

SENATE BILL 1015

N1

2lr3296
CF HB 75

By: **Senator Pugh**

Introduced and read first time: February 20, 2012

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Residential Property – Condominium Unit Owners or Lot Owners – Provision**
3 **of Disclosure Documents**

4 FOR the purpose of providing that a residential condominium unit owner or a vendor
5 of or a lot owner in a development subject to the Maryland Homeowners
6 Association Act who is selling the property shall provide certain disclosure
7 documents without charge to a purchaser; providing that, notwithstanding
8 certain provisions of law, the mortgagee or trustee designated under the deed of
9 trust shall provide certain disclosure documents to the purchaser of a
10 condominium unit or a certain lot in a development at a foreclosure sale;
11 making conforming changes; providing for the application of this Act; and
12 generally relating to the provision of disclosure documents in the sale of a
13 residential condominium unit or a lot in a development.

14 BY repealing and reenacting, with amendments,
15 Article – Real Property
16 Section 11–135(a), (b), and (g), 11B–105(a) and (b), and 11B–106(a), (b), and (d)
17 Annotated Code of Maryland
18 (2010 Replacement Volume and 2011 Supplement)

19 BY adding to
20 Article – Real Property
21 Section 11–135.1 and 11B–106.2
22 Annotated Code of Maryland
23 (2010 Replacement Volume and 2011 Supplement)

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

26 **Article – Real Property**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 11-135.

2 (a) Except as provided in subsection (b) of this section, a contract for the
3 resale of a unit by a unit owner other than a developer is not enforceable unless the
4 contract of sale contains in conspicuous type a notice in the form specified in
5 subsection (g)(1) of this section, and the unit owner furnishes **WITHOUT CHARGE** to
6 the purchaser not later than 15 days prior to closing:

7 (1) A copy of the declaration (other than the plats);

8 (2) The bylaws;

9 (3) The rules or regulations of the condominium;

10 (4) A certificate containing:

11 (i) A statement disclosing the effect on the proposed conveyance
12 of any right of first refusal or other restraint on the free alienability of the unit other
13 than any restraint created by the unit owner;

14 (ii) A statement setting forth the amount of the monthly
15 common expense assessment and any unpaid common expense or special assessment
16 currently due and payable from the selling unit owner;

17 (iii) A statement of any other fees payable by the unit owners to
18 the council of unit owners;

19 (iv) A statement of any capital expenditures approved by the
20 council of unit owners planned at the time of the conveyance which are not reflected in
21 the current operating budget disclosed under subparagraph (vi) of this paragraph;

22 (v) The most recent regularly prepared balance sheet and
23 income expense statement, if any, of the condominium;

24 (vi) The current operating budget of the condominium including
25 details concerning the reserve fund for repair and replacement and its intended use, or
26 a statement that there is no reserve fund;

27 (vii) A statement of any judgments against the condominium and
28 the existence of any pending suits to which the council of unit owners is a party;

29 (viii) A statement generally describing any insurance policies
30 provided for the benefit of unit owners, a notice that copies of the policies are available
31 for inspection, stating the location at which the copies are available, and a notice that
32 the terms of the policy prevail over the description;

1 (ix) A statement as to whether the council of unit owners has
2 knowledge that any alteration or improvement to the unit or to the limited common
3 elements assigned to the unit violates any provision of the declaration, bylaws, or
4 rules or regulations;

5 (x) A statement as to whether the council of unit owners has
6 knowledge of any violation of the health or building codes with respect to the unit, the
7 limited common elements assigned to the unit, or any other portion of the
8 condominium;

9 (xi) A statement of the remaining term of any leasehold estate
10 affecting the condominium and the provisions governing any extension or renewal
11 thereof; and

12 (xii) A description of any recreational or other facilities which are
13 to be used by the unit owners or maintained by them or the council of unit owners, and
14 a statement as to whether or not they are to be a part of the common elements;

15 (5) A statement by the unit owner as to whether the unit owner has
16 knowledge:

17 (i) That any alteration to the unit or to the limited common
18 elements assigned to the unit violates any provision of the declaration, bylaws, or
19 rules and regulations;

20 (ii) Of any violation of the health or building codes with respect
21 to the unit or the limited common elements assigned to the unit; and

22 (iii) That the unit is subject to an extended lease under § 11–137
23 of this title or under local law, and if so, a copy of the lease must be provided; and

24 (6) A written notice of the unit owner's responsibility for the council of
25 unit owners' property insurance deductible and the amount of the deductible.

26 (b) A contract for the resale by a unit owner other than a developer of a unit
27 in a condominium containing less than 7 units is not enforceable unless the contract of
28 sale contains in conspicuous type a notice in the form specified in subsection (g)(2) of
29 this section, and the unit owner furnishes **WITHOUT CHARGE** to the purchaser not
30 later than 15 days prior to closing:

31 (1) A copy of the declaration (other than the plats);

32 (2) The bylaws;

33 (3) The rules and regulations of the condominium;

1 (4) A statement by the unit owner of the unit owner's expenses during
2 the preceding 12 months relating to the common elements; and

3 (5) A written notice of the unit owner's responsibility for the council of
4 unit owners' property insurance deductible and the amount of the deductible.

5 (g) (1) A notice given as required by subsection (a) of this section shall be
6 sufficient for the purposes of this section if it is in substantially the following form:

7 "NOTICE

8 The seller is required by law to furnish to you **WITHOUT CHARGE AND** not later
9 than 15 days prior to closing certain information concerning the condominium which is
10 described in § 11–135 of the Maryland Condominium Act. This information must
11 include at least the following:

12 (i) A copy of the declaration (other than the plats);

13 (ii) A copy of the bylaws;

14 (iii) A copy of the rules and regulations of the condominium;

15 (iv) A certificate containing:

16 1. A statement disclosing the effect on the proposed
17 conveyance of any right of first refusal or other restraint on the free alienability of the
18 unit, other than any restraint created by the unit owner;

19 2. A statement of the amount of the monthly common
20 expense assessment and any unpaid common expense or special assessment currently
21 due and payable from the selling unit owner;

22 3. A statement of any other fees payable by the unit
23 owners to the council of unit owners;

24 4. A statement of any capital expenditures approved by
25 the council of unit owners or its authorized designee planned at the time of the
26 conveyance which are not reflected in the current operating budget included in the
27 certificate;

28 5. The most recently prepared balance sheet and income
29 and expense statement, if any, of the condominium;

30 6. The current operating budget of the condominium,
31 including details concerning the amount of the reserve fund for repair and
32 replacement and its intended use, or a statement that there is no reserve fund;

1 7. A statement of any judgments against the
2 condominium and the existence of any pending suits to which the council of unit
3 owners is a party;

4 8. A statement generally describing any insurance
5 policies provided for the benefit of the unit owners, a notice that the policies are
6 available for inspection stating the location at which they are available, and a notice
7 that the terms of the policy prevail over the general description;

8 9. A statement as to whether the council of unit owners
9 has knowledge that any alteration or improvement to the unit or to the limited
10 common elements assigned to the unit violates any provision of the declaration,
11 bylaws, or rules or regulations;

12 10. A statement as to whether the council of unit owners
13 has knowledge of any violation of the health or building codes with respect to the unit,
14 the limited common elements assigned to the unit, or any other portion of the
15 condominium;

16 11. A statement of the remaining term of any leasehold
17 estate affecting the condominium and the provisions governing any extension or
18 renewal of it; and

19 12. A description of any recreational or other facilities
20 which are to be used by the unit owners or maintained by them or the council of unit
21 owners, and a statement as to whether or not they are to be a part of the common
22 elements; and

23 (v) A statement by the unit owner as to whether the unit owner
24 has knowledge:

25 1. That any alteration to the unit or to the limited
26 common elements assigned to the unit violates any provision of the declaration,
27 bylaws, or rules and regulations.

28 2. Of any violation of the health or building codes with
29 respect to the unit or the limited common elements assigned to the unit.

30 3. That the unit is subject to an extended lease under §
31 11-137 of this title or under local law, and if so, a copy of the lease must be provided.

32 You will have the right to cancel this contract without penalty, at any time
33 within 7 days following delivery to you of all of this information. However, once the
34 sale is closed, your right to cancel the contract is terminated.”

35 (2) A notice given as required by subsection (b) of this section shall be
36 sufficient for the purposes of this section if it is in substantially the following form:

1 "NOTICE

2 The seller is required by law to furnish to you **WITHOUT CHARGE AND** not later
3 than 15 days prior to closing certain information concerning the condominium which is
4 described in § 11–135 of the Maryland Condominium Act. This information must
5 include at least the following:

6 (1) A copy of the declaration (other than the plats);

7 (2) A copy of the bylaws;

8 (3) A copy of the rules and regulations of the condominium; and

9 (4) A statement by the seller of his expenses relating to the common
10 elements during the preceding 12 months.

11 You will have the right to cancel this contract without penalty, at any time
12 within 7 days following delivery to you of all of this information. However, once the
13 sale is closed, your right to cancel the contract is terminated.”

14 **11–135.1.**

15 **NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, IF A UNIT IS**
16 **SOLD AT A FORECLOSURE SALE, THE MORTGAGEE OR TRUSTEE DESIGNATED**
17 **UNDER THE DEED OF TRUST SHALL PROVIDE THE PURCHASER WITH THE**
18 **DISCLOSURE DOCUMENTS REQUIRED UNDER § 11–135 OF THIS TITLE.**

19 11B–105.

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

23 (1) The purchaser is given **WITHOUT CHARGE**, at or before the time a
24 contract is entered into between the vendor and the purchaser, or within 7 calendar
25 days of entering into the contract, the disclosures set forth in subsection (b) of this
26 section;

27 (2) The purchaser is given notice of any changes in mandatory fees
28 and payments exceeding 10 percent of the amount previously stated to exist or any
29 other substantial and material amendment to the disclosures after the same becomes
30 known to the vendor; and

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, **WITHOUT CHARGE TO YOU** certain information concerning the development
8 in which the lot you are purchasing is located. The content of the information to be
9 disclosed is set forth in § 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 **AND WITHOUT CHARGE**:

3 (1) (i) The name, principal address, and telephone number of the
4 vendor and of the declarant, if the declarant is not the vendor; or

5 (ii) If the vendor is a corporation or partnership, the names and
6 addresses of the principal officers of the corporation, or general partners of the
7 partnership;

8 (2) (i) The name, if any, of the homeowners association; and

9 (ii) If incorporated, the state in which the homeowners
10 association is incorporated and the name of the Maryland resident agent;

11 (3) A description of:

12 (i) The location and size of the development, including the
13 minimum and maximum number of lots currently planned or permitted, if applicable,
14 which may be contained within the development; and

15 (ii) Any property owned by the declarant or the vendor
16 contiguous to the development which is to be dedicated to public use;

17 (4) If the development is or will be within or a part of another
18 development, a general description of the other development;

19 (5) If the declarant has reserved in the declaration the right to annex
20 additional property to the development, a description of the size and location of the
21 additional property and the approximate number of lots currently planned to be
22 contained in the development, as well as any time limits within which the declarant
23 may annex such property;

24 (6) A copy of:

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

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

1 (7) A description or statement of any property which is currently
2 planned to be owned, leased, or maintained by the homeowners association;

3 (8) A copy of the estimated proposed or actual annual budget for the
4 homeowners association for the current fiscal year, including a description of the
5 replacement reserves for common area improvements, if any, and a copy of the current
6 projected budget for the homeowners association based upon the development fully
7 expanded in accordance with expansion rights contained in the declaration;

8 (9) A statement of current or anticipated mandatory fees or
9 assessments to be paid by owners of lots within the development for the use,
10 maintenance, and operation of common areas and for other purposes related to the
11 homeowners association and whether the declarant or vendor will be obligated to pay
12 the fees in whole or in part;

13 (10) (i) A brief description of zoning and other land use
14 requirements affecting the development; or

15 (ii) A written disclosure of where the information is available for
16 inspection;

17 (11) A statement regarding:

18 (i) When mandatory homeowners association fees or
19 assessments will first be levied against owners of lots;

20 (ii) The procedure for increasing or decreasing such fees or
21 assessments;

22 (iii) How fees or assessments and delinquent charges will be
23 collected;

24 (iv) Whether unpaid fees or assessments are a personal
25 obligation of owners of lots;

26 (v) Whether unpaid fees or assessments bear interest and if so,
27 the rate of interest;

28 (vi) Whether unpaid fees or assessments may be enforced by
29 imposing a lien on a lot under the terms of the Maryland Contract Lien Act; and

30 (vii) Whether lot owners will be assessed late charges or
31 attorneys' fees for collecting unpaid fees or assessments and any other consequences
32 for the nonpayment of the fees or assessments;

1 (12) If any sums of money are to be collected at settlement for
2 contribution to the homeowners association other than prorated fees or assessments, a
3 statement of the amount to be collected and the intended use of such funds; and

4 (13) A description of special rights or exemptions reserved by or for the
5 benefit of the declarant or the vendor, including:

6 (i) The right to conduct construction activities within the
7 development;

8 (ii) The right to pay a reduced homeowners association fee or
9 assessment; and

10 (iii) Exemptions from use restrictions or architectural control
11 provisions contained in the declaration or provisions by which the declarant or the
12 vendor intends to maintain control over the homeowners association.

13 11B-106.

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

18 (1) The purchaser is given **WITHOUT CHARGE**, on or before entering
19 into the contract for the sale of such lot, or within 20 calendar days of entering into the
20 contract, the disclosures set forth in subsection (b) of this section;

21 (2) The purchaser is given any changes in mandatory fees and
22 payments exceeding 10 percent of the amount previously stated to exist and any other
23 substantial and material amendment to the disclosures after they become known to
24 the vendor; and

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

28 “This sale is subject to the requirements of the Maryland Homeowners
29 Association Act (the “Act”). The Act requires that the seller disclose to you **WITHOUT**
30 **CHARGE** at or before the time the contract is entered into, or within 20 calendar days
31 of entering into the contract, certain information concerning the development in which
32 the lot you are purchasing is located. The content of the information to be disclosed is
33 set forth in § 11B-106(b) of the Act (the “MHAA information”) as follows:

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

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

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

- 18 (1) Architectural changes, design, color, landscaping, or appearance;
- 19 (2) Occupancy density;
- 20 (3) Kind, number, or use of vehicles;
- 21 (4) Renting, leasing, mortgaging, or conveying property;
- 22 (5) Commercial activity; or
- 23 (6) Other matters.

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

26 (b) The vendor shall provide the purchaser the following information in
27 writing **AND WITHOUT CHARGE**:

- 28 (1) A statement as to whether the lot is located within a development;
- 29 (2) (i) The current monthly fees or assessments imposed by the
30 homeowners association upon the lot;
- 31 (ii) The total amount of fees, assessments, and other charges
32 imposed by the homeowners association upon the lot during the prior fiscal year of the
33 homeowners association; and

1 (iii) A statement of whether any of the fees, assessments, or
2 other charges against the lot are delinquent;

3 (3) The name, address, and telephone number of the management
4 agent of the homeowners association, or other officer or agent authorized by the
5 homeowners association to provide to members of the public, information regarding
6 the homeowners association and the development, or a statement that no agent or
7 officer is presently so authorized by the homeowners association;

8 (4) A statement as to whether the owner has actual knowledge of:

9 (i) The existence of any unsatisfied judgments or pending
10 lawsuits against the homeowners association; and

11 (ii) Any pending claims, covenant violations actions, or notices
12 of default against the lot; and

13 (5) A copy of:

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

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

24 (d) The requirements of subsection (b) of this section shall be deemed to have
25 been fulfilled if the information required to be disclosed is provided to the purchaser
26 in writing in a clear and concise manner **AND WITHOUT CHARGE**. The disclosures
27 may be summarized or produced in any collection of documents, including plats, the
28 declaration, or the organizational documents of the homeowners association, provided
29 those documents effectively convey the required information to the purchaser.

30 **11B-106.2.**

31 **NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, IF A LOT IS**
32 **SOLD AT A FORECLOSURE SALE, THE MORTGAGEE OR TRUSTEE DESIGNATED**
33 **UNDER THE DEED OF TRUST SHALL FURNISH TO THE PURCHASER THE**
34 **DISCLOSURE DOCUMENTS REQUIRED UNDER § 11B-105 OR § 11B-106 OF THIS**
35 **TITLE.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
2 construed to apply only prospectively and may not be applied or interpreted to have
3 any effect on or application to any sale of a residential condominium unit or a lot in a
4 development if the contract for sale is entered into before the effective date of this Act.

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