a lot is  
8 located, and which instrument governs or otherwise legally restricts the use of such  
9 lot.

10 [(l)] (M) "Related development" means a development such that the purchaser  
11 of a lot will pay fees to the homeowners association of such development through the  
12 homeowners association of a primary development or another development.

13 [(m)] (N) "Unaffiliated declarant" means a person who is not affiliated with the  
14 vendor of a lot but who has subjected such property to a declaration required to be  
15 disclosed by this title.

16 11B-113.1.

17 (A) NOTWITHSTANDING LANGUAGE CONTAINED IN THE GOVERNING  
18 DOCUMENTS OF A HOMEOWNERS ASSOCIATION, THE HOMEOWNERS ASSOCIATION  
19 MAY PROVIDE NOTICE OF A MEETING OR DELIVER INFORMATION TO A LOT OWNER  
20 BY ELECTRONIC TRANSMISSION IF:

21 (1) THE BOARD OF DIRECTORS OR OTHER GOVERNING BODY OF THE  
22 HOMEOWNERS ASSOCIATION GIVES THE HOMEOWNERS ASSOCIATION THE  
23 AUTHORITY TO PROVIDE NOTICE OF A MEETING OR DELIVER INFORMATION BY  
24 ELECTRONIC TRANSMISSION;

25 (2) THE LOT OWNER GIVES THE HOMEOWNERS ASSOCIATION PRIOR  
26 WRITTEN AUTHORIZATION TO PROVIDE NOTICE OF A MEETING OR DELIVER  
27 INFORMATION BY ELECTRONIC TRANSMISSION; AND

28 (3) AN OFFICER OR AGENT OF THE HOMEOWNERS ASSOCIATION  
29 CERTIFIES IN WRITING THAT THE HOMEOWNERS ASSOCIATION HAS PROVIDED  
30 NOTICE OF A MEETING OR DELIVERED MATERIAL OR INFORMATION AS AUTHORIZED  
31 BY THE LOT OWNER.

32 (B) NOTICE OR DELIVERY BY ELECTRONIC TRANSMISSION SHALL BE  
33 CONSIDERED INEFFECTIVE IF:

34 (1) THE HOMEOWNERS ASSOCIATION IS UNABLE TO DELIVER TWO  
35 CONSECUTIVE NOTICES; AND

36 (2) THE INABILITY TO DELIVER THE ELECTRONIC TRANSMISSION  
37 BECOMES KNOWN TO THE PERSON RESPONSIBLE FOR SENDING THE ELECTRONIC  
38 TRANSMISSION.

1 (C) THE INADVERTENT FAILURE TO DELIVER NOTICE BY ELECTRONIC  
2 TRANSMISSION DOES NOT INVALIDATE ANY MEETING OR OTHER ACTION.

3 11B-113.2.

4 (A) NOTWITHSTANDING LANGUAGE CONTAINED IN THE GOVERNING  
5 DOCUMENTS OF THE HOMEOWNERS ASSOCIATION, THE BOARD OF DIRECTORS OR  
6 OTHER GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION MAY AUTHORIZE LOT  
7 OWNERS TO SUBMIT A VOTE OR PROXY BY ELECTRONIC TRANSMISSION IF THE  
8 ELECTRONIC TRANSMISSION CONTAINS INFORMATION THAT VERIFIES THAT THE  
9 VOTE OR PROXY IS AUTHORIZED BY THE LOT OWNER OR THE LOT OWNER'S PROXY.

10 (B) IF THE GOVERNING DOCUMENTS OF THE HOMEOWNERS ASSOCIATION  
11 REQUIRE VOTING BY SECRET BALLOT AND THE ANONYMITY OF VOTING BY  
12 ELECTRONIC TRANSMISSION CANNOT BE GUARANTEED, VOTING BY ELECTRONIC  
13 TRANSMISSION SHALL BE PERMITTED IF LOT OWNERS HAVE THE OPTION OF  
14 CASTING ANONYMOUS PRINTED BALLOTS.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 October 1, 2004.