

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

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 18, 2009

CHAPTER _____

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

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.



certain circumstances; defining certain terms; making a stylistic change; and generally relating to the transition of control in a condominium or homeowners association.

BY repealing and reenacting, with amendments,
Article – Real Property
Section 11–109(c)(16), 11–116, and 11B–112(a)
Annotated Code of Maryland
(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) 1. BEFORE THE DATE OF THE MEETING HELD UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE DEVELOPER SHALL DELIVER TO

1 EACH UNIT OWNER NOTICE THAT THE REQUIREMENTS OF SUBPARAGRAPH (I)
2 OF THIS PARAGRAPH HAVE BEEN MET.

3 2. THE NOTICE SHALL INCLUDE THE DATE, TIME,
4 AND PLACE OF THE MEETING TO ELECT THE BOARD OF DIRECTORS FOR THE
5 COUNCIL OF UNIT OWNERS.

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

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

15 1. THE DOCUMENTS SPECIFIED IN § 11-132 OF THIS
16 TITLE;

17 2. THE CONDOMINIUM FUNDS, INCLUDING
18 OPERATING FUNDS, REPLACEMENT RESERVES, INVESTMENT ACCOUNTS, AND
19 WORKING CAPITAL;

20 3. THE TANGIBLE PROPERTY OF THE
21 CONDOMINIUM; AND

22 4. A ROSTER OF CURRENT UNIT OWNERS,
23 INCLUDING MAILING ADDRESSES, TELEPHONE NUMBERS, AND UNIT NUMBERS,
24 IF KNOWN.

25 ~~(IV)~~ (V) 1. THIS SUBPARAGRAPH DOES NOT APPLY TO
26 A CONTRACT ENTERED INTO BEFORE OCTOBER 1, 2009.

27 2. A. IN THIS SUBPARAGRAPH, "CONTRACT"
28 MEANS AN AGREEMENT WITH A COMPANY OR INDIVIDUAL TO HANDLE
29 FINANCIAL MATTERS, MAINTENANCE, OR SERVICES ~~OF~~ FOR THE CONDOMINIUM.

30 B. "CONTRACT" DOES NOT INCLUDE AN AGREEMENT
31 RELATING TO THE PROVISION OF UTILITY SERVICES OR COMMUNICATION
32 SYSTEMS.

33 3. UNTIL ALL MEMBERS OF THE BOARD OF
34 DIRECTORS OF THE CONDOMINIUM ARE ELECTED BY THE UNIT OWNERS AT A

1 TRANSITIONAL MEETING AS SPECIFIED IN SUBPARAGRAPH (I) OF THIS
2 PARAGRAPH, A CONTRACT ENTERED INTO BY THE OFFICERS OR BOARD OF
3 DIRECTORS OF THE CONDOMINIUM MAY BE TERMINATED, AT THE DISCRETION
4 OF THE BOARD OF DIRECTORS AND WITHOUT LIABILITY FOR THE TERMINATION,
5 NOT LATER THAN 30 DAYS AFTER NOTICE.

6 ~~(V)~~ (VI) IF THE DEVELOPER FAILS TO COMPLY WITH THE
7 REQUIREMENTS OF THIS PARAGRAPH, AN AGGRIEVED UNIT OWNER MAY SUBMIT
8 THE DISPUTE TO THE DIVISION OF CONSUMER PROTECTION OF THE OFFICE OF
9 THE ATTORNEY GENERAL UNDER § 11-130(C) OF THIS TITLE.

10 11-116.

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

13 (b) On the request of the unit owners of at least 5 percent of the units, the
14 council of unit owners shall cause an audit of the books and records to be made by an
15 independent certified public accountant, provided an audit shall be made not more
16 than once in any consecutive 12-month period. The cost of the audit shall be a
17 common expense.

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

25 (2) BOOKS AND RECORDS REQUIRED TO BE MADE AVAILABLE
26 UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL FIRST BE MADE AVAILABLE
27 TO A UNIT OWNER NOT LATER THAN 15 BUSINESS DAYS AFTER A UNIT IS
28 CONVEYED FROM A DEVELOPER AND THE UNIT OWNER REQUESTS TO EXAMINE
29 OR COPY THE BOOKS AND RECORDS.

30 [(2)] (3) Books and records kept by or on behalf of a council of unit
31 owners may be withheld from public inspection to the extent that they concern:

32 (i) Personnel records;

33 (ii) An individual's medical records;

34 (iii) An individual's financial records;

(iv) Records relating to business transactions that are currently in negotiation;

(v) The written advice of legal counsel; or

(vi) Minutes of a closed meeting of the board of directors or other governing body of the council of unit owners.

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

[11–132.

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

11–132.

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

(1) COPIES OF THE CONDOMINIUM’S FILED ARTICLES OF INCORPORATION, RECORDED DECLARATION, AND ALL RECORDED COVENANTS, BYLAWS, PLATS, AND RESTRICTIONS OF THE CONDOMINIUM;

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

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

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

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

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

(7) ANY INSURANCE POLICIES IN EFFECT AND ALL PRIOR INSURANCE POLICIES;

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

(9) ANY WARRANTY IN EFFECT;

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

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

11B-106.1.

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

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

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

(B) (1) BEFORE THE DATE OF THE MEETING HELD UNDER SUBSECTION (A) OF THIS SECTION, THE DECLARANT SHALL DELIVER TO EACH LOT OWNER NOTICE THAT THE REQUIREMENTS OF SUBSECTION (A) OF THIS SECTION HAVE BEEN MET.

(2) THE NOTICE SHALL INCLUDE THE DATE, TIME, AND PLACE OF THE MEETING TO ELECT THE GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION.

1 ~~(B)~~ (C) THE TERM OF EACH MEMBER OF THE GOVERNING BODY OF
2 THE HOMEOWNERS ASSOCIATION APPOINTED BY THE DECLARANT SHALL END
3 10 DAYS AFTER THE MEETING UNDER SUBSECTION (A) OF THIS SECTION IS
4 HELD, IF A REPLACEMENT BOARD MEMBER IS ELECTED.

5 ~~(C)~~ (D) WITHIN 30 DAYS FROM THE DATE OF THE MEETING HELD
6 UNDER SUBSECTION (A) OF THIS SECTION, THE DECLARANT SHALL DELIVER
7 THE FOLLOWING ITEMS TO THE GOVERNING BODY AT THE DECLARANT'S
8 EXPENSE:

9 (1) THE ~~DEED~~ DEEDS TO THE COMMON AREAS;

10 (2) COPIES OF THE HOMEOWNERS ASSOCIATION'S FILED
11 ARTICLES OF INCORPORATION, DECLARATION, AND ALL RECORDED
12 COVENANTS, PLATS, ~~AND~~ RESTRICTIONS, AND ANY OTHER RECORDS OF THE
13 PRIMARY DEVELOPMENT AND OF RELATED DEVELOPMENTS;

14 (3) A COPY OF THE BYLAWS AND RULES OF THE PRIMARY
15 DEVELOPMENT AND OF OTHER RELATED DEVELOPMENTS AS FILED IN THE
16 DEPOSITORY OF THE COUNTY IN WHICH THE DEVELOPMENT IS LOCATED;

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

18 (5) SUBJECT TO THE RESTRICTIONS OF § 11B-112 OF THIS TITLE,
19 ALL BOOKS AND RECORDS OF THE HOMEOWNERS ASSOCIATION, INCLUDING
20 FINANCIAL STATEMENTS, MINUTES OF ANY MEETING OF THE GOVERNING BODY,
21 AND COMPLETED BUSINESS TRANSACTIONS;

22 (6) ANY POLICIES, RULES, AND REGULATIONS ADOPTED BY THE
23 GOVERNING BODY;

24 (7) THE FINANCIAL RECORDS OF THE HOMEOWNERS
25 ASSOCIATION FROM THE DATE OF CREATION TO THE DATE OF TRANSFER OF
26 CONTROL, INCLUDING BUDGET INFORMATION REGARDING ESTIMATED AND
27 ACTUAL EXPENDITURES BY THE HOMEOWNERS ASSOCIATION AND ANY REPORT
28 RELATING TO THE RESERVES REQUIRED FOR MAJOR REPAIRS AND
29 REPLACEMENT OF THE COMMON AREAS OF THE HOMEOWNERS ASSOCIATION;

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

32 (9) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF ANY
33 CONTRACTOR OR SUBCONTRACTOR EMPLOYED BY THE HOMEOWNERS
34 ASSOCIATION;

1 (10) ANY INSURANCE POLICIES IN EFFECT;

2 (11) ANY PERMIT OR NOTICE OF CODE VIOLATIONS ISSUED TO THE
3 HOMEOWNERS ASSOCIATION BY THE COUNTY, LOCAL, STATE, OR FEDERAL
4 GOVERNMENT;

5 (12) ANY WARRANTY IN EFFECT AND ALL PRIOR INSURANCE
6 POLICIES;

7 (13) THE HOMEOWNERS ASSOCIATION FUNDS, INCLUDING
8 OPERATING FUNDS, REPLACEMENT RESERVES, INVESTMENT ACCOUNTS, AND
9 WORKING CAPITAL;

10 (14) THE TANGIBLE PROPERTY OF THE HOMEOWNERS
11 ASSOCIATION;

12 (15) A ROSTER OF CURRENT LOT OWNERS, INCLUDING THEIR
13 MAILING ADDRESSES, TELEPHONE NUMBERS, AND LOT NUMBERS, IF KNOWN;
14 ~~AND~~

15 (16) INDIVIDUAL MEMBER FILES AND RECORDS, INCLUDING
16 ASSESSMENT ACCOUNT RECORDS, CORRESPONDENCE, AND NOTICES OF ANY
17 VIOLATIONS; AND

18 (17) DRAWINGS, ARCHITECTURAL PLANS, OR OTHER SUITABLE
19 DOCUMENTS SETTING FORTH THE NECESSARY INFORMATION FOR LOCATION,
20 MAINTENANCE, AND REPAIRS OF ALL COMMON AREAS.

21 ~~(D)~~ (E) (1) THIS SUBSECTION DOES NOT APPLY TO A CONTRACT
22 ENTERED INTO BEFORE OCTOBER 1, 2009.

23 (2) (I) IN THIS SUBSECTION, "CONTRACT" MEANS AN
24 AGREEMENT WITH A COMPANY OR INDIVIDUAL TO HANDLE FINANCIAL
25 MATTERS, MAINTENANCE, OR SERVICES ~~OF~~ FOR THE HOMEOWNERS
26 ASSOCIATION.

27 (II) "CONTRACT" DOES NOT INCLUDE AN AGREEMENT
28 RELATING TO THE PROVISION OF UTILITY SERVICES OR COMMUNICATION
29 SYSTEMS.

30 (3) UNTIL ALL MEMBERS OF THE GOVERNING BODY ARE
31 ELECTED BY THE LOT OWNERS AT A TRANSITIONAL MEETING UNDER
32 SUBSECTION (A) OF THIS SECTION, A CONTRACT ENTERED INTO BY THE
33 GOVERNING BODY MAY BE TERMINATED, AT THE DISCRETION OF THE

1 GOVERNING BODY AND WITHOUT LIABILITY FOR THE TERMINATION, NOT LATER
2 THAN 30 DAYS AFTER NOTICE.

3 ~~(E)~~ (F) IF THE DECLARANT FAILS TO COMPLY WITH THE
4 REQUIREMENTS OF THIS SECTION, AN AGGRIEVED LOT OWNER MAY SUBMIT THE
5 DISPUTE TO THE DIVISION OF CONSUMER PROTECTION OF THE OFFICE OF THE
6 ATTORNEY GENERAL UNDER § 11B-115(C) OF THIS TITLE.

7 11B-112.

8 (a) (1) (I) Subject to the provisions of paragraph (2) of this subsection,
9 all books and records kept by or on behalf of the homeowners association shall be
10 made available for examination and copying by a lot owner, a lot owner's mortgagee,
11 and their respective duly authorized agents or attorneys, during normal business
12 hours, and after reasonable notice.

13 (II) BOOKS AND RECORDS REQUIRED TO BE MADE
14 AVAILABLE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL FIRST BE
15 MADE AVAILABLE TO A LOT OWNER NO LATER THAN 15 BUSINESS DAYS AFTER A
16 LOT IS CONVEYED BY THE DECLARANT AND THE LOT OWNER REQUESTS TO
17 EXAMINE OR COPY THE BOOKS AND RECORDS.

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

- 20 (i) Personnel records;
- 21 (ii) An individual's medical records;
- 22 (iii) An individual's financial records;
- 23 (iv) Records relating to business transactions that are currently
24 in negotiation;
- 25 (v) The written advice of legal counsel; or
- 26 (vi) Minutes of a closed meeting of the governing body of the
27 homeowners association.

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