

HOUSE BILL 722

N1

1lr1447

By: **Delegates Holmes and Weir**

Introduced and read first time: February 10, 2011

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Common Interest Communities – Management Services – Required Contract**

3 FOR the purpose of requiring a service provider of certain management services for a
4 common interest community to enter into a written contract with the governing
5 body of the common interest community in order to provide the management
6 services; establishing the right of a common interest community to terminate a
7 management service without penalty if the management service was not
8 provided under a written contract; establishing the right to terminate a certain
9 written contract for cause; prohibiting certain provisions in a certain written
10 contract; requiring a service provider to provide a common interest community
11 with evidence that the service provider carries certain insurance coverage
12 before entering into a certain written contract; authorizing a written contract to
13 provide certain legal defense to a service provider under certain conditions;
14 requiring a written contract that includes accounting or debt collection services
15 to include certain provisions; requiring a certain written contract to make
16 certain provisions regarding certain records and documents of the common
17 interest community; defining certain terms; and generally relating to the
18 requirement of a written contract for the provision of management services to a
19 common interest community.

20 BY adding to

21 Article – Real Property

22 Section 14–133

23 Annotated Code of Maryland

24 (2010 Replacement Volume and 2010 Supplement)

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

27 **Article – Real Property**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 14-133.

2 (A) (1) IN THIS SECTION THE FOLLOWING TERMS HAVE THE
3 MEANINGS INDICATED.

4 (2) "COMMON INTEREST COMMUNITY" MEANS:

5 (I) A CONDOMINIUM COUNCIL OF UNIT OWNERS
6 ORGANIZED UNDER TITLE 11 OF THIS ARTICLE;

7 (II) A HOMEOWNERS ASSOCIATION ORGANIZED UNDER
8 TITLE 11B OF THIS ARTICLE; OR

9 (III) A COOPERATIVE HOUSING CORPORATION ORGANIZED
10 UNDER TITLE 5, SUBTITLE 6B OF THE CORPORATIONS AND ASSOCIATIONS
11 ARTICLE.

12 (3) "GOVERNING BODY" MEANS:

13 (I) THE BOARD OF DIRECTORS OF A CONDOMINIUM
14 COUNCIL OF UNIT OWNERS ORGANIZED UNDER TITLE 11 OF THIS ARTICLE;

15 (II) THE BOARD OF DIRECTORS OR OTHER GOVERNING
16 BODY OF A HOMEOWNERS ASSOCIATION ORGANIZED UNDER TITLE 11B OF THIS
17 ARTICLE; OR

18 (III) THE BOARD OF DIRECTORS OF A COOPERATIVE
19 HOUSING CORPORATION ORGANIZED UNDER TITLE 5, SUBTITLE 6B OF THE
20 CORPORATIONS AND ASSOCIATIONS ARTICLE.

21 (4) (I) "MANAGEMENT SERVICES" MEANS THE MANAGING OF
22 THE COMMON PROPERTY AND SERVICES OF A COMMON INTEREST COMMUNITY
23 WITH THE AUTHORITY OF THE GOVERNING BODY IN ITS BUSINESS, LEGAL,
24 FINANCIAL, OR OTHER TRANSACTIONS WITH MEMBERS OF THE COMMON
25 INTEREST COMMUNITY AND NONMEMBERS FOR A FEE, COMMISSION, OR OTHER
26 VALUABLE CONSIDERATION.

27 (II) "MANAGEMENT SERVICES" INCLUDES:

28 1. COLLECTING MONTHLY ASSESSMENTS;

29 2. PREPARING BUDGETS, FINANCIAL STATEMENTS,
30 OR OTHER FINANCIAL REPORTS;

1 3. NEGOTIATING CONTRACTS OR OTHERWISE
2 COORDINATING OR ARRANGING FOR SERVICES OR THE PURCHASE OF
3 PROPERTY OR GOODS FOR OR ON BEHALF OF A COMMON INTEREST
4 COMMUNITY;

5 4. EXECUTING THE RESOLUTIONS AND DECISIONS
6 OF A GOVERNING BODY AND ASSISTING THE GOVERNING BODY AND MEMBERS
7 OF A COMMON INTEREST COMMUNITY IN COMPLYING WITH LAWS, CONTRACTS,
8 COVENANTS, RULES, AND BYLAWS;

9 5. MANAGING THE OPERATION AND MAINTENANCE
10 OF PROPERTY OWNED BY A COMMON INTEREST COMMUNITY, INCLUDING A
11 COMMUNITY CENTER, POOL, GOLF COURSE, AND PARKING AREA; AND

12 6. ARRANGING, CONDUCTING, OR COORDINATING
13 MEETINGS OF A COMMON INTEREST COMMUNITY OR A GOVERNING BODY.

14 (5) (I) “SERVICE PROVIDER” MEANS A PERSON THAT
15 PROVIDES MANAGEMENT SERVICES.

16 (II) “SERVICE PROVIDER” INCLUDES A SOLE
17 PROPRIETORSHIP.

18 (B) (1) A SERVICE PROVIDER THAT PROVIDES MANAGEMENT
19 SERVICES TO A COMMON INTEREST COMMUNITY IS REQUIRED TO ENTER INTO A
20 WRITTEN CONTRACT WITH THE COMMON INTEREST COMMUNITY BEFORE
21 PROVIDING THE MANAGEMENT SERVICES.

22 (2) THE WRITTEN CONTRACT SHALL BE MADE IN THE NAME OF
23 THE COMMON INTEREST COMMUNITY AND EXECUTED BY ONE OR MORE
24 MEMBERS OF THE GOVERNING BODY.

25 (3) IF THE SERVICE PROVIDER FAILS TO COMPLY WITH
26 PARAGRAPH (1) OF THIS SUBSECTION, THE COMMON INTEREST COMMUNITY
27 MAY TERMINATE THE MANAGEMENT SERVICE WITHOUT PENALTY OR
28 OBLIGATION WITH 10 DAYS’ WRITTEN NOTICE.

29 (C) (1) IN THIS SUBSECTION, “CAUSE” MEANS THAT:

30 (I) EITHER PARTY DOES NOT MAINTAIN INSURANCE
31 COVERAGE AS REQUIRED BY LAW OR ALLOWS INSURANCE COVERAGE AS
32 REQUIRED BY LAW TO LAPSE;

1 (II) EITHER PARTY FAILS TO COMPLY WITH OR IS IN
2 VIOLATION OF A PROVISION OF THE U.S. OR MARYLAND CONSTITUTION,
3 FEDERAL OR STATE LAW OR REGULATION, OR A LOCAL ORDINANCE OR LAW; OR

4 (III) A COURT FINDS EITHER PARTY HAS COMMITTED A
5 MATERIAL BREACH OF THE CONTRACT.

6 (2) EITHER PARTY TO THE WRITTEN CONTRACT MAY TERMINATE
7 THE CONTRACT AT ANY TIME FOR CAUSE WITH 30 DAYS' WRITTEN NOTICE.

8 (3) EITHER PARTY MAY TERMINATE THE WRITTEN CONTRACT
9 DURING THE TERM OF THE CONTRACT WITH 60 DAYS' WRITTEN NOTICE.

10 (D) THE CONTRACT MAY NOT:

11 (1) WAIVE ANY RIGHT OR REMEDY PROVIDED BY LAW;

12 (2) (I) REQUIRE THE COMMON INTEREST COMMUNITY TO PAY
13 A LATE PAYMENT FEE IN EXCESS OF 10% OF THE AMOUNT DUE; OR

14 (II) REQUIRE A LATE PAYMENT FEE UNTIL AT LEAST 15
15 DAYS AFTER THE PAYMENT IS DUE; OR

16 (3) AUTHORIZE THE SERVICE PROVIDER TO TAKE POSSESSION
17 OF ANY COMMON INTEREST COMMUNITY PROPERTY WITHOUT THE USE OF
18 FORMAL LEGAL PROCESS.

19 (E) THE WRITTEN CONTRACT MAY NOT CONTAIN AN AUTOMATIC
20 RENEWAL PROVISION OF MORE THAN 1 MONTH UNLESS:

21 (1) THE AUTOMATIC RENEWAL PROVISION IS DISTINCTLY AND
22 PROMINENTLY SET APART IN THE CONTRACT; AND

23 (2) A MEMBER OF THE GOVERNING BODY INITIALS THE
24 PROVISION TO INDICATE AGREEMENT OF THE COMMON INTEREST COMMUNITY.

25 (F) BEFORE ENTERING INTO A WRITTEN CONTRACT UNDER THIS
26 SECTION, A SERVICE PROVIDER SHALL PROVIDE THE COMMON INTEREST
27 COMMUNITY WITH EVIDENCE THAT THE SERVICE PROVIDER HAS IN PLACE:

28 (1) A COMMERCIAL PROPERTY AND LIABILITY INSURANCE
29 POLICY WITH A MINIMUM OF \$1,000,000 COVERAGE; AND

1 **(2) A WORKERS COMPENSATION POLICY WITH A MINIMUM OF**
2 **\$500,000 COVERAGE.**

3 **(G) A WRITTEN CONTRACT MAY CONTAIN A PROVISION THAT THE**
4 **COMMON INTEREST COMMUNITY WILL DEFEND THE SERVICE PROVIDER IN ANY**
5 **CLAIM AGAINST THE COMMON INTEREST COMMUNITY OR THE SERVICE**
6 **PROVIDER AS LONG AS:**

7 **(1) THE SERVICE PROVIDER ACTED UNDER THE EXPRESS OR**
8 **IMPLIED AUTHORITY OF THE GOVERNING BODY; AND**

9 **(2) THE SERVICE PROVIDER DID NOT ACT WITH WILLFUL OR**
10 **GROSS NEGLIGENCE.**

11 **(H) (1) A WRITTEN CONTRACT THAT INCLUDES ACCOUNTING OR**
12 **DEBT COLLECTION SERVICES SHALL PROVIDE THAT FUNDS RECEIVED BY THE**
13 **SERVICE PROVIDER BE PLACED IN AN ACCOUNT IDENTIFIED AS AN ACCOUNT OF**
14 **THE COMMON INTEREST COMMUNITY BY NAME AND FEDERAL IDENTIFICATION**
15 **NUMBER.**

16 **(2) (I) A WRITTEN CONTRACT THAT INCLUDES ACCOUNTING**
17 **SERVICES SHALL PROVIDE THAT THE SERVICE PROVIDER SHALL ISSUE A**
18 **WRITTEN REPORT TO THE GOVERNING BODY OF ALL ACCOUNTING ACTIVITY**
19 **WITHIN 30 DAYS FOLLOWING THE END OF A MONTH.**

20 **(II) THE REPORT MAY BE PROVIDED ELECTRONICALLY AND**
21 **SHALL INCLUDE:**

22 1. **A LIST OF ALL FINANCIAL TRANSACTIONS;**

23 2. **A REPORT OF ALL UNIT OWNER OR HOMEOWNER**
24 **PAYMENTS AND ACCOUNT BALANCES;**

25 3. **ALL PAID AND UNPAID INVOICES;**

26 4. **A BALANCE SHEET; AND**

27 5. **A COMPARISON OF THE MONTH AND YEAR TO**
28 **DATE ACTUAL INCOME AND EXPENSES WITH THE COMMON INTEREST**
29 **COMMUNITY'S BUDGET.**

30 **(3) A WRITTEN CONTRACT ENTERED INTO UNDER THIS**
31 **SUBSECTION SHALL CONTAIN A PROVISION THAT ALL FUNDS BELONGING TO**
32 **THE COMMON INTEREST COMMUNITY SHALL BE RETURNED TO THE COMMON**

1 INTEREST COMMUNITY WITHIN 15 DAYS FOLLOWING THE FINAL REPORT OF
2 MONTHLY ACCOUNTING SERVICES OR WITHIN 30 DAYS OF THE TERMINATION OF
3 DEBT COLLECTION SERVICES.

4 (I) THE WRITTEN CONTRACT SHALL PROVIDE THAT ALL RECORDS AND
5 DOCUMENTS OF THE COMMON INTEREST COMMUNITY THAT RELATE TO THE
6 WORK OF THE SERVICE PROVIDER:

7 (1) REMAIN THE PROPERTY OF THE COMMON INTEREST
8 COMMUNITY;

9 (2) MAY BE HELD BY THE SERVICE PROVIDER DURING THE
10 NORMAL COURSE OF BUSINESS;

11 (3) SHALL BE MADE AVAILABLE FOR INSPECTION BY THE
12 COMMON INTEREST COMMUNITY DURING THE TERM OF THE CONTRACT DURING
13 THE SERVICE PROVIDER'S NORMAL BUSINESS HOURS; AND

14 (4) SHALL BE RETURNED TO THE COMMON INTEREST
15 COMMUNITY WITHIN 30 DAYS OF THE TERMINATION OF THE CONTRACT.

16 (J) A WRITTEN CONTRACT CONTAINING A PROVISION PROHIBITED BY
17 THIS SECTION MAY NOT BE ENFORCED.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2011.