

HOUSE BILL 76

N1
HB 984/11 – ENV

2lr0403
CF 2lr3297

By: **Delegate Braveboy**

Introduced and read first time: January 17, 2012

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 6, 2012

CHAPTER _____

1 AN ACT concerning

2 **Real Property – Common Ownership Communities – Dispute Settlement**
3 **Mechanism**

4 FOR the purpose of altering the application of a certain dispute settlement mechanism
5 under the Maryland Condominium Act; establishing a certain dispute
6 settlement mechanism under the Maryland Homeowners Association Act;
7 providing a certain exception to the application of the dispute settlement
8 mechanism established under this Act if the condominium declaration or bylaws
9 or homeowners association declaration, bylaws, or other documents meet
10 certain requirements; requiring a governing body of a homeowners association
11 to follow certain procedures before imposing a sanction for a rule violation;
12 authorizing a certain alleged violator to request a certain hearing before the
13 governing body of a homeowners association; authorizing a certain action for
14 damages or injunctive relief under certain circumstances; establishing that the
15 failure of the governing body of a homeowners association to enforce certain
16 provisions is not a waiver of the right to enforce a provision; providing for the
17 application of this Act; making stylistic changes; and generally relating to the
18 Maryland Condominium Act, the Maryland Homeowners Association Act, and
19 common ownership community dispute settlement procedures.

20 BY repealing and reenacting, with amendments,
21 Article – Real Property
22 Section 11–113
23 Annotated Code of Maryland
24 (2010 Replacement Volume and 2011 Supplement)

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.



1 BY adding to
 2 Article – Real Property
 3 Section 11B–111.7
 4 Annotated Code of Maryland
 5 (2010 Replacement Volume and 2011 Supplement)

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

8 **Article – Real Property**

9 11–113.

10 (a) **(1) ~~Unless the declaration or bylaws state otherwise~~ OF A**
 11 **CONDOMINIUM MEET THE REQUIREMENTS OF PARAGRAPH (2) OF THIS**
 12 **SUBSECTION**, the ~~THE~~ dispute settlement mechanism provided by this section is
 13 applicable to complaints or demands formally arising on or after [January 1, 1982]
 14 **OCTOBER 1, 2012.**

15 **(2) THE DISPUTE SETTLEMENT MECHANISM PROVIDED BY THIS**
 16 **SECTION DOES NOT APPLY IF THE DECLARATION OR BYLAWS OF THE**
 17 **CONDOMINIUM PROVIDE FOR A DISPUTE RESOLUTION PROCESS THAT**
 18 **INCLUDES:**

19 **(i) NOTICE TO THE UNIT OWNER OR OCCUPANT BEFORE**
 20 **THE IMPOSITION OF ANY PENALTY OR SANCTION EXPLAINING THE VIOLATION**
 21 **AND THE ACTION REQUIRED TO ABATE THE VIOLATION; AND**

22 **(ii) AN OPPORTUNITY FOR A HEARING BEFORE A SANCTION**
 23 **OR PENALTY IS IMPOSED.**

24 (b) The council of unit owners or board of directors may not impose a fine,
 25 suspend voting, or infringe upon any other rights of a unit owner or other occupant for
 26 violations of rules until the following procedure is followed:

27 (1) Written demand to cease and desist from an alleged violation is
 28 served upon the alleged violator specifying:

29 (i) The alleged violation;

30 (ii) The action required to abate the violation; and

31 (iii) **1. [A] IF A VIOLATION IS A CONTINUING ONE, A time**
 32 **period, not less than 10 days, during which the violation may be abated without**
 33 **further sanction[, if the violation is a continuing one,]; or**

1 **2. IF THE VIOLATION IS NOT CONTINUING,** a
2 statement that any further violation of the same rule may result in the imposition of
3 sanction after notice and hearing [if the violation is not continuing].

4 (2) **(I)** Within 12 months of the demand, if the violation continues
5 past the period allowed in the demand for abatement without penalty or if the same
6 rule is violated subsequently, the board serves the alleged violator with written notice
7 of a hearing to be held by the board in session.

8 **(II)** The notice shall contain:

9 **[(i)] 1.** The nature of the alleged violation **AND THE ACTION**
10 **REQUIRED TO ABATE THE VIOLATION;**

11 **[(ii)] 2.** The time and place of the hearing, which time may be
12 not less than 10 days from the giving of the notice;

13 **[(iii)] 3.** An invitation to attend the hearing and produce any
14 statement, evidence, and witnesses on [his or her] **THE ALLEGED VIOLATOR'S** behalf;
15 and

16 **[(iv)] 4.** The proposed sanction to be imposed.

17 (3) **(I)** A hearing occurs at which the alleged violator has the right
18 to present evidence and present and cross-examine witnesses.

19 **(II)** The hearing shall be held in executive session pursuant to
20 this notice and shall afford the alleged violator a reasonable opportunity to be heard.

21 **(III)** Prior to the effectiveness of any sanction hereunder, proof of
22 notice and the invitation to be heard shall be placed in the minutes of the meeting.

23 **(IV)** This proof shall be deemed adequate if a copy of the notice,
24 together with a statement of the date and manner of delivery, is entered by the officer
25 or director who delivered the notice.

26 **(V)** The notice requirement shall be deemed satisfied if the
27 alleged violator appears at the meeting.

28 **(VI)** The minutes of the meeting shall contain a written
29 statement of the results of the hearing and the sanction, if any, imposed.

30 (4) A decision pursuant to these procedures shall be appealable to the
31 courts of Maryland.

1 (c) (1) If any unit owner fails to comply with this title, the declaration, or
 2 bylaws, or a decision rendered pursuant to this section, the unit owner may be sued for
 3 damages caused by the failure or for injunctive relief, or both, by the council of unit
 4 owners or by any other unit owner.

5 (2) The prevailing party in any such proceeding is entitled to an award
 6 for counsel fees as determined by court.

7 (d) The failure of the council of unit owners to enforce a provision of this
 8 title, the declaration, or bylaws on any occasion is not a waiver of the right to enforce
 9 the provision on any other occasion.

10 **11B-111.7.**

11 (A) (1) ~~THE~~ UNLESS THE DECLARATION, BYLAWS, OR OTHER
 12 DOCUMENTS OF A HOMEOWNERS ASSOCIATION MEET THE REQUIREMENTS OF
 13 PARAGRAPH (2) OF THIS SUBSECTION, THE DISPUTE SETTLEMENT MECHANISM
 14 PROVIDED BY THIS SECTION IS APPLICABLE TO COMPLAINTS OR DEMANDS
 15 FORMALLY ARISING ON OR AFTER OCTOBER 1, 2012.

16 (2) THE DISPUTE SETTLEMENT MECHANISM PROVIDED BY THIS
 17 SECTION DOES NOT APPLY IF THE DECLARATION, BYLAWS, OR OTHER
 18 DOCUMENTS OF THE HOMEOWNERS ASSOCIATION PROVIDE FOR A DISPUTE
 19 RESOLUTION PROCESS THAT INCLUDES:

20 (I) NOTICE TO THE LOT OWNER OR OCCUPANT BEFORE THE
 21 IMPOSITION OF ANY PENALTY OR SANCTION EXPLAINING THE VIOLATION AND
 22 THE ACTION REQUIRED TO ABATE THE VIOLATION; AND

23 (II) AN OPPORTUNITY FOR A HEARING BEFORE A SANCTION
 24 OR PENALTY IS IMPOSED.

25 (B) THE GOVERNING BODY OF A HOMEOWNERS ASSOCIATION MAY NOT
 26 IMPOSE A FINE, SUSPEND VOTING, OR INFRINGE ON ANY OTHER RIGHTS OF A
 27 LOT OWNER FOR VIOLATIONS OF RULES UNTIL THE FOLLOWING PROCEDURE IS
 28 FOLLOWED:

29 (1) WRITTEN DEMAND TO CEASE AND DESIST FROM AN ALLEGED
 30 VIOLATION IS SERVED ON THE ALLEGED VIOLATOR SPECIFYING:

31 (I) THE ALLEGED VIOLATION;

32 (II) THE ACTION REQUIRED TO ABATE THE VIOLATION; AND

1 (III) 1. IF THE VIOLATION IS A CONTINUING ONE, A TIME
2 PERIOD, NOT LESS THAN 10 DAYS, DURING WHICH THE VIOLATION MAY BE
3 ABATED WITHOUT FURTHER SANCTION; OR

4 2. IF THE VIOLATION IS NOT CONTINUING, A
5 STATEMENT THAT ANY FURTHER VIOLATION OF THE SAME RULE MAY RESULT IN
6 THE IMPOSITION OF SANCTION AFTER NOTICE AND THE OPPORTUNITY FOR A
7 HEARING.

8 (2) (I) WITHIN 12 MONTHS OF THE DEMAND, IF THE
9 VIOLATION CONTINUES PAST THE PERIOD ALLOWED IN THE DEMAND FOR
10 ABATEMENT WITHOUT PENALTY OR IF THE SAME RULE IS VIOLATED
11 SUBSEQUENTLY, THE GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION
12 SERVES THE ALLEGED VIOLATOR WITH WRITTEN NOTICE ~~OF~~ THAT THE
13 ALLEGED VIOLATOR HAS THE RIGHT TO A HEARING TO BE HELD BY THE
14 GOVERNING BODY IN SESSION.

15 (II) THE NOTICE SHALL CONTAIN:

16 1. THE NATURE OF THE ALLEGED VIOLATION AND
17 THE ACTION REQUIRED TO ABATE THE VIOLATION;

18 2. THE TIME AND PLACE OF THE HEARING, IF A
19 HEARING IS REQUESTED BY THE ALLEGED VIOLATOR, WHICH TIME MAY BE NOT
20 LESS THAN 10 DAYS FROM THE GIVING OF THE NOTICE;

21 3. AN INVITATION TO ATTEND THE HEARING AND
22 PRODUCE ANY STATEMENT, EVIDENCE, AND WITNESSES ON THE ALLEGED
23 VIOLATOR'S BEHALF; AND

24 4. THE PROPOSED SANCTION TO BE IMPOSED.

25 (3) (I) ~~A~~ IF REQUESTED BY THE ALLEGED VIOLATOR, A
26 HEARING OCCURS AT WHICH THE ALLEGED VIOLATOR HAS THE RIGHT TO
27 PRESENT EVIDENCE AND PRESENT AND CROSS-EXAMINE WITNESSES.

28 (II) THE HEARING SHALL BE HELD IN ACCORDANCE WITH
29 THIS NOTICE AND SHALL AFFORD THE ALLEGED VIOLATOR A REASONABLE
30 OPPORTUNITY TO BE HEARD.

31 (III) PRIOR TO THE EFFECTIVENESS OF ANY SANCTION,
32 PROOF OF NOTICE AND THE INVITATION TO BE HEARD SHALL BE PLACED IN THE
33 MINUTES OF THE MEETING.

1 **(IV) THIS PROOF SHALL BE DEEMED ADEQUATE IF A COPY**
2 **OF THE NOTICE, TOGETHER WITH A STATEMENT OF THE DATE AND MANNER OF**
3 **DELIVERY, IS ENTERED BY THE OFFICER OR DIRECTOR WHO DELIVERED THE**
4 **NOTICE.**

5 **(V) THE NOTICE REQUIREMENT SHALL BE DEEMED**
6 **SATISFIED IF THE ALLEGED VIOLATOR APPEARS AT THE MEETING.**

7 **(VI) THE MINUTES OF THE MEETING SHALL CONTAIN A**
8 **WRITTEN STATEMENT OF THE RESULTS OF THE HEARING, IF HELD, AND THE**
9 **SANCTION, IF ANY, IMPOSED.**

10 **(4) A DECISION IN ACCORDANCE WITH THESE PROCEDURES**
11 **SHALL BE APPEALABLE TO THE COURTS OF MARYLAND.**

12 **(C) (1) IF ANY LOT OWNER FAILS TO COMPLY WITH THIS TITLE, THE**
13 **DECLARATION, OR BYLAWS, OR A DECISION RENDERED IN ACCORDANCE WITH**
14 **THIS SECTION, THE LOT OWNER MAY BE SUED FOR DAMAGES CAUSED BY THE**
15 **FAILURE OR FOR INJUNCTIVE RELIEF, OR BOTH, BY THE GOVERNING BODY OF**
16 **THE HOMEOWNERS ASSOCIATION OR BY ANY OTHER LOT OWNER.**

17 **(2) THE PREVAILING PARTY IN ANY SUCH PROCEEDING IS**
18 **ENTITLED TO AN AWARD FOR COUNSEL FEES AS DETERMINED BY COURT.**

19 **(D) THE FAILURE OF THE GOVERNING BODY OF A HOMEOWNERS**
20 **ASSOCIATION TO ENFORCE A PROVISION OF THIS TITLE, THE DECLARATION, OR**
21 **BYLAWS ON ANY OCCASION IS NOT A WAIVER OF THE RIGHT TO ENFORCE THE**
22 **PROVISION ON ANY OTHER OCCASION.**

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
24 construed to apply only prospectively and may not be applied or interpreted to have
25 any effect on or application to any complaint or demand arising before the effective
26 date of this Act.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2012.