
By: Senator Stone

Introduced and read first time: February 9, 1996

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property - Common Interest Developments - Dispute Resolution**

3 FOR the purpose of establishing a mechanism for resolving disputes as an alternative to
4 litigation between developers and governing bodies of common interest
5 developments, including councils of unit owners of a condominium, homeowners
6 associations, and cooperative housing corporations; requiring that persons who
7 bring an action for damages against a developer must first meet certain
8 requirements concerning notice, making available of certain parts of the common
9 interest development for inspection and testing, meeting with the developer and the
10 appointment of a neutral expert; providing for the tolling of certain statutes of
11 limitation under certain circumstances; requiring the dissemination of certain
12 information to members of certain associations; requiring the court to stay certain
13 action for a certain time if it finds that certain provisions of this Act have not been
14 complied with; and generally relating to alternative dispute resolutions for
15 developers and governing bodies of common interest developments.

16 BY adding to

17 Article - Real Property
18 Section 11C-101 through 11C-104 to be under the new title "Title 11C. Dispute
19 Resolution"
20 Annotated Code of Maryland
21 (1996 Replacement Volume)

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

24 **Article - Real Property**

25 TITLE 11C.

26 DISPUTE RESOLUTION.

27 11C-101.

28 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

29 (B) "ASSOCIATION" MEANS:

2

1 (1) A COUNCIL OF UNIT OWNERS OF A CONDOMINIUM, AS THAT TERM
2 IS DEFINED UNDER § 11-101 OF THIS ARTICLE;

3 (2) A COOPERATIVE HOUSING CORPORATION, AS THAT TERM IS
4 DEFINED UNDER § 5-6B-01 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE; OR

5 (3) A HOMEOWNERS ASSOCIATION, AS THAT TERM IS DEFINED UNDER §
6 11B-101 OF THIS ARTICLE.

7 (C) "COMMON AREAS" MEANS PROPERTY THAT IS OWNED, LEASED, OR
8 MAINTAINED BY A HOMEOWNERS ASSOCIATION OF PROPERTY THAT IS A COMMON
9 ELEMENT UNDER TITLE 11 OF THIS ARTICLE.

10 (D) "COMMON INTEREST DEVELOPMENT" MEANS PROPERTY THAT IS EITHER
11 SUBJECT TO:

12 (1) A CONDOMINIUM REGIME UNDER TITLE 11 OF THIS ARTICLE;

13 (2) A COOPERATIVE HOUSING CORPORATION UNDER TITLE 5, SUBTITLE
14 6B OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE; OR

15 (3) THE ENFORCEMENT POWERS OF A HOMEOWNERS ASSOCIATION
16 UNDER TITLE 11B OF THIS ARTICLE.

17 (E) (1) "DESTRUCTIVE PHYSICAL TESTING" MEANS AN ACT THAT CAUSES
18 SUBSTANTIAL PHYSICAL CHANGE IN THE CONDITION OF THE PREMISES AND THAT
19 NECESSITATES A REPAIR TO RESTORE THE PREMISES TO THE CONDITION WHICH
20 EXISTED IMMEDIATELY BEFORE THE ACT.

21 (2) "DESTRUCTIVE PHYSICAL TESTING" DOES NOT INCLUDE ACTS OF
22 REPAIR OR MAINTENANCE BY THE ASSOCIATION OR OWNER.

23 (F) "DEVELOPER" MEANS A PERSON INVOLVED IN THE DESIGN,
24 CONSTRUCTION, OR SALE OF PROPERTY WITHIN A COMMON INTEREST
25 DEVELOPMENT.

26 11C-102.

27 (A) BEFORE AN ASSOCIATION MAY BRING AN ACTION FOR DAMAGES
28 AGAINST THE DEVELOPER OF A COMMON INTEREST DEVELOPMENT BASED ON A
29 CLAIM FOR DEFECTS IN THE DESIGN OR CONSTRUCTION OF THE COMMON
30 INTEREST DEVELOPMENT, THE REQUIREMENTS LISTED UNDER THIS SECTION
31 SHALL BE MET.

32 (B) (1) (I) THE ASSOCIATION SHALL DELIVER WRITTEN NOTICE TO ALL
33 DEVELOPERS AGAINST WHOM THE CLAIM IS MADE SPECIFYING THE DEFECTS THAT
34 ARE THE SUBJECT OF THE CLAIM, INCLUDING IDENTIFICATION OF THE AREAS AND
35 COMPONENTS OF THE PROJECT THAT HAVE MANIFESTED DAMAGE OR OTHERWISE
36 INDICATE EXISTENCE OF A DEFECT.

37 (II) THE NOTICE SHALL CONTAIN THE CURRENT MAILING
38 ADDRESS FOR THE ASSOCIATION AND SHALL BE DELIVERED TO THE DEVELOPERS
39 OR THEIR AGENTS.

1 (III) THE NOTICE SHALL BE ACCOMPANIED BY COPIES OF THE
2 RESULTS OF ANY INVESTIGATION OR TESTING CONDUCTED BY THE ASSOCIATION
3 REGARDING ITS CLAIM.

4 (2) (I) WITHIN 30 DAYS AFTER THE RECEIPT OF THE NOTICE, A
5 DEVELOPER MAY MAKE A WRITTEN REQUEST TO THE ASSOCIATION TO INSPECT
6 THE PROJECT AND CONDUCT TESTING, INCLUDING DESTRUCTIVE PHYSICAL
7 TESTING, TO ANY PROPERTY IN THE COMMON INTEREST DEVELOPMENT.

8 (II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THIS
9 REQUEST SHALL, UPON DELIVERY, TOLL ALL STATUTES OF LIMITATION
10 APPLICABLE TO THE CLAIM AGAINST ANY DEVELOPER WHO HAS RECEIVED NOTICE.

11 (III) IF THE DEVELOPER FAILS TO DELIVER A TIMELY WRITTEN
12 REQUEST, THE ASSOCIATION MAY BRING AN ACTION WITHOUT SATISFYING ANY
13 OTHER REQUIREMENT OF THIS SECTION.

14 (3) (I) WITHIN 30 DAYS AFTER RECEIPT OF A WRITTEN REQUEST
15 FROM ANY DEVELOPER AGAINST WHOM THE CLAIM IS MADE, THE ASSOCIATION
16 SHALL MAKE AVAILABLE FOR INSPECTION AND TESTING ALL COMMON AREAS AND
17 OTHER PORTIONS OF THE COMMON INTEREST DEVELOPMENT IDENTIFIED IN THE
18 ASSOCIATION'S NOTICE.

19 (II) ALL INSPECTIONS AND TESTING SHALL BE COMPLETED WITHIN
20 60 DAYS AFTER THE DATE THE PREMISES ARE MADE AVAILABLE FOR INSPECTION
21 AND TESTING.

22 (4) RIGHTS GRANTED TO THE DEVELOPER UNDER THIS SUBSECTION
23 SHALL BE CONDITIONED UPON COMPLIANCE WITH THE FOLLOWING CONDITIONS:

24 (I) BEFORE THE DEVELOPER SHALL PAY ALL COSTS OF
25 INSPECTION AND TESTING, RESTORE THE PROPERTY TO THE CONDITION WHICH
26 EXISTED IMMEDIATELY BEFORE THE TESTING, AND INDEMNIFY THE ASSOCIATION
27 FOR ANY DAMAGES RESULTING FROM THE TESTING;

28 (II) INTERIOR INSPECTIONS OF DWELLINGS SHALL OCCUR ONLY
29 DURING NORMAL BUSINESS HOURS OR OTHER MUTUALLY AGREED UPON TIMES,
30 ONLY UPON NOTICE TO THE OWNER OR OCCUPANT OF THE DWELLING, AND ONLY
31 WITH THE CONSENT OF THE OWNER, WHOSE CONSENT MAY NOT BE
32 UNREASONABLY WITHHELD OR DELAYED;

33 (III) THE ASSOCIATION HAS CONDUCTED PRIOR DESTRUCTIVE
34 PHYSICAL TESTING TO THE AREAS PLANNED FOR DESTRUCTIVE PHYSICAL TESTING
35 OR THE PARTIES MUTUALLY AGREE UPON THE CONDITIONS FOR DESTRUCTIVE
36 PHYSICAL TESTING; AND

37 (IV) DESTRUCTIVE PHYSICAL TESTING OF ANY INTERIOR OF A
38 DWELLING SHALL OCCUR ONLY DURING NORMAL BUSINESS HOURS OR OTHER
39 MUTUALLY AGREED UPON TIMES, ONLY UPON NOTICE TO THE OWNER OR
40 OCCUPANT OF THE DWELLING AND ONLY WITH THE CONSENT OF THE OWNER,
41 WHOSE CONSENT MAY NOT BE UNREASONABLY WITHHELD OR DELAYED.

4

1 (5) THE LIMITATIONS SET FORTH IN PARAGRAPH (4)(I) AND (II) OF THIS
2 SUBSECTION DO NOT APPLY IF THE ASSOCIATION HAS CONDUCTED DESTRUCTIVE
3 PHYSICAL TESTING AND HAS FAILED TO DISCLOSE THAT FACT OR FAILED TO
4 DISCLOSE THE RESULTS OF THE TESTING.

5 (6) WITHIN 90 DAYS AFTER COMPLETION OF THE INSPECTION AND
6 TESTING UNDER PARAGRAPH (3) OF THIS SUBSECTION, THE DEVELOPER AGAINST
7 WHOM THE CLAIM IS MADE WHO CONDUCTED THE TESTS MAY SUBMIT A WRITTEN
8 STATEMENT TO THE ASSOCIATION, STATING THE DEVELOPER'S PROPOSED
9 SETTLEMENT OF THE CLAIM, AND WHETHER THE DEVELOPER PROPOSES TO DO
10 ANY REMEDIAL WORK, PAY THE ASSOCIATION A CASH AMOUNT, OR BOTH.

11 (7) IF THE DEVELOPER DOES NOT DELIVER THE WRITTEN STATEMENT
12 WITHIN 90 DAYS, THE ASSOCIATION MAY BRING AN ACTION ON THE CLAIMS
13 DESCRIBED IN THE ASSOCIATION'S NOTICE WITHOUT MEETING ANY OTHER
14 REQUIREMENT OF THIS SECTION.

15 (8) (I) IF THE DEVELOPER DELIVERS A PROPOSED SETTLEMENT OF
16 THE CLAIM, THE ASSOCIATION SHALL CAUSE AT LEAST A MAJORITY OF ITS
17 GOVERNING BODY TO PERSONALLY CONFER WITH THE DEVELOPER TO DISCUSS
18 THE ASSOCIATION'S CLAIM AND THE DEVELOPER'S RESPONSE.

19 (II) THE ASSOCIATION AND THE DEVELOPER MAY BE
20 REPRESENTED AT THE MEETING BY ATTORNEYS AND CONSULTANTS.

21 (C) (1) IF A SETTLEMENT OF THE ASSOCIATION'S CLAIM IS NOT REACHED,
22 THE ASSOCIATION OR DEVELOPER MAY DELIVER WITHIN 15 DAYS AFTER THE
23 CONFERENCE A WRITTEN PROPOSAL FOR APPOINTMENT OF A NEUTRAL EXPERT
24 AGREEABLE TO BOTH PARTIES TO:

25 (I) INVESTIGATE THE CLAIM;

26 (II) CONSIDER ALL RELEVANT ISSUES; AND

27 (III) RECOMMEND A SETTLEMENT.

28 (2) THE WRITTEN PROPOSAL SHALL CONTAIN THE NAME, ADDRESS,
29 TELEPHONE NUMBER, AND QUALIFICATIONS OF THE PROPOSED NEUTRAL EXPERT
30 AND THE FEES THE NEUTRAL EXPERT PROPOSES TO CHARGE.

31 (3) THE NEUTRAL EXPERT MAY RETAIN INDEPENDENT CONSULTANTS
32 AS THE NEUTRAL EXPERT DEEMS NECESSARY AND INCUR CHARGES THAT IN THE
33 NEUTRAL EXPERT'S OPINION ARE REASONABLE.

34 (4) ALL FEES AND COSTS OF THE NEUTRAL EXPERT AND THE
35 CONSULTANTS SHALL BE BORNE EQUALLY BY THE ASSOCIATION AND THE
36 DEVELOPER.

37 (5) THE NEUTRAL EXPERT SHALL BE PROVIDED WITH PERTINENT
38 DOCUMENTS AND RECORDS OF THE ASSOCIATION AND THE DEVELOPER ON
39 REQUEST.

5

1 (6) (I) THE NEUTRAL EXPERT SHALL HAVE ACCESS TO ALL COMMON
2 AREAS AND OTHER PORTIONS OF THE COMMON INTEREST DEVELOPMENT TO
3 ANALYZE, INVESTIGATE, AND TEST THE ASSOCIATION'S CLAIMS.

4 (II) THE NEUTRAL EXPERT IS RESPONSIBLE FOR THE REPAIR OF
5 ANY DAMAGES ARISING FROM THE TESTING.

6 (7) IF THE ASSOCIATION DOES NOT CLAIM THAT A DEFECT EXISTS, THE
7 NEUTRAL EXPERT MAY NOT CONDUCT RANDOM TESTING OR ANALYSIS TO
8 ASCERTAIN WHETHER A DEFECT MIGHT EXIST.

9 (8) THE NEUTRAL EXPERT SHALL DELIVER A WRITTEN REPORT TO THE
10 ASSOCIATION AND THE DEVELOPER THAT SHALL STATE:

11 (I) THE DEFECT CLAIMS ON WHICH A DEFECT WAS NOT FOUND TO
12 EXIST;

13 (II) THE NATURE AND EXTENT OF ANY DEFECTS FOUND;

14 (III) THE NEUTRAL EXPERT'S OPINION OF THE CAUSE OF ALL THE
15 DEFECTS FOUND TO EXIST AND OF THE CONSTRUCTION TRADES OR PROFESSIONAL
16 DISCIPLINES WHOSE WORK CONTRIBUTED TO THESE DEFECTS;

17 (IV) A DESCRIPTION OF REPAIRS THAT THE NEUTRAL EXPERT
18 BELIEVES IS APPROPRIATE FOR ANY DEFECT FOUND;

19 (V) AN OPINION AS TO WHETHER A REPAIR REQUIRES OWNERS OR
20 OCCUPANTS TO VACATE THEIR DWELLINGS, AND IF SO, THE EXTENT AND LENGTH
21 OF THE REQUIRED ABSENCE;

22 (VI) AN ESTIMATE OF THE COSTS OF RECOMMENDED REPAIRS;

23 (VII) THE PROPORTIONATE RESPONSIBILITY, SET FORTH AS A
24 PERCENTAGE, OF ANY FAILURE BY THE ASSOCIATION TO USE REASONABLE CARE
25 IN MAINTAINING ANY PART OF THE PROJECT THAT CONTRIBUTED TO DAMAGE
26 CAUSED BY A DEFECT OR TO A DEFECTIVE CONDITION; AND

27 (VIII) A STATEMENT OF THOSE DEFECTS, IF ANY, THAT ARE BEYOND
28 THE STATUTE OF LIMITATIONS OR THAT ARE NOT WITHIN THE SCOPE OF ANY
29 WARRANTIES PROVIDED BY THE DEVELOPER.

30 (9) (I) THE NEUTRAL EXPERT SHALL RECOMMEND IN WRITING A
31 SETTLEMENT BASED UPON THE NEUTRAL EXPERT'S ESTIMATE OF THE COST OF
32 REASONABLE AND NECESSARY REPAIRS FOR DEFECTS.

33 (II) THE ESTIMATE MAY NOT INCLUDE COSTS RELATED TO CLAIMS
34 THAT THE NEUTRAL EXPERT BELIEVES ARE BEYOND THE STATUTE OF LIMITATIONS
35 OR THAT ARE NOT WITHIN THE SCOPE OF ANY WARRANTIES PROVIDED BY THE
36 DEVELOPER, REDUCED BY THE PROPORTION OF THE ASSOCIATION'S
37 CONTRIBUTORY NEGLIGENCE, AS DETERMINED BY THE NEUTRAL EXPERT.

38 (D) (1) IF THE GOVERNING BODY OF THE ASSOCIATION DOES NOT ACCEPT
39 THE DEVELOPER'S PROPOSED SETTLEMENT OF THE CLAIM UNDER SUBSECTION (B)

6

1 (6) OF THIS SECTION, OR IF EITHER OF THE PARTIES REFUSES TO ACCEPT THE
2 NEUTRAL EXPERT'S SETTLEMENT RECOMMENDATION PURSUANT TO SUBSECTION
3 (C)(9) OF THIS SECTION, THE ASSOCIATION SHALL DISSEMINATE TO EACH MEMBER
4 OF THE ASSOCIATION ALL OF THE WRITTEN MATERIALS REQUIRED UNDER § 11C-102
5 OF THIS TITLE BEFORE THE ASSOCIATION MAY BRING AN ACTION AGAINST THE
6 DEVELOPER ON THE CLAIMS DESCRIBED IN THE ASSOCIATION'S NOTICE.

7 (2) A RECOMMENDATION BY THE GOVERNING BODY OF THE
8 ASSOCIATION TO REJECT THE DEVELOPER'S SETTLEMENT PROPOSAL OR THE
9 NEUTRAL EXPERT'S SETTLEMENT RECOMMENDATION AND TO BRING SUIT IS
10 SUBJECT TO THE APPROVAL OF A MAJORITY OF THE MEMBERS OF THE
11 ASSOCIATION.

12 (E) IF THE DEVELOPER'S SETTLEMENT PROPOSAL OR THE NEUTRAL
13 EXPERT'S SETTLEMENT RECOMMENDATION IS REJECTED BY EITHER PARTY, THE
14 NEUTRAL EXPERT AND ALL CONSULTANTS SHALL BE COMPETENT TO TESTIFY IN A
15 SUBSEQUENT ACTION.

16 (F) IF AN ACTION IS BROUGHT BASED ON A CLAIM THAT WAS THE SUBJECT
17 OF A SETTLEMENT RECOMMENDATION MADE BY THE NEUTRAL EXPERT, THE
18 COURT MAY ORDER THE PARTY WHO REJECTED THE NEUTRAL EXPERT'S
19 SETTLEMENT RECOMMENDATION AND RECEIVED A JUDGMENT LESS FAVORABLE
20 THAN THE NEUTRAL EXPERT'S RECOMMENDATION, TO REIMBURSE THE OTHER
21 PARTY FOR THE OTHER PARTY'S SHARE OF THE NEUTRAL EXPERT'S AND
22 CONSULTANTS' CHARGES AND COSTS.

23 (G) (1) AT ANY TIME AFTER DELIVERY OF THE NOTICE OF THE
24 ASSOCIATION'S CLAIM, THE ASSOCIATION AND THE DEVELOPER MAY AGREE IN
25 WRITING TO MODIFY OR EXCUSE ANY OF THE OTHER CONDITIONS OR TIME
26 PERIODS SET FORTH IN SUBSECTIONS (B) AND (C) OF THIS SECTION.

27 (2) THIS AGREEMENT SHALL SPECIFICALLY REFER TO EACH
28 SUBSECTION THAT IS THE SUBJECT OF THE MODIFICATION OR EXCUSE, AND SHALL
29 WHERE APPLICABLE SET FORTH THE SUBSTANCE OF THE MODIFICATION.

30 (H) SATISFACTION OF THE REQUIREMENTS OF SUBSECTIONS (B) AND (C) OF
31 THIS SECTION, OR A WRITTEN MODIFICATION OR EXCUSE OF THESE
32 REQUIREMENTS, SHALL BE SPECIFIED IN A COMPLAINT IN AN ACTION FOR
33 DAMAGES SUBJECT TO THIS SECTION.

34 (I) (1) AT ANY TIME, EACH DEVELOPER WHO HAS DELIVERED THE
35 WRITTEN REQUEST DESCRIBED IN SUBSECTION (B)(2) OF THIS SECTION MAY
36 DELIVER WRITTEN NOTICE TO THE ASSOCIATION TO CANCEL THE TOLLING OF THE
37 STATUTE OF LIMITATIONS PROVIDED IN THIS SECTION.

38 (2) ON RECEIPT OF THE NOTICE, THE ASSOCIATION SHALL BE
39 RELIEVED OF ALL FURTHER OBLIGATIONS TO SATISFY THE CONDITIONS OF
40 SUBSECTIONS (B) AND (C) OF THIS SECTION WITH RESPECT TO THE DEVELOPER WHO
41 HAS DELIVERED A WRITTEN NOTICE TO CANCEL THE TOLLING OF THE STATUTE OF
42 LIMITATIONS. THE TOLLING OF ALL APPLICABLE STATUTES OF LIMITATION SHALL

7
1 END 30 DAYS AFTER DELIVERY OF THE WRITTEN NOTICE OF CANCELLATION BY THE
2 DEVELOPER.

3 (J) NOTWITHSTANDING SUBSECTION (I) OF THIS SECTION, THE TOLLING OF A
4 STATUTE OF LIMITATIONS SHALL AUTOMATICALLY END 240 DAYS AFTER THE
5 TOLLING, UNLESS OTHERWISE AGREED TO BY THE PARTIES.

6 (K) IF THE ASSOCIATION ASSERTS ANY CLAIM NOT SET FORTH IN ANY PRIOR
7 NOTICE DELIVERED TO THE DEVELOPER UNDER SUBSECTION (B)(1) OF THIS
8 SECTION, ALL OF THE REQUIREMENTS OF THIS SECTION SHALL APPLY TO EACH
9 CLAIM NOT SET FORTH IN THE PRIOR NOTICE, EXCEPT AS FOLLOWS:

10 (1) DEFECTS THAT ARE DISCOVERED IN THE COURSE OF INSPECTIONS
11 OR INVESTIGATIONS CONDUCTED IN ACCORDANCE WITH THIS SECTION SHALL BE
12 DEEMED INCLUDED IN THE PRIOR PROVIDED NOTICE; AND

13 (2) (I) DEFECTS THAT ARE DISCOVERED BY THE ASSOCIATION AFTER
14 ITS GIVING OF NOTICE AND THAT ARE NOT RELATED TO AN AREA OR COMPONENT
15 OF THE PROJECT IDENTIFIED IN THE CLAIM MAY BE AMENDED INTO THAT NOTICE
16 UPON NOTIFYING THE NEUTRAL EXPERT OR THE DEVELOPER.

17 (II) IF A CLAIM IS AMENDED, THE TIME SPECIFIED IN SUBSECTION
18 (B)(3) OF THIS SECTION FOR A DEVELOPER'S TESTING AND INSPECTION SHALL BE
19 EXTENDED BY 10 DAYS TO PERMIT TESTING AND INSPECTION, OR BY 15 DAYS IF LESS
20 THAN 10 DAYS REMAINS IN THE SPECIFIED PERIOD OR IF DESTRUCTIVE PHYSICAL
21 TESTING IS NECESSARY.

22 (L) A NOTICE, REQUEST, STATEMENT, OR OTHER COMMUNICATION
23 REQUIRED UNDER THIS SECTION SHALL BE MAILED BY FIRST-CLASS REGISTERED
24 OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR PERSONALLY SERVED ON
25 THE DEVELOPER OR ITS AGENT.

26 11C-103.

27 (A) BEFORE AN ASSOCIATION BRINGS AN ACTION FOR DAMAGES AGAINST
28 ANY DEVELOPER UNDER § 11C-102 OF THIS TITLE, THE ASSOCIATION SHALL
29 DISSEMINATE TO EACH MEMBER OF THE ASSOCIATION AND MORTGAGEE WHO HAS
30 REQUESTED NOTICES FROM THE ASSOCIATION:

31 (1) A WRITTEN STATEMENT OF THE ASSOCIATION'S CLAIM AGAINST
32 THE DEVELOPER, SPECIFYING THE DEFECTS THAT ARE THE SUBJECT OF THE CLAIM,
33 INCLUDING IDENTIFICATION OF THE AREAS AND COMPONENTS OF THE PROJECT
34 THAT HAVE MANIFESTED DAMAGE OR OTHERWISE INDICATED EXISTENCE OF A
35 DEFECT;

36 (2) A COPY OF THE DEVELOPER'S WRITTEN RESPONSE TO THE CLAIM,
37 INCLUDING ANY SETTLEMENT PROPOSAL DELIVERED BY THE DEVELOPER TO THE
38 ASSOCIATION;

39 (3) WRITTEN INFORMATION ABOUT THE PROPOSAL FOR A NEUTRAL
40 EXPERT, ANY SETTLEMENT RECOMMENDATION MADE BY THE NEUTRAL EXPERT, A
41 SUMMARY OF THE NEUTRAL EXPERT'S REPORT, AND A NOTICE ADVISING THE

8

1 MEMBER THAT THE NEUTRAL EXPERT'S FULL REPORT IS AVAILABLE FOR REVIEW
2 AT THE ASSOCIATION'S OFFICE DURING NORMAL BUSINESS HOURS;

3 (4) A STATEMENT AS TO WHICH PARTY OR PARTIES REFUSED TO
4 ACCEPT THE NEUTRAL EXPERT'S SETTLEMENT RECOMMENDATION, IF APPLICABLE,
5 AND THE REASON FOR THE REFUSAL;

6 (5) A STATEMENT THAT THE GOVERNING BODY OF THE ASSOCIATION
7 DESIRES TO BRING SUIT AND A STATEMENT OF THE ANTICIPATED CONSEQUENCES
8 OF THE LITIGATION, INCLUDING:

9 (I) THE DAMAGES OR OTHER RELIEF THAT THE GOVERNING
10 BODY OF THE ASSOCIATION SEEKS;

11 (II) A GOOD FAITH ESTIMATE OF THE TOTAL COSTS TO THE
12 ASSOCIATION OF BRINGING AND PROCEEDING WITH THE LITIGATION, INCLUDING
13 THE COSTS OF APPEAL;

14 (III) A GOOD FAITH ESTIMATE OF THE TIME FRAME FOR THE
15 LITIGATION, INCLUDING THE PROJECTED TIME FRAME FOR APPEAL;

16 (IV) THE PROPOSED SOURCE OF RESOURCES FOR PURSUING THE
17 LITIGATION, INCLUDING ANTICIPATED SPECIAL ASSESSMENTS; AND

18 (V) ANY POTENTIALLY ADVERSE CONSEQUENCES TO THE
19 MEMBERS AS A RESULT OF THE LITIGATION, INCLUDING THE IMPACT ON REALES,
20 REFINANCING, AND UNIT VALUES;

21 (6) A MEETING NOTICE TO BE RECEIVED AT LEAST 30 DAYS BEFORE
22 THE OPEN MEETING OF THE GOVERNING BODY OF THE ASSOCIATION AT WHICH
23 THE GOVERNING BODY INTENDS TO VOTE ON THIS MATTER;

24 (7) A STATEMENT THAT THE ALLEGED DEFECTS MAY BE A MATERIAL
25 FACT RELATING TO THE CONDITION OR VALUE OF THE PROPERTY; AND

26 (8) A STATEMENT THAT IF 5% OF THE MEMBERS OR MORTGAGEES
27 ENTITLED TO NOTICE REQUEST A SPECIAL MEETING OF THE MEMBERS AND
28 MORTGAGEES TO DISCUSS THE MATTER WITHIN 30 DAYS AFTER THE DATE THE
29 NOTICE IS MAILED OR DELIVERED TO THE MEMBERS AND MORTGAGEES BY THE
30 ASSOCIATION, THEN A SPECIAL MEETING MUST BE HELD AND A MAJORITY OF THE
31 MEMBERS AT THE MEETING MUST APPROVE LITIGATION BEFORE AN ACTION MAY
32 BE BROUGHT.

33 (B) IF 5% OF THE MEMBERS OR MORTGAGEES ENTITLED TO NOTICE
34 REQUEST A SPECIAL MEETING OF THE MEMBERS AND MORTGAGEES TO DISCUSS
35 THE MATTER WITHIN 30 DAYS AFTER THE DATE THE NOTICE IS MAILED OR
36 DELIVERED TO THE MEMBERS AND MORTGAGEES BY THE ASSOCIATION, THE
37 SPECIAL MEETING SHALL BE HELD:

38 (1) AFTER THE MEMBERS AND THE MORTGAGEES HAVE HAD AT LEAST
39 15 DAYS' WRITTEN NOTICE OF THE SPECIAL MEETING; AND

1 (2) WITHIN 30 DAYS AFTER THE DATE ON WHICH THE PETITION
2 REQUESTING THE SPECIAL MEETING IS RECEIVED BY THE GOVERNING BODY OF
3 THE ASSOCIATION.

4 (C) WITHOUT THE CONSENT OF THE ASSOCIATION, ALL WRITTEN MATERIALS
5 PROVIDED TO THE MEMBERS OF THE ASSOCIATION UNDER SUBSECTION (A) OF THIS
6 SECTION ARE PRIVILEGED COMMUNICATIONS AND ARE NOT ADMISSIBLE IN
7 EVIDENCE IN ANY ACTION SUBJECT TO THIS TITLE.

8 (D) SATISFACTION OF THE REQUIREMENTS OF SUBSECTIONS (A) THROUGH
9 (C) OF THIS SECTION SHALL BE SPECIFIED IN ANY COMPLAINT SUBJECT TO THIS
10 TITLE.

11 11C-104.

12 (A) (1) FAILURE BY THE ASSOCIATION TO COMPLY WITH A REQUIREMENT
13 UNDER THIS TITLE MAY BE ASSERTED AS A PROCEDURAL DEFICIENCY TO A CLAIM
14 UNDER § 11C-103 OF THIS TITLE.

15 (2) UPON APPLICATION BY THE DEVELOPER ALLEGING
16 NONCOMPLIANCE WITH THIS TITLE, THE COURT SHALL SCHEDULE A HEARING
17 WITHIN 15 DAYS AFTER THE FILING OF THE PETITION TO DETERMINE WHETHER
18 THE ASSOCIATION HAS COMPLIED WITH THE REQUIREMENTS OF THIS TITLE.

19 (B) IF THE COURT FINDS THAT THE ASSOCIATION DID NOT COMPLY WITH
20 THE PROVISIONS OF THIS TITLE AND THAT NONCOMPLIANCE MATERIALLY AFFECTS
21 THE PUBLIC INTEREST FOR THE PARTIES TO EXPLORE ALTERNATIVES TO
22 LITIGATION, THEN THE COURT:

23 (1) SHALL STAY THE ACTION FOR UP TO 90 DAYS TO ALLOW THE
24 ASSOCIATION TO ESTABLISH COMPLIANCE TO SATISFY THE PUBLIC INTEREST; AND

25 (2) IN THE INTEREST OF JUSTICE, SHALL EXTEND THE TIME PERIOD
26 FOR COMPLIANCE UPON PETITION BY THE ASSOCIATION.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 1996.