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**By: Senator Roesser**

Introduced and read first time: January 31, 1997

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Condominiums and Homeowners Associations - Rights and Restrictions**

3 FOR the purpose of authorizing condominium unit owners and homeowners association  
4 lot owners to assemble in certain areas for certain purposes; authorizing unit owners  
5 and lot owners to have certain rights to comment at certain condominium and  
6 homeowners association meetings; requiring certain governing bodies of  
7 condominium and homeowners associations to consider certain comments at certain  
8 condominium and homeowners association meetings; authorizing unit owners and  
9 lot owners to distribute information and circulate petitions at certain places and in  
10 certain ways; defining certain terms; and generally relating to rights of  
11 condominium unit owners and homeowners association lot owners.

12 BY repealing and reenacting, with amendments,  
13 Article - Real Property  
14 Section 11-101, 11-108, 11-109(c), 11B-101, and 11B-111  
15 Annotated Code of Maryland  
16 (1996 Replacement Volume and 1996 Supplement)

17 BY adding to  
18 Article - Real Property  
19 Section 11-111.2 and 11B-111.2  
20 Annotated Code of Maryland  
21 (1996 Replacement Volume and 1996 Supplement)

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 11-101.

26 (a) In this title the following words have the meanings indicated unless otherwise  
27 apparent from context.

28 (b) (1) "Board of directors" means the persons to whom some or all of the  
29 powers of the council of unit owners have been delegated under this title or under the  
30 condominium bylaws.

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1 (2) "Board of directors" includes any reference to "board".

2 (c) (1) "Common elements" means all of the condominium except the units.

3 [(1)] (2) "Limited common elements" means those common elements  
4 identified in the declaration or on the condominium plat as reserved for the exclusive use  
5 of one or more but less than all of the unit owners.

6 [(2)] (3) "General common elements" means all the common elements  
7 except the limited common elements.

8 (d) "Common expenses and common profits" means the expenses and profits of  
9 the council of unit owners.

10 (e) "Condominium" means property subject to the condominium regime  
11 established under this title.

12 (f) "Council of unit owners" means the legal entity described in § 11-109 of this  
13 title.

14 (g) "Developer" means any person who subjects his property to the condominium  
15 regime established by this title.

16 (H) "GOVERNING BODY" MEANS THE COUNCIL OF UNIT OWNERS, BOARD OF  
17 DIRECTORS OR ENTITY ESTABLISHED TO GOVERN THE CONDOMINIUM.

18 [(h)] (I) "Housing agency" means a housing agency of a county or incorporated  
19 municipality or some other agency or entity of a county or incorporated municipality  
20 designated as such by law or ordinance.

21 [(i)] (J) "Mortgagee" means the holder of any recorded mortgage, or the  
22 beneficiary of any recorded deed of trust, encumbering one or more units.

23 [(j)] (K) "Moving expenses" means costs incurred to:

24 (1) Hire contractors, labor, trucks, or equipment for the transportation of  
25 personal property;

26 (2) Pack and unpack personal property;

27 (3) Disconnect and install personal property;

28 (4) Insure personal property to be moved; and

29 (5) Disconnect and reconnect utilities such as telephone service, gas, water,  
30 and electricity.

31 [(k)] (L) "Occupant" means any lessee or guest of a unit owner.

32 [(l)] (M) "Percentage interests" means the interests, expressed as a percentage,  
33 fraction or proportion, established in accordance with § 11-107 OF THIS TITLE.

34 [(m)] (N) "Property" means unimproved land, land together with improvements  
35 thereon, improvements without the underlying land, or riparian or littoral rights  
36 associated with land. Property may consist of noncontiguous parcels or improvements.

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1 [(n)] (O) "Rental facility" means property containing dwelling units intended to  
2 be leased to persons who occupy the dwellings as their residences.

3 [(o)] (P) "Unit" means a three-dimensional space identified as such in the  
4 declaration and on the condominium plat and shall include all improvements contained  
5 within the space except those excluded in the declaration, the boundaries of which are  
6 established in accordance with § 11-103(a)(3) of this title. A unit may include 2 or more  
7 noncontiguous spaces.

8 [(p)] (Q) "Unit owner" means the person, or combination of persons, who hold  
9 legal title to a unit. A mortgagee or a trustee designated under a deed of trust, as such,  
10 may not be deemed a unit owner.

11 11-108.

12 (a) [The] SUBJECT TO THE PROVISIONS OF SUBSECTION (C) OF THIS  
13 SECTION, THE common elements may be used only for the purposes for which they were  
14 intended and, except as provided in the declaration, the common elements shall be  
15 subject to mutual rights of support, access, use, and enjoyment by all unit owners.  
16 However, subject to the provisions of subsection (b) of this section, any portion of the  
17 common elements designated as limited common elements shall be used only by the unit  
18 owner of the unit to which their use is limited in the declaration or condominium plat.

19 (b) Any unit owner or any group of unit owners of units to which the use of any  
20 limited common element is exclusively restricted may grant by deed the exclusive use, or  
21 the joint use in common with one or more of the grantors, of the limited common  
22 elements to any one or more unit owners. A copy of the deed shall be furnished to the  
23 council of unit owners.

24 (C) ALL UNIT OWNERS MAY ASSEMBLE IN THE COMMON ELEMENTS OR IN  
25 ANY BUILDING OR FACILITY IN THE COMMON ELEMENTS FOR THE PURPOSE OF  
26 CONSIDERING AND DISCUSSING THE OPERATION AND MATTERS THAT RELATE TO  
27 THE OPERATION OF THE CONDOMINIUM.

28 (D) THE RIGHT TO ASSEMBLE WILL BE SUBJECT TO REASONABLE RULES  
29 PROMULGATED BY THE BOARD.

30 11-109.

31 (c) (1) A meeting of the council of unit owners or board of directors may not be  
32 held on less notice than required by this section.

33 (2) The council of unit owners shall maintain a current roster of names and  
34 addresses of each unit owner to which notice of meetings of the board of directors shall  
35 be sent at least annually.

36 (3) Each unit owner shall furnish the council of unit owners with his name  
37 and current mailing address. A unit owner may not vote at meetings of the council of unit  
38 owners until this information is furnished.

39 (4) A regular or special meeting of the council of unit owners may not be  
40 held on less than 10 nor more than 90 days' written notice delivered or mailed to each  
41 unit owner at the address shown on the roster on the date of the notice.

4

1 (5) Notice of special meetings of the board of directors shall be given as  
2 provided in the bylaws.

3 (6) Except as provided in § 11-109.1 of this title, a meeting of [the council  
4 of unit owners or board of directors] A GOVERNING BODY OR COMMITTEE shall be  
5 open and held at a time and location as provided in the notice or bylaws.

6 (7) (I) EACH UNIT OWNER, DURING A MEETING OF A GOVERNING BODY  
7 OR COMMITTEE SHALL BE GIVEN A REASONABLE OPPORTUNITY TO COMMENT ON  
8 ANY MATTER RELATED TO A VOTE OR OTHER ACTION TO BE TAKEN.

9 (II) THE GOVERNING BODY OR COMMITTEE, SHALL CONSIDER THE  
10 COMMENTS MADE BY EACH UNIT OWNER.

11 [(7)] (8) Unless the bylaws provide otherwise, a quorum is deemed present  
12 throughout any meeting of the council of unit owners if persons entitled to cast 25 percent  
13 of the total number of votes appurtenant to all units are present in person or by proxy.

14 [(8)] (9) At meetings of the council of unit owners each unit owner shall be  
15 entitled to cast the number of votes appurtenant to his unit. Unit owners may vote by  
16 proxy, but, the proxy is effective only for a maximum period of 180 days following its  
17 issuance, unless granted to a lessee or mortgagee.

18 [(9)] (10) Any proxy may be revoked at any time at the pleasure of the unit  
19 owner or unit owners executing the proxy.

20 [(10)] (11) A proxy who is not appointed to vote as directed by a unit owner  
21 may only be appointed for purposes of meeting quorums and to vote for matters of  
22 business before the council of unit owners, other than an election of officers and members  
23 of the board of directors.

24 [(11)] (12) Only a unit owner voting in person or a proxy voting for candidates  
25 designated by a unit owner may vote for officers and members of the board of directors.

26 [(12)] (13) Unless otherwise provided in the bylaws, a unit owner may  
27 nominate himself or any other person to be an officer or member of the board of  
28 directors. A call for nominations shall be sent to all unit owners not less than 45 days  
29 before notice of an election is sent. Only nominations made at least 15 days before notice  
30 of an election shall be listed on the election ballot. Candidates shall be listed on the ballot  
31 in alphabetical order, with no indicated candidate preference. Nominations may be made  
32 from the floor at the meeting at which the election to the board is held.

33 [(13)] (14) Election materials prepared with funds of the council of unit  
34 owners shall list candidates in alphabetical order and may not indicate a candidate  
35 preference.

36 [(14)] (15) Unless otherwise provided in this title, and subject to provisions in  
37 the bylaws requiring a different majority, decisions of the council of unit owners shall be  
38 made on a majority of votes of the unit owners listed on the current roster present and  
39 voting.

40 [(15)] (16) A meeting of the council of unit owners shall be held within 60  
41 days from the date that units representing 50 percent of the votes in the condominium

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1 have been conveyed by the developer to the initial purchasers of units to elect officers or  
2 a board of directors for the council of unit owners, as provided in the condominium  
3 declaration or bylaws.

4 11-111.2.

5 A RECORDED COVENANT OR RESTRICTION, A PROVISION IN A DECLARATION,  
6 OR A PROVISION OF THE BYLAWS OR RULES OF A CONDOMINIUM MAY NOT  
7 RESTRICT A UNIT OWNER FROM DISTRIBUTING INFORMATION OR CIRCULATING  
8 PETITIONS TO OTHER UNIT OWNERS REGARDING THE OPERATION AND MATTERS  
9 THAT RELATE TO THE OPERATION OF THE CONDOMINIUM:

10 (1) IN ALL COMMON ELEMENTS AND IN ANY BUILDING OR FACILITY  
11 LOCATED IN THE COMMON ELEMENTS; OR

12 (2) IN ANY MANNER THAT A GOVERNING BODY DISTRIBUTES  
13 INFORMATION AND CIRCULATES PETITIONS TO UNIT OWNERS.

14 11B-101.

15 (a) In this title the following words have the meanings indicated, unless the  
16 context requires otherwise.

17 (b) "Common areas" means property which is owned or leased by a homeowners  
18 association.

19 (c) "Declarant" means any person who subjects property to a declaration.

20 (d) (1) "Declaration" means an instrument, however denominated, recorded  
21 among the land records of the county in which the property of the declarant is located,  
22 that creates the authority for a homeowners association to impose on lots, or on the  
23 owners or occupants of lots, or on another homeowners association, condominium, or  
24 cooperative housing corporation any mandatory fee in connection with the provision of  
25 services or otherwise for the benefit of some or all of the lots, the owners or occupants of  
26 lots, or the common areas.

27 (2) "Declaration" includes any amendment or supplement to the  
28 instruments described in paragraph (1) of this subsection.

29 (3) "Declaration" does not include a private right-of-way or similar  
30 agreement unless it requires a mandatory fee payable annually or at more frequent  
31 intervals.

32 (e) "Depository" or "homeowners association depository" means the document  
33 file created by the clerk of the court of each county and the City of Baltimore where a  
34 homeowners association may periodically deposit information as required by this title.

35 (f) (1) "Development" means property subject to a declaration.

36 (2) "Development" includes property comprising a condominium or  
37 cooperative housing corporation to the extent that the property is part of a development.

38 (3) "Development" does not include a cooperative housing corporation or a  
39 condominium.

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1 (G) "GOVERNING BODY" MEANS THE HOMEOWNERS ASSOCIATION, BOARD  
2 OF DIRECTORS, OR OTHER ENTITY ESTABLISHED TO GOVERN THE DEVELOPMENT.

3 [(g)] (H) (1) "Homeowners association" means a person having the authority to  
4 enforce the provisions of a declaration.

5 (2) "Homeowners association" includes an incorporated or unincorporated  
6 association.

7 [(h)] (I) (1) "Lot" means any plot or parcel of land on which a dwelling is  
8 located or will be located within a development.

9 (2) "Lot" includes a unit within a condominium or cooperative housing  
10 corporation if the condominium or cooperative housing corporation is part of a  
11 development.

12 [(i)] (J) "Primary development" means a development such that the purchaser of  
13 a lot will pay fees directly to its homeowners association.

14 [(j)] (K) "Recorded covenants and restrictions" means any instrument of writing  
15 which is recorded in the land records of the jurisdiction within which a lot is located, and  
16 which instrument governs or otherwise legally restricts the use of such lot.

17 [(k)] (L) "Related development" means a development such that the purchaser of  
18 a lot will pay fees to the homeowners association of such development through the  
19 homeowners association of a primary development or another development.

20 [(l)] (M) "Unaffiliated declarant" means a person who is not affiliated with the  
21 vendor of a lot but who has subjected such property to a declaration required to be  
22 disclosed by this title.

23 11B-111.

24 Except as provided in this title, and notwithstanding anything contained in any of  
25 the documents of the homeowners association:

26 (1) Subject to the provisions of paragraph [(3)] (4) of this section, all  
27 meetings of the homeowners association, including meetings of the board of directors or  
28 other governing body of the homeowners association or a committee of the homeowners  
29 association, shall be open to all members of the homeowners association or their agents;

30 (2) All members of the homeowners association shall be given reasonable  
31 notice of all regularly scheduled open meetings of the homeowners association;

32 (3) (I) EACH LOT OWNER, DURING A MEETING OF A GOVERNING BODY  
33 OR COMMITTEE, SHALL BE GIVEN A REASONABLE OPPORTUNITY TO COMMENT ON  
34 ANY MATTER RELATED TO A VOTE OR OTHER ACTION TO BE TAKEN; AND

35 (II) THE GOVERNING BODY OR COMMITTEE SHALL CONSIDER THE  
36 COMMENTS MADE BY EACH LOT OWNER;

37 [(3)] (4) A meeting of the board of directors or other governing body of the  
38 homeowners association or a committee of the homeowners association may be held in  
39 closed session only for the following purposes:

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- 1 (i) Discussion of matters pertaining to employees and personnel;
- 2 (ii) Protection of the privacy or reputation of individuals in matters not  
3 related to the homeowners association's business;
- 4 (iii) Consultation with legal counsel;
- 5 (iv) Consultation with staff personnel, consultants, attorneys, or other  
6 persons in connection with pending or potential litigation;
- 7 (v) Investigative proceedings concerning possible or actual criminal  
8 misconduct;
- 9 (vi) Consideration of the terms or conditions of a business transaction  
10 in the negotiation stage if the disclosure could adversely affect the economic interests of  
11 the homeowners association;
- 12 (vii) Compliance with a specific constitutional, statutory, or judicially  
13 imposed requirement protecting particular proceedings or matters from public disclosure;  
14 or
- 15 (viii) On an individually recorded affirmative vote of two-thirds of the  
16 board or committee members present, some other exceptional reason so compelling as to  
17 override the general public policy in favor of open meetings; and

18 [(4)] (5) If a meeting is held in closed session under paragraph [(3)] (4) of  
19 this section:

- 20 (i) An action may not be taken and a matter may not be discussed if it  
21 is not permitted by paragraph [(3)] (4) of this section; and
- 22 (ii) A statement of the time, place, and purpose of a closed meeting,  
23 the record of the vote of each board or committee member by which the meeting was  
24 closed, and the authority under this section for closing a meeting shall be included in the  
25 minutes of the next meeting of the board of directors or the committee of the  
26 homeowners association.

27 11B-111.2.

28 A RECORDED COVENANT OR RESTRICTION, A PROVISION IN A DECLARATION,  
29 OR A PROVISION OF THE BYLAWS OR RULES OF A HOMEOWNERS ASSOCIATION MAY  
30 NOT RESTRICT LOT OWNERS FROM DISTRIBUTING INFORMATION OR CIRCULATING  
31 PETITIONS TO OTHER LOT OWNERS REGARDING THE OPERATION AND MATTERS  
32 THAT RELATE TO THE OPERATION OF THE HOMEOWNERS ASSOCIATION:

33 (1) IN ALL COMMON AREAS AND IN ANY BUILDING OR FACILITY  
34 LOCATED IN THE COMMON AREAS; OR

35 (2) IN ANY MANNER THAT A GOVERNING BODY DISTRIBUTES  
36 INFORMATION AND CIRCULATES PETITIONS TO MEMBERS OF THE HOMEOWNERS  
37 ASSOCIATION.

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

