

SENATE BILL 285

N1

7lr1409

By: **Senators Kelley and Hooper**

Introduced and read first time: January 31, 2007

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Condominiums and Homeowners Associations – Reserve**
3 **Study**

4 FOR the purpose of requiring the bylaws of a condominium to provide for the
5 frequency with which a reserve study will be conducted; requiring a certain
6 developer to cause to be conducted a certain reserve study before a certain
7 event; requiring a certain council of unit owners to cause to be conducted a
8 reserve study within a certain time; requiring a certain developer to pay a
9 certain installment of a certain assessment; requiring a certain declarant to
10 cause to be conducted a certain reserve study before the occurrence of a certain
11 event; requiring the governing body of a homeowners association to cause to be
12 conducted a reserve study within a certain time; requiring the bylaws or other
13 governing documents of a homeowners association to include the frequency with
14 which a reserve study must be conducted; requiring a certain budget to provide
15 for reserves; requiring a certain declarant to pay a certain installment of a
16 certain assessment; defining a certain term; requiring certain bylaws or other
17 governing documents to comply with certain requirements on or before a certain
18 date; providing for the application of certain provisions of this Act; and
19 generally relating to a reserve study for a condominium or homeowners
20 association.

21 BY repealing and reenacting, with amendments,
22 Article – Real Property
23 Section 11–104 and 11–110(b)(1)
24 Annotated Code of Maryland
25 (2003 Replacement Volume and 2006 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, without amendments,
2 Article – Real Property
3 Section 11–109.2
4 Annotated Code of Maryland
5 (2003 Replacement Volume and 2006 Supplement)

6 BY adding to
7 Article – Real Property
8 Section 11–139.3 and 11B–112.1
9 Annotated Code of Maryland
10 (2003 Replacement Volume and 2006 Supplement)

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

13 **Article – Real Property**

14 11–104.

15 (a) The administration of every condominium shall be governed by bylaws
16 which shall be recorded with the declaration. If the council of unit owners is
17 incorporated, these bylaws shall be the bylaws of that corporation.

18 (b) The bylaws shall express at least the following particulars:

19 (1) The form of administration, indicating whether the council of unit
20 owners shall be incorporated or unincorporated, and whether, and to what extent, the
21 duties of the council of unit owners may be delegated to a board of directors, manager,
22 or otherwise, and specifying the powers, manner of selection, and removal of them;

23 (2) The mailing address of the council of unit owners;

24 (3) The method of calling the unit owners to assemble; the attendance
25 necessary to constitute a quorum at any meeting of the council of unit owners; the
26 manner of notifying the unit owners of any proposed meeting; who presides at the
27 meetings of the council of unit owners, who keeps the minute book for recording the
28 resolutions of the council of unit owners, and who counts votes at meetings of the
29 council of unit owners; [and]

30 (4) The manner of assessing against and collecting from unit owners
31 their respective shares of the common expenses; **AND**

(5) THE FREQUENCY WITH WHICH A RESERVE STUDY, AS DEFINED UNDER § 11-139.3 OF THIS TITLE, SHALL BE CONDUCTED.

(c) The bylaws also may contain any other provision regarding the management and operation of the condominium including any restriction on or requirement respecting the use and maintenance of the units and the common elements.

(d) The bylaws may contain a provision prohibiting any unit owner from voting at a meeting of the council of unit owners if the council of unit owners has recorded a statement of condominium lien on his unit and the amount necessary to release the lien has not been paid at the time of the meeting.

(e) (1) A corrective amendment to the bylaws may be made in accordance with § 11-103.1 of this title, or as provided in paragraph (2) of this subsection.

(2) Unless a higher percentage is required in the bylaws, the bylaws may be amended by the affirmative vote of unit owners having at least 66 2/3 percent of the votes in the council of unit owners.

(3) (i) Except as provided in paragraph (4) of this subsection, if the declaration or bylaws contain a provision requiring any action on the part of the holder of a mortgage or deed of trust on a unit in order to amend the bylaws, that provision shall be deemed satisfied if the procedures under this paragraph are satisfied.

(ii) If the declaration or bylaws contain a provision described in subparagraph (i) of this paragraph, the council of unit owners shall cause to be delivered to each holder of a mortgage or deed of trust entitled to notice, a copy of the proposed amendment to the bylaws.

(iii) If a holder of the mortgage or deed of trust that receives the proposed amendment fails to object, in writing, to the proposed amendment within 60 days from the date of actual receipt of the proposed amendment, the holder shall be deemed to have consented to the adoption of the amendment.

(4) Paragraph (3) of this subsection does not apply to amendments that:

(i) Alter the priority of the lien of the mortgage or deed of trust;

(ii) Materially impair or affect the unit as collateral; or

1 (iii) Materially impair or affect the right of the holder of the
2 mortgage or deed of trust to exercise any rights under the mortgage, deed of trust, or
3 applicable law.

4 (5) Each particular set forth in subsection (b) of this section shall be
5 expressed in the bylaws as amended. An amendment under paragraph (2) of this
6 subsection shall be entitled to be recorded if accompanied by a certificate of the person
7 specified in the bylaws to count votes at the meeting of the council of unit owners that
8 the amendment was approved by unit owners having the required percentage of the
9 votes and shall be effective on recordation. This certificate shall be conclusive evidence
10 of approval.

11 11-109.2.

12 (a) The council of unit owners shall cause to be prepared and submitted to
13 the unit owners an annual proposed budget at least 30 days before its adoption.

14 (b) The annual budget shall provide for at least the following items:

15 (1) Income;

16 (2) Administration;

17 (3) Maintenance;

18 (4) Utilities;

19 (5) General expenses;

20 (6) Reserves; and

21 (7) Capital items.

22 (c) The budget shall be adopted at an open meeting of the council of unit
23 owners or any other body to which the council of unit owners delegates responsibilities
24 for preparing and adopting the budget.

25 (d) Any expenditure made other than those made because of conditions
26 which, if not corrected, could reasonably result in a threat to the health or safety of the
27 unit owners or a significant risk of damage to the condominium, that would result in
28 an increase in an amount of assessments for the current fiscal year of the
29 condominium in excess of 15 percent of the budgeted amount previously adopted, shall

1 be approved by an amendment to the budget adopted at a special meeting, upon not
2 less than 10 days written notice to the council of unit owners.

3 (e) The adoption of a budget shall not impair the authority of the council of
4 unit owners to obligate the council of unit owners for expenditures for any purpose
5 consistent with any provision of this title.

6 (f) The provisions of this section do not apply to a condominium that is
7 occupied and used solely for nonresidential purposes.

8 11-110.

9 (b) (1) (I) Funds for the payment of current common expenses and for
10 the creation of reserves for the payment of future common expenses shall be obtained
11 by assessments against the unit owners in proportion to their percentage interests in
12 common expenses and common profits.

13 (II) NOTWITHSTANDING ANY PROVISION IN THE
14 DECLARATION OR THE BYLAWS, THE DEVELOPER SHALL PAY EACH
15 INSTALLMENT OF THE ASSESSMENT FOR A UNIT UNTIL THE UNIT IS SOLD.

16 11-139.3.

17 (A) IN THIS SECTION, "RESERVE STUDY" MEANS A STUDY OF THE
18 RESERVES REQUIRED TO MAINTAIN AND REPAIR THE COMMON ELEMENTS OF
19 THE CONDOMINIUM CONDUCTED BY A PERSON THAT CONDUCTS THIS TYPE OF
20 STUDY IN THE ORDINARY COURSE OF THE PERSON'S BUSINESS.

21 (B) (1) BEFORE THE FIRST UNIT OF A CONDOMINIUM IS SOLD, THE
22 DEVELOPER SHALL CAUSE TO BE CONDUCTED A RESERVE STUDY.

23 (2) WITHIN 5 YEARS AFTER TRANSFER OF CONTROL FROM THE
24 DEVELOPER, THE COUNCIL OF UNIT OWNERS SHALL CAUSE TO BE CONDUCTED A
25 RESERVE STUDY.

26 (C) (1) (I) THIS SUBSECTION APPLIES TO A CONDOMINIUM
27 ESTABLISHED BEFORE OCTOBER 1, 2007.

1 (II) THIS SUBSECTION DOES NOT APPLY IF THE COUNCIL OF
2 UNIT OWNERS HAS CAUSED TO BE CONDUCTED A RESERVE STUDY ON OR AFTER
3 OCTOBER 1, 2004.

4 (2) ON OR BEFORE OCTOBER 1, 2010, THE COUNCIL OF UNIT
5 OWNERS SHALL CAUSE TO BE CONDUCTED A RESERVE STUDY.

6 **11B-112.1.**

7 (A) IN THIS SECTION, "RESERVE STUDY" MEANS A STUDY OF THE
8 RESERVES REQUIRED TO MAINTAIN AND REPAIR THE COMMON AREAS OF THE
9 HOMEOWNERS ASSOCIATION CONDUCTED BY A PERSON THAT CONDUCTS THIS
10 TYPE OF STUDY IN THE ORDINARY COURSE OF THE PERSON'S BUSINESS.

11 (B) THIS SECTION APPLIES ONLY TO A DEVELOPMENT THAT HAS
12 COMMON AREAS.

13 (C) (1) BEFORE THE FIRST LOT IN A DEVELOPMENT IS SOLD, THE
14 DECLARANT SHALL CAUSE TO BE CONDUCTED A RESERVE STUDY.

15 (2) WITHIN 5 YEARS AFTER TRANSFER OF CONTROL FROM THE
16 DECLARANT, THE GOVERNING BODY OF A DEVELOPMENT SHALL CAUSE TO BE
17 CONDUCTED A RESERVE STUDY.

18 (D) (1) THIS SUBSECTION APPLIES TO A DEVELOPMENT
19 ESTABLISHED PRIOR TO OCTOBER 1, 2007.

20 (2) (I) BY OCTOBER 1, 2010, THE GOVERNING BODY SHALL
21 CAUSE TO BE CONDUCTED A RESERVE STUDY.

22 (II) THIS PARAGRAPH DOES NOT APPLY IF THE GOVERNING
23 BODY HAS CAUSED TO BE CONDUCTED A RESERVE STUDY ON OR AFTER
24 OCTOBER 1, 2004.

25 (E) (1) THE BYLAWS OR OTHER GOVERNING DOCUMENTS SHALL
26 INCLUDE THE FREQUENCY WITH WHICH A RESERVE STUDY MUST BE
27 CONDUCTED.

28 (2) THE ANNUAL BUDGET SHALL PROVIDE FOR RESERVES.

1 **(F) NOTWITHSTANDING ANY PROVISION IN THE DECLARATION, THE**
2 **BYLAWS, OR OTHER GOVERNING DOCUMENTS, THE DECLARANT SHALL PAY**
3 **EACH INSTALLMENT OF THE ASSESSMENT FOR A LOT UNTIL THE LOT IS SOLD.**

4 SECTION 2. AND BE IT FURTHER ENACTED, That if the bylaws of a
5 condominium established before the effective date of this Act do not require a reserve
6 study as described under § 11–139.3 of the Real Property Article, as enacted by
7 Section 1 of this Act, the condominium shall amend its bylaws to comply with §
8 11–104(b)(5) of the Real Property Article, as enacted by Section 1 of this Act, by
9 October 1, 2010.

10 SECTION 3. AND BE IT FURTHER ENACTED, That if the bylaws or other
11 governing documents of a development were approved before October 1, 2007, the
12 bylaws or other governing documents shall comply with § 11B–112.1 of the Real
13 Property Article, as enacted by Section 1 of this Act, by October 1, 2010.

14 SECTION 4. AND BE IT FURTHER ENACTED, That § 11–110(b)(1)(ii) of the
15 Real Property Article, as enacted by Section 1 of this Act, applies only to a
16 condominium established on or after October 1, 2007.

17 SECTION 5. AND BE IT FURTHER ENACTED, That § 11B–112.1(f) of the
18 Real Property Article, as enacted by Section 1 of this Act, applies only to a
19 development established on or after October 1, 2007.

20 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2007.