

SENATE BILL 945

N1

EMERGENCY BILL

0lr3013

By: **Senator Middleton**

Introduced and read first time: February 18, 2010

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Condominiums and Homeowners Associations – Governing Documents –**
3 **Overriding Restrictions Against Rental of Home**

4 FOR the purpose of establishing that a provision in a certain governing document of a
5 condominium or a homeowners association that restricts the right of a unit
6 owner in a condominium or a homeowner in a homeowners association from
7 renting their residential property is null and void for a certain period of time;
8 stating the intent of the General Assembly; providing for the termination of this
9 Act; making this Act an emergency measure; and generally relating to
10 overriding governing documents that restrict the rental of residential property
11 in condominiums and homeowners associations.

12 BY repealing and reenacting, without amendments,
13 Article – Real Property
14 Section 11–104(a) and (c), 11B–105(a)(3) and (b)(6), and 11B–106(a)(3) and
15 (b)(5)
16 Annotated Code of Maryland
17 (2003 Replacement Volume and 2009 Supplement)

18 BY adding to
19 Article – Real Property
20 Section 11–104.1 and 11B–106.2
21 Annotated Code of Maryland
22 (2003 Replacement Volume and 2009 Supplement)

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

25 **Article – Real Property**

26 11–104.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

4 (c) The bylaws also may contain any other provision regarding the
5 management and operation of the condominium including any restriction on or
6 requirement respecting the use and maintenance of the units and the common
7 elements.

8 **11-104.1.**

9 (A) **THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:**

10 (1) **SINCE 2006, CHANGES IN THE REAL ESTATE MARKET AND THE**
11 **ECONOMY IN GENERAL HAVE LED TO A MARKED INCREASE IN FORECLOSURE**
12 **EVENTS BOTH NATIONWIDE AND IN MARYLAND;**

13 (2) **EVEN WITH THE LEGISLATIVE CHANGES APPROVED IN THE**
14 **2008 LEGISLATIVE SESSION, FORECLOSURES HAVE CONTINUED TO RISE IN THE**
15 **STATE;**

16 (3) **IN NOVEMBER 2009, 1 IN EVERY 364 MARYLAND HOMES WAS**
17 **IN SOME STAGE OF FORECLOSURE; AND**

18 (4) **THE RISE IN UNEMPLOYMENT IN THE STATE HAS MADE THE**
19 **FORECLOSURE CRISIS WORSE BY MAKING IT MORE DIFFICULT FOR MANY**
20 **HOMEOWNERS TO KEEP THEIR HOMES.**

21 (B) **IT IS THE PURPOSE OF THE GENERAL ASSEMBLY IN ENACTING THIS**
22 **SECTION TO HELP UNIT OWNERS IN CONDOMINIUMS PREVENT FORECLOSURE**
23 **ON THEIR RESIDENTIAL PROPERTY BY ENABLING THE UNIT OWNERS TO RENT**
24 **THEIR UNITS TO ASSIST IN MAKING THEIR MONTHLY MORTGAGE PAYMENTS.**

25 (C) **UNTIL JUNE 30, 2013, ANY PROVISION IN THE BYLAWS OF A**
26 **CONDOMINIUM RESTRICTING A UNIT OWNER FROM RENTING THE UNIT OWNER'S**
27 **RESIDENTIAL PROPERTY IS NULL AND VOID AND OF NO EFFECT.**

28 **11B-105.**

29 (a) A contract for the initial sale of a lot in a development containing more
30 than 12 lots to a member of the public who intends to occupy or rent the lot for
31 residential purposes is not enforceable by the vendor unless:

1 (3) The contract of sale contains a notice in conspicuous type, which
2 shall include bold and underscored type, in a form substantially the same as the
3 following:

4 “This sale is subject to the requirements of the Maryland Homeowners
5 Association Act (the “Act”). The Act requires that the seller disclose to you at or before
6 the time the contract is entered into, or within 7 calendar days of entering into the
7 contract, certain information concerning the development in which the lot you are
8 purchasing is located. The content of the information to be disclosed is set forth in §
9 11B–105(b) of the Act (the “MHAA information”) as follows:

10 (The notice shall include at this point the text of § 11B–105(b) in its entirety).

11 If you have not received all of the MHAA information 5 calendar days or more
12 before entering into the contract, you have 5 calendar days to cancel this contract after
13 receiving all of the MHAA information. You must cancel the contract in writing, but
14 you do not have to state a reason. The seller must also provide you with notice of any
15 changes in mandatory fees exceeding 10% of the amount previously stated to exist and
16 copies of any other substantial and material amendment to the information provided
17 to you. You have 3 calendar days to cancel this contract after receiving notice of any
18 changes in mandatory fees, or copies of any other substantial and material
19 amendment to the MHAA information which adversely affects you. If you do cancel the
20 contract you will be entitled to a refund of any deposit you made on account of the
21 contract. However, unless you return the MHAA information to the seller when you
22 cancel the contract, the seller may keep out of your deposit the cost of reproducing the
23 MHAA information, or \$100, whichever amount is less.

24 By purchasing a lot within this development, you will automatically be subject
25 to various rights, responsibilities, and obligations, including the obligation to pay
26 certain assessments to the homeowners association within the development. The lot
27 you are purchasing may have restrictions on:

- 28 (1) Architectural changes, design, color, landscaping, or appearance;
- 29 (2) Occupancy density;
- 30 (3) Kind, number, or use of vehicles;
- 31 (4) Renting, leasing, mortgaging, or conveying property;
- 32 (5) Commercial activity; or
- 33 (6) Other matters.

34 You should review the MHAA information carefully to ascertain your rights,
35 responsibilities, and obligations within the development.”

1 (b) The vendor shall provide the purchaser the following information in
2 writing:

3 (6) A copy of:

4 (i) The articles of incorporation, the declaration, and all
5 recorded covenants and restrictions of the primary development and of other related
6 developments to the extent reasonably available, to which the purchaser shall become
7 obligated on becoming an owner of the lot, including a statement that these obligations
8 are enforceable against an owner and the owner's tenants, if applicable; and

9 (ii) The bylaws and rules of the primary development and of
10 other related developments to the extent reasonably available, to which the purchaser
11 shall become obligated on becoming an owner of the lot, including a statement that
12 these obligations are enforceable against an owner and the owner's tenants, if
13 applicable;

14 11B-106.

15 (a) A contract for the resale of a lot within a development, or for the initial
16 sale of a lot within a development containing 12 or fewer lots, to a member of the
17 public who intends to occupy or rent the lot for residential purposes, is not enforceable
18 by the vendor unless:

19 (3) The contract of sale contains a notice in conspicuous type, which
20 shall include bold and underscored type, in a form substantially the same as the
21 following:

22 "This sale is subject to the requirements of the Maryland Homeowners
23 Association Act (the "Act"). The Act requires that the seller disclose to you at or before
24 the time the contract is entered into, or within 20 calendar days of entering into the
25 contract, certain information concerning the development in which the lot you are
26 purchasing is located. The content of the information to be disclosed is set forth in §
27 11B-106(b) of the Act (the "MHAA information") as follows:

28 (The notice shall include at this point the text of § 11B-106(b) in its entirety).

29 If you have not received all of the MHAA information 5 calendar days or more
30 before entering into the contract, you have 5 calendar days to cancel this contract after
31 receiving all of the MHAA information. You must cancel the contract in writing, but
32 you do not have to state a reason. The seller must also provide you with notice of any
33 changes in mandatory fees exceeding 10% of the amount previously stated to exist and
34 copies of any other substantial and material amendment to the information provided
35 to you. You have 3 calendar days to cancel this contract after receiving notice of any
36 changes in mandatory fees, or copies of any other substantial and material
37 amendment to the MHAA information which adversely affects you. If you do cancel the
38 contract you will be entitled to a refund of any deposit you made on account of the
39 contract. However, unless you return the MHAA information to the seller when you

1 cancel the contract, the seller may keep out of your deposit the cost of reproducing the
2 MHAA information, or \$100, whichever amount is less.

3 By purchasing a lot within this development, you will automatically be subject
4 to various rights, responsibilities, and obligations, including the obligation to pay
5 certain assessments to the homeowners association within the development. The lot
6 you are purchasing may have restrictions on:

7 (1) Architectural changes, design, color, landscaping, or appearance;

8 (2) Occupancy density;

9 (3) Kind, number, or use of vehicles;

10 (4) Renting, leasing, mortgaging, or conveying property;

11 (5) Commercial activity; or

12 (6) Other matters.

13 You should review the MHAA information carefully to ascertain your rights,
14 responsibilities, and obligations within the development.”

15 (b) The vendor shall provide the purchaser the following information in
16 writing:

17 (5) A copy of:

18 (i) The articles of incorporation, the declaration, and all
19 recorded covenants and restrictions of the primary development, and of other related
20 developments to the extent reasonably available, to which the purchaser shall become
21 obligated on becoming an owner of the lot, including a statement that these obligations
22 are enforceable against an owner’s tenants, if applicable; and

23 (ii) The bylaws and rules of the primary development, and of
24 other related developments to the extent reasonably available, to which the purchaser
25 shall become obligated on becoming an owner of the lot, including a statement that
26 these obligations are enforceable against an owner and the owner’s tenants, if
27 applicable.

28 **11B-106.2.**

29 **(A) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:**

30 **(1) SINCE 2006, CHANGES IN THE REAL ESTATE MARKET AND THE**
31 **ECONOMY IN GENERAL HAVE LED TO A MARKED INCREASE IN FORECLOSURE**
32 **EVENTS BOTH NATIONWIDE AND IN MARYLAND;**

1 **(2) EVEN WITH THE LEGISLATIVE CHANGES APPROVED IN THE**
2 **2008 LEGISLATION SESSION, FORECLOSURES HAVE CONTINUED TO RISE IN THE**
3 **STATE;**

4 **(3) IN NOVEMBER 2009, 1 IN EVERY 364 MARYLAND HOMES WAS**
5 **IN SOME STAGE OF FORECLOSURE; AND**

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7 **FORECLOSURE CRISIS WORSE BY MAKING IT MORE DIFFICULT FOR MANY**
8 **HOMEOWNERS TO KEEP THEIR HOMES.**

9 **(B) IT IS THE INTENT OF THE GENERAL ASSEMBLY, IN ENACTING THIS**
10 **SECTION, TO HELP PROPERTY OWNERS IN HOMEOWNERS ASSOCIATIONS**
11 **PREVENT FORECLOSURE ON THEIR RESIDENTIAL PROPERTY BY ENABLING THE**
12 **PROPERTY OWNERS TO RENT THEIR RESIDENTIAL PROPERTY TO ASSIST IN**
13 **MAKING THEIR MONTHLY MORTGAGE PAYMENTS.**

14 **(C) UNTIL JUNE 30, 2013, ANY PROVISION IN THE ARTICLES OF**
15 **INCORPORATION, THE DECLARATION, THE RECORDED COVENANTS AND**
16 **RESTRICTIONS, OR THE BYLAWS OF A HOMEOWNERS ASSOCIATION THAT**
17 **RESTRICTS A PROPERTY OWNER FROM RENTING THE PROPERTY OWNER'S**
18 **RESIDENTIAL PROPERTY IS NULL AND VOID AND OF NO EFFECT.**

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
20 measure, is necessary for the immediate preservation of the public health or safety,
21 has been passed by a ye and nay vote supported by three-fifths of all the members
22 elected to each of the two Houses of the General Assembly, and shall take effect from
23 the date it is enacted. It shall remain effective through June 30, 2013, and, at the end
24 of June 30, 2013, with no further action required by the General Assembly, this Act
25 shall be abrogated and of no further force and effect.