

SENATE BILL 742

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9lr1571
CF HB 667

By: **Senator Kelley**

Introduced and read first time: February 6, 2009

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Condominiums and Homeowners Associations – Transition of Control**

3 FOR the purpose of requiring a meeting of the council of unit owners of a
4 condominium to elect a board of directors to be held within a certain time;
5 terminating the term of members of a board of directors appointed by a
6 developer under certain circumstances; requiring a developer to deliver certain
7 documents, funds, and property to the officers or board of directors for the
8 council of unit owners on transfer of control under certain circumstances;
9 authorizing the board of directors to terminate without liability certain
10 contracts under certain circumstances; authorizing an aggrieved unit owner to
11 submit a certain dispute to the Division of Consumer Protection of the Office of
12 the Attorney General under certain circumstances; requiring a developer to
13 make certain books and records available to a unit owner within a certain time
14 under certain circumstances; requiring a meeting of the members of a
15 homeowners association to elect a governing body to be held within a certain
16 time; terminating the term of members of the governing body appointed by a
17 declarant under certain circumstances; requiring a declarant to deliver certain
18 documents, funds, and property to the governing body on transfer of control
19 under certain circumstances; authorizing the members of a governing body to
20 terminate without liability certain contracts under certain circumstances;
21 authorizing an aggrieved lot owner to submit a certain dispute to the Division of
22 Consumer Protection of the Office of the Attorney General under certain
23 circumstances; requiring a declarant to make certain books and records
24 available to a lot owner within a certain time under certain circumstances;
25 defining certain terms; making a stylistic change; and generally relating to the
26 transition of control in a condominium or homeowners association.

27 BY repealing and reenacting, with amendments,
28 Article – Real Property
29 Section 11–109(c)(16), 11–116, and 11B–112(a)
30 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2003 Replacement Volume and 2008 Supplement)

BY repealing

Article – Real Property

Section 11–132

Annotated Code of Maryland

(2003 Replacement Volume and 2008 Supplement)

BY adding to

Article – Real Property

Section 11–132 and 11B–106.1

Annotated Code of Maryland

(2003 Replacement Volume and 2008 Supplement)

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

Article – Real Property

11–109.

(c) (16) (I) A meeting of the council of unit owners **TO ELECT A BOARD OF DIRECTORS FOR THE COUNCIL OF UNIT OWNERS, AS PROVIDED IN THE CONDOMINIUM DECLARATION OR BYLAWS**, shall be held within:

1. 60 days from the date that units representing 50 percent of the votes in the condominium have been conveyed by the developer [to the initial purchasers of units to elect officers or a board of directors for the council of unit owners, as provided in the condominium declaration or bylaws] **TO MEMBERS OF THE PUBLIC FOR RESIDENTIAL PURPOSES; OR**

2. **IF A LESSER PERCENTAGE IS SPECIFIED IN THE DECLARATION OR BYLAWS OF THE CONDOMINIUM, 60 DAYS FROM THE DATE THE SPECIFIED LESSER PERCENTAGE OF UNITS IN THE CONDOMINIUM ARE SOLD TO MEMBERS OF THE PUBLIC FOR RESIDENTIAL PURPOSES.**

(II) **THE TERM OF EACH MEMBER OF THE BOARD OF DIRECTORS APPOINTED BY THE DEVELOPER SHALL END 10 DAYS AFTER THE MEETING AS SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH IS HELD, IF A REPLACEMENT BOARD MEMBER IS ELECTED.**

(III) **WITHIN 30 DAYS FROM THE DATE OF THE MEETING HELD UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE DEVELOPER SHALL DELIVER TO THE OFFICERS OR BOARD OF DIRECTORS FOR THE COUNCIL OF UNIT OWNERS, AS PROVIDED IN THE CONDOMINIUM DECLARATION OR BYLAWS, AT THE DEVELOPER’S EXPENSE:**

1 1. **THE DOCUMENTS SPECIFIED IN § 11-132 OF THIS**
2 **TITLE;**

3 2. **THE CONDOMINIUM FUNDS;**

4 3. **THE TANGIBLE PROPERTY OF THE**
5 **CONDOMINIUM; AND**

6 4. **A ROSTER OF CURRENT UNIT OWNERS,**
7 **INCLUDING MAILING ADDRESSES, TELEPHONE NUMBERS, AND UNIT NUMBERS,**
8 **IF KNOWN.**

9 (IV) 1. **THIS SUBPARAGRAPH DOES NOT APPLY TO A**
10 **CONTRACT ENTERED INTO BEFORE OCTOBER 1, 2009.**

11 2. **A. IN THIS SUBPARAGRAPH, “CONTRACT”**
12 **MEANS AN AGREEMENT WITH A COMPANY OR INDIVIDUAL TO HANDLE**
13 **FINANCIAL MATTERS, MAINTENANCE, OR SERVICES OF THE CONDOMINIUM.**

14 **B. “CONTRACT” DOES NOT INCLUDE AN AGREEMENT**
15 **RELATING TO THE PROVISION OF UTILITY SERVICES OR COMMUNICATION**
16 **SYSTEMS.**

17 3. **UNTIL ALL MEMBERS OF THE BOARD OF**
18 **DIRECTORS OF THE CONDOMINIUM ARE ELECTED BY THE UNIT OWNERS AT A**
19 **TRANSITIONAL MEETING AS SPECIFIED IN SUBPARAGRAPH (I) OF THIS**
20 **PARAGRAPH, A CONTRACT ENTERED INTO BY THE OFFICERS OR BOARD OF**
21 **DIRECTORS OF THE CONDOMINIUM MAY BE TERMINATED, AT THE DISCRETION**
22 **OF THE BOARD OF DIRECTORS AND WITHOUT LIABILITY FOR THE TERMINATION,**
23 **NOT LATER THAN 30 DAYS AFTER NOTICE.**

24 (V) **IF THE DEVELOPER FAILS TO COMPLY WITH THE**
25 **REQUIREMENTS OF THIS PARAGRAPH, AN AGGRIEVED UNIT OWNER MAY SUBMIT**
26 **THE DISPUTE TO THE DIVISION OF CONSUMER PROTECTION OF THE OFFICE OF**
27 **THE ATTORNEY GENERAL UNDER § 11-130(C) OF THIS TITLE.**

28 11-116.

29 (a) The council of unit owners shall keep books and records in accordance
30 with good accounting practices on a consistent basis.

31 (b) On the request of the unit owners of at least 5 percent of the units, the
32 council of unit owners shall cause an audit of the books and records to be made by an
33 independent certified public accountant, provided an audit shall be made not more

1 than once in any consecutive 12-month period. The cost of the audit shall be a
2 common expense.

3 (c) (1) Except as provided in paragraph [(2)] (3) of this subsection, all
4 books and records, including insurance policies, kept by the council of unit owners
5 shall be maintained in Maryland or within 50 miles of its borders and shall be
6 available at some place designated by the council of unit owners [within the county
7 where the condominium is located] for examination and copying by any unit owner,
8 [his] **THE UNIT OWNER'S** mortgagee, and their respective duly authorized agents or
9 attorneys, during normal business hours, and after reasonable notice.

10 **(2) BOOKS AND RECORDS REQUIRED TO BE MADE AVAILABLE**
11 **UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL FIRST BE MADE AVAILABLE**
12 **TO A UNIT OWNER NOT LATER THAN 15 BUSINESS DAYS AFTER A UNIT IS**
13 **CONVEYED FROM A DEVELOPER AND THE UNIT OWNER REQUESTS TO EXAMINE**
14 **OR COPY THE BOOKS AND RECORDS.**

15 [(2)] (3) Books and records kept by or on behalf of a council of unit
16 owners may be withheld from public inspection to the extent that they concern:

- 17 (i) Personnel records;
- 18 (ii) An individual's medical records;
- 19 (iii) An individual's financial records;
- 20 (iv) Records relating to business transactions that are currently
21 in negotiation;
- 22 (v) The written advice of legal counsel; or
- 23 (vi) Minutes of a closed meeting of the board of directors or other
24 governing body of the council of unit owners.

25 (d) The council of unit owners may impose a reasonable charge upon a
26 person desiring to review or copy the books and records.

27 [11-132.

28 Drawings, architectural plans, or other suitable documents, setting forth the
29 necessary information for location, maintenance, and repair of all condominium
30 facilities, to the extent that they exist, shall be turned over to the council of unit
31 owners upon transfer of control by the developer.]

32 **11-132.**

1 **ON TRANSFER OF CONTROL BY THE DEVELOPER TO THE COUNCIL OF**
2 **UNIT OWNERS, THE DEVELOPER SHALL TURN OVER DOCUMENTS INCLUDING:**

3 **(1) COPIES OF THE CONDOMINIUM'S FILED ARTICLES OF**
4 **INCORPORATION, RECORDED DECLARATION, AND ALL RECORDED COVENANTS,**
5 **BYLAWS, PLATS, AND RESTRICTIONS OF THE CONDOMINIUM;**

6 **(2) SUBJECT TO THE RESTRICTIONS OF § 11-116 OF THIS TITLE,**
7 **ALL BOOKS AND RECORDS OF THE CONDOMINIUM, INCLUDING FINANCIAL**
8 **STATEMENTS, MINUTES OF ANY MEETING OF THE GOVERNING BODY, AND**
9 **COMPLETED BUSINESS TRANSACTIONS;**

10 **(3) ANY POLICIES, RULES, AND REGULATIONS ADOPTED BY THE**
11 **GOVERNING BODY;**

12 **(4) THE FINANCIAL RECORDS OF THE CONDOMINIUM FROM THE**
13 **DATE OF CREATION TO THE DATE OF TRANSFER OF CONTROL, INCLUDING**
14 **BUDGET INFORMATION REGARDING ESTIMATED AND ACTUAL EXPENDITURES**
15 **BY THE CONDOMINIUM AND ANY REPORT RELATING TO THE RESERVES**
16 **REQUIRED FOR MAJOR REPAIRS AND REPLACEMENT OF THE COMMON**
17 **ELEMENTS OF THE CONDOMINIUM;**

18 **(5) A COPY OF ALL CONTRACTS TO WHICH THE CONDOMINIUM IS**
19 **A PARTY;**

20 **(6) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF ANY**
21 **CONTRACTOR OR SUBCONTRACTOR EMPLOYED BY THE CONDOMINIUM;**

22 **(7) ANY INSURANCE POLICIES IN EFFECT;**

23 **(8) ANY PERMIT OR NOTICE OF CODE VIOLATION ISSUED TO THE**
24 **CONDOMINIUM BY THE COUNTY, LOCAL, STATE, OR FEDERAL GOVERNMENT;**

25 **(9) ANY WARRANTY IN EFFECT;**

26 **(10) DRAWINGS, ARCHITECTURAL PLANS, OR OTHER SUITABLE**
27 **DOCUMENTS SETTING FORTH THE NECESSARY INFORMATION FOR LOCATION,**
28 **MAINTENANCE, AND REPAIR OF ALL CONDOMINIUM FACILITIES; AND**

29 **(11) INDIVIDUAL OWNER FILES AND RECORDS, INCLUDING**
30 **ASSESSMENT ACCOUNT RECORDS, CORRESPONDENCE, AND NOTICES OF ANY**
31 **VIOLATIONS.**

32 **11B-106.1.**

1 **(A) A MEETING OF THE MEMBERS OF THE HOMEOWNERS ASSOCIATION**
2 **TO ELECT A GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION SHALL BE**
3 **HELD WITHIN:**

4 **(1) 60 DAYS FROM THE DATE THAT AT LEAST 75% OF THE TOTAL**
5 **NUMBER OF LOTS THAT MAY BE PART OF THE DEVELOPMENT AFTER ALL**
6 **PHASES ARE COMPLETE ARE SOLD TO MEMBERS OF THE PUBLIC FOR**
7 **RESIDENTIAL PURPOSES; OR**

8 **(2) IF A LESSER PERCENTAGE IS SPECIFIED IN THE GOVERNING**
9 **DOCUMENTS OF THE HOMEOWNERS ASSOCIATION, 60 DAYS FROM THE DATE**
10 **THE SPECIFIED LESSER PERCENTAGE OF THE TOTAL NUMBER OF LOTS IN THE**
11 **DEVELOPMENT AFTER ALL PHASES ARE COMPLETE ARE SOLD TO MEMBERS OF**
12 **THE PUBLIC FOR RESIDENTIAL PURPOSES.**

13 **(B) THE TERM OF EACH MEMBER OF THE GOVERNING BODY OF THE**
14 **HOMEOWNERS ASSOCIATION APPOINTED BY THE DECLARANT SHALL END 10**
15 **DAYS AFTER THE MEETING UNDER SUBSECTION (A) OF THIS SECTION IS HELD,**
16 **IF A REPLACEMENT BOARD MEMBER IS ELECTED.**

17 **(C) WITHIN 30 DAYS FROM THE DATE OF THE MEETING HELD UNDER**
18 **SUBSECTION (A) OF THIS SECTION, THE DECLARANT SHALL DELIVER THE**
19 **FOLLOWING ITEMS TO THE GOVERNING BODY AT THE DECLARANT'S EXPENSE:**

20 **(1) THE DEED TO THE COMMON AREAS;**

21 **(2) COPIES OF THE HOMEOWNERS ASSOCIATION'S FILED**
22 **ARTICLES OF INCORPORATION, DECLARATION, AND ALL RECORDED**
23 **COVENANTS, PLATS, AND RESTRICTIONS OF THE PRIMARY DEVELOPMENT AND**
24 **OF RELATED DEVELOPMENTS;**

25 **(3) A COPY OF THE BYLAWS AND RULES OF THE PRIMARY**
26 **DEVELOPMENT AND OF OTHER RELATED DEVELOPMENTS AS FILED IN THE**
27 **DEPOSITORY OF THE COUNTY IN WHICH THE DEVELOPMENT IS LOCATED;**

28 **(4) THE MINUTE BOOKS, INCLUDING ALL MINUTES;**

29 **(5) SUBJECT TO THE RESTRICTIONS OF § 11B-112 OF THIS TITLE,**
30 **ALL BOOKS AND RECORDS OF THE HOMEOWNERS ASSOCIATION, INCLUDING**
31 **FINANCIAL STATEMENTS, MINUTES OF ANY MEETING OF THE GOVERNING BODY,**
32 **AND COMPLETED BUSINESS TRANSACTIONS;**

1 (6) ANY POLICIES AND REGULATIONS ADOPTED BY THE
2 GOVERNING BODY;

3 (7) THE FINANCIAL RECORDS OF THE HOMEOWNERS
4 ASSOCIATION FROM THE DATE OF CREATION TO THE DATE OF TRANSFER OF
5 CONTROL, INCLUDING BUDGET INFORMATION REGARDING ESTIMATED AND
6 ACTUAL EXPENDITURES BY THE HOMEOWNERS ASSOCIATION AND ANY REPORT
7 RELATING TO THE RESERVES REQUIRED FOR MAJOR REPAIRS AND
8 REPLACEMENT OF THE COMMON AREAS OF THE HOMEOWNERS ASSOCIATION;

9 (8) A COPY OF ALL CONTRACTS TO WHICH THE HOMEOWNERS
10 ASSOCIATION IS A PARTY;

11 (9) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF ANY
12 CONTRACTOR OR SUBCONTRACTOR EMPLOYED BY THE HOMEOWNERS
13 ASSOCIATION;

14 (10) ANY INSURANCE POLICIES IN EFFECT;

15 (11) ANY PERMIT OR NOTICE OF CODE VIOLATIONS ISSUED TO
16 THE HOMEOWNERS ASSOCIATION BY THE COUNTY, LOCAL, STATE, OR FEDERAL
17 GOVERNMENT;

18 (12) ANY WARRANTY IN EFFECT;

19 (13) THE HOMEOWNERS ASSOCIATION FUNDS;

20 (14) THE TANGIBLE PROPERTY OF THE HOMEOWNERS
21 ASSOCIATION;

22 (15) A ROSTER OF CURRENT LOT OWNERS, INCLUDING THEIR
23 MAILING ADDRESSES, TELEPHONE NUMBERS, AND LOT NUMBERS, IF KNOWN;
24 AND

25 (16) INDIVIDUAL MEMBER FILES AND RECORDS, INCLUDING
26 ASSESSMENT ACCOUNT RECORDS, CORRESPONDENCE, AND NOTICES OF ANY
27 VIOLATIONS.

28 (D) (1) THIS SUBSECTION DOES NOT APPLY TO A CONTRACT
29 ENTERED INTO BEFORE OCTOBER 1, 2009.

30 (2) (I) IN THIS SUBSECTION, "CONTRACT" MEANS AN
31 AGREEMENT WITH A COMPANY OR INDIVIDUAL TO HANDLE FINANCIAL
32 MATTERS, MAINTENANCE, OR SERVICES OF THE HOMEOWNERS ASSOCIATION.

1 **(II) “CONTRACT” DOES NOT INCLUDE AN AGREEMENT**
2 **RELATING TO THE PROVISION OF UTILITY SERVICES OR COMMUNICATION**
3 **SYSTEMS.**

4 **(3) UNTIL ALL MEMBERS OF THE GOVERNING BODY ARE**
5 **ELECTED BY THE LOT OWNERS AT A TRANSITIONAL MEETING UNDER**
6 **SUBSECTION (A) OF THIS SECTION, A CONTRACT ENTERED INTO BY THE**
7 **GOVERNING BODY MAY BE TERMINATED, AT THE DISCRETION OF THE**
8 **GOVERNING BODY AND WITHOUT LIABILITY FOR THE TERMINATION, NOT LATER**
9 **THAN 30 DAYS AFTER NOTICE.**

10 **(E) IF THE DECLARANT FAILS TO COMPLY WITH THE REQUIREMENTS OF**
11 **THIS SECTION, AN AGGRIEVED LOT OWNER MAY SUBMIT THE DISPUTE TO THE**
12 **DIVISION OF CONSUMER PROTECTION OF THE OFFICE OF THE ATTORNEY**
13 **GENERAL UNDER § 11B–115(C) OF THIS TITLE.**

14 11B–112.

15 (a) (1) **(I)** Subject to the provisions of paragraph (2) of this subsection,
16 all books and records kept by or on behalf of the homeowners association shall be
17 made available for examination and copying by a lot owner, a lot owner’s mortgagee,
18 and their respective duly authorized agents or attorneys, during normal business
19 hours, and after reasonable notice.

20 **(II) BOOKS AND RECORDS REQUIRED TO BE MADE**
21 **AVAILABLE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL FIRST BE**
22 **MADE AVAILABLE TO A LOT OWNER NO LATER THAN 15 BUSINESS DAYS AFTER A**
23 **LOT IS CONVEYED BY THE DECLARANT AND THE LOT OWNER REQUESTS TO**
24 **EXAMINE OR COPY THE BOOKS AND RECORDS.**

25 (2) Books and records kept by or on behalf of a homeowners
26 association may be withheld from public inspection to the extent that they concern:

- 27 (i) Personnel records;
- 28 (ii) An individual’s medical records;
- 29 (iii) An individual’s financial records;
- 30 (iv) Records relating to business transactions that are currently
31 in negotiation;
- 32 (v) The written advice of legal counsel; or

1 (vi) Minutes of a closed meeting of the governing body of the
2 homeowners association.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2009.