

HOUSE BILL 38

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SB 769/97 - JPR

1998 Regular Session
8lr0049
CF 8lr0160

(PRE-FILED)

By: **Delegates Kach and Kagan**

Requested: July 14, 1997

Introduced and read first time: January 14, 1998

Assigned to: Economic Matters

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
4 association lot owners to assemble in certain areas for certain purposes;
5 requiring certain governing bodies or committees of condominiums and
6 homeowners associations to designate a period of time during certain meetings
7 to allow an opportunity to comment on certain matters; authorizing unit owners
8 and lot owners to distribute information and circulate petitions at certain places
9 and in certain ways, subject to certain rules; defining certain terms; and
10 generally relating to rights of condominium unit owners and homeowners
11 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 1997 Supplement)

17 BY adding to
18 Article - Real Property
19 Section 11-111.2, 11B-111.2, and 11B-111.3
20 Annotated Code of Maryland
21 (1996 Replacement Volume and 1997 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
27 otherwise apparent from context.

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

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

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

6 [(1)] (2) "Limited common elements" means those common elements
7 identified in the declaration or on the condominium plat as reserved for the exclusive
8 use of one or more but less than all of the unit owners.

9 [(2)] (3) "General common elements" means all the common elements
10 except the limited common elements.

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

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

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

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

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

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

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

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

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

29 (2) Pack and unpack personal property;

30 (3) Disconnect and install personal property;

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

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

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

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

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

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

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

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

19 11-108.

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

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

33 (C) SUBJECT TO REASONABLE RULES ADOPTED BY THE GOVERNING BODY
34 UNDER § 11-111 OF THIS SUBTITLE, ALL UNIT OWNERS MAY ASSEMBLE IN THE
35 GENERAL COMMON ELEMENTS OR IN ANY BUILDING OR FACILITY IN THE GENERAL
36 COMMON ELEMENTS FOR THE PURPOSE OF CONSIDERING AND DISCUSSING THE
37 OPERATION OF AND MATTERS RELATING TO THE OPERATION OF THE
38 CONDOMINIUM.

1 11-109.

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

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

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

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

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

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

18 (7) SUBJECT TO REASONABLE RULES ADOPTED BY THE GOVERNING
19 BODY UNDER § 11-111 OF THIS SUBTITLE, A GOVERNING BODY OR COMMITTEE SHALL
20 PROVIDE A DESIGNATED PERIOD OF TIME DURING A MEETING TO ALLOW UNIT
21 OWNERS AN OPPORTUNITY TO COMMENT ON ANY MATTER RELATING TO THE
22 CONDOMINIUM.

23 [(7)] (8) Unless the bylaws provide otherwise, a quorum is deemed
24 present throughout any meeting of the council of unit owners if persons entitled to
25 cast 25 percent of the total number of votes appurtenant to all units are present in
26 person or by proxy.

27 [(8)] (9) At meetings of the council of unit owners each unit owner shall
28 be entitled to cast the number of votes appurtenant to his unit. Unit owners may vote
29 by proxy, but, the proxy is effective only for a maximum period of 180 days following
30 its issuance, unless granted to a lessee or mortgagee.

31 [(9)] (10) Any proxy may be revoked at any time at the pleasure of the
32 unit owner or unit owners executing the proxy.

33 [(10)] (11) A proxy who is not appointed to vote as directed by a unit owner
34 may only be appointed for purposes of meeting quorums and to vote for matters of
35 business before the council of unit owners, other than an election of officers and
36 members of the board of directors.

1 [(11)] (12) Only a unit owner voting in person or a proxy voting for
2 candidates designated by a unit owner may vote for officers and members of the board
3 of directors.

4 [(12)] (13) Unless otherwise provided in the bylaws, a unit owner may
5 nominate himself or any other person to be an officer or member of the board of
6 directors. A call for nominations shall be sent to all unit owners not less than 45 days
7 before notice of an election is sent. Only nominations made at least 15 days before
8 notice of an election shall be listed on the election ballot. Candidates shall be listed on
9 the ballot in alphabetical order, with no indicated candidate preference. Nominations
10 may be made from the floor at the meeting at which the election to the board is held.

11 [(13)] (14) Election materials prepared with funds of the council of unit
12 owners shall list candidates in alphabetical order and may not indicate a candidate
13 preference.

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

18 [(15)] (16) A meeting of the council of unit owners shall be held within 60
19 days from the date that units representing 50 percent of the votes in the
20 condominium have been conveyed by the developer to the initial purchasers of units
21 to elect officers or a board of directors for the council of unit owners, as provided in
22 the condominium declaration or bylaws.

23 11-111.2.

24 (A) A RECORDED COVENANT OR RESTRICTION, A PROVISION IN A
25 DECLARATION, OR A PROVISION OF THE BYLAWS OR RULES OF A CONDOMINIUM MAY
26 NOT RESTRICT A UNIT OWNER FROM DISTRIBUTING INFORMATION OR CIRCULATING
27 PETITIONS TO OTHER UNIT OWNERS REGARDING THE OPERATION OF AND MATTERS
28 RELATING TO THE OPERATION OF THE CONDOMINIUM:

29 (1) IN ALL GENERAL COMMON ELEMENTS AND IN ANY BUILDING OR
30 FACILITY LOCATED IN THE GENERAL COMMON ELEMENTS, SUBJECT TO
31 REASONABLE RULES CONCERNING TIME, PLACE, AND MANNER ADOPTED BY THE
32 GOVERNING BODY UNDER § 11-111 OF THIS SUBTITLE; AND

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

35 (B) THE COSTS OF DUPLICATION, DISTRIBUTION, OR REMOVAL OF MATERIALS
36 PREPARED BY A UNIT OWNER SHALL BE THE RESPONSIBILITY OF THOSE
37 DISTRIBUTING THE INFORMATION OR CIRCULATING THE PETITIONS.

38 (C) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE THE GOVERNING
39 BODY TO DUPLICATE OR DISTRIBUTE MATERIAL PREPARED BY A UNIT OWNER.

1 11B-101.

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

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

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

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

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

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

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

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

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

27 (3) "Development" does not include a cooperative housing corporation or
28 a condominium.

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

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

33 (2) "Homeowners association" includes an incorporated or
34 unincorporated association.

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

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

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

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

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

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

16 11B-111.

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

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

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

26 (3) **SUBJECT TO REASONABLE RULES ADOPTED BY THE GOVERNING**
27 **BODY, A GOVERNING BODY OR COMMITTEE SHALL PROVIDE A DESIGNATED PERIOD**
28 **OF TIME DURING A MEETING TO ALLOW LOT OWNERS AN OPPORTUNITY TO**
29 **COMMENT ON ANY MATTER RELATING TO THE HOMEOWNERS ASSOCIATION;**

30 [(3)] (4) A meeting of the board of directors or other governing body of
31 the homeowners association or a committee of the homeowners association may be
32 held in closed session only for the following purposes:

33 (i) Discussion of matters pertaining to employees and personnel;

34 (ii) Protection of the privacy or reputation of individuals in matters
35 not related to the homeowners association's business;

36 (iii) Consultation with legal counsel;

1 (iv) Consultation with staff personnel, consultants, attorneys, or
2 other persons in connection with pending or potential litigation;

3 (v) Investigative proceedings concerning possible or actual criminal
4 misconduct;

5 (vi) Consideration of the terms or conditions of a business
6 transaction in the negotiation stage if the disclosure could adversely affect the
7 economic interests of the homeowners association;

8 (vii) Compliance with a specific constitutional, statutory, or
9 judicially imposed requirement protecting particular proceedings or matters from
10 public disclosure; or

11 (viii) On an individually recorded affirmative vote of two-thirds of
12 the board or committee members present, some other exceptional reason so
13 compelling as to override the general public policy in favor of open meetings; and

14 [(4)] (5) If a meeting is held in closed session under paragraph [(3)] (4)
15 of this section:

16 (i) An action may not be taken and a matter may not be discussed
17 if it is not permitted by paragraph [(3)] (4) of this section; and

18 (ii) A statement of the time, place, and purpose of a closed meeting,
19 the record of the vote of each board or committee member by which the meeting was
20 closed, and the authority under this section for closing a meeting shall be included in
21 the minutes of the next meeting of the board of directors or the committee of the
22 homeowners association.

23 11B-111.2.

24 (A) A RECORDED COVENANT OR RESTRICTION, A PROVISION IN A
25 DECLARATION, OR A PROVISION OF THE BYLAWS OR RULES OF A HOMEOWNERS
26 ASSOCIATION MAY NOT RESTRICT LOT OWNERS FROM DISTRIBUTING INFORMATION
27 OR CIRCULATING PETITIONS TO OTHER LOT OWNERS REGARDING THE OPERATION
28 OF AND MATTERS RELATING TO THE OPERATION OF THE HOMEOWNERS
29 ASSOCIATION:

30 (1) IN ALL COMMON AREAS AND IN ANY BUILDING OR FACILITY
31 LOCATED IN THE COMMON AREAS, SUBJECT TO REASONABLE RULES CONCERNING
32 TIME, PLACE, AND MANNER ADOPTED BY THE GOVERNING BODY; AND

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

36 (B) THE COSTS OF DUPLICATION, DISTRIBUTION, OR REMOVAL OF MATERIALS
37 PREPARED BY A LOT OWNER SHALL BE THE RESPONSIBILITY OF THOSE
38 DISTRIBUTING THE INFORMATION OR CIRCULATING THE PETITIONS.

1 (C) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE THE GOVERNING
2 BODY TO DUPLICATE OR DISTRIBUTE MATERIAL PREPARED BY A LOT OWNER.

3 11B-111.3.

4 SUBJECT TO REASONABLE RULES ADOPTED BY THE GOVERNING BODY, ALL LOT
5 OWNERS MAY ASSEMBLE IN THE COMMON AREAS OR IN ANY BUILDING OR FACILITY
6 IN THE COMMON AREAS FOR THE PURPOSE OF CONSIDERING AND DISCUSSING THE
7 OPERATION OF AND MATTERS RELATING TO THE OPERATION OF THE HOMEOWNERS
8 ASSOCIATION.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 1998.