

HOUSE BILL 950

N1

8lr1166

By: **Delegate Braveboy**

Introduced and read first time: February 7, 2008

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property - Homeowners Associations and Condominiums - Transition**
3 **of Control**

4 FOR the purpose of requiring a meeting of the council of unit owners of a
5 condominium to be held within a certain time for a certain purpose; requiring a
6 developer to schedule and provide notice of a certain meeting of unit owners
7 under certain circumstances for a certain purpose; requiring a developer of a
8 condominium to obtain certain resignations; requiring a developer to deliver
9 certain documents, funds, and property to the officers or board of directors for
10 the council of unit owners; prohibiting the officers or board of directors for the
11 council of unit owners from entering into a certain contract that does not
12 contain a clause providing for the termination of the contract under certain
13 circumstances; establishing that an aggrieved unit owner may submit a certain
14 dispute to the Division of Consumer Protection of the Office of the Attorney
15 General; requiring a developer to make certain books and records available to a
16 unit owner by a certain time; requiring a developer to turn over certain
17 documents to the council of unit owners on transfer of control by the developer;
18 authorizing the lot owners of a homeowners association to elect the governing
19 body of the homeowners association when a certain percentage of lots are
20 purchased under certain circumstances; requiring a developer to schedule,
21 provide notice of, and hold a certain meeting of lot owners under certain
22 circumstances; requiring a developer of a homeowners association to obtain
23 certain resignations; requiring a developer to deliver certain items to the
24 governing body under certain circumstances; prohibiting the governing body
25 from entering into a certain contract that does not contain a clause providing for
26 the termination of the contract under certain circumstances; establishing that
27 an aggrieved lot owner may submit a certain dispute to the Division of
28 Consumer Protection of the Office of the Attorney General; requiring a
29 developer to make certain books and records available to a lot owner by a
30 certain time; defining a certain term; making a stylistic change; and generally

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 relating to the transition of control in a condominium or homeowners
2 association.

3 BY repealing and reenacting, with amendments,
4 Article – Real Property
5 Section 11–109(c)(16), 11–116, 11–132, 11B–101, 11B–102(e), and 11B–112(a)
6 Annotated Code of Maryland
7 (2003 Replacement Volume and 2007 Supplement)

8 BY adding to
9 Article – Real Property
10 Section 11B–106.1
11 Annotated Code of Maryland
12 (2003 Replacement Volume and 2007 Supplement)

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

15 **Article – Real Property**

16 11–109.

17 (c) (16) (I) A meeting of the council of unit owners **TO ELECT**
18 **OFFICERS OR A BOARD OF DIRECTORS FOR THE COUNCIL OF UNIT OWNERS, AS**
19 **PROVIDED IN THE CONDOMINIUM DECLARATION OR BYLAWS,** shall be held
20 within:

21 **1.** 60 days from the date that units representing 50
22 percent of the votes in the condominium have been conveyed by the developer [to the
23 initial purchasers of units to elect officers or a board of directors for the council of unit
24 owners, as provided in the condominium declaration or bylaws] **UNDER BONA FIDE**
25 **ARM’S LENGTH CONTRACTS TO MEMBERS OF THE PUBLIC WHO INTEND TO**
26 **OCCUPY OR RENT THE UNITS FOR RESIDENTIAL PURPOSES; OR**

27 **2.** **IF A LESSER PERCENTAGE IS SPECIFIED IN THE**
28 **DECLARATION OR BYLAWS OF THE CONDOMINIUM, 60 DAYS FROM THE DATE**
29 **THAT THAT PERCENTAGE OF UNITS IN THE CONDOMINIUM IS SOLD UNDER BONA**
30 **FIDE ARM’S LENGTH CONTRACTS TO MEMBERS OF THE PUBLIC WHO INTEND TO**
31 **OCCUPY OR RENT THE UNITS FOR RESIDENTIAL PURPOSES.**

32 **(II) WITHIN 30 DAYS FROM THE DATE THAT UNITS**
33 **REPRESENTING 50 PERCENT OF THE VOTES IN THE CONDOMINIUM HAVE BEEN**
34 **CONVEYED BY THE DEVELOPER UNDER BONA FIDE ARM’S LENGTH CONTRACTS**
35 **TO MEMBERS OF THE PUBLIC WHO INTEND TO OCCUPY OR RENT THE UNITS FOR**
36 **RESIDENTIAL PURPOSES, OR A LESSER PERCENTAGE IF SPECIFIED IN THE**
37 **DECLARATION OR BYLAWS OF THE CONDOMINIUM, THE DEVELOPER SHALL:**

1 **1. SCHEDULE A MEETING OF THE COUNCIL OF UNIT**
2 **OWNERS TO ELECT OFFICERS OR A BOARD OF DIRECTORS FOR THE COUNCIL OF**
3 **UNIT OWNERS UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH;**

4 **2. GIVE NOTICE TO THE UNIT OWNERS OF THE DATE**
5 **OF THE MEETING AND THE UNIT OWNERS' RIGHT TO ELECT OFFICERS OR A**
6 **BOARD OF DIRECTORS FOR THE COUNCIL OF UNIT OWNERS; AND**

7 **3. OBTAIN THE RESIGNATIONS OF ALL OFFICERS OR**
8 **MEMBERS OF THE BOARD OF DIRECTORS APPOINTED BY THE DEVELOPER.**

9 **(III) THE DEVELOPER SHALL DELIVER TO THE OFFICERS OR**
10 **BOARD OF DIRECTORS FOR THE COUNCIL OF UNIT OWNERS, AS PROVIDED IN**
11 **THE CONDOMINIUM DECLARATION OR BYLAWS, AT THE DEVELOPER'S EXPENSE:**

12 **1. THE DOCUMENTS SPECIFIED IN § 11-132 OF THIS**
13 **TITLE;**

14 **2. THE RESIGNATIONS OF ALL OFFICERS OR**
15 **MEMBERS OF THE BOARD OF DIRECTORS REQUIRED TO RESIGN BECAUSE OF**
16 **THE TRANSITION OF CONDOMINIUM CONTROL;**

17 **3. THE CONDOMINIUM FUNDS;**

18 **4. THE TANGIBLE PROPERTY OF THE**
19 **CONDOMINIUM; AND**

20 **5. A ROSTER OF CURRENT UNIT OWNERS,**
21 **INCLUDING ADDRESSES, TELEPHONE NUMBERS, AND UNIT NUMBERS, IF**
22 **APPLICABLE.**

23 **(IV) 1. THIS SUBPARAGRAPH DOES NOT APPLY TO A**
24 **CONTRACT ENTERED INTO BEFORE OCTOBER 1, 2008.**

25 **2. UNTIL ALL OFFICERS OR MEMBERS OF THE**
26 **BOARD OF DIRECTORS OF THE CONDOMINIUM ARE ELECTED BY THE UNIT**
27 **OWNERS AT A TRANSITIONAL MEETING AS SPECIFIED IN SUBPARAGRAPH (I) OF**
28 **THIS PARAGRAPH, THE OFFICERS OR BOARD OF DIRECTORS OF THE**
29 **CONDOMINIUM MAY NOT ENTER INTO A CONTRACT THAT DOES NOT CONTAIN A**
30 **CLAUSE PROVIDING FOR THE TERMINATION OF THE CONTRACT AT THE**
31 **DISCRETION OF THE COUNCIL OF UNIT OWNERS AT LEAST 60 DAYS AFTER**
32 **NOTICE.**

1 (v) IF THE DEVELOPER FAILS TO COMPLY WITH THE
2 REQUIREMENTS OF THIS PARAGRAPH, AN AGGRIEVED UNIT OWNER MAY SUBMIT
3 THE DISPUTE TO THE DIVISION OF CONSUMER PROTECTION OF THE OFFICE OF
4 THE ATTORNEY GENERAL UNDER § 11-130(C) OF THIS TITLE.

5 11-116.

6 (a) The council of unit owners shall keep books and records in accordance
7 with good accounting practices on a consistent basis.

8 (b) On the request of the unit owners of at least 5 percent of the units, the
9 council of unit owners shall cause an audit of the books and records to be made by an
10 independent certified public accountant, provided an audit shall be made not more
11 than once in any consecutive 12-month period. The cost of the audit shall be a
12 common expense.

13 (c) (1) Except as provided in paragraph [(2)] (3) of this subsection, all
14 books and records, including insurance policies, kept by the council of unit owners
15 shall be maintained in Maryland or within 50 miles of its borders and shall be
16 available at some place designated by the council of unit owners within the county
17 where the condominium is located for examination and copying by any unit owner,
18 [his] THE UNIT OWNER'S mortgagee, and their respective duly authorized agents or
19 attorneys, during normal business hours, and after reasonable notice.

20 (2) BOOKS AND RECORDS REQUIRED TO BE MADE AVAILABLE
21 UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL FIRST BE MADE AVAILABLE
22 TO A UNIT OWNER NO LATER THAN 10 BUSINESS DAYS AFTER A UNIT OWNER
23 FINALIZES THE SALE OF THE UNIT FROM A DEVELOPER AND REQUESTS TO
24 EXAMINE OR COPY THE BOOKS AND RECORDS.

25 [(2)] (3) Books and records kept by or on behalf of a council of unit
26 owners may be withheld from public inspection to the extent that they concern:

- 27 (i) Personnel records;
- 28 (ii) An individual's medical records;
- 29 (iii) An individual's financial records;
- 30 (iv) Records relating to business transactions that are currently
31 in negotiation;
- 32 (v) The written advice of legal counsel; or
- 33 (vi) Minutes of a closed meeting of the board of directors or other
34 governing body of the council of unit owners.

1 (d) The council of unit owners may impose a reasonable charge upon a
2 person desiring to review or copy the books and records.

3 11-132.

4 (A) [Drawings, architectural plans, or other suitable documents, setting forth
5 the necessary information for location, maintenance, and repair of all condominium
6 facilities,] **CONDOMINIUM DOCUMENTS**, to the extent that they exist, shall be turned
7 over to the council of unit owners upon transfer of control by the developer.

8 (B) **DOCUMENTS REQUIRED TO BE TURNED OVER UNDER SUBSECTION**
9 **(A) OF THIS SECTION INCLUDE:**

10 (1) **THE DEED TO THE COMMON ELEMENTS OWNED BY THE**
11 **CONDOMINIUM;**

12 (2) **THE ORIGINALS OF THE CONDOMINIUM'S ARTICLES OF**
13 **INCORPORATION, DECLARATION, AND ALL RECORDED COVENANTS AND**
14 **RESTRICTIONS OF THE CONDOMINIUM;**

15 (3) **A COPY OF THE BYLAWS AND RULES OF THE CONDOMINIUM;**

16 (4) **THE MINUTE BOOKS, INCLUDING ALL MINUTES;**

17 (5) **THE BOOKS AND RECORDS OF THE CONDOMINIUM;**

18 (6) **ANY POLICIES, RULES, AND REGULATIONS ADOPTED BY THE**
19 **GOVERNING BODY;**

20 (7) **THE FINANCIAL RECORDS OF THE CONDOMINIUM FROM THE**
21 **DATE OF INCORPORATION TO THE DATE OF TRANSFER OF CONTROL, INCLUDING**
22 **BUDGET INFORMATION REGARDING ESTIMATED AND ACTUAL EXPENDITURES**
23 **BY THE CONDOMINIUM;**

24 (8) **A COPY OF ALL CONTRACTS TO WHICH THE CONDOMINIUM IS**
25 **A PARTY;**

26 (9) **THE NAME, ADDRESS, AND TELEPHONE NUMBER OF ANY**
27 **CONTRACTOR OR SUBCONTRACTOR EMPLOYED BY THE CONDOMINIUM;**

28 (10) **ANY INSURANCE POLICIES IN EFFECT;**

29 (11) **ANY PERMIT ISSUED TO THE CONDOMINIUM BY THE STATE OR**
30 **FEDERAL GOVERNMENT;**

1 **(12) ANY WARRANTY IN EFFECT; AND**

2 **(13) DRAWINGS, ARCHITECTURAL PLANS, OR OTHER SUITABLE**
3 **DOCUMENTS, SETTING FORTH THE NECESSARY INFORMATION FOR LOCATION,**
4 **MAINTENANCE, AND REPAIR OF ALL CONDOMINIUM FACILITIES.**

5 11B-101.

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

8 (b) “Common areas” means property which is owned or leased by a
9 homeowners association.

10 (c) “Declarant” means any person [who] **THAT** subjects property to a
11 declaration.

12 (d) (1) “Declaration” means an instrument, however denominated,
13 recorded among the land records of the county in which the property of the declarant
14 is located, that creates the authority for a homeowners association to impose on lots, or
15 on the owners or occupants of lots, or on another homeowners association,
16 condominium, or cooperative housing corporation any mandatory fee in connection
17 with the provision of services or otherwise for the benefit of some or all of the lots, the
18 owners or occupants of lots, or the common areas.

19 (2) “Declaration” includes any amendment or supplement to the
20 instruments described in paragraph (1) of this subsection.

21 (3) “Declaration” does not include a private right-of-way or similar
22 agreement unless it requires a mandatory fee payable annually or at more frequent
23 intervals.

24 (e) “Depository” or “homeowners association depository” means the document
25 file created by the clerk of the court of each county and the City of Baltimore where a
26 homeowners association may periodically deposit information as required by this title.

27 (f) **“DEVELOPER” MEANS A PERSON THAT:**

28 **(1) BUILDS THE DEVELOPMENT SERVED BY A HOMEOWNERS**
29 **ASSOCIATION; OR**

30 **(2) SUCCEEDS TO THE RIGHTS AND LIABILITIES OF THE PERSON**
31 **THAT CREATED THE DEVELOPMENT SERVED BY A HOMEOWNERS ASSOCIATION.**

32 (g) (1) “Development” means property subject to a declaration.

1 (2) “Development” includes property comprising a condominium or
2 cooperative housing corporation to the extent that the property is part of a
3 development.

4 (3) “Development” does not include a cooperative housing corporation
5 or a condominium.

6 [(g)] (H) “Electronic transmission” means any form of communication, not
7 directly involving the physical transmission of paper, that creates a record that:

8 (1) May be retained, retrieved, and reviewed by a recipient of the
9 communication; and

10 (2) May be reproduced directly in paper form by a recipient through an
11 automated process.

12 [(h)] (I) “Governing body” means the homeowners association, board of
13 directors, or other entity established to govern the development.

14 [(i)] (J) (1) “Homeowners association” means a person having the
15 authority to enforce the provisions of a declaration.

16 (2) “Homeowners association” includes an incorporated or
17 unincorporated association.

18 [(j)] (K) (1) “Lot” means any plot or parcel of land on which a dwelling is
19 located or will be located within a development.

20 (2) “Lot” includes a unit within a condominium or cooperative housing
21 corporation if the condominium or cooperative housing corporation is part of a
22 development.

23 [(k)] (L) “Primary development” means a development such that the
24 purchaser of a lot will pay fees directly to its homeowners association.

25 [(l)] (M) “Recorded covenants and restrictions” means any instrument of
26 writing which is recorded in the land records of the jurisdiction within which a lot is
27 located, and which instrument governs or otherwise legally restricts the use of such
28 lot.

29 [(m)] (N) “Related development” means a development such that the
30 purchaser of a lot will pay fees to the homeowners association of such development
31 through the homeowners association of a primary development or another
32 development.

1 [(n)] (O) “Unaffiliated declarant” means a person [who] **THAT** is not
2 affiliated with the vendor of a lot but [who] **THAT** has subjected such property to a
3 declaration required to be disclosed by this title.

4 11B-102.

5 (e) Except as provided in [§ 11B-101(f)] § **11B-101(G)** of this title, this title
6 does not apply to any property which is:

7 (1) Part of a condominium regime governed by Title 11 of this article;

8 (2) Part of a cooperative housing corporation; or

9 (3) To be occupied and used for nonresidential purposes.

10 **11B-106.1.**

11 (A) **LOT OWNERS IN A DEVELOPMENT OTHER THAN THE DEVELOPER**
12 **ARE ENTITLED TO ELECT ALL THE MEMBERS OF THE GOVERNING BODY OF THE**
13 **HOMEOWNERS ASSOCIATION WHEN:**

14 (1) **AT LEAST 75% OF THE LOTS IN THE DEVELOPMENT ARE SOLD**
15 **UNDER BONA FIDE ARM’S LENGTH CONTRACTS TO MEMBERS OF THE PUBLIC**
16 **WHO INTEND TO OCCUPY OR RENT THE LOTS FOR RESIDENTIAL PURPOSES; OR**

17 (2) **IF A LESSER PERCENTAGE IS SPECIFIED IN THE GOVERNING**
18 **DOCUMENTS OF THE HOMEOWNERS ASSOCIATION, THE SPECIFIED LESSER**
19 **PERCENTAGE OF LOTS IN THE DEVELOPMENT ARE SOLD UNDER BONA FIDE**
20 **ARM’S LENGTH CONTRACTS TO MEMBERS OF THE PUBLIC WHO INTEND TO**
21 **OCCUPY OR RENT THE LOTS FOR RESIDENTIAL PURPOSES.**

22 (B) **WITHIN 30 DAYS AFTER THE TIME THAT THE LOT OWNERS ARE**
23 **ENTITLED TO ELECT THE GOVERNING BODY OF THE HOMEOWNERS**
24 **ASSOCIATION AS PROVIDED IN SUBSECTION (A) OF THIS SECTION, THE**
25 **DEVELOPER SHALL:**

26 (1) **SCHEDULE A TRANSITIONAL MEETING TO ELECT A NEW**
27 **GOVERNING BODY;**

28 (2) **GIVE NOTICE TO THE LOT OWNERS OF THE DATE OF THE**
29 **TRANSITIONAL MEETING AND THE LOT OWNERS’ RIGHT TO ELECT A NEW**
30 **GOVERNING BODY; AND**

1 **(3) OBTAIN THE RESIGNATION OF ALL MEMBERS OF THE**
2 **GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION APPOINTED BY THE**
3 **DEVELOPER.**

4 **(C) WITHIN 60 DAYS AFTER THE TIME THE LOT OWNERS ARE ENTITLED**
5 **TO ELECT THE GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION AS**
6 **PROVIDED IN SUBSECTION (A) OF THIS SECTION, THE DEVELOPER SHALL:**

7 **(1) HOLD A TRANSITIONAL MEETING FOR THE LOT OWNERS TO**
8 **ELECT A NEW GOVERNING BODY; AND**

9 **(2) DELIVER THE FOLLOWING ITEMS TO THE GOVERNING BODY**
10 **AT THE DEVELOPER'S EXPENSE:**

11 **(I) THE DEED TO THE COMMON AREAS;**

12 **(II) THE ORIGINALS OF THE HOMEOWNERS ASSOCIATION'S**
13 **ARTICLES OF INCORPORATION, DECLARATION, AND ALL RECORDED COVENANTS**
14 **AND RESTRICTIONS OF THE PRIMARY DEVELOPMENT AND OF RELATED**
15 **DEVELOPMENTS;**

16 **(III) A COPY OF THE BYLAWS AND RULES OF THE PRIMARY**
17 **DEVELOPMENT AND OF OTHER RELATED DEVELOPMENTS;**

18 **(IV) THE MINUTE BOOKS, INCLUDING ALL MINUTES;**

19 **(V) THE BOOKS AND RECORDS OF THE HOMEOWNERS**
20 **ASSOCIATION;**

21 **(VI) ANY POLICIES, RULES, AND REGULATIONS ADOPTED BY**
22 **THE GOVERNING BODY;**

23 **(VII) THE FINANCIAL RECORDS OF THE HOMEOWNERS**
24 **ASSOCIATION FROM THE DATE OF INCORPORATION TO THE DATE OF TRANSFER**
25 **OF CONTROL, INCLUDING BUDGET INFORMATION REGARDING ESTIMATED AND**
26 **ACTUAL EXPENDITURES BY THE HOMEOWNERS ASSOCIATION;**

27 **(VIII) A COPY OF ALL CONTRACTS TO WHICH THE**
28 **HOMEOWNERS ASSOCIATION IS A PARTY;**

29 **(IX) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF ANY**
30 **CONTRACTOR OR SUBCONTRACTOR EMPLOYED BY THE HOMEOWNERS**
31 **ASSOCIATION;**

1 (X) ANY INSURANCE POLICIES IN EFFECT;

2 (XI) ANY PERMIT ISSUED TO THE HOMEOWNERS
3 ASSOCIATION BY THE STATE OR FEDERAL GOVERNMENT;

4 (XII) ANY WARRANTY IN EFFECT;

5 (XIII) THE RESIGNATIONS OF ALL MEMBERS OF THE
6 GOVERNING BODY REQUIRED TO RESIGN BECAUSE OF THE TRANSITION OF
7 ASSOCIATION CONTROL;

8 (XIV) THE HOMEOWNERS ASSOCIATION FUNDS;

9 (XV) THE TANGIBLE PROPERTY OF THE HOMEOWNERS
10 ASSOCIATION; AND

11 (XVI) A ROSTER OF CURRENT LOT OWNERS, INCLUDING
12 THEIR ADDRESSES, TELEPHONE NUMBERS, AND LOT NUMBERS.

13 (D) (1) THIS SUBSECTION DOES NOT APPLY TO A CONTRACT
14 ENTERED INTO BEFORE OCTOBER 1, 2008.

15 (2) UNTIL ALL MEMBERS OF THE GOVERNING BODY ARE
16 ELECTED BY THE LOT OWNERS AS SPECIFIED IN SUBSECTION (A) OF THIS
17 SECTION, THE GOVERNING BODY MAY NOT ENTER INTO A CONTRACT THAT DOES
18 NOT CONTAIN A CLAUSE PROVIDING FOR THE TERMINATION OF THE CONTRACT
19 AT THE DISCRETION OF THE HOMEOWNERS ASSOCIATION AT LEAST 60 DAYS
20 AFTER NOTICE.

21 (E) IF THE DEVELOPER FAILS TO COMPLY WITH THE REQUIREMENTS OF
22 THIS SECTION, AN AGGRIEVED LOT OWNER MAY SUBMIT THE DISPUTE TO THE
23 DIVISION OF CONSUMER PROTECTION OF THE OFFICE OF THE ATTORNEY
24 GENERAL UNDER § 11B-115(C) OF THIS TITLE.

25 11B-112.

26 (a) (1) (I) Subject to the provisions of paragraph (2) of this subsection,
27 all books and records kept by or on behalf of the homeowners association shall be
28 made available for examination and copying by a lot owner, a lot owner's mortgagee,
29 and their respective duly authorized agents or attorneys, during normal business
30 hours, and after reasonable notice.

31 (II) BOOKS AND RECORDS REQUIRED TO BE MADE
32 AVAILABLE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL FIRST BE

1 **MADE AVAILABLE TO A LOT OWNER NO LATER THAN 10 BUSINESS DAYS AFTER A**
2 **LOT OWNER FINALIZES THE SALE OF THE LOT FROM A DEVELOPER AND**
3 **REQUESTS TO EXAMINE OR COPY THE BOOKS AND RECORDS.**

4 (2) Books and records kept by or on behalf of a homeowners
5 association may be withheld from public inspection to the extent that they concern:

6 (i) Personnel records;

7 (ii) An individual's medical records;

8 (iii) An individual's financial records;

9 (iv) Records relating to business transactions that are currently
10 in negotiation;

11 (v) The written advice of legal counsel; or

12 (vi) Minutes of a closed meeting of the governing body of the
13 homeowners association.

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