

HOUSE BILL 195

N1

8lr0963

By: **Delegates McConkey, Beidle, Cane, and Shewell**

Introduced and read first time: January 22, 2008

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Common Ownership Communities – Reserve Study**

3 FOR the purpose of requiring the governing body of a cooperative housing corporation
4 to conduct a reserve study at certain times; requiring the governing body of a
5 cooperative housing corporation to distribute a certain summary of the results
6 of the reserve study; requiring the governing body of a cooperative housing
7 corporation to review the results of the reserve study at certain times; requiring
8 the bylaws of a condominium to provide for the frequency with which a reserve
9 study will be conducted; requiring a certain unit owner reselling a unit to
10 furnish the results of a reserve study to the purchaser; requiring a certain
11 notice contained in a contract for the resale of a unit by a certain unit owner to
12 alert the purchaser of the purchaser's right to the results of a reserve study;
13 requiring the governing body of a condominium to conduct a reserve study at
14 certain times; requiring the governing body of a condominium to review the
15 results of the reserve study at certain times; requiring the governing body of a
16 condominium to distribute a certain summary of the results of the reserve
17 study; requiring the governing body of a homeowners association to conduct a
18 reserve study at certain times; requiring the governing body of a homeowners
19 association to distribute a certain summary of the results of the reserve study;
20 requiring the governing body of a homeowners association to review the results
21 of the reserve study at certain times; defining certain terms; providing for the
22 application of certain provisions of this Act; making stylistic changes; and
23 generally relating to a reserve study requirement for condominiums,
24 homeowners associations, and cooperative housing corporations.

25 BY adding to

26 Article – Corporations and Associations

27 Section 5–6B–18.6

28 Annotated Code of Maryland

29 (2007 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Real Property
3 Section 11–104 and 11–135(a) and (g)(1)
4 Annotated Code of Maryland
5 (2003 Replacement Volume and 2007 Supplement)

6 BY adding to
7 Article – Real Property
8 Section 11–139.3 and 11B–112.2
9 Annotated Code of Maryland
10 (2003 Replacement Volume and 2007 Supplement)

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

13 **Article – Corporations and Associations**

14 **5–6B–18.6.**

15 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
16 MEANINGS INDICATED.

17 (2) “COMMON AREAS” MEANS THE PORTIONS OF A COOPERATIVE
18 PROJECT POSSESSED IN COMMON BY THE MEMBERS OF A COOPERATIVE
19 HOUSING PROJECT.

20 (3) “RESERVE FUND” MEANS A FUND FOR MAJOR REPAIRS AND
21 REPLACEMENT OF THE COMMON AREAS.

22 (4) “RESERVE STUDY” MEANS A STUDY OF THE AMOUNT OF
23 RESERVES REQUIRED FOR MAJOR REPAIRS AND REPLACEMENT OF THE
24 COMMON AREAS CONDUCTED IN A MANNER ADOPTED BY THE GOVERNING BODY.

25 (B) THIS SECTION APPLIES ONLY TO A COOPERATIVE HOUSING
26 CORPORATION THAT HAS COMMON AREAS.

27 (C) UNLESS THE BYLAWS REQUIRE A RESERVE STUDY TO BE
28 CONDUCTED WITH GREATER FREQUENCY, THE GOVERNING BODY OF A
29 COOPERATIVE HOUSING CORPORATION SHALL:

30 (1) CAUSE A RESERVE STUDY TO BE CONDUCTED AT LEAST ONCE
31 EVERY 5 YEARS;

32 (2) DISTRIBUTE A SUMMARY OF THE RESERVE STUDY FINDINGS
33 TO ALL MEMBERS OF THE COOPERATIVE HOUSING PROJECT; AND

1 **(3) ANNUALLY REVIEW THE RESULTS OF THE RESERVE STUDY.**

2 **Article – Real Property**

3 11–104.

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

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

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

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

13 (3) The method of calling the unit owners to assemble; the attendance
14 necessary to constitute a quorum at any meeting of the council of unit owners; the
15 manner of notifying the unit owners of any proposed meeting; who presides at the
16 meetings of the council of unit owners, who keeps the minute book for recording the
17 resolutions of the council of unit owners, and who counts votes at meetings of the
18 council of unit owners; [and]

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

21 **(5) THE FREQUENCY WITH WHICH A RESERVE STUDY, AS**
22 **DESCRIBED IN § 11–139.3 OF THIS TITLE, SHALL BE CONDUCTED.**

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

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

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

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

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

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

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

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

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

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

20 (iii) Materially impair or affect the right of the holder of the
21 mortgage or deed of trust to exercise any rights under the mortgage, deed of trust, or
22 applicable law.

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

30 11–135.

31 (a) Except as provided in subsection (b) of this section, a contract for the
32 resale of a unit by a unit owner other than a developer is not enforceable unless the
33 contract of sale contains in conspicuous type a notice in the form specified in
34 subsection (g)(1) of this section, and the unit owner furnishes to the purchaser not
35 later than 15 days prior to closing:

36 (1) A copy of the declaration (other than the plats);

1 (2) The bylaws;

2 (3) The rules or regulations of the condominium;

3 (4) A certificate containing:

4 (i) A statement disclosing the effect on the proposed conveyance
5 of any right of first refusal or other restraint on the free alienability of the unit other
6 than any restraint created by the unit owner;

7 (ii) A statement setting forth the amount of the monthly
8 common expense assessment and any unpaid common expense or special assessment
9 currently due and payable from the selling unit owner;

10 (iii) A statement of any other fees payable by the unit owners to
11 the council of unit owners;

12 (iv) A statement of any capital expenditures approved by the
13 council of unit owners planned at the time of the conveyance which are not reflected in
14 the current operating budget disclosed under subparagraph (vi) of this paragraph;

15 (v) The most recent regularly prepared balance sheet and
16 income expense statement, if any, of the condominium;

17 (vi) The current operating budget of the [condominium]
18 **CONDOMINIUM**, including details concerning the reserve fund for repair and
19 replacement [and its], **THE** intended use **OF THE RESERVE FUND, THE RESULTS OF**
20 **THE LATEST RESERVE STUDY CONDUCTED UNDER § 11-139.3 OF THIS TITLE**, or
21 a statement that there is no reserve fund;

22 (vii) A statement of any judgments against the condominium and
23 the existence of any pending suits to which the council of unit owners is a party;

24 (viii) A statement generally describing any insurance policies
25 provided for the benefit of unit owners, a notice that copies of the policies are available
26 for inspection, stating the location at which the copies are available, and a notice that
27 the terms of the policy prevail over the description;

28 (ix) A statement as to whether the council of unit owners has
29 knowledge that any alteration or improvement to the unit or to the limited common
30 elements assigned to the unit violates any provision of the declaration, bylaws, or
31 rules or regulations;

32 (x) A statement as to whether the council of unit owners has
33 knowledge of any violation of the health or building codes with respect to the unit, the
34 limited common elements assigned to the unit, or any other portion of the
35 condominium;

1 (xi) A statement of the remaining term of any leasehold estate
2 affecting the condominium and the provisions governing any extension or renewal
3 thereof; and

4 (xii) A description of any recreational or other facilities which are
5 to be used by the unit owners or maintained by them or the council of unit owners, and
6 a statement as to whether or not they are to be a part of the common elements; and

7 (5) A statement by the unit owner as to whether the unit owner has
8 knowledge:

9 (i) That any alteration to the unit or to the limited common
10 elements assigned to the unit violates any provision of the declaration, bylaws, or
11 rules and regulations;

12 (ii) Of any violation of the health or building codes with respect
13 to the unit or the limited common elements assigned to the unit; and

14 (iii) That the unit is subject to an extended lease under § 11–137
15 of this title or under local law, and if so, a copy of the lease must be provided.

16 (g) (1) A notice given as required by subsection (a) of this section shall be
17 sufficient for the purposes of this section if it is in substantially the following form:

18 “NOTICE

19 The seller is required by law to furnish to you not later than 15 days prior to
20 closing certain information concerning the condominium which is described in §
21 11–135 of the Maryland Condominium Act. This information must include at least the
22 following:

23 (i) A copy of the declaration (other than the plats);

24 (ii) A copy of the bylaws;

25 (iii) A copy of the rules and regulations of the condominium;

26 (iv) A certificate containing:

27 1. A statement disclosing the effect on the proposed
28 conveyance of any right of first refusal or other restraint on the free alienability of the
29 unit, other than any restraint created by the unit owner;

30 2. A statement of the amount of the monthly common
31 expense assessment and any unpaid common expense or special assessment currently
32 due and payable from the selling unit owner;

1 3. A statement of any other fees payable by the unit
2 owners to the council of unit owners;

3 4. A statement of any capital expenditures approved by
4 the council of unit owners or its authorized designee planned at the time of the
5 conveyance which are not reflected in the current operating budget included in the
6 certificate;

7 5. The most recently prepared balance sheet and income
8 and expense statement, if any, of the condominium;

9 6. The current operating budget of the condominium,
10 including details concerning the amount of the reserve fund for repair and
11 replacement [and its], **THE intended use OF THE RESERVE FUND, THE RESULTS OF**
12 **THE LATEST RESERVE STUDY**, or a statement that there is no reserve fund;

13 7. A statement of any judgments against the
14 condominium and the existence of any pending suits to which the council of unit
15 owners is a party;

16 8. A statement generally describing any insurance
17 policies provided for the benefit of the unit owners, a notice that the policies are
18 available for inspection stating the location at which they are available, and a notice
19 that the terms of the policy prevail over the general description;

20 9. A statement as to whether the council of unit owners
21 has knowledge that any alteration or improvement to the unit or to the limited
22 common elements assigned to the unit violates any provision of the declaration,
23 bylaws, or rules or regulations;

24 10. A statement as to whether the council of unit owners
25 has knowledge of any violation of the health or building codes with respect to the unit,
26 the limited common elements assigned to the unit, or any other portion of the
27 condominium;

28 11. A statement of the remaining term of any leasehold
29 estate affecting the condominium and the provisions governing any extension or
30 renewal of it; and

31 12. A description of any recreational or other facilities
32 which are to be used by the unit owners or maintained by them or the council of unit
33 owners, and a statement as to whether or not they are to be a part of the common
34 elements; and

35 (v) A statement by the unit owner as to whether the unit owner
36 has knowledge:

1 1. That any alteration to the unit or to the limited
2 common elements assigned to the unit violates any provision of the declaration,
3 bylaws, or rules and regulations[.];

4 2. Of any violation of the health or building codes with
5 respect to the unit or the limited common elements assigned to the unit[.]; **AND**

6 3. That the unit is subject to an extended lease under §
7 11-137 of this title or under local law, and if so, a copy of the lease must be provided.

8 You will have the right to cancel this contract without penalty, at any time
9 within 7 days following delivery to you of all of this information. However, once the
10 sale is closed, your right to cancel the contract is terminated.”

11 **11-139.3.**

12 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
13 **MEANINGS INDICATED.**

14 **(2) “RESERVE FUND” MEANS A FUND FOR MAJOR REPAIRS AND**
15 **REPLACEMENT OF THE COMMON ELEMENTS OF A CONDOMINIUM.**

16 **(3) “RESERVE STUDY” MEANS A STUDY OF THE AMOUNT OF**
17 **RESERVES REQUIRED FOR MAJOR REPAIRS AND REPLACEMENT OF THE**
18 **COMMON AREAS CONDUCTED IN A MANNER ADOPTED BY THE GOVERNING BODY.**

19 **(B) UNLESS THE BYLAWS REQUIRE A RESERVE STUDY TO BE**
20 **CONDUCTED WITH GREATER FREQUENCY, THE GOVERNING BODY SHALL:**

21 **(1) CAUSE A RESERVE STUDY TO BE CONDUCTED AT LEAST ONCE**
22 **EVERY 5 YEARS;**

23 **(2) DISTRIBUTE A SUMMARY OF THE RESERVE STUDY FINDINGS**
24 **TO ALL UNIT OWNERS; AND**

25 **(3) ANNUALLY REVIEW THE RESULTS OF THE RESERVE STUDY.**

26 **11B-112.2.**

27 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
28 **MEANINGS INDICATED.**

29 **(2) “RESERVE FUND” MEANS A FUND FOR MAJOR REPAIRS AND**
30 **REPLACEMENT OF THE COMMON AREAS OF A DEVELOPMENT.**

1 **(3) “RESERVE STUDY” MEANS A STUDY OF THE AMOUNT OF**
2 **RESERVES REQUIRED FOR MAJOR REPAIRS AND REPLACEMENT OF THE**
3 **COMMON AREAS CONDUCTED IN A MANNER ADOPTED BY THE GOVERNING BODY.**

4 **(B) THIS SECTION APPLIES ONLY TO A HOMEOWNERS ASSOCIATION**
5 **THAT HAS COMMON AREAS.**

6 **(C) UNLESS THE BYLAWS REQUIRE A RESERVE STUDY TO BE**
7 **CONDUCTED WITH GREATER FREQUENCY, THE GOVERNING BODY SHALL:**

8 **(1) CAUSE A RESERVE STUDY TO BE CONDUCTED AT LEAST ONCE**
9 **EVERY 5 YEARS;**

10 **(2) DISTRIBUTE A SUMMARY OF THE RESERVE STUDY FINDINGS**
11 **TO ALL LOT OWNERS; AND**

12 **(3) ANNUALLY REVIEW THE RESULTS OF THE RESERVE STUDY.**

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2008.