

# SENATE BILL 291

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8lr1808  
CF 8lr1282

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By: **Senator Kelley**

Introduced and read first time: January 25, 2008

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Condominiums and Homeowners Associations – Assessments and Reserves**

3 FOR the purpose of requiring condominium developers to pay a certain assessment for  
4 a certain period; requiring certain persons or certain governing bodies of a  
5 condominium or homeowners association to have certain reserve studies  
6 conducted at certain times; requiring certain annual budgets to provide for  
7 certain reserves; defining certain terms; making certain stylistic changes; and  
8 generally relating to assessments and reserves of condominiums and  
9 homeowners associations.

10 BY repealing and reenacting, without amendments,  
11 Article – Real Property  
12 Section 11–109.2  
13 Annotated Code of Maryland  
14 (2003 Replacement Volume and 2007 Supplement)

15 BY repealing and reenacting, with amendments,  
16 Article – Real Property  
17 Section 11–110(b)(1), 11B–101, and 11B–102(e)  
18 Annotated Code of Maryland  
19 (2003 Replacement Volume and 2007 Supplement)

20 BY adding to  
21 Article – Real Property  
22 Section 11–139.3, 11B–112.2, and 11B–112.3  
23 Annotated Code of Maryland  
24 (2003 Replacement Volume and 2007 Supplement)

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Real Property**

2 11–109.2.

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

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

6 (1) Income;

7 (2) Administration;

8 (3) Maintenance;

9 (4) Utilities;

10 (5) General expenses;

11 (6) Reserves; and

12 (7) Capital items.

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

16 (d) Any expenditure made other than those made because of conditions  
17 which, if not corrected, could reasonably result in a threat to the health or safety of the  
18 unit owners or a significant risk of damage to the condominium, that would result in  
19 an increase in an amount of assessments for the current fiscal year of the  
20 condominium in excess of 15 percent of the budgeted amount previously adopted, shall  
21 be approved by an amendment to the budget adopted at a special meeting, upon not  
22 less than 10 days written notice to the council of unit owners.

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

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

28 11–110.

29 (b) (1) **(I)** Funds for the payment of current common expenses and for  
30 the creation of reserves for the payment of future common expenses shall be obtained  
31 by assessments against the unit owners in proportion to their percentage interests in  
32 common expenses and common profits.

1                   **(II) NOTWITHSTANDING ANY PROVISION IN THE**  
2 **DECLARATION OR BYLAWS, THE DEVELOPER SHALL PAY EACH INSTALLMENT OF**  
3 **AN ASSESSMENT FOR A UNIT UNTIL THE UNIT IS SOLD.**

4 **11-139.3.**

5           **(A) IN THIS SECTION, “RESERVE STUDY” MEANS A STUDY OF THE**  
6 **RESERVES REQUIRED TO MAINTAIN AND REPAIR THE COMMON ELEMENTS OF A**  
7 **CONDOMINIUM CONDUCTED BY A PERSON THAT CONDUCTS THIS TYPE OF**  
8 **STUDY IN THE ORDINARY COURSE OF THE PERSON’S BUSINESS.**

9           **(B) (1) THIS SUBSECTION APPLIES TO A CONDOMINIUM**  
10 **ESTABLISHED ON OR AFTER OCTOBER 1, 2008.**

11                   **(2) AT LEAST 30 DAYS BEFORE THE MEETING OF THE COUNCIL OF**  
12 **UNIT OWNERS REQUIRED BY § 11-109(C)(16) OF THIS TITLE, A DEVELOPER**  
13 **SHALL HAVE A RESERVE STUDY CONDUCTED AT THE DEVELOPER’S COST.**

14                   **(3) WITHIN 5 YEARS AFTER THE DATE OF THE RESERVE STUDY**  
15 **CONDUCTED BY THE DEVELOPER UNDER SUBSECTION (B)(2) OF THIS SECTION,**  
16 **AND AT LEAST EVERY 5 YEARS THEREAFTER, A COUNCIL OF UNIT OWNERS**  
17 **SHALL HAVE A RESERVE STUDY CONDUCTED.**

18           **(C) (1) THIS SUBSECTION APPLIES TO A CONDOMINIUM**  
19 **ESTABLISHED BEFORE OCTOBER 1, 2008.**

20                   **(2) IF A COUNCIL OF UNIT OWNERS HAS A RESERVE STUDY**  
21 **CONDUCTED ON OR AFTER OCTOBER 1, 2005, THE COUNCIL OF UNIT OWNERS**  
22 **SHALL HAVE A RESERVE STUDY CONDUCTED WITHIN 5 YEARS AFTER THE DATE**  
23 **OF THAT STUDY, AND AT LEAST EVERY 5 YEARS THEREAFTER.**

24                   **(3) IF A COUNCIL OF UNIT OWNERS HAS NOT HAD A RESERVE**  
25 **STUDY CONDUCTED ON OR AFTER OCTOBER 1, 2005, THE COUNCIL OF UNIT**  
26 **OWNERS SHALL HAVE A RESERVE STUDY CONDUCTED ON OR BEFORE OCTOBER**  
27 **1, 2010, AND AT LEAST EVERY 5 YEARS THEREAFTER.**

28 **11B-101.**

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

31           **(b) “Common areas” means property which is owned or leased by a**  
32 **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 THAT:**

18 **(1) BUILDS A DEVELOPMENT SERVED BY A HOMEOWNERS**  
19 **ASSOCIATION; OR**

20 **(2) SUCCEEDS TO THE RIGHTS AND LIABILITIES OF THE PERSON**  
21 **THAT CREATED THE DEVELOPMENT SERVED BY A 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:

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

32 (2) May be reproduced directly in paper form by a recipient through an  
33 automated process.

1            [(h)] (I)        “Governing body” means the homeowners association, board of  
2 directors, or other entity established to govern the development.

3            [(i)] (J)        (1)    “Homeowners association” means a person having the  
4 authority to enforce the provisions of a declaration.

5                            (2)    “Homeowners association” includes an incorporated or  
6 unincorporated association.

7            [(j)] (K)        (1)    “Lot” means any plot or parcel of land on which a dwelling is  
8 located or will be located within a development.

9                            (2)    “Lot” includes a unit within a condominium or cooperative housing  
10 corporation if the condominium or cooperative housing corporation is part of a  
11 development.

12           [(k)] (L)        “Primary development” means a development such that the  
13 purchaser of a lot will pay fees directly to its homeowners association.

14           [(l)] (M)        “Recorded covenants and restrictions” means any instrument of  
15 writing which is recorded in the land records of the jurisdiction within which a lot is  
16 located, and which instrument governs or otherwise legally restricts the use of such  
17 lot.

18           [(m)] (N)        “Related development” means a development such that the  
19 purchaser of a lot will pay fees to the homeowners association of such development  
20 through the homeowners association of a primary development or another  
21 development.

22           [(n)] (O)        “Unaffiliated declarant” means a person who is not affiliated with  
23 the vendor of a lot but who has subjected such property to a declaration required to be  
24 disclosed by this title.

25    11B–102.

26           (e)        Except as provided in [§ 11B–101(f)] § **11B–101(G)** of this title, this title  
27 does not apply to any property which is:

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

29                            (2)    Part of a cooperative housing corporation; or

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

31    **11B–112.2.**

1           (A)    **IN THIS SECTION, “RESERVE STUDY” MEANS A STUDY OF THE**  
2 **RESERVES REQUIRED TO MAINTAIN AND REPAIR THE COMMON AREAS OF A**  
3 **HOMEOWNERS ASSOCIATION CONDUCTED BY A PERSON THAT CONDUCTS THIS**  
4 **TYPE OF STUDY IN THE ORDINARY COURSE OF THE PERSON’S BUSINESS.**

5           (B)    **THIS SECTION APPLIES ONLY TO A HOMEOWNERS ASSOCIATION**  
6 **THAT HAS RESPONSIBILITY UNDER ITS DECLARATION FOR MAINTAINING AND**  
7 **REPAIRING COMMON AREAS.**

8           (C)    **(1)    THIS SUBSECTION APPLIES TO A HOMEOWNERS ASSOCIATION**  
9 **ESTABLISHED ON OR AFTER OCTOBER 1, 2008.**

10           **(2)    AT LEAST 30 DAYS BEFORE THE FIRST MEETING OF THE**  
11 **HOMEOWNERS ASSOCIATION AT WHICH THE LOT OWNERS, OTHER THAN THE**  
12 **DEVELOPER, HAVE A MAJORITY OF VOTES IN THE HOMEOWNERS ASSOCIATION,**  
13 **A DEVELOPER SHALL HAVE A RESERVE STUDY CONDUCTED AT THE**  
14 **DEVELOPER’S COST.**

15           **(3)    WITHIN 5 YEARS AFTER THE DATE OF THE RESERVE STUDY**  
16 **CONDUCTED BY THE DEVELOPER UNDER SUBSECTION (C)(2) OF THIS SECTION,**  
17 **AND AT LEAST EVERY 5 YEARS THEREAFTER, THE HOMEOWNERS ASSOCIATION**  
18 **SHALL HAVE A RESERVE STUDY CONDUCTED.**

19           (D)    **(1)    THIS SUBSECTION APPLIES TO A HOMEOWNERS ASSOCIATION**  
20 **ESTABLISHED BEFORE OCTOBER 1, 2008.**

21           **(2)    IF A HOMEOWNERS ASSOCIATION CONDUCTS A RESERVE**  
22 **STUDY ON OR AFTER OCTOBER 1, 2005, THE GOVERNING BODY OF THE**  
23 **HOMEOWNERS ASSOCIATION SHALL HAVE A RESERVE STUDY CONDUCTED**  
24 **WITHIN 5 YEARS AFTER THE DATE OF THAT STUDY AND AT LEAST EVERY 5**  
25 **YEARS THEREAFTER.**

26           (E)    **THE ANNUAL BUDGET SHALL PROVIDE FOR RESERVES.**

27 **11B-112.3.**

28           **NOTWITHSTANDING ANY PROVISION IN THE DECLARATION, THE BYLAWS,**  
29 **OR OTHER GOVERNING DOCUMENTS, THE DEVELOPER SHALL PAY EACH**  
30 **INSTALLMENT OF THE HOMEOWNERS ASSOCIATION ASSESSMENT FOR A LOT**  
31 **UNTIL THE LOT IS SOLD.**

32           SECTION 2. AND BE IT FURTHER ENACTED, That § 11-110(b)(1)(ii) of the  
33 Real Property Article, as enacted by Section 1 of this Act, applies only to a  
34 condominium established on or after October 1, 2008.

1           SECTION 3. AND BE IT FURTHER ENACTED, That §§ 11B–112.2(e) and  
2 11B–112.3 of the Real Property Article, as enacted by Section 1 of this Act, apply only  
3 to a development established on or after October 1, 2008.

4           SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 October 1, 2008.