

HOUSE BILL 1170

N1

6lr3180
CF SB 250

By: **Delegate Frush**

Introduced and read first time: February 11, 2016

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Condominiums – Warranty Claims**

3 FOR the purpose of establishing that, notwithstanding any provision in the declaration,
4 bylaws, or rules and regulations of the condominium, a council of unit owners has
5 the right to be involved in a certain manner in certain litigation or administrative
6 proceedings affecting the condominium and to enforce implied warranties made to
7 the council of unit owners by the developer; making unenforceable a provision of a
8 declaration, a bylaw, a contract for the initial sale of a unit, or any other instrument
9 made by a developer or vendor in accordance with certain provisions of law relating
10 to certain claims that purports to shorten the statute of limitations applicable to the
11 claim, purports to waive the application of a certain rule, requires a unit owner or
12 the council of unit owners to assert a certain claim within a certain period of time
13 under certain circumstances, or operates to prevent a unit owner or the council of
14 unit owners from asserting a certain claim within a certain period of time; making
15 unenforceable a provision of a declaration, a bylaw, a contract for the initial sale of
16 a unit, or any other instrument made by a developer or vendor in accordance with
17 certain provisions of law that requires a certain vote of unit owners as a precondition
18 to the institution or maintenance of certain proceedings unless the council of unit
19 owners adopts the provision under certain circumstances; defining a certain term;
20 providing for the application of this Act; and generally relating to warranty claims
21 for condominiums.

22 BY repealing and reenacting, with amendments,

23 Article – Real Property

24 Section 11–109(d)

25 Annotated Code of Maryland

26 (2015 Replacement Volume)

27 BY adding to

28 Article – Real Property

29 Section 11–134.1

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2015 Replacement Volume)

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

5 **Article – Real Property**

6 11–109.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (21) Generally, to exercise the powers set forth in this title and the
33 declaration or bylaws and to do every other act not inconsistent with law, which may be
34 appropriate to promote and attain the purposes set forth in this title, the declaration or
35 bylaws; and

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

3 **11-134.1.**

4 (A) IN THIS SECTION, "VENDOR" HAS THE MEANING STATED IN § 10-201 OF
5 THIS ARTICLE.

6 (B) THIS SECTION DOES NOT APPLY TO:

7 (1) A UNIT OR A CONDOMINIUM REGIME THAT IS OCCUPIED AND USED
8 SOLELY FOR NONRESIDENTIAL PURPOSES;

9 (2) A SETTLEMENT AGREEMENT OR OTHER INSTRUMENT ENTERED
10 INTO BY A DEVELOPER OR VENDOR AND A COUNCIL OF UNIT OWNERS FOR THE
11 PURPOSE OF SETTTLING A DISPUTED CLAIM AFTER THE DATE ON WHICH THE UNIT
12 OWNERS, OTHER THAN THE DEVELOPER AND ITS AFFILIATES, FIRST ELECT A
13 CONTROLLING MAJORITY OF THE MEMBERS OF THE BOARD OF DIRECTORS FOR THE
14 COUNCIL OF UNIT OWNERS; OR

15 (3) A SETTLEMENT AGREEMENT OR OTHER INSTRUMENT ENTERED
16 INTO BY A DEVELOPER OR VENDOR AND A UNIT OWNER FOR THE PURPOSE OF
17 SETTTLING A DISPUTED CLAIM AFTER THE DATE THE UNIT IS CONVEYED TO THE
18 PURCHASER OF THE UNIT.

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

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

25 (II) PURPORTS TO WAIVE THE APPLICATION OF THE
26 "DISCOVERY RULE" OR OTHER ACCRUAL DATE APPLICABLE TO A CLAIM;

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

31 (IV) OPERATES TO PREVENT A UNIT OWNER OR THE COUNCIL OF
32 UNIT OWNERS FROM FILING A LAWSUIT, INITIATING ARBITRATION PROCEEDINGS,

1 OR OTHERWISE ASSERTING A CLAIM WITHIN THE STATUTE OF LIMITATIONS
2 APPLICABLE TO THE CLAIM.

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

7 (I) APPLICABLE BUILDING CODES;

8 (II) PLANS AND SPECIFICATIONS APPROVED BY A COUNTY OR
9 MUNICIPALITY;

10 (III) MANUFACTURER'S INSTALLATION INSTRUCTIONS;

11 (IV) WARRANTY PROVISIONS UNDER § 10-203 OF THIS ARTICLE
12 AND § 11-131 OF THIS TITLE, SUBJECT TO ANY APPLICABLE EXCEPTIONS UNDER §
13 10-203 OF THIS ARTICLE; OR

14 (V) ACCEPTABLE INDUSTRY STANDARDS FOR MATERIALS AND
15 WORKMANSHIP IN EFFECT WHEN THE BUILDING WAS CONSTRUCTED.

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

27 (2) THE COUNCIL OF UNIT OWNERS SHALL PROVIDE WRITTEN NOTICE
28 TO EACH UNIT OWNER BEFORE ADOPTING A PROVISION DESCRIBED IN PARAGRAPH
29 (1) OF THIS SUBSECTION.

30 (3) THE ADOPTION OF A PROVISION DESCRIBED IN PARAGRAPH (1)
31 OF THIS SUBSECTION SHALL BE ACCOMPLISHED IN ACCORDANCE WITH THE
32 REQUIREMENTS NECESSARY TO AMEND THE DECLARATION OR BYLAWS UNDER THIS
33 TITLE.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
2 apply only prospectively and may not be applied or interpreted to have any effect on or
3 application to:

4 (1) any provision of a declaration or bylaws of a condominium recorded in
5 the land records of the county where the property is located before the effective date of this
6 Act; or

7 (2) any other instrument executed before the effective date of this Act.

8 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2016.