

CHAPTER 95

(Senate Bill 742)

AN ACT concerning

Condominiums and Homeowners Associations – Transition of Control

FOR the purpose of requiring a meeting of the council of unit owners of a condominium to elect a board of directors to be held within a certain time; requiring a developer before the date of a certain meeting to deliver to each unit owner a certain notice; terminating the term of members of a board of directors appointed by a developer under certain circumstances; requiring a developer to deliver certain documents, funds, and property to the officers or board of directors for the council of unit owners on transfer of control under certain circumstances; authorizing the board of directors to terminate without liability certain contracts under certain circumstances; authorizing an aggrieved unit owner to submit a certain dispute to the Division of Consumer Protection of the Office of the Attorney General under certain circumstances; requiring a developer to make certain books and records available to a unit owner within a certain time under certain circumstances; requiring a meeting of the members of a homeowners association to elect a governing body to be held within a certain time; requiring a declarant before the date of a certain meeting to deliver to each lot owner a certain notice; terminating the term of members of the governing body appointed by a declarant under certain circumstances; requiring a declarant to deliver certain documents, funds, and property to the governing body on transfer of control under certain circumstances; authorizing the members of a governing body to terminate without liability certain contracts under certain circumstances; authorizing an aggrieved lot owner to submit a certain dispute to the Division of Consumer Protection of the Office of the Attorney General under certain circumstances; requiring a declarant to make certain books and records available to a lot owner within a certain time under 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 EACH UNIT OWNER NOTICE THAT THE REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH HAVE BEEN MET.

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

~~(H)~~ (III) **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)~~ (IV) 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. THE DOCUMENTS SPECIFIED IN § 11-132 OF THIS TITLE;

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

3. THE TANGIBLE PROPERTY OF THE CONDOMINIUM; AND

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

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

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

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

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

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

11-116.

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

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

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

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

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

- (i) Personnel records;
- (ii) An individual's medical records;
- (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.

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

~~(C)~~ (D) WITHIN 30 DAYS FROM THE DATE OF THE MEETING HELD UNDER SUBSECTION (A) OF THIS SECTION, THE DECLARANT SHALL DELIVER

THE FOLLOWING ITEMS TO THE GOVERNING BODY AT THE DECLARANT'S EXPENSE:

- (1) THE ~~DEED~~ DEEDS TO THE COMMON AREAS;**
- (2) COPIES OF THE HOMEOWNERS ASSOCIATION'S FILED ARTICLES OF INCORPORATION, DECLARATION, AND ALL RECORDED COVENANTS, PLATS, ~~AND~~ RESTRICTIONS, AND ANY OTHER RECORDS OF THE PRIMARY DEVELOPMENT AND OF RELATED DEVELOPMENTS;**
- (3) A COPY OF THE BYLAWS AND RULES OF THE PRIMARY DEVELOPMENT AND OF OTHER RELATED DEVELOPMENTS AS FILED IN THE DEPOSITORY OF THE COUNTY IN WHICH THE DEVELOPMENT IS LOCATED;**
- (4) THE MINUTE BOOKS, INCLUDING ALL MINUTES;**
- (5) SUBJECT TO THE RESTRICTIONS OF § 11B-112 OF THIS TITLE, ALL BOOKS AND RECORDS OF THE HOMEOWNERS ASSOCIATION, INCLUDING FINANCIAL STATEMENTS, MINUTES OF ANY MEETING OF THE GOVERNING BODY, AND COMPLETED BUSINESS TRANSACTIONS;**
- (6) ANY POLICIES, RULES, AND REGULATIONS ADOPTED BY THE GOVERNING BODY;**
- (7) THE FINANCIAL RECORDS OF THE HOMEOWNERS ASSOCIATION FROM THE DATE OF CREATION TO THE DATE OF TRANSFER OF CONTROL, INCLUDING BUDGET INFORMATION REGARDING ESTIMATED AND ACTUAL EXPENDITURES BY THE HOMEOWNERS ASSOCIATION AND ANY REPORT RELATING TO THE RESERVES REQUIRED FOR MAJOR REPAIRS AND REPLACEMENT OF THE COMMON AREAS OF THE HOMEOWNERS ASSOCIATION;**
- (8) A COPY OF ALL CONTRACTS TO WHICH THE HOMEOWNERS ASSOCIATION IS A PARTY;**
- (9) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF ANY CONTRACTOR OR SUBCONTRACTOR EMPLOYED BY THE HOMEOWNERS ASSOCIATION;**
- (10) ANY INSURANCE POLICIES IN EFFECT;**
- (11) ANY PERMIT OR NOTICE OF CODE VIOLATIONS ISSUED TO THE HOMEOWNERS ASSOCIATION BY THE COUNTY, LOCAL, STATE, OR FEDERAL GOVERNMENT;**

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

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

(14) THE TANGIBLE PROPERTY OF THE HOMEOWNERS ASSOCIATION;

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

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

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

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

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

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

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

~~(E)~~ (F) IF THE DECLARANT FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION, AN AGGRIEVED LOT OWNER MAY SUBMIT THE

DISPUTE TO THE DIVISION OF CONSUMER PROTECTION OF THE OFFICE OF THE ATTORNEY GENERAL UNDER § 11B-115(C) OF THIS TITLE.

11B-112.

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

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

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

- (i) Personnel records;
- (ii) An individual's medical records;
- (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 governing body of the homeowners association.

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

Approved by the Governor, April 14, 2009.