

HOUSE BILL 117

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8lr0460

By: **Delegates Hecht, Bartlett, Bronrott, G. Clagett, DeBoy, Donoghue, Elmore, Feldman, Frank, George, Gilchrist, Guzzone, Howard, Hucker, James, King, Krysiak, Lee, Manno, Mizeur, Morhaim, Murphy, Riley, Rudolph, Schuh, Stocksdales, Stukes, F. Turner, and Weldon**

Introduced and read first time: January 17, 2008

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Installation of Solar Panels – Clarification and Solar**
3 **Easement**

4 FOR the purpose of defining certain terms relating to the application of a restrictive
5 covenant as to the installation of solar collection panels in certain locations;
6 prohibiting a condominium council of unit owners from establishing bylaws that
7 impose unreasonable limitations on the installation of solar collection panels in
8 certain locations; establishing the right of a condominium unit owner or a lot
9 owner in a development to negotiate with neighboring unit owners or lot owners
10 to obtain a solar easement for a unit or lot that has installed a solar energy
11 system; establishing certain requirements for an instrument creating a solar
12 easement; defining certain terms; and generally relating to enabling the
13 installation and access to sunlight of solar energy systems.

14 BY repealing and reenacting, with amendments,
15 Article – Real Property
16 Section 2–119, 11–104(c), and 11–125(f)
17 Annotated Code of Maryland
18 (2003 Replacement Volume and 2007 Supplement)

19 BY repealing and reenacting, without amendments,
20 Article – Real Property
21 Section 11–104(a)
22 Annotated Code of Maryland
23 (2003 Replacement Volume and 2007 Supplement)

24 BY adding to
25 Article – Real Property

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 11–125(f) through (h) and 11B–111.6
 2 Annotated Code of Maryland
 3 (2003 Replacement Volume and 2007 Supplement)

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

6 **Article – Real Property**

7 2–119.

8 (a) **IN THIS SECTION, “RESTRICTIVE COVENANT” INCLUDES ANY**
 9 **COVENANT, RESTRICTION, OR CONDITION CONTAINED IN:**

10 (1) **A DEED;**

11 (2) **A DECLARATION;**

12 (3) **A CONTRACT;**

13 (4) **THE BYLAWS OR RULES OF A CONDOMINIUM OR**
 14 **HOMEOWNERS ASSOCIATION;**

15 (5) **A SECURITY INSTRUMENT; OR**

16 (6) **ANY OTHER INSTRUMENT AFFECTING:**

17 (I) **THE TRANSFER OR SALE OF REAL PROPERTY; OR**

18 (II) **ANY OTHER INTEREST IN REAL PROPERTY.**

19 (B) (1) A restrictive covenant regarding land use, which becomes effective
 20 after July 1, 1980, may not impose or act to impose unreasonable limitations on the
 21 installation of solar collection panels on the roof or exterior walls of improvements.

22 (2) **AN UNREASONABLE LIMITATION INCLUDES A LIMITATION**
 23 **THAT:**

24 (I) **SIGNIFICANTLY INCREASES THE COST OF THE SYSTEM;**

25 (II) **SIGNIFICANTLY DECREASES THE EFFICIENCY OF THE**
 26 **SYSTEM;**

27 (III) **SIGNIFICANTLY DECREASES THE SPECIFIED**
 28 **PERFORMANCE OF THE SYSTEM; OR**

1 **(IV) DOES NOT ALLOW FOR AN ALTERNATIVE SYSTEM OF**
2 **COMPARABLE COST, EFFICIENCY, AND ENERGY CONSERVATION BENEFITS.**

3 **[(b)] (C)** This section does not apply to a restrictive covenant on historic
4 property that is listed by:

5 (1) The Maryland Inventory of Historic Properties; or

6 (2) The Maryland Register of Historic Properties.

7 11-104.

8 (a) The administration of every condominium shall be governed by bylaws
9 which shall be recorded with the declaration. If the council of unit owners is
10 incorporated, these bylaws shall be the bylaws of that corporation.

11 (c) **(1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
12 **SUBSECTION, THE** bylaws also may contain any other provision regarding the
13 management and operation of the condominium including any restriction on or
14 requirement respecting the use and maintenance of the units and the common
15 elements.

16 **(2) THE BYLAWS MAY NOT IMPOSE OR ACT TO IMPOSE**
17 **UNREASONABLE LIMITATIONS ON THE INSTALLATION OF SOLAR COLLECTION**
18 **PANELS ON THE ROOF OR EXTERIOR WALLS OF A UNIT.**

19 **(3) AN UNREASONABLE LIMITATION INCLUDES A LIMITATION**
20 **THAT:**

21 **(I) SIGNIFICANTLY INCREASES THE COST OF THE SYSTEM;**

22 **(II) SIGNIFICANTLY DECREASES THE EFFICIENCY OF THE**
23 **SYSTEM;**

24 **(III) SIGNIFICANTLY DECREASES THE SPECIFIED**
25 **PERFORMANCE OF THE SYSTEM; OR**

26 **(IV) DOES NOT ALLOW FOR AN ALTERNATIVE SYSTEM OF**
27 **COMPARABLE COST, EFFICIENCY, AND ENERGY CONSERVATION BENEFITS.**

28 11-125.

29 **(F) (1) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE**
30 **MEANINGS INDICATED.**

1 **(2) “SOLAR EASEMENT” MEANS AN INTEREST IN LAND THAT:**

2 **(I) IS CONVEYED OR ASSIGNED IN PERPETUITY; AND**

3 **(II) LIMITS THE USE OF THE LAND TO PRESERVE THE**
4 **RECEIPT OF SUNLIGHT ACROSS THE LAND FOR THE USE OF A UNIT OWNER’S**
5 **SOLAR ENERGY SYSTEM.**

6 **(3) “SOLAR ENERGY SYSTEM” MEANS:**

7 **(I) A SOLAR COLLECTOR OR OTHER SOLAR ENERGY**
8 **DEVICE, THE PRIMARY PURPOSE OF WHICH IS TO PROVIDE FOR THE**
9 **COLLECTION, STORAGE, AND DISTRIBUTION OF SOLAR ENERGY FOR**
10 **ELECTRICITY GENERATION, SPACE HEATING, SPACE COOLING, OR WATER**
11 **HEATING; OR**

12 **(II) A STRUCTURAL DESIGN FEATURE OF A UNIT, THE**
13 **PRIMARY PURPOSE OF WHICH IS TO PROVIDE FOR THE COLLECTION, STORAGE,**
14 **AND DISTRIBUTION OF SOLAR ENERGY FOR ELECTRICITY GENERATION, SPACE**
15 **HEATING, SPACE COOLING, OR WATER HEATING.**

16 **(G) A UNIT OWNER WHO OWNS A UNIT THAT HAS INSTALLED A SOLAR**
17 **ENERGY SYSTEM MAY NEGOTIATE WITH NEIGHBORING UNIT OWNERS TO OBTAIN**
18 **A SOLAR EASEMENT THAT SHALL BE RECORDED IN WRITING.**

19 **(H) ANY WRITTEN INSTRUMENT CREATING A SOLAR EASEMENT SHALL**
20 **INCLUDE:**

21 **(1) A DESCRIPTION OF THE DIMENSIONS OF THE EASEMENT**
22 **EXPRESSED IN MEASURABLE TERMS, INCLUDING VERTICAL OR HORIZONTAL**
23 **ANGLES MEASURED IN DEGREES OR THE HOURS OF THE DAY ON SPECIFIED**
24 **DATES WHEN DIRECT SUNLIGHT TO A SPECIFIED SURFACE OF A SOLAR ENERGY**
25 **SYSTEM MAY NOT BE OBSTRUCTED;**

26 **(2) THE RESTRICTIONS PLACED ON VEGETATION, STRUCTURES,**
27 **AND OTHER OBJECTS THAT WOULD IMPAIR THE PASSAGE OF SUNLIGHT**
28 **THROUGH THE EASEMENT; AND**

29 **(3) THE TERMS UNDER WHICH THE EASEMENT MAY BE REVISED**
30 **OR TERMINATED.**

31 **[(f)] (I) (1) The declaration or bylaws may give the council of unit**
32 **owners authority to grant easements, rights-of-way, licenses, leases in excess of 1**
33 **year, or similar interests affecting the common elements of the condominium if the**

1 grant is approved by the affirmative vote of unit owners having 66 2/3 percent or more
2 of the votes, and with the express written consent of the mortgagees holding an
3 interest in those units as to which unit owners vote affirmatively. Any easement,
4 right-of-way, license, or similar interest granted by the council of unit owners under
5 this subsection shall state that the grant was approved by unit owners having at least
6 66 2/3 percent of the votes, and by the corresponding mortgagees.

7 (2) The board of directors may, by majority vote, grant easements,
8 rights-of-way, licenses, leases in excess of 1 year, or similar interests for the provision
9 of utility services or communication systems for the exclusive benefit of units within
10 the condominium regime. These actions by the board of directors are subject to the
11 following requirements:

12 (i) The action shall be taken at a meeting of the board held
13 after at least 30-days' notice to all unit owners and mortgagees of record with the
14 condominium;

15 (ii) At the meeting, the board may not act until all unit owners
16 and mortgagees shall be afforded a reasonable opportunity to present their views on
17 the proposed easement, right-of-way, license, lease, or similar interest;

18 (iii) The easement, right-of-way, license, lease, or similar
19 interest shall contain the following provisions:

20 1. The service or system shall be installed or affixed to
21 the premises at no cost to the individual unit owners or the council of unit owners
22 other than charges normally paid for like services by residents of similar or
23 comparable dwelling units within the same area;

24 2. The unit owners and council of unit owners shall be
25 indemnified for any damage arising out of the installation of the service or system; and

26 3. The board of directors shall be provided the right to
27 approve of the design for installation of the service or system in order to insure that
28 the installation conforms to any conditions which are reasonable to protect the safety,
29 functioning, and appearance of the premises.

30 (3) By majority vote, the board of directors may grant to the State
31 perpetual easements, rights-of-way, licenses, leases in excess of 1 year, or similar
32 interests affecting the common elements of the condominium for bulkhead
33 construction, dune construction or restoration, beach replenishment, or periodic
34 maintenance and replacement construction, on Maryland's ocean beaches, including
35 rights in the State to restrict access to dune areas. These actions by the board of
36 directors are subject to the following requirements:

37 (i) The action shall be taken at a meeting of the board held
38 after at least 30-days' notice to all unit owners and mortgagees of record with the
39 condominium; and

1 (ii) At the meeting, the board may not act until all unit owners
2 and mortgagees shall be afforded a reasonable opportunity to present their views on
3 the proposed easement, right-of-way, license, lease, or similar interest.

4 (4) By majority vote, the board of directors may settle an eminent
5 domain proceeding or grant to the State or any county, municipality, or agency or
6 instrumentality thereof with condemnation authority, perpetual easements,
7 rights-of-way, licenses, leases in excess of 1 year, or similar interests affecting the
8 common elements of the condominium for road, highway, sidewalk, bikeway, storm
9 drain, sewer, water, utility, and similar public purposes. These actions by the board of
10 directors are subject to the following requirements:

11 (i) The action shall be taken at a meeting of the board held
12 after at least 60 days' notice to all unit owners and all first mortgagees listed with the
13 condominium;

14 (ii) The notice shall include information provided by the
15 condemnation authority that describes the purpose and the extent of the property
16 being acquired for public use; and

17 (iii) At the meeting, the board may not act until all unit owners
18 and mortgagees in attendance have been afforded a reasonable opportunity to present
19 their views on the proposed easement, right-of-way, license, lease, or similar interest.

20 (5) The action of the board of directors granting any easement,
21 right-of-way, license, lease, or similar interest under paragraphs (2), (3), or (4) of this
22 subsection shall not be final until the following have occurred:

23 (i) Within 15 days after the vote by the board to grant an
24 easement, right-of-way, license, lease, or similar interest, a petition may be filed with
25 the board of directors signed by the unit owners having at least 15 percent of the votes
26 calling for a special meeting of unit owners to vote on the question of a disapproval of
27 the action of the board of directors granting such easement, right-of-way, license,
28 lease, or similar interest. If no such petition is received within 15 days, the decision of
29 the board shall be final;

30 (ii) If a qualifying petition is filed, a special meeting shall be
31 held no less than 15 days or more than 30 days from receipt of the petition. At the
32 special meeting, if a quorum is not present, the decision of the board of directors shall
33 be final;

34 (iii) 1. If a special meeting is held and 50 percent of the unit
35 owners present and voting disapprove the grant, and the unit owners voting to
36 disapprove the grant are more than 33 percent of the total votes in the condominium,
37 then the grant shall be void; or

1 2. If the vote of the unit owners is not more than 33
2 percent of the total votes in the condominium, the decision of the board or council to
3 make the grant shall be final;

4 (iv) Mortgagees shall receive notice of and be entitled to attend
5 and speak at such special meeting; and

6 (v) Any easement, right-of-way, license, lease, or similar
7 interest granted by the board of directors under the provisions of this subsection shall
8 state that the grant was approved in accordance with the provisions of this subsection.

9 (6) The provisions of this subsection are applicable to all
10 condominiums, regardless of the date they were established.

11 **11B-111.6.**

12 (A) (1) **IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
13 **MEANINGS INDICATED.**

14 (2) **“SOLAR EASEMENT” MEANS AN INTEREST IN LAND THAT:**

15 (I) **IS CONVEYED OR ASSIGNED IN PERPETUITY; AND**

16 (II) **LIMITS THE USE OF THE LAND TO PRESERVE THE**
17 **RECEIPT OF SUNLIGHT ACROSS THE LAND FOR THE USE OF A LOT OWNER’S**
18 **SOLAR ENERGY SYSTEM.**

19 (3) **“SOLAR ENERGY SYSTEM” MEANS:**

20 (I) **A SOLAR COLLECTOR OR OTHER SOLAR ENERGY**
21 **DEVICE, THE PRIMARY PURPOSE OF WHICH IS TO PROVIDE FOR THE**
22 **COLLECTION, STORAGE, AND DISTRIBUTION OF SOLAR ENERGY FOR**
23 **ELECTRICITY GENERATION, SPACE HEATING, SPACE COOLING, OR WATER**
24 **HEATING; OR**

25 (II) **A STRUCTURAL DESIGN FEATURE OF A BUILDING, THE**
26 **PRIMARY PURPOSE OF WHICH IS TO PROVIDE FOR THE COLLECTION, STORAGE,**
27 **AND DISTRIBUTION OF SOLAR ENERGY FOR ELECTRICITY GENERATION, SPACE**
28 **HEATING, SPACE COOLING, OR WATER HEATING.**

29 (B) **A LOT OWNER WHO OWNS A DWELLING UNIT THAT HAS INSTALLED A**
30 **SOLAR ENERGY SYSTEM MAY NEGOTIATE WITH NEIGHBORING LOT OWNERS TO**
31 **OBTAIN A SOLAR EASEMENT THAT SHALL BE RECORDED IN WRITING.**

1 **(C) ANY WRITTEN INSTRUMENT CREATING A SOLAR EASEMENT SHALL**
2 **INCLUDE:**

3 **(1) A DESCRIPTION OF THE DIMENSIONS OF THE EASEMENT**
4 **EXPRESSED IN MEASURABLE TERMS, INCLUDING VERTICAL OR HORIZONTAL**
5 **ANGLES MEASURED IN DEGREES OR THE HOURS OF THE DAY ON SPECIFIED**
6 **DATES WHEN DIRECT SUNLIGHT TO A SPECIFIED SURFACE OF A SOLAR ENERGY**
7 **SYSTEM MAY NOT BE OBSTRUCTED;**

8 **(2) THE RESTRICTIONS PLACED ON VEGETATION, STRUCTURES,**
9 **AND OTHER OBJECTS THAT WOULD IMPAIR THE PASSAGE OF SUNLIGHT**
10 **THROUGH THE EASEMENT; AND**

11 **(3) THE TERMS UNDER WHICH THE EASEMENT MAY BE REVISED**
12 **OR TERMINATED.**

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2008.