

SENATE BILL 816

N1

6lr3261
CF 6lr1435

By: **Senator Muse**

Introduced and read first time: February 5, 2016

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Condominiums and Homeowners Associations – Resales –**
3 **Disclosures and Fees**

4 FOR the purpose of altering the contents of a certain certificate that a unit owner is
5 required to furnish to a purchaser on resale of a condominium unit under certain
6 circumstances; specifying a certain maximum fee that a council of unit owners may
7 charge for furnishing a certificate to a unit owner under certain circumstances;
8 authorizing a council of unit owners to charge certain maximum fees for the
9 inspection of a unit and delivery of a certificate under certain circumstances;
10 requiring the Department of Housing and Community Development to adjust in a
11 certain manner the maximum fee that a council of unit owners may charge for
12 furnishing a certificate to a unit owner under certain circumstances; requiring the
13 Department to maintain on its Web site a list of certain maximum fees that may be
14 charged by a council of unit owners or homeowners association; requiring a
15 homeowners association to provide certain information to a lot owner on resale of a
16 lot within a certain time period after receipt of a written request and a certain fee;
17 authorizing a homeowners association to charge certain fees for the delivery of
18 information under certain circumstances; requiring the Department to adjust in a
19 certain manner the maximum fee that a homeowners association may charge for
20 furnishing information to a lot owner under certain circumstances; and generally
21 relating to resales in condominiums and homeowners associations.

22 BY repealing and reenacting, without amendments,

23 Article – Real Property

24 Section 11–135(b)

25 Annotated Code of Maryland

26 (2015 Replacement Volume)

27 BY repealing and reenacting, with amendments,

28 Article – Real Property

29 Section 11–135(a) and (c) and 11B–106

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 11–135.

7 (a) Except as provided in subsection (b) of this section, a contract for the resale of
8 a unit by a unit owner other than a developer is not enforceable unless the contract of sale
9 contains in conspicuous type a notice in the form specified in subsection (g)(1) of this
10 section, and the unit owner furnishes to the purchaser not later than 15 days prior to
11 closing:

12 (1) A copy of the declaration (other than the plats);

13 (2) The bylaws;

14 (3) The rules or regulations of the condominium;

15 (4) A certificate containing:

16 (i) A statement disclosing the effect on the proposed conveyance of
17 any right of first refusal or other restraint on the free alienability of the unit other than
18 any restraint created by the unit owner;

19 (ii) A statement setting forth the amount of the [monthly] common
20 expense assessment and any unpaid common expense or special assessment [currently]
21 **ADOPTED BY THE COUNCIL OF UNIT OWNERS THAT IS** due and payable from the selling
22 unit owner;

23 (iii) A statement of any other fees payable by the unit owners to the
24 council of unit owners;

25 (iv) A statement of any capital expenditures approved by the council
26 of unit owners planned at the time of the conveyance which are not reflected in the current
27 operating budget disclosed under item (vi) of this item;

28 (v) The most recent regularly prepared balance sheet and income
29 expense statement, if any, of the condominium;

30 (vi) The current operating budget of the condominium including
31 [details concerning the reserve fund for repair and replacement and its intended use] **THE**
32 **CURRENT RESERVE STUDY REPORT OR A SUMMARY OF THE REPORT, A STATEMENT**

1 **OF THE STATUS AND AMOUNT OF ANY RESERVE OR REPLACEMENT FUND**, or a
2 statement that there is no reserve fund;

3 (vii) A statement of any **UNSATISFIED** judgments [against the
4 condominium and the existence of any] **OR** pending [suits] **LAWSUITS** to which the council
5 of unit owners is a party, **EXCLUDING ASSESSMENT COLLECTION SUITS**;

6 (viii) A statement generally describing any insurance policies provided
7 for the benefit of unit owners, a notice that copies of the policies are available for inspection,
8 stating the location at which the copies are available, and a notice that the terms of the
9 policy prevail over the description;

10 (ix) [A statement as to whether the council of unit owners has
11 knowledge that any alteration or improvement to the unit or to the limited common
12 elements assigned to the unit violates any provision of the declaration, bylaws, or rules or
13 regulations;

14 (x)] A statement as to whether the council of unit owners has
15 **ACTUAL** knowledge of any violation of the health or building codes with respect to the [unit,
16 the limited] common elements [assigned to the unit, or any other portion] of the
17 condominium; **AND**

18 [(xi) A statement of the remaining term of any leasehold estate
19 affecting the condominium and the provisions governing any extension or renewal thereof;
20 and

21 (xii)] **(X)** A description of any recreational or other facilities which
22 are to be used by the unit owners or maintained by them or the council of unit owners, and
23 a statement as to whether or not they are to be a part of the common elements;

24 (5) A statement by the unit owner as to whether the unit owner has
25 knowledge:

26 (i) That any alteration to the unit or to the limited common
27 elements assigned to the unit violates any provision of the declaration, bylaws, or rules and
28 regulations;

29 (ii) Of any violation of the health or building codes with respect to
30 the unit or the limited common elements assigned to the unit; and

31 (iii) That the unit is subject to an extended lease under § 11–137 of
32 this title or under local law, and if so, a copy of the lease must be provided; and

33 (6) A written notice of the unit owner's responsibility for the council of unit
34 owners' property insurance deductible and the amount of the deductible.

1 (b) A contract for the resale by a unit owner other than a developer of a unit in a
2 condominium containing less than 7 units is not enforceable unless the contract of sale
3 contains in conspicuous type a notice in the form specified in subsection (g)(2) of this
4 section, and the unit owner furnishes to the purchaser not later than 15 days prior to
5 closing:

6 (1) A copy of the declaration (other than the plats);

7 (2) The bylaws;

8 (3) The rules and regulations of the condominium;

9 (4) A statement by the unit owner of the unit owner's expenses during the
10 preceding 12 months relating to the common elements; and

11 (5) A written notice of the unit owner's responsibility for the council of unit
12 owners' property insurance deductible and the amount of the deductible.

13 (c) (1) **[The] EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS**
14 **SUBSECTION, THE** council of unit owners, within 20 days after a written request by a unit
15 owner and receipt of a reasonable fee therefor, not to exceed the cost to the council of unit
16 owners, if any, **UP TO A MAXIMUM OF \$250**, shall furnish a certificate containing the
17 information necessary to enable the unit owner to comply with subsection (a) of this section.
18 A unit owner providing a certificate under subsection (a) of this section is not liable to the
19 purchaser for any erroneous information provided by the council of unit owners and
20 included in the certificate.

21 **(2) IN ADDITION TO THE FEE UNDER PARAGRAPH (1) OF THIS**
22 **SUBSECTION, THE COUNCIL OF UNIT OWNERS IS ENTITLED TO A REASONABLE FEE**
23 **NOT TO EXCEED \$100 FOR AN INSPECTION OF THE UNIT OWNER'S UNIT, IF**
24 **REQUIRED.**

25 **(3) IN ADDITION TO THE FEES UNDER PARAGRAPHS (1) AND (2) OF**
26 **THIS SUBSECTION, THE COUNCIL OF UNIT OWNERS IS ENTITLED TO A REASONABLE**
27 **FEE:**

28 **(I) NOT TO EXCEED \$50 FOR DELIVERY OF THE CERTIFICATE**
29 **WITHIN 14 DAYS AFTER THE REQUEST FOR THE CERTIFICATE; AND**

30 **(II) NOT TO EXCEED \$100 FOR DELIVERY OF THE CERTIFICATE**
31 **WITHIN 7 DAYS AFTER THE REQUEST FOR THE CERTIFICATE.**

32 **(4) (I) THE DEPARTMENT OF HOUSING AND COMMUNITY**
33 **DEVELOPMENT SHALL ADJUST THE MAXIMUM FEE AUTHORIZED UNDER**
34 **PARAGRAPH (1) OF THIS SUBSECTION TO THE NEAREST \$50 EVERY 2 YEARS,**

1 BEGINNING OCTOBER 1, 2018, TO REFLECT ANY AGGREGATE INCREASE IN THE
2 CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS (CPI-U) FOR
3 WASHINGTON-BALTIMORE, OR ANY SUCCESSOR INDEX, FOR THE PREVIOUS 2
4 YEARS.

5 (II) THE DEPARTMENT OF HOUSING AND COMMUNITY
6 DEVELOPMENT SHALL MAINTAIN ON ITS WEB SITE A LIST OF THE MAXIMUM FEES
7 AUTHORIZED UNDER PARAGRAPH (1) OF THIS SUBSECTION AS ADJUSTED EVERY 2
8 YEARS IN ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH.

9 [(2)] (5) With respect to the remaining information that the unit owner is
10 required to disclose under subsection (a) of this section that is not provided by the council
11 of unit owners and included in the certificate, a unit owner:

12 (i) Except as provided in item (ii) of this paragraph, is liable to the
13 purchaser under this section for damages proximately caused by:

14 1. An untrue statement about a material fact; and

15 2. An omission of a material fact that is necessary to make
16 the statements made not misleading, in light of the circumstances under which the
17 statements were made; and

18 (ii) Is not liable to the purchaser under this section if the owner had,
19 after reasonable investigation, reasonable grounds to believe, and did believe, at the time
20 the information was provided to the purchaser, that the statements were true and that
21 there was no omission to state a material fact necessary to make the statements made not
22 misleading, in light of the circumstances under which the statements were made.

23 11B-106.

24 (a) A contract for the resale of a lot within a development, or for the initial sale of
25 a lot within a development containing 12 or fewer lots, to a member of the public who
26 intends to occupy or rent the lot for residential purposes, is not enforceable by the vendor
27 unless:

28 (1) The purchaser is given, on or before entering into the contract for the
29 sale of such lot, or within 20 calendar days of entering into the contract, the disclosures set
30 forth in subsection (b) of this section;

31 (2) The purchaser is given any changes in mandatory fees and payments
32 exceeding 10 percent of the amount previously stated to exist and any other substantial
33 and material amendment to the disclosures after they become known to the vendor; and

34 (3) The contract of sale contains a notice in conspicuous type, which shall
35 include bold and underscored type, in a form substantially the same as the following:

1 “This sale is subject to the requirements of the Maryland Homeowners Association
2 Act (the “Act”). The Act requires that the seller disclose to you at or before the time the
3 contract is entered into, or within 20 calendar days of entering into the contract, certain
4 information concerning the development in which the lot you are purchasing is located. The
5 content of the information to be disclosed is set forth in § 11B–106(b) of the Act (the “MHAA
6 information”) as follows:

7 (The notice shall include at this point the text of § 11B–106(b) in its entirety).

8 If you have not received all of the MHAA information 5 calendar days or more before
9 entering into the contract, you have 5 calendar days to cancel this contract after receiving
10 all of the MHAA information. You must cancel the contract in writing, but you do not have
11 to state a reason. The seller must also provide you with notice of any changes in mandatory
12 fees exceeding 10% of the amount previously stated to exist and copies of any other
13 substantial and material amendment to the information provided to you. You have 3
14 calendar days to cancel this contract after receiving notice of any changes in mandatory
15 fees, or copies of any other substantial and material amendment to the MHAA information
16 which adversely affects you. If you do cancel the contract you will be entitled to a refund of
17 any deposit you made on account of the contract. However, unless you return the MHAA
18 information to the seller when you cancel the contract, the seller may keep out of your
19 deposit the cost of reproducing the MHAA information, or \$100, whichever amount is less.

20 By purchasing a lot within this development, you will automatically be subject to
21 various rights, responsibilities, and obligations, including the obligation to pay certain
22 assessments to the homeowners association within the development. The lot you are
23 purchasing may have restrictions on:

- 24 (1) Architectural changes, design, color, landscaping, or appearance;
- 25 (2) Occupancy density;
- 26 (3) Kind, number, or use of vehicles;
- 27 (4) Renting, leasing, mortgaging, or conveying property;
- 28 (5) Commercial activity; or
- 29 (6) Other matters.

30 You should review the MHAA information carefully to ascertain your rights,
31 responsibilities, and obligations within the development.”

32 (b) The vendor shall provide the purchaser the following information in writing:

- 33 (1) A statement as to whether the lot is located within a development;

1 (2) (i) The current monthly fees or assessments imposed by the
2 homeowners association upon the lot;

3 (ii) The total amount of fees, assessments, and other charges
4 imposed by the homeowners association upon the lot during the prior fiscal year of the
5 homeowners association; and

6 (iii) A statement of whether any of the fees, assessments, or other
7 charges against the lot are delinquent;

8 (3) The name, address, and telephone number of the management agent of
9 the homeowners association, or other officer or agent authorized by the homeowners
10 association to provide to members of the public, information regarding the homeowners
11 association and the development, or a statement that no agent or officer is presently so
12 authorized by the homeowners association;

13 (4) A statement as to whether the owner has actual knowledge of:

14 (i) The existence of any unsatisfied judgments or pending lawsuits
15 against the homeowners association; and

16 (ii) Any pending claims, covenant violations actions, or notices of
17 default against the lot; and

18 (5) A copy of:

19 (i) The articles of incorporation, the declaration, and all recorded
20 covenants and restrictions of the primary development, and of other related developments
21 to the extent reasonably available, to which the purchaser shall become obligated on
22 becoming an owner of the lot, including a statement that these obligations are enforceable
23 against an owner's tenants, if applicable; and

24 (ii) The bylaws and rules of the primary development, and of other
25 related developments to the extent reasonably available, to which the purchaser shall
26 become obligated on becoming an owner of the lot, including a statement that these
27 obligations are enforceable against an owner and the owner's tenants, if applicable.

28 **(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION,**
29 **WITHIN 20 DAYS AFTER A WRITTEN REQUEST BY A LOT OWNER AND RECEIPT OF A**
30 **REASONABLE FEE, NOT TO EXCEED THE COST TO THE HOMEOWNERS ASSOCIATION,**
31 **IF ANY, UP TO A MAXIMUM OF \$250, THE HOMEOWNERS ASSOCIATION, THE**
32 **MANAGEMENT AGENT OF THE HOMEOWNERS ASSOCIATION, OR ANY OTHER**
33 **AUTHORIZED OFFICER OR AGENT OF THE HOMEOWNERS ASSOCIATION, SHALL**
34 **PROVIDE THE INFORMATION LISTED UNDER SUBSECTION (B) OF THIS SECTION.**

1 **(2) IN ADDITION TO THE FEE UNDER PARAGRAPH (1) OF THIS**
2 **SUBSECTION, THE HOMEOWNERS ASSOCIATION IS ENTITLED TO A REASONABLE FEE:**

3 **(I) NOT TO EXCEED \$50 FOR DELIVERY OF THE INFORMATION**
4 **WITHIN 14 DAYS AFTER THE REQUEST FOR THE INFORMATION; AND**

5 **(II) NOT TO EXCEED \$100 FOR DELIVERY OF THE INFORMATION**
6 **WITHIN 7 DAYS AFTER THE REQUEST FOR THE INFORMATION.**

7 **(3) (I) THE DEPARTMENT OF HOUSING AND COMMUNITY**
8 **DEVELOPMENT SHALL ADJUST THE MAXIMUM FEE AUTHORIZED UNDER**
9 **PARAGRAPH (1) OF THIS SUBSECTION TO THE NEAREST \$50 EVERY 2 YEARS,**
10 **BEGINNING ON OCTOBER 1, 2018, TO REFLECT ANY AGGREGATE INCREASE IN THE**
11 **CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS (CPI-U) FOR**
12 **WASHINGTON-BALTIMORE, OR ANY SUCCESSOR INDEX, FOR THE PREVIOUS 2**
13 **YEARS.**

14 **(II) THE DEPARTMENT OF HOUSING AND COMMUNITY**
15 **DEVELOPMENT SHALL MAINTAIN ON ITS WEB SITE A LIST OF THE MAXIMUM FEES**
16 **AUTHORIZED UNDER PARAGRAPH (1) OF THIS SUBSECTION AS ADJUSTED EVERY 2**
17 **YEARS IN ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH.**

18 **[(c)] (D) (1)** Within 30 calendar days of any resale transfer of a lot within a
19 development, the transferor shall notify the homeowners association for the primary
20 development of the transfer.

21 (2) The notification shall include, to the extent reasonably available, the
22 name and address of the transferee, the name and forwarding address of the transferor,
23 the date of transfer, the name and address of any mortgagee, and the proportionate amount
24 of any outstanding homeowners association fee or assessment assumed by each of the
25 parties to the transaction.

26 **[(d)] (E)** The requirements of subsection (b) of this section shall be deemed to
27 have been fulfilled if the information required to be disclosed is provided to the purchaser
28 in writing in a clear and concise manner. The disclosures may be summarized or produced
29 in any collection of documents, including plats, the declaration, or the organizational
30 documents of the homeowners association, provided those documents effectively convey the
31 required information to the purchaser.

32 **[(e)] (F)** In satisfying the requirements of subsection (b) of this section, the
33 vendor shall be entitled to rely upon the disclosures contained in the depository after June
34 30, 1989.

35 **[(f)] (G)** The provisions of subsections (a), (b), **[(d), and] (e), AND (F)** of this
36 section do not apply to the sale of a lot in an action to foreclose a mortgage or deed of trust.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2016.