

HOUSE BILL 259

N1
HB 1141/13 – ENV

4r1251
CF SB 207

By: **Delegate Frush**

Introduced and read first time: January 20, 2014

Assigned to: Environmental Matters

A BILL ENTITLED

AN ACT concerning

Condominiums – Warranty Claims

FOR the purpose of establishing that, notwithstanding any provision in the declaration, bylaws, or rules and regulations of the condominium, a council of unit owners has the right to be involved in a certain manner in certain litigation or administrative proceedings affecting the condominium and to enforce implied warranties made to the council of unit owners by the developer; making unenforceable a provision of a declaration, a bylaw, a contract for the initial sale of a unit, or any other instrument made by a developer or vendor in accordance with certain provisions of law relating to certain claims that purports to shorten the statute of limitations applicable to the claim, purports to waive the application of a certain rule, or requires a unit owner or the council of unit owners to assert a certain claim within a certain period of time under certain circumstances; making unenforceable a provision of a declaration, a bylaw, a contract for the initial sale of a unit, or any other instrument made by a developer or vendor in accordance with certain provisions of law that requires a certain vote of unit owners as a precondition to the institution or maintenance of certain proceedings unless the council of unit owners adopts the provision under certain circumstances; and generally relating to warranty claims for condominiums.

BY repealing and reenacting, with amendments,

Article – Real Property

Section 11–109(d)

Annotated Code of Maryland

(2010 Replacement Volume and 2013 Supplement)

BY adding to

Article – Real Property

Section 11–134.1

Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2010 Replacement Volume and 2013 Supplement)

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

Article – Real Property

11–109.

(d) The council of unit owners may be either incorporated as a nonstock corporation or unincorporated and it is subject to those provisions of Title 5, Subtitle 2 of the Corporations and Associations Article which are not inconsistent with this title. The council of unit owners has, subject to any provision of this title, and except as provided in [item] **ITEMS (4), (19), AND (22)** of this subsection, the declaration, and bylaws, the following powers:

(1) To have perpetual existence, subject to the right of the unit owners to terminate the condominium regime as provided in § 11–123 of this title;

(2) To adopt and amend reasonable rules and regulations;

(3) To adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;

(4) To sue and be sued, complain and defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium, **NOTWITHSTANDING ANY PROVISION IN THE DECLARATION, BYLAWS, OR RULES AND REGULATIONS;**

(5) To transact its business, carry on its operations and exercise the powers provided in this subsection in any state, territory, district, or possession of the United States and in any foreign country;

(6) To make contracts and guarantees, incur liabilities and borrow money, sell, mortgage, lease, pledge, exchange, convey, transfer, and otherwise dispose of any part of its property and assets;

(7) To issue bonds, notes, and other obligations and secure the same by mortgage or deed of trust of any part of its property, franchises, and income;

(8) To acquire by purchase or in any other manner, to take, receive, own, hold, use, employ, improve, and otherwise deal with any property, real or personal, or any interest therein, wherever located;

(9) To hire and terminate managing agents and other employees, agents, and independent contractors;

(10) To purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligation of corporations of the State, or foreign corporations, and of associations, partnerships, and individuals;

(11) To invest its funds and to lend money in any manner appropriate to enable it to carry on the operations or to fulfill the purposes named in the declaration or bylaws, and to take and to hold real and personal property as security for the payment of funds so invested or loaned;

(12) To regulate the use, maintenance, repair, replacement, and modification of common elements;

(13) To cause additional improvements to be made as a part of the general common elements;

(14) To grant easements, rights-of-way, licenses, leases in excess of 1 year, or similar interests through or over the common elements in accordance with § 11-125(f) of this title;

(15) To impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements;

(16) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the council of unit owners, under § 11-113 of this title;

(17) To impose reasonable charges for the preparation and recordation of amendments to the declaration, bylaws, rules, regulations, or resolutions, resale certificates, or statements of unpaid assessments;

(18) To provide for the indemnification of and maintain liability insurance for officers, directors, and any managing agent or other employee charged with the operation or maintenance of the condominium;

(19) To enforce the implied warranties made to the council of unit owners by the developer under § 11-131 of this title, **NOTWITHSTANDING ANY PROVISION IN THE DECLARATION, BYLAWS, OR RULES AND REGULATIONS;**

(20) To enforce the provisions of this title, the declaration, bylaws, and rules and regulations of the council of unit owners against any unit owner or occupant;

(21) Generally, to exercise the powers set forth in this title and the declaration or bylaws and to do every other act not inconsistent with law, which may

be appropriate to promote and attain the purposes set forth in this title, the declaration or bylaws; and

(22) To designate parking for individuals with disabilities, notwithstanding any provision in the declaration, bylaws, or rules and regulations.

11-134.1.

(A) THIS SECTION DOES NOT APPLY TO A CONDOMINIUM THAT IS OCCUPIED AND USED SOLELY FOR NONRESIDENTIAL PURPOSES.

(B) (1) ANY PROVISION OF A DECLARATION, A BYLAW, A CONTRACT FOR THE INITIAL SALE OF A UNIT TO A MEMBER OF THE PUBLIC, OR ANY OTHER INSTRUMENT MADE BY A DEVELOPER OR VENDOR IN ACCORDANCE WITH THIS TITLE SHALL BE UNENFORCEABLE IF THE PROVISION:

(I) PURPORTS TO SHORTEN THE STATUTE OF LIMITATIONS APPLICABLE TO ANY CLAIM;

(II) PURPORTS TO WAIVE THE APPLICATION OF THE “DISCOVERY RULE” OR OTHER ACCRUAL DATE APPLICABLE TO A CLAIM;

(III) REQUIRES A UNIT OWNER OR THE COUNCIL OF UNIT OWNERS TO ASSERT A CLAIM SUBJECT TO ARBITRATION WITHIN A PERIOD OF TIME THAT IS SHORTER THAN THE STATUTE OF LIMITATIONS APPLICABLE TO THE CLAIM; OR

(IV) OPERATES TO PREVENT A UNIT OWNER OR THE COUNCIL OF UNIT OWNERS FROM FILING A LAWSUIT, INITIATING ARBITRATION PROCEEDINGS, OR OTHERWISE ASSERTING A CLAIM WITHIN THE STATUTE OF LIMITATIONS APPLICABLE TO THE CLAIM.

(2) PARAGRAPH (1) OF THIS SUBSECTION ONLY APPLIES TO A PROVISION RELATING TO THE RIGHT OF A UNIT OWNER OR COUNCIL OF UNIT OWNERS TO BRING A CLAIM ALLEGING THE FAILURE TO COMPLY WITH:

(I) APPLICABLE BUILDING CODES;

(II) COUNTY-APPROVED PLANS AND SPECIFICATIONS;

(III) MANUFACTURER’S INSTALLATION INSTRUCTIONS; OR

(IV) OTHER APPLICABLE CONSTRUCTION INDUSTRY STANDARDS.

(C) (1) ANY PROVISION OF A DECLARATION, A BYLAW, A CONTRACT FOR THE INITIAL SALE OF A UNIT TO A MEMBER OF THE PUBLIC, OR ANY OTHER INSTRUMENT MADE BY A DEVELOPER OR VENDOR IN ACCORDANCE WITH THIS TITLE THAT REQUIRES THE COUNCIL OF UNIT OWNERS TO OBTAIN A VOTE OF UNIT OWNERS OR THE APPROVAL OF THE DEVELOPER OR ANY NONUNIT OWNERS AS A PRECONDITION TO THE INSTITUTION OR MAINTENANCE OF A LAWSUIT, AN ARBITRATION, A MEDIATION, OR A SIMILAR PROCEEDING SHALL BE UNENFORCEABLE UNLESS THE COUNCIL OF UNIT OWNERS ADOPTS THE PROVISION ON A DATE FOLLOWING THE DATE ON WHICH THE UNIT OWNERS, OTHER THAN THE DEVELOPER AND ITS AFFILIATES, FIRST ELECT A CONTROLLING MAJORITY OF THE MEMBERS OF THE BOARD OF DIRECTORS FOR THE COUNCIL OF UNIT OWNERS.

(2) THE ADOPTION OF THE PROVISION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION SHALL BE ACCOMPLISHED IN ACCORDANCE WITH THE SAME REQUIREMENTS NECESSARY TO AMEND THE DECLARATION OR BYLAWS UNDER THIS TITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.