

HOUSE BILL 369

N1

7lr1579

By: **Delegates Braveboy, Griffith, Davis, and Vaughn**

Introduced and read first time: February 2, 2007

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 2007

CHAPTER _____

1 AN ACT concerning

2 **Real Property – Homeowners Associations – Transition of Association**
3 **Control – Study**

4 FOR the purpose of ~~entitling the lot owners of a homeowners association to elect the~~
5 ~~governing body of the homeowners association when a certain percentage of lots~~
6 ~~are purchased under certain circumstances; requiring a developer to schedule,~~
7 ~~provide notice of, and hold a certain meeting of lot owners under certain~~
8 ~~circumstances; requiring a developer to deliver certain items to the governing~~
9 ~~body under certain circumstances; requiring the governing body to make certain~~
10 ~~documents available for inspection to lot owners under certain circumstances;~~
11 ~~prohibiting the governing body from entering into certain contracts;~~
12 ~~establishing a certain grievance procedure for lot owners; defining certain~~
13 ~~terms; making stylistic changes~~ requiring the Division of Consumer Protection
14 of the Office of the Attorney General to study and make recommendations
15 regarding the transfer of control of the governing body in a homeowners
16 association; requiring the Division to report to the General Assembly on or
17 before a certain date; providing for the termination of this Act; and generally
18 relating to the study of the transition of control in a homeowners association.

19 ~~BY repealing and reenacting, with amendments,~~
20 ~~Article – Real Property~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



~~Section 11B-101 and 11B-102(e)
Annotated Code of Maryland
(2003 Replacement Volume and 2006 Supplement)~~

~~BY adding to
Article—Real Property
Section 11B-106.1
Annotated Code of Maryland
(2003 Replacement Volume and 2006 Supplement)~~

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

(a) The Division of Consumer Protection of the Office of the Attorney General shall:

(1) study the issue of the transfer of control of the governing body in a homeowners association from a declarant or developer, including:

(i) the process for the transfer of control in other forms of common ownership communities in the State; and

(ii) the process for the transfer of control in common ownership communities in other states; and

(2) make recommendations regarding options, including legislative proposals if appropriate, to facilitate the transfer of control of the governing body in a homeowners association in the State.

(b) On or before December 31, 2007, the Division shall report its findings and recommendations, in accordance with § 2-1246 of the State Government Article, to the General Assembly.

~~Article—Real Property~~

~~11B-101.~~

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

~~(b) “Common areas” means property which is owned or leased by a homeowners association.~~

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

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

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

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

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

17 ~~(f) "DEVELOPER" MEANS A PERSON WHO:~~

18 ~~(1) BUILDS THE COMMUNITY SERVED BY THE HOMEOWNERS~~
 19 ~~ASSOCIATION; OR~~

20 ~~(2) SUCCEEDS TO THE RIGHTS AND LIABILITIES OF THE PERSON~~
 21 ~~THAT CREATED THE COMMUNITY SERVED BY THE HOMEOWNERS ASSOCIATION.~~

22 ~~(G) (1) "Development" means property subject to a declaration.~~

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

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

28 ~~[(g)] (H) "Electronic transmission" means any form of communication, not~~
 29 ~~directly involving the physical transmission of paper, that creates a record that:~~

1 ~~(1) May be retained, retrieved, and reviewed by a recipient of the~~
2 ~~communication; and~~

3 ~~(2) May be reproduced directly in paper form by a recipient through an~~
4 ~~automated process.~~

5 ~~[(h)](I) "Governing body" means the homeowners association, board of~~
6 ~~directors, or other entity established to govern the development.~~

7 ~~[(i)](J) (1) "Homeowners association" means a person having the~~
8 ~~authority to enforce the provisions of a declaration.~~

9 ~~(2) "Homeowners association" includes an incorporated or~~
10 ~~unincorporated association.~~

11 ~~[(j)](K) (1) "Lot" means any plot or parcel of land on which a dwelling is~~
12 ~~located or will be located within a development.~~

13 ~~(2) "Lot" includes a unit within a condominium or cooperative housing~~
14 ~~corporation if the condominium or cooperative housing corporation is part of a~~
15 ~~development.~~

16 ~~[(k)](L) "Primary development" means a development such that the~~
17 ~~purchaser of a lot will pay fees directly to its homeowners association.~~

18 ~~[(l)](M) "Recorded covenants and restrictions" means any instrument of~~
19 ~~writing which is recorded in the land records of the jurisdiction within which a lot is~~
20 ~~located, and which instrument governs or otherwise legally restricts the use of such~~
21 ~~lot.~~

22 ~~[(m)](N) "Related development" means a development such that the~~
23 ~~purchaser of a lot will pay fees to the homeowners association of such development~~
24 ~~through the homeowners association of a primary development or another~~
25 ~~development.~~

26 ~~[(n)](O) "Unaffiliated declarant" means a person who is not affiliated with~~
27 ~~the vendor of a lot but who has subjected such property to a declaration required to be~~
28 ~~disclosed by this title.~~

29 ~~11B-102.~~

1 (e) ~~Except as provided in [§ 11B-101(f)] § 11B-101(G) of this title, this title~~
 2 ~~does not apply to any property which is:~~

3 (1) ~~Part of a condominium regime governed by Title 11 of this article;~~

4 (2) ~~Part of a cooperative housing corporation; or~~

5 (3) ~~To be occupied and used for nonresidential purposes.~~

6 ~~11B-106.1.~~

7 (A) ~~IN THIS SECTION, "HOMEOWNERS ASSOCIATION DOCUMENTS"~~
 8 ~~MEANS:~~

9 (1) ~~THE DEED TO COMMON PROPERTY OWNED BY THE~~
 10 ~~HOMEOWNERS ASSOCIATION;~~

11 (2) ~~THE ORIGINALS OF THE HOMEOWNERS ASSOCIATION'S~~
 12 ~~ARTICLES OF INCORPORATION, DECLARATION, AND ALL RECORDED COVENANTS~~
 13 ~~AND RESTRICTIONS OF THE PRIMARY DEVELOPMENT AND OF RELATED~~
 14 ~~DEVELOPMENTS;~~

15 (3) ~~A COPY OF THE BYLAWS AND RULES OF THE PRIMARY~~
 16 ~~DEVELOPMENT AND OF OTHER RELATED DEVELOPMENTS;~~

17 (4) ~~THE MINUTE BOOKS, INCLUDING ALL MINUTES;~~

18 (5) ~~THE BOOKS AND RECORDS OF THE HOMEOWNERS~~
 19 ~~ASSOCIATION;~~

20 (6) ~~ANY POLICIES, RULES, AND REGULATIONS ADOPTED BY THE~~
 21 ~~GOVERNING BODY;~~

22 (7) ~~THE FINANCIAL RECORDS OF THE HOMEOWNERS~~
 23 ~~ASSOCIATION FROM THE DATE OF INCORPORATION TO THE DATE OF TURNOVER,~~
 24 ~~INCLUDING BUDGET INFORMATION REGARDING ESTIMATED AND ACTUAL~~
 25 ~~EXPENDITURES BY THE HOMEOWNERS ASSOCIATION;~~

26 (8) ~~A COPY OF ALL CONTRACTS IN FORCE WITH THE~~
 27 ~~HOMEOWNERS ASSOCIATION AS ONE OF THE PARTIES;~~

1 ~~(9) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF ANY~~
2 ~~CONTRACTOR OR SUBCONTRACTOR EMPLOYED BY THE HOMEOWNERS~~
3 ~~ASSOCIATION;~~

4 ~~(10) THE INSURANCE POLICY IN EFFECT;~~

5 ~~(11) ANY PERMIT ISSUED TO THE HOMEOWNERS ASSOCIATION BY~~
6 ~~THE STATE OR FEDERAL GOVERNMENT; AND~~

7 ~~(12) ANY WARRANTY IN EFFECT.~~

8 ~~(B) LOT OWNERS OF A HOMEOWNERS ASSOCIATION OTHER THAN THE~~
9 ~~DEVELOPER ARE ENTITLED TO ELECT ALL THE MEMBERS OF THE GOVERNING~~
10 ~~BODY OF THE HOMEOWNERS ASSOCIATION WHEN:~~

11 ~~(1) AT LEAST 75% OF THE LOTS IN THE DEVELOPMENT ARE SOLD~~
12 ~~UNDER A BONA FIDE ARM'S LENGTH CONTRACT TO MEMBERS OF THE PUBLIC~~
13 ~~WHO INTEND TO OCCUPY OR RENT THE LOTS FOR RESIDENTIAL PURPOSES; OR~~

14 ~~(2) IF A LESSER PERCENTAGE IS SPECIFIED IN THE DOCUMENTS~~
15 ~~OF THE HOMEOWNERS ASSOCIATION, THE SPECIFIED LESSER PERCENTAGE OF~~
16 ~~LOTS IN THE DEVELOPMENT ARE SOLD UNDER A BONA FIDE ARM'S LENGTH~~
17 ~~CONTRACT TO MEMBERS OF THE PUBLIC WHO INTEND TO OCCUPY OR RENT THE~~
18 ~~LOTS FOR RESIDENTIAL PURPOSES.~~

19 ~~(C) WITHIN 30 DAYS AFTER THE TIME THE LOT OWNERS ARE ENTITLED~~
20 ~~TO ELECT THE GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION AS~~
21 ~~PROVIDED IN SUBSECTION (A) OF THIS SECTION, THE DEVELOPER SHALL:~~

22 ~~(1) SCHEDULE A TRANSITIONAL MEETING TO ELECT A NEW~~
23 ~~GOVERNING BODY;~~

24 ~~(2) GIVE NOTICE TO THE LOT OWNERS OF THE DATE OF THE~~
25 ~~TRANSITIONAL MEETING AND THE LOT OWNERS' RIGHT TO ELECT A NEW~~
26 ~~GOVERNING BODY; AND~~

27 ~~(3) OBTAIN THE RESIGNATION OF ALL MEMBERS OF THE~~
28 ~~GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION APPOINTED BY THE~~
29 ~~DEVELOPER.~~

1 ~~(D) WITHIN 60 DAYS AFTER THE TIME THE LOT OWNERS ARE ENTITLED~~
2 ~~TO ELECT THE GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION AS~~
3 ~~PROVIDED IN SUBSECTION (A) OF THIS SECTION, THE DEVELOPER SHALL:~~

4 ~~(1) HOLD A TRANSITIONAL MEETING FOR THE LOT OWNERS TO~~
5 ~~ELECT A NEW GOVERNING BODY; AND~~

6 ~~(2) DELIVER THE FOLLOWING ITEMS TO THE BOARD AT THE~~
7 ~~DEVELOPER'S EXPENSE:~~

8 ~~(I) THE HOMEOWNERS ASSOCIATION DOCUMENTS;~~

9 ~~(II) THE RESIGNATIONS OF ALL MEMBERS OF THE~~
10 ~~GOVERNING BODY REQUIRED TO RESIGN BECAUSE OF THE TRANSITION OF~~
11 ~~ASSOCIATION CONTROL;~~

12 ~~(III) THE HOMEOWNERS ASSOCIATION FUNDS;~~

13 ~~(IV) THE TANGIBLE PROPERTY OF THE HOMEOWNERS~~
14 ~~ASSOCIATION; AND~~

15 ~~(V) A ROSTER OF CURRENT HOMEOWNERS, INCLUDING~~
16 ~~THEIR ADDRESSES, TELEPHONE NUMBERS, AND LOT NUMBERS.~~

17 ~~(E) THE GOVERNING BODY SHALL MAKE ALL HOMEOWNERS~~
18 ~~ASSOCIATION DOCUMENTS AVAILABLE FOR INSPECTION AND COPYING DURING~~
19 ~~REASONABLE BUSINESS HOURS NO LATER THAN 10 BUSINESS DAYS AFTER A~~
20 ~~LOT OWNER FINALIZES THE SALE OF THE LOT AND REQUESTS ACCESS.~~

21 ~~(F) UNTIL ALL MEMBERS OF THE GOVERNING BODY ARE ELECTED BY~~
22 ~~THE LOT OWNERS, THE GOVERNING BODY MAY NOT ENTER INTO CONTRACTS:~~

23 ~~(1) THAT ARE MORE THAN 1 YEAR IN DURATION; AND~~

24 ~~(2) THAT DO NOT CONTAIN A CLAUSE PROVIDING FOR THE~~
25 ~~TERMINATION OF THE CONTRACT AT THE DISCRETION OF THE HOMEOWNERS~~
26 ~~ASSOCIATION ON AT LEAST 30 DAYS OF NOTICE.~~

1 ~~(C) IF THE DEVELOPER FAILS TO COMPLY WITH THE REQUIREMENTS OF~~
2 ~~THIS SECTION, AN AGGRIEVED LOT OWNER MAY SUBMIT THE DISPUTE FOR~~
3 ~~ADJUDICATION TO:~~

4 ~~(1) A COUNTY HOMEOWNERS ASSOCIATION COMMISSION FOR~~
5 ~~ADJUDICATION, IF ONE EXISTS; OR~~

6 ~~(2) A MEDIATOR FROM THE OFFICE OF ADMINISTRATIVE~~
7 ~~HEARINGS, WITH COSTS TO BE PAID BY THE PARTY AGAINST WHOM JUDGMENT~~
8 ~~IS RENDERED.~~

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 ~~October~~ July 1, 2007. It shall remain effective for a period of 6 months and, at the end
11 of December 31, 2007, with no further action required by the General Assembly, this
12 Act shall be abrogated and of no further force and effect.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.