

SENATE BILL 568

Unofficial Copy  
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2004 Regular Session  
4lr2845  
CF 4lr1725

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By: **Senators Green, Forehand, and Frosh**  
Introduced and read first time: February 6, 2004  
Assigned to: Judicial Proceedings

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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  
35 does not invalidate any meeting or other action of the homeowners association;

1 authorizing the board of directors or other governing body of a homeowners  
2 association to authorize lot owners to submit a vote or proxy by electronic  
3 transmission if the electronic transmission contains certain information;  
4 defining certain terms; and generally relating to the authority of cooperative  
5 housing corporations, units of council owners of condominiums, and  
6 homeowners associations to provide notices and authorize voting by electronic  
7 transmission.

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

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

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

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

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

30 **Article - Corporations and Associations**

31 5-6B-01.

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

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

35 (c) "Blanket encumbrance" means any contract binding on a cooperative  
36 housing corporation and creating a lien or security interest or other encumbrance or

1 imposing restrictions on any real or personal property owned by the cooperative  
2 housing corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (2) Pack and unpack personal property;

13 (3) Disconnect and install personal property;

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

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

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

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

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

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

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

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

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

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

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

5 5-6B-18.3.

6 (A) NOTWITHSTANDING LANGUAGE CONTAINED IN THE GOVERNING  
7 DOCUMENTS OF A COOPERATIVE HOUSING CORPORATION, THE COOPERATIVE  
8 HOUSING CORPORATION MAY PROVIDE NOTICE OF A MEETING OR DELIVER  
9 INFORMATION TO A MEMBER BY ELECTRONIC TRANSMISSION IF:

10 (1) THE BOARD OF DIRECTORS OF THE COOPERATIVE HOUSING  
11 CORPORATION GIVES THE COOPERATIVE HOUSING CORPORATION THE AUTHORITY  
12 TO PROVIDE NOTICE OF A MEETING OR DELIVER INFORMATION BY ELECTRONIC  
13 TRANSMISSION;

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

17 (3) AN OFFICER OR AGENT OF THE COOPERATIVE HOUSING  
18 CORPORATION CERTIFIES IN WRITING THAT THE COOPERATIVE HOUSING  
19 CORPORATION HAS PROVIDED NOTICE OF A MEETING OR DELIVERED INFORMATION  
20 TO THE MEMBER.

21 (B) NOTICE OR DELIVERY BY ELECTRONIC TRANSMISSION SHALL BE  
22 CONSIDERED INEFFECTIVE IF:

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

25 (2) THE INABILITY TO DELIVER THE ELECTRONIC TRANSMISSION  
26 BECOMES KNOWN TO THE PERSON RESPONSIBLE FOR THE SENDING OF THE  
27 ELECTRONIC TRANSMISSION.

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

30 5-6B-18.4.

31 (A) NOTWITHSTANDING LANGUAGE CONTAINED IN THE GOVERNING  
32 DOCUMENTS OF A COOPERATIVE HOUSING CORPORATION, THE BOARD OF  
33 DIRECTORS OF THE COOPERATIVE HOUSING CORPORATION MAY AUTHORIZE  
34 MEMBERS TO SUBMIT A VOTE OR PROXY BY ELECTRONIC TRANSMISSION IF THE  
35 ELECTRONIC TRANSMISSION CONTAINS INFORMATION THAT VERIFIES THAT THE  
36 VOTE OR PROXY IS AUTHORIZED BY THE MEMBER OR THE MEMBER'S PROXY.

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

6 **Article - Real Property**

7 11-101.

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

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

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

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

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

18 (3) "General common elements" means all the common elements except  
19 the limited common elements.

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

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

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

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

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

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

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

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

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

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

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

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

11 (2) Pack and unpack personal property;

12 (3) Disconnect and install personal property;

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

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

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

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

20 [(n)] (O) "Property" means unimproved land, land together with  
21 improvements thereon, improvements without the underlying land, or riparian or  
22 littoral rights associated with land. Property may consist of noncontiguous parcels or  
23 improvements.

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

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

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

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':

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

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

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

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

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

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

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

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

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

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

35 (8) (i) Unless the bylaws provide otherwise, a quorum is deemed  
36 present throughout any meeting of the council of unit owners if persons entitled to



1 cast 25 percent of the total number of votes appurtenant to all units are present in  
2 person or by proxy.

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

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

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

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

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

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

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

21 A. May approve or authorize the proposed action at the  
22 additional meeting; and

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

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

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

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

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

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

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

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

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

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

24 11-139.1.

25 (A) NOTWITHSTANDING LANGUAGE CONTAINED IN THE GOVERNING  
26 DOCUMENTS OF A COUNCIL OF UNIT OWNERS, THE COUNCIL OF UNIT OWNERS MAY  
27 PROVIDE NOTICE OF A MEETING OR DELIVER INFORMATION TO A UNIT OWNER BY  
28 ELECTRONIC TRANSMISSION IF:

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

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

35 (3) AN OFFICER OR AGENT OF THE COUNCIL OF UNIT OWNERS  
36 CERTIFIES IN WRITING THAT THE COUNCIL OF UNIT OWNERS HAS PROVIDED  
37 NOTICE OF A MEETING OR DELIVERED MATERIAL OR INFORMATION AS AUTHORIZED  
38 BY THE UNIT OWNER.

39 (B) NOTICE OR DELIVERY BY ELECTRONIC TRANSMISSION SHALL BE  
40 CONSIDERED INEFFECTIVE IF:

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

3 (2) THE INABILITY TO DELIVER THE ELECTRONIC TRANSMISSION  
4 BECOMES KNOWN TO THE PERSON RESPONSIBLE FOR THE SENDING OF THE  
5 ELECTRONIC TRANSMISSION.

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

8 11-139.2.

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

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

20 11B-101.

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

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

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

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

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

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

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

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

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

9 (3) "Development" does not include a cooperative housing corporation or  
10 a condominium.

11 (g) "ELECTRONIC TRANSMISSION" MEANS ANY FORM OF COMMUNICATION,  
12 NOT DIRECTLY INVOLVING THE PHYSICAL TRANSMISSION OF PAPER, THAT CREATES  
13 A RECORD THAT:

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

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

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

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

22 (2) "Homeowners association" includes an incorporated or  
23 unincorporated association.

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

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

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

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

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

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

7 11B-113.1.

8 (A) NOTWITHSTANDING LANGUAGE CONTAINED IN THE GOVERNING  
9 DOCUMENTS OF A HOMEOWNERS ASSOCIATION, THE HOMEOWNERS ASSOCIATION  
10 MAY PROVIDE NOTICE OF A MEETING OR DELIVER INFORMATION TO A LOT OWNER  
11 BY ELECTRONIC TRANSMISSION IF:

12 (1) THE BOARD OF DIRECTORS OR OTHER GOVERNING BODY OF THE  
13 HOMEOWNERS ASSOCIATION GIVES THE HOMEOWNERS ASSOCIATION THE  
14 AUTHORITY TO PROVIDE NOTICE OF A MEETING OR DELIVER INFORMATION BY  
15 ELECTRONIC TRANSMISSION;

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

19 (3) AN OFFICER OR AGENT OF THE HOMEOWNERS ASSOCIATION  
20 CERTIFIES IN WRITING THAT THE HOMEOWNERS ASSOCIATION HAS PROVIDED  
21 NOTICE OF A MEETING OR DELIVERED MATERIAL OR INFORMATION AS AUTHORIZED  
22 BY THE LOT OWNER.

23 (B) NOTICE OR DELIVERY BY ELECTRONIC TRANSMISSION SHALL BE  
24 CONSIDERED INEFFECTIVE IF:

25 (1) THE HOMEOWNERS ASSOCIATION IS UNABLE TO DELIVER TWO  
26 CONSECUTIVE NOTICES; AND

27 (2) THE INABILITY TO DELIVER THE ELECTRONIC TRANSMISSION  
28 BECOMES KNOWN TO THE PERSON RESPONSIBLE FOR SENDING THE ELECTRONIC  
29 TRANSMISSION.

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

32 11B-113.2.

33 (A) NOTWITHSTANDING LANGUAGE CONTAINED IN THE GOVERNING  
34 DOCUMENTS OF THE HOMEOWNERS ASSOCIATION, THE BOARD OF DIRECTORS OR  
35 OTHER GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION MAY AUTHORIZE LOT  
36 OWNERS TO SUBMIT A VOTE OR PROXY BY ELECTRONIC TRANSMISSION IF THE  
37 ELECTRONIC TRANSMISSION CONTAINS INFORMATION THAT VERIFIES THAT THE  
38 VOTE OR PROXY IS AUTHORIZED BY THE LOT OWNER OR THE LOT OWNER'S PROXY.

1 (B) IF THE GOVERNING DOCUMENTS OF THE HOMEOWNERS ASSOCIATION  
2 REQUIRE VOTING BY SECRET BALLOT AND THE ANONYMITY OF VOTING BY  
3 ELECTRONIC TRANSMISSION CANNOT BE GUARANTEED, VOTING BY ELECTRONIC  
4 TRANSMISSION SHALL BE PERMITTED IF LOT OWNERS HAVE THE OPTION OF  
5 CASTING ANONYMOUS PRINTED BALLOTS.

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