
By: Senator Stone

Introduced and read first time: January 22, 1997

Assigned to: Judicial Proceedings

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 persons who bring an
7 action for damages against a developer to first meet certain requirements
8 concerning notice, inspection and testing, meeting with the developer, and the
9 appointing of a neutral expert; providing for the tolling of certain statutes of
10 limitation under certain circumstances; requiring the dissemination of certain
11 information to members of certain associations; requiring the court to stay certain
12 action for a certain time if it finds that certain provisions of this Act have not been
13 complied with; and generally relating to alternative dispute resolutions for
14 developers and governing bodies of common interest developments.

15 BY adding to

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

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

23 **Article - Real Property**

24 TITLE 11C. DISPUTE RESOLUTION.

25 11C-101.

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

27 (B) "ASSOCIATION" MEANS:

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

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

3 (3) A HOMEOWNERS ASSOCIATION, AS THAT TERM IS DEFINED IN §
4 11B-101 OF THIS ARTICLE.

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

8 (D) "COMMON INTEREST DEVELOPMENT" MEANS PROPERTY THAT IS EITHER
9 SUBJECT TO:

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

11 (2) A COOPERATIVE HOUSING CORPORATION UNDER TITLE 5, SUBTITLE
12 6B OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE; OR

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

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

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

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

24 11C-102.

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

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

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

38 (III) THE NOTICE SHALL BE ACCOMPANIED BY COPIES OF THE
39 RESULTS OF ANY INVESTIGATION OR TESTING CONDUCTED BY THE ASSOCIATION
40 REGARDING ITS CLAIM.

1 (2) (I) WITHIN 30 DAYS AFTER THE RECEIPT OF THE NOTICE, A
2 DEVELOPER MAY DELIVER A WRITTEN REQUEST TO THE ASSOCIATION TO INSPECT
3 AND TEST, INCLUDING DESTRUCTIVE PHYSICAL TESTING, THE COMMON AREAS AND
4 OTHER PORTIONS OF THE COMMON INTEREST DEVELOPMENT IDENTIFIED IN THE
5 ASSOCIATION'S WRITTEN NOTICE.

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

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

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

17 (II) ALL INSPECTIONS AND TESTING SHALL BE COMPLETED WITHIN
18 60 DAYS AFTER THE DATE THE PREMISES ARE MADE AVAILABLE FOR INSPECTION
19 AND TESTING.

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

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

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

31 (III) THE ASSOCIATION MUST HAVE CONDUCTED DESTRUCTIVE
32 PHYSICAL TESTING OF THE AREAS PLANNED FOR DESTRUCTIVE PHYSICAL TESTING
33 OR THE PARTIES SHALL MUTUALLY AGREE UPON THE CONDITIONS FOR
34 DESTRUCTIVE PHYSICAL TESTING; AND

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

40 (5) THE LIMITATION SET FORTH IN PARAGRAPH (4)(I) OF THIS
41 SUBSECTION DOES NOT APPLY IF THE ASSOCIATION HAS CONDUCTED DESTRUCTIVE
42 PHYSICAL TESTING OF THE AREAS PLANNED FOR DESTRUCTIVE PHYSICAL TESTING

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1 AND HAS FAILED TO DISCLOSE THAT FACT OR FAILED TO DISCLOSE THE RESULTS
2 OF THE TESTING.

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

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

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

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

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

23 (I) INVESTIGATE THE CLAIM;

24 (II) CONSIDER ALL RELEVANT ISSUES; AND

25 (III) RECOMMEND A SETTLEMENT.

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

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

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

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

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

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

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

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

8 (I) THE DEFECT CLAIMS ON WHICH A DEFECT WAS NOT FOUND TO
9 EXIST;

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

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

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

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

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

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

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

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

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

35 (D) (1) IF THE GOVERNING BODY OF THE ASSOCIATION DOES NOT ACCEPT
36 THE DEVELOPER'S PROPOSED SETTLEMENT OF THE CLAIM UNDER SUBSECTION (B)
37 (6) OF THIS SECTION, OR IF EITHER OF THE PARTIES REFUSES TO ACCEPT THE
38 NEUTRAL EXPERT'S SETTLEMENT RECOMMENDATION PURSUANT TO SUBSECTION
39 (C)(9) OF THIS SECTION, THE ASSOCIATION SHALL DISSEMINATE TO EACH MEMBER
40 OF THE ASSOCIATION ALL OF THE WRITTEN MATERIALS REQUIRED UNDER § 11C-102

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1 OF THIS TITLE BEFORE THE ASSOCIATION MAY BRING AN ACTION AGAINST THE
2 DEVELOPER ON THE CLAIMS DESCRIBED IN THE ASSOCIATION'S NOTICE.

3 (2) A RECOMMENDATION BY THE GOVERNING BODY OF THE
4 ASSOCIATION TO REJECT THE DEVELOPER'S SETTLEMENT PROPOSAL OR THE
5 NEUTRAL EXPERT'S SETTLEMENT RECOMMENDATION AND TO BRING SUIT IS
6 SUBJECT TO THE APPROVAL OF A MAJORITY OF THE MEMBERS OF THE
7 ASSOCIATION.

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

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

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

23 (2) THE AGREEMENT SHALL SPECIFICALLY REFER TO EACH
24 SUBSECTION THAT IS THE SUBJECT OF THE MODIFICATION OR EXCUSE, AND SHALL
25 WHERE APPLICABLE SET FORTH THE SUBSTANCE OF THE MODIFICATION.

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

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

34 (2) ON RECEIPT OF THE NOTICE, THE ASSOCIATION SHALL BE
35 RELIEVED OF ALL FURTHER OBLIGATIONS TO SATISFY THE CONDITIONS OF
36 SUBSECTIONS (B) AND (C) OF THIS SECTION WITH RESPECT TO THE DEVELOPER WHO
37 HAS DELIVERED A WRITTEN NOTICE TO CANCEL THE TOLLING OF THE STATUTE OF
38 LIMITATIONS. THE TOLLING OF ALL APPLICABLE STATUTES OF LIMITATION SHALL
39 END 30 DAYS AFTER DELIVERY OF THE WRITTEN NOTICE OF CANCELLATION BY THE
40 DEVELOPER.

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

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

5 (I) DEFECTS THAT ARE DISCOVERED IN THE COURSE OF
6 INSPECTIONS OR INVESTIGATIONS CONDUCTED IN ACCORDANCE WITH THIS
7 SECTION SHALL BE DEEMED INCLUDED IN THE PRIOR PROVIDED NOTICE; AND

8 (II) DEFECTS THAT ARE DISCOVERED BY THE ASSOCIATION AFTER
9 ITS GIVING OF NOTICE AND THAT ARE NOT RELATED TO AN AREA OR COMPONENT
10 OF THE COMMON INTEREST DEVELOPMENT IDENTIFIED IN THE CLAIM MAY BE
11 AMENDED INTO THAT NOTICE UPON NOTIFYING THE NEUTRAL EXPERT OR THE
12 DEVELOPER.

13 (2) IF A CLAIM IS AMENDED, THE TIME SPECIFIED IN SUBSECTION (B)(3)
14 OF THIS SECTION FOR A DEVELOPER'S TESTING AND INSPECTION SHALL BE
15 EXTENDED BY 10 DAYS TO PERMIT TESTING AND INSPECTION, OR BY 15 DAYS IF LESS
16 THAN 10 DAYS REMAIN IN THE SPECIFIED PERIOD OR IF DESTRUCTIVE PHYSICAL
17 TESTING IS NECESSARY.

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

22 11C-103.

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

27 (1) A WRITTEN STATEMENT OF THE ASSOCIATION'S CLAIM AGAINST
28 THE DEVELOPER, SPECIFYING THE DEFECTS THAT ARE THE SUBJECT OF THE CLAIM,
29 INCLUDING IDENTIFICATION OF THE AREAS AND COMPONENTS OF THE COMMON
30 INTEREST DEVELOPMENT THAT HAVE MANIFESTED DAMAGE OR OTHERWISE
31 INDICATED EXISTENCE OF A DEFECT;

32 (2) A COPY OF THE DEVELOPER'S WRITTEN RESPONSE TO THE CLAIM,
33 INCLUDING ANY SETTLEMENT PROPOSAL DELIVERED BY THE DEVELOPER TO THE
34 ASSOCIATION;

35 (3) WRITTEN INFORMATION ABOUT THE PROPOSAL FOR A NEUTRAL
36 EXPERT, ANY SETTLEMENT RECOMMENDATION MADE BY THE NEUTRAL EXPERT, A
37 SUMMARY OF THE NEUTRAL EXPERT'S REPORT, AND A NOTICE ADVISING THE
38 MEMBER THAT THE NEUTRAL EXPERT'S FULL REPORT IS AVAILABLE FOR REVIEW
39 AT THE ASSOCIATION'S OFFICE DURING NORMAL BUSINESS HOURS;

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

1 (5) A STATEMENT THAT THE GOVERNING BODY OF THE ASSOCIATION
2 DESIRES TO BRING SUIT AND A STATEMENT OF THE ANTICIPATED CONSEQUENCES
3 OF THE LITIGATION, INCLUDING:

4 (I) THE DAMAGES OR OTHER RELIEF THAT THE GOVERNING
5 BODY OF THE ASSOCIATION SEEKS;

6 (II) A GOOD FAITH ESTIMATE OF THE TOTAL COSTS TO THE
7 ASSOCIATION OF BRINGING AND PROCEEDING WITH THE LITIGATION, INCLUDING
8 THE COSTS OF APPEAL;

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

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

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

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

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

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

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

33 (1) AFTER THE MEMBERS AND THE MORTGAGEES HAVE HAD AT LEAST
34 15 DAYS' WRITTEN NOTICE OF THE SPECIAL MEETING; AND

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

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

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1 (D) SATISFACTION OF THE REQUIREMENTS OF SUBSECTIONS (A) THROUGH
2 (C) OF THIS SECTION SHALL BE SPECIFIED IN ANY COMPLAINT SUBJECT TO THIS
3 TITLE.

4 11C-104.

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

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

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

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

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

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 1997.