

HOUSE BILL 878

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2004 Regular Session
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By: **Delegates Bobo, Boteler, Bozman, Brown, Holmes, Hubbard, Moe, and Pendergrass**

Introduced and read first time: February 9, 2004

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Cooperative Housing Corporations, Condominiums, and Homeowners**
3 **Associations - Electronic Transmission of Notices and Votes**

4 FOR the purpose of authorizing a cooperative housing corporation, to provide notice of
5 a meeting or deliver information to a member by electronic transmission if
6 certain conditions are met; providing that notice or delivery by electronic
7 transmission by a cooperative housing corporation shall be considered
8 ineffective if certain conditions are met; providing that the inadvertent failure to
9 deliver notice by electronic transmission to a member does not invalidate any
10 meeting or other action of the cooperative housing corporation; authorizing the
11 board of directors of a cooperative housing association to authorize members to
12 submit a vote or proxy by electronic transmission if the electronic transmission
13 contains certain information; prohibiting a regular or special meeting of a
14 council of unit owners of a condominium from being held without certain notice;
15 requiring that notice of special meetings of the board of directors of a council of
16 unit owners be given in a certain manner; requiring that certain notice be
17 delivered, mailed, or sent by electronic transmission if certain requirements are
18 met, to each unit owner; providing that only a unit owner voting in person or by
19 electronic transmission or a certain proxy may vote for officers and members of
20 the board of directors if certain requirements are met; authorizing a council of
21 unit owners to provide notice of a meeting or deliver information to a unit owner
22 by electronic transmission if certain conditions are met; providing that notice or
23 delivery by electronic transmission by a council of unit owners shall be
24 considered ineffective if certain conditions are met; providing that the
25 inadvertent failure to deliver notice to a unit owner by electronic transmission
26 does not invalidate any meeting or other action of the council of unit owners;
27 authorizing the board of directors of a council of unit owners to authorize unit
28 owners to submit a vote or proxy by electronic transmission if the electronic
29 transmission contains certain information; authorizing a homeowners
30 association to provide notice of a meeting or deliver information to a lot owner by
31 electronic transmission if certain conditions are met; providing that notice or
32 delivery by electronic transmission by a homeowners association shall be
33 considered ineffective if certain conditions are met; providing that the
34 inadvertent failure to deliver notice by electronic transmission to a lot owner

1 does not invalidate any meeting or other action of the homeowners association;
2 authorizing the board of directors or other governing body of a homeowners
3 association to authorize lot owners to submit a vote or proxy by electronic
4 transmission if the electronic transmission contains certain information;
5 defining certain terms; and generally relating to the authority of cooperative
6 housing corporations, units of council owners of condominiums, and
7 homeowners associations to provide notices and authorize voting by electronic
8 transmission.

9 BY repealing and reenacting, with amendments,
10 Article - Corporations and Associations
11 Section 5-6B-01
12 Annotated Code of Maryland
13 (1999 Replacement Volume and 2003 Supplement)

14 BY adding to
15 Article - Corporations and Associations
16 Section 5-6B-18.3 and 5-6B-18.4
17 Annotated Code of Maryland
18 (1999 Replacement Volume and 2003 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article - Real Property
21 Section 11-101, 11-109(c), and 11B-101
22 Annotated Code of Maryland
23 (2003 Replacement Volume and 2003 Supplement)

24 BY adding to
25 Article - Real Property
26 Section 11-139.1, 11-139.2, 11B-113.1, and 11B-113.2
27 Annotated Code of Maryland
28 (2003 Replacement Volume and 2003 Supplement)

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

31 **Article - Corporations and Associations**

32 5-6B-01.

33 (a) In this subtitle the following terms have the meanings indicated.

34 (b) "Articles of incorporation" means the charter by which a cooperative
35 housing corporation becomes incorporated under this article.

1 (c) "Blanket encumbrance" means any contract binding on a cooperative
2 housing corporation and creating a lien or security interest or other encumbrance or
3 imposing restrictions on any real or personal property owned by the cooperative
4 housing corporation.

5 (d) "Bylaws" means the document which details and governs the internal
6 organization and operation of the cooperative housing corporation.

7 (e) "Conversion" means the creation of a cooperative housing corporation from
8 a property which was immediately previously a residential rental facility.

9 (f) "Cooperative housing corporation" means a domestic or foreign corporation
10 qualified in this State, either stock or nonstock, having only one class of stock or
11 membership, in which each stockholder or member, by virtue of such ownership or
12 membership, has a cooperative interest in the corporation.

13 (g) "Cooperative interest" means the ownership interest in a cooperative
14 housing corporation which is coupled with a possessory interest in real or personal
15 property or both and evidenced by a membership certificate.

16 (h) "Cooperative project" means all the real and personal property in this
17 State owned or leased by the cooperative housing corporation for the primary purpose
18 of residential use.

19 (i) (1) "Developer" means a person who:

20 (i) Owns an equitable interest, including a cooperative interest, in
21 a unit prior to its initial sale to a member of the public;

22 (ii) Exercises control over cooperative interests before they are
23 transferred to initial purchasers, excluding management agents and sales agents
24 acting in their capacities as such; or

25 (iii) Receives a material portion of the sales proceeds, not including
26 customary brokerage commissions or payment for indebtedness to an institutional
27 banker, from the initial sale of a cooperative interest to a member of the public.

28 (2) "Developer" does not include a cooperative housing corporation.

29 (j) "ELECTRONIC TRANSMISSION" MEANS ANY FORM OF COMMUNICATION,
30 NOT DIRECTLY INVOLVING THE PHYSICAL TRANSMISSION OF PAPER, THAT CREATES
31 A RECORD THAT:

32 (1) MAY BE RETAINED, RETRIEVED, AND REVIEWED BY A RECIPIENT OF
33 THE COMMUNICATION; AND

34 (2) MAY BE REPRODUCED DIRECTLY IN PAPER FORM BY A RECIPIENT
35 THROUGH AN AUTOMATED PROCESS.

1 (K) "Initial purchaser" means a member of the public, not an affiliate of or a
2 successor to the developer, who, for value, acquires a cooperative interest as part of
3 the initial sale of a cooperative interest which is used for residential purposes.

4 [(k)] (L) "Initial sale" means the first transfer of a cooperative interest to an
5 initial purchaser.

6 [(l)] (M) "Member" means a person who owns a cooperative interest.

7 [(m)] (N) "Membership certificate" means:

8 (1) A document, including a stock certificate issued by a cooperative
9 housing corporation, evidencing ownership of a cooperative interest; or

10 (2) If there is no other document which satisfies paragraph (1) of this
11 subsection, a proprietary lease.

12 [(n)] (O) "Moving expenses" means costs incurred to:

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

15 (2) Pack and unpack personal property;

16 (3) Disconnect and install personal property;

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

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

20 [(o)] (P) "No-impact home-based business" means a business that:

21 (1) Is consistent with the residential character of the dwelling unit;

22 (2) Is subordinate to the use of the dwelling unit for residential purposes
23 and requires no external modifications that detract from the residential appearance
24 of the dwelling unit;

25 (3) Uses no equipment or process that creates noise, vibration, glare,
26 fumes, odors, or electrical or electronic interference detectable by neighbors; and

27 (4) Does not involve use, storage, or disposal of any grouping or
28 classification of materials that the United States Secretary of Transportation or the
29 State or any local governing body designates as a hazardous material.

30 [(p)] (Q) (1) "Proprietary lease" means an agreement with the cooperative
31 housing corporation under which a member has an exclusive possessory interest in a
32 unit and a possessory interest in common with other members in that portion of a
33 cooperative project not constituting units and which creates a legal relationship of

1 landlord and tenant between the cooperative housing corporation and the member,
2 respectively.

3 (2) "Proprietary lease" includes, if there is no other document that
4 satisfies paragraph (1) of this subsection, a membership certificate.

5 [(q)] (R) "Residential rental facility" means property containing at least 10
6 dwelling units leased for residential purposes.

7 [(r)] (S) "Unit" means a portion of the cooperative project leased for exclusive
8 occupancy by a member under a proprietary lease.

9 5-6B-18.3.

10 (A) NOTWITHSTANDING LANGUAGE CONTAINED IN THE GOVERNING
11 DOCUMENTS OF A COOPERATIVE HOUSING CORPORATION, THE COOPERATIVE
12 HOUSING CORPORATION MAY PROVIDE NOTICE OF A MEETING OR DELIVER
13 INFORMATION TO A MEMBER BY ELECTRONIC TRANSMISSION IF:

14 (1) THE BOARD OF DIRECTORS OF THE COOPERATIVE HOUSING
15 CORPORATION GIVES THE COOPERATIVE HOUSING CORPORATION THE AUTHORITY
16 TO PROVIDE NOTICE OF A MEETING OR DELIVER INFORMATION BY ELECTRONIC
17 TRANSMISSION;

18 (2) THE MEMBER GIVES THE COOPERATIVE HOUSING CORPORATION
19 PRIOR WRITTEN AUTHORIZATION TO PROVIDE NOTICE OF A MEETING OR DELIVER
20 INFORMATION BY ELECTRONIC TRANSMISSION; AND

21 (3) AN OFFICER OR AGENT OF THE COOPERATIVE HOUSING
22 CORPORATION CERTIFIES IN WRITING THAT THE COOPERATIVE HOUSING
23 CORPORATION HAS PROVIDED NOTICE OF A MEETING OR DELIVERED INFORMATION
24 TO THE MEMBER.

25 (B) NOTICE OR DELIVERY BY ELECTRONIC TRANSMISSION SHALL BE
26 CONSIDERED INEFFECTIVE IF:

27 (1) THE COOPERATIVE HOUSING CORPORATION IS UNABLE TO DELIVER
28 TWO CONSECUTIVE NOTICES; AND

29 (2) THE INABILITY TO DELIVER THE ELECTRONIC TRANSMISSION
30 BECOMES KNOWN TO THE PERSON RESPONSIBLE FOR THE SENDING OF THE
31 ELECTRONIC TRANSMISSION.

32 (C) THE INADVERTENT FAILURE TO DELIVER NOTICE BY ELECTRONIC
33 TRANSMISSION DOES NOT INVALIDATE ANY MEETING OR OTHER ACTION.

34 5-6B-18.4.

35 (A) NOTWITHSTANDING LANGUAGE CONTAINED IN THE GOVERNING
36 DOCUMENTS OF A COOPERATIVE HOUSING CORPORATION, THE BOARD OF

1 DIRECTORS OF THE COOPERATIVE HOUSING CORPORATION MAY AUTHORIZE
2 MEMBERS TO SUBMIT A VOTE OR PROXY BY ELECTRONIC TRANSMISSION IF THE
3 ELECTRONIC TRANSMISSION CONTAINS INFORMATION THAT VERIFIES THAT THE
4 VOTE OR PROXY IS AUTHORIZED BY THE MEMBER OR THE MEMBER'S PROXY.

5 (B) IF THE GOVERNING DOCUMENTS OF THE COOPERATIVE HOUSING
6 CORPORATION REQUIRE VOTING BY SECRET BALLOT AND THE ANONYMITY OF
7 VOTING BY ELECTRONIC TRANSMISSION CANNOT BE GUARANTEED, VOTING BY
8 ELECTRONIC TRANSMISSION SHALL BE PERMITTED IF MEMBERS HAVE THE OPTION
9 OF CASTING ANONYMOUS PRINTED BALLOTS.

10 **Article - Real Property**

11 11-101.

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

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

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

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

19 (2) "Limited common elements" means those common elements
20 identified in the declaration or on the condominium plat as reserved for the exclusive
21 use of one or more but less than all of the unit owners.

22 (3) "General common elements" means all the common elements except
23 the limited common elements.

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

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

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

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

32 (h) "ELECTRONIC TRANSMISSION" MEANS ANY FORM OF COMMUNICATION,
33 NOT DIRECTLY INVOLVING THE PHYSICAL TRANSMISSION OF PAPER, THAT CREATES
34 A RECORD THAT:

1 (1) MAY BE RETAINED, RETRIEVED, AND REVIEWED BY A RECIPIENT OF
2 THE COMMUNICATION; AND

3 (2) MAY BE REPRODUCED DIRECTLY IN PAPER FORM BY A RECIPIENT
4 THROUGH AN AUTOMATED PROCESS.

5 (I) "Governing body" means the council of unit owners, board of directors, or
6 any committee of the council of unit owners or board of directors.

7 [(i)] (J) "Housing agency" means a housing agency of a county or
8 incorporated municipality or some other agency or entity of a county or incorporated
9 municipality designated as such by law or ordinance.

10 [(j)] (K) "Mortgagee" means the holder of any recorded mortgage, or the
11 beneficiary of any recorded deed of trust, encumbering one or more units.

12 [(k)] (L) "Moving expenses" means costs incurred to:

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

15 (2) Pack and unpack personal property;

16 (3) Disconnect and install personal property;

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

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

20 [(l)] (M) "Occupant" means any lessee or guest of a unit owner.

21 [(m)] (N) "Percentage interests" means the interests, expressed as a
22 percentage, fraction or proportion, established in accordance with § 11-107 of this
23 title.

24 [(n)] (O) "Property" means unimproved land, land together with
25 improvements thereon, improvements without the underlying land, or riparian or
26 littoral rights associated with land. Property may consist of noncontiguous parcels or
27 improvements.

28 [(o)] (P) "Rental facility" means property containing dwelling units intended
29 to be leased to persons who occupy the dwellings as their residences.

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

1 [(q)] (R) "Unit owner" means the person, or combination of persons, who hold
2 legal title to a unit. A mortgagee or a trustee designated under a deed of trust, as
3 such, may not be deemed a unit owner.

4 11-109.

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

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

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

13 (4) A regular or special meeting of the council of unit owners may not be
14 held on less than 10 nor more than 90 days':

15 (I) [written] WRITTEN notice delivered or mailed to each unit
16 owner at the address shown on the roster on the date of the notice; OR

17 (II) NOTICE SENT TO EACH UNIT OWNER BY ELECTRONIC
18 TRANSMISSION, IF THE REQUIREMENTS OF § 11-139.1 OF THIS SUBTITLE ARE MET.

19 (5) Notice of special meetings of the board of directors shall be given:

20 (I) [as] AS provided in the bylaws; OR

21 (II) IF THE REQUIREMENTS OF § 11-139.1 OF THIS SUBTITLE ARE
22 MET, BY ELECTRONIC TRANSMISSION.

23 (6) Except as provided in § 11-109.1 of this title, a meeting of a
24 governing body shall be open and held at a time and location as provided in the notice
25 or bylaws.

26 (7) (i) This paragraph does not apply to any meeting of the governing
27 body that occurs at any time before the meeting at which the unit owners elect
28 officers or a board of directors in accordance with paragraph (16) of this subsection.

29 (ii) Subject to subparagraph (iii) of this paragraph and to
30 reasonable rules adopted by the governing body under § 11-111 of this title, a
31 governing body shall provide a designated period of time during a meeting to allow
32 unit owners an opportunity to comment on any matter relating to the condominium.

33 (iii) During a meeting at which the agenda is limited to specific
34 topics or at a special meeting, the unit owners' comments may be limited to the topics
35 listed on the meeting agenda.

1 (iv) The governing body shall convene at least one meeting each
2 year at which the agenda is open to any matter relating to the condominium.

3 (8) (i) Unless the bylaws provide otherwise, a quorum is deemed
4 present throughout any meeting of the council of unit owners if persons entitled to
5 cast 25 percent of the total number of votes appurtenant to all units are present in
6 person or by proxy.

7 (ii) If the number of persons present in person, or by proxy, at a
8 properly called meeting of the council of unit owners is insufficient to constitute a
9 quorum, another meeting of the council of unit owners may be called for the same
10 purpose if:

11 1. The notice of the meeting stated that the procedure
12 authorized by this paragraph might be invoked; and

13 2. By majority vote, the unit owners present in person or by
14 proxy call for the additional meeting.

15 (iii) 1. Fifteen days' notice of the time, place, and purpose of the
16 additional meeting shall be delivered, [or] mailed, OR SENT BY ELECTRONIC
17 TRANSMISSION IF THE REQUIREMENTS OF § 11-139.2 ARE MET, to each unit owner at
18 the address shown on the roster maintained under paragraph (2) of this subsection.

19 2. The notice shall contain the quorum and voting provisions
20 of subparagraph (iv) of this paragraph.

21 (iv) 1. At the additional meeting, the unit owners present in
22 person or by proxy constitute a quorum.

23 2. Unless the bylaws provide otherwise, a majority of the
24 unit owners present in person, or by proxy:

25 A. May approve or authorize the proposed action at the
26 additional meeting; and

27 B. May take any other action that could have been taken at
28 the original meeting if a sufficient number of unit owners had been present.

29 (v) This paragraph may not be construed to affect the percentage of
30 votes required to amend the declaration or bylaws or to take any other action required
31 to be taken by a specified percentage of votes.

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

36 (10) Any proxy may be revoked at any time at the pleasure of the unit
37 owner or unit owners executing the proxy.

1 (11) A proxy who is not appointed to vote as directed by a unit owner may
2 only be appointed for purposes of meeting quorums and to vote for matters of business
3 before the council of unit owners, other than an election of officers and members of
4 the board of directors.

5 (12) Only a unit owner voting in person OR BY ELECTRONIC
6 TRANSMISSION IF THE REQUIREMENTS OF § 11-139.2 ARE MET or a proxy voting for
7 candidates designated by a unit owner may vote for officers and members of the board
8 of directors.

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

16 (14) Election materials prepared with funds of the council of unit owners
17 shall list candidates in alphabetical order and may not indicate a candidate
18 preference.

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

23 (16) A meeting of the council of unit owners shall be held within 60 days
24 from the date that units representing 50 percent of the votes in the condominium
25 have been conveyed by the developer to the initial purchasers of units to elect officers
26 or a board of directors for the council of unit owners, as provided in the condominium
27 declaration or bylaws.

28 11-139.1.

29 (A) NOTWITHSTANDING LANGUAGE CONTAINED IN THE GOVERNING
30 DOCUMENTS OF A COUNCIL OF UNIT OWNERS, THE COUNCIL OF UNIT OWNERS MAY
31 PROVIDE NOTICE OF A MEETING OR DELIVER INFORMATION TO A UNIT OWNER BY
32 ELECTRONIC TRANSMISSION IF:

33 (1) THE GOVERNING BODY OF THE COUNCIL OF UNIT OWNERS GIVES
34 THE COUNCIL OF UNIT OWNERS THE AUTHORITY TO PROVIDE NOTICE OF A MEETING
35 OR DELIVER INFORMATION BY ELECTRONIC TRANSMISSION;

36 (2) THE UNIT OWNER GIVES THE COUNCIL OF UNIT OWNERS PRIOR
37 WRITTEN AUTHORIZATION TO PROVIDE NOTICE OF A MEETING OR DELIVER
38 INFORMATION BY ELECTRONIC TRANSMISSION; AND

39 (3) AN OFFICER OR AGENT OF THE COUNCIL OF UNIT OWNERS
40 CERTIFIES IN WRITING THAT THE COUNCIL OF UNIT OWNERS HAS PROVIDED

1 NOTICE OF A MEETING OR DELIVERED MATERIAL OR INFORMATION AS AUTHORIZED
2 BY THE UNIT OWNER.

3 (B) NOTICE OR DELIVERY BY ELECTRONIC TRANSMISSION SHALL BE
4 CONSIDERED INEFFECTIVE IF:

5 (1) THE COUNCIL OF UNIT OWNERS IS UNABLE TO DELIVER TWO
6 CONSECUTIVE NOTICES; AND

7 (2) THE INABILITY TO DELIVER THE ELECTRONIC TRANSMISSION
8 BECOMES KNOWN TO THE PERSON RESPONSIBLE FOR THE SENDING OF THE
9 ELECTRONIC TRANSMISSION.

10 (C) THE INADVERTENT FAILURE TO DELIVER NOTICE BY ELECTRONIC
11 TRANSMISSION DOES NOT INVALIDATE ANY MEETING OR OTHER ACTION.

12 11-139.2.

13 (A) NOTWITHSTANDING LANGUAGE CONTAINED IN THE GOVERNING
14 DOCUMENTS OF THE COUNCIL OF UNIT OWNERS, THE BOARD OF DIRECTORS OF THE
15 COUNCIL OF UNIT OWNERS MAY AUTHORIZE UNIT OWNERS TO SUBMIT A VOTE OR
16 PROXY BY ELECTRONIC TRANSMISSION IF THE ELECTRONIC TRANSMISSION
17 CONTAINS INFORMATION THAT VERIFIES THAT THE VOTE OR PROXY IS AUTHORIZED
18 BY THE UNIT OWNER OR THE UNIT OWNER'S PROXY.

19 (B) IF THE GOVERNING DOCUMENTS OF THE COUNCIL OF UNIT OWNERS
20 REQUIRE VOTING BY SECRET BALLOT AND THE ANONYMITY OF VOTING BY
21 ELECTRONIC TRANSMISSION CANNOT BE GUARANTEED, VOTING BY ELECTRONIC
22 TRANSMISSION SHALL BE PERMITTED IF UNIT OWNERS HAVE THE OPTION OF
23 CASTING ANONYMOUS PRINTED BALLOTS.

24 11B-101.

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

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

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

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

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

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

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

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

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

14 (3) "Development" does not include a cooperative housing corporation or
15 a condominium.

16 (g) "ELECTRONIC TRANSMISSION" MEANS ANY FORM OF COMMUNICATION,
17 NOT DIRECTLY INVOLVING THE PHYSICAL TRANSMISSION OF PAPER, THAT CREATES
18 A RECORD THAT:

19 (1) MAY BE RETAINED, RETRIEVED, AND REVIEWED BY A RECIPIENT OF
20 THE COMMUNICATION; AND

21 (2) MAY BE REPRODUCED DIRECTLY IN PAPER FORM BY A RECIPIENT
22 THROUGH AN AUTOMATED PROCESS.

23 (H) "Governing body" means the homeowners association, board of directors, or
24 other entity established to govern the development.

25 [(h)] (I) (1) "Homeowners association" means a person having the authority
26 to enforce the provisions of a declaration.

27 (2) "Homeowners association" includes an incorporated or
28 unincorporated association.

29 [(i)] (J) (1) "Lot" means any plot or parcel of land on which a dwelling is
30 located or will be located within a development.

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

34 [(j)] (K) "Primary development" means a development such that the
35 purchaser of a lot will pay fees directly to its homeowners association.

1 [(k)] (L) "Recorded covenants and restrictions" means any instrument of
2 writing which is recorded in the land records of the jurisdiction within which a lot is
3 located, and which instrument governs or otherwise legally restricts the use of such
4 lot.

5 [(l)] (M) "Related development" means a development such that the purchaser
6 of a lot will pay fees to the homeowners association of such development through the
7 homeowners association of a primary development or another development.

8 [(m)] (N) "Unaffiliated declarant" means a person who is not affiliated with the
9 vendor of a lot but who has subjected such property to a declaration required to be
10 disclosed by this title.

11 11B-113.1.

12 (A) NOTWITHSTANDING LANGUAGE CONTAINED IN THE GOVERNING
13 DOCUMENTS OF A HOMEOWNERS ASSOCIATION, THE HOMEOWNERS ASSOCIATION
14 MAY PROVIDE NOTICE OF A MEETING OR DELIVER INFORMATION TO A LOT OWNER
15 BY ELECTRONIC TRANSMISSION IF:

16 (1) THE BOARD OF DIRECTORS OR OTHER GOVERNING BODY OF THE
17 HOMEOWNERS ASSOCIATION GIVES THE HOMEOWNERS ASSOCIATION THE
18 AUTHORITY TO PROVIDE NOTICE OF A MEETING OR DELIVER INFORMATION BY
19 ELECTRONIC TRANSMISSION;

20 (2) THE LOT OWNER GIVES THE HOMEOWNERS ASSOCIATION PRIOR
21 WRITTEN AUTHORIZATION TO PROVIDE NOTICE OF A MEETING OR DELIVER
22 INFORMATION BY ELECTRONIC TRANSMISSION; AND

23 (3) AN OFFICER OR AGENT OF THE HOMEOWNERS ASSOCIATION
24 CERTIFIES IN WRITING THAT THE HOMEOWNERS ASSOCIATION HAS PROVIDED
25 NOTICE OF A MEETING OR DELIVERED MATERIAL OR INFORMATION AS AUTHORIZED
26 BY THE LOT OWNER.

27 (B) NOTICE OR DELIVERY BY ELECTRONIC TRANSMISSION SHALL BE
28 CONSIDERED INEFFECTIVE IF:

29 (1) THE HOMEOWNERS ASSOCIATION IS UNABLE TO DELIVER TWO
30 CONSECUTIVE NOTICES; AND

31 (2) THE INABILITY TO DELIVER THE ELECTRONIC TRANSMISSION
32 BECOMES KNOWN TO THE PERSON RESPONSIBLE FOR SENDING THE ELECTRONIC
33 TRANSMISSION.

34 (C) THE INADVERTENT FAILURE TO DELIVER NOTICE BY ELECTRONIC
35 TRANSMISSION DOES NOT INVALIDATE ANY MEETING OR OTHER ACTION.

1 11B-113.2.

2 (A) NOTWITHSTANDING LANGUAGE CONTAINED IN THE GOVERNING
3 DOCUMENTS OF THE HOMEOWNERS ASSOCIATION, THE BOARD OF DIRECTORS OR
4 OTHER GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION MAY AUTHORIZE LOT
5 OWNERS TO SUBMIT A VOTE OR PROXY BY ELECTRONIC TRANSMISSION IF THE
6 ELECTRONIC TRANSMISSION CONTAINS INFORMATION THAT VERIFIES THAT THE
7 VOTE OR PROXY IS AUTHORIZED BY THE LOT OWNER OR THE LOT OWNER'S PROXY.

8 (B) IF THE GOVERNING DOCUMENTS OF THE HOMEOWNERS ASSOCIATION
9 REQUIRE VOTING BY SECRET BALLOT AND THE ANONYMITY OF VOTING BY
10 ELECTRONIC TRANSMISSION CANNOT BE GUARANTEED, VOTING BY ELECTRONIC
11 TRANSMISSION SHALL BE PERMITTED IF LOT OWNERS HAVE THE OPTION OF
12 CASTING ANONYMOUS PRINTED BALLOTS.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2004.