

SENATE BILL 229

N1

4lr0613

By: **Senator Frosh**

Introduced and read first time: January 16, 2014

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Condominiums and Homeowners Associations – Disclosures**
3 **to Purchasers on Resale of Unit or Lot – Limitation on Fees**

4 FOR the purpose of limiting the amount of the fee that a condominium council of unit
5 owners may charge a unit owner to furnish a certain certificate; limiting the
6 amount of the fee that a homeowners association or certain other persons may
7 charge a lot owner for providing certain information; and generally relating to
8 the resale of a condominium unit or a lot located in a certain development.

9 BY repealing and reenacting, without amendments,
10 Article – Real Property
11 Section 11–135(a) and (b)
12 Annotated Code of Maryland
13 (2010 Replacement Volume and 2013 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article – Real Property
16 Section 11–135(c) and 11B–106
17 Annotated Code of Maryland
18 (2010 Replacement Volume and 2013 Supplement)

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

21 **Article – Real Property**

22 11–135.

23 (a) Except as provided in subsection (b) of this section, a contract for the
24 resale of a unit by a unit owner other than a developer is not enforceable unless the
25 contract of sale contains in conspicuous type a notice in the form specified in

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 subsection (g)(1) of this section, and the unit owner furnishes to the purchaser not
2 later than 15 days prior to closing:

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

4 (2) The bylaws;

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

6 (4) A certificate containing:

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

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

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

15 (iv) A statement of any capital expenditures approved by the
16 council of unit owners planned at the time of the conveyance which are not reflected in
17 the current operating budget disclosed under item (vi) of this item;

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

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

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

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

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

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

5 (xi) A statement of the remaining term of any leasehold estate
6 affecting the condominium and the provisions governing any extension or renewal
7 thereof; and

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

11 (5) A statement by the unit owner as to whether the unit owner has
12 knowledge:

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

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

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

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

22 (b) A contract for the resale by a unit owner other than a developer of a unit
23 in a condominium containing less than 7 units is not enforceable unless the contract of
24 sale contains in conspicuous type a notice in the form specified in subsection (g)(2) of
25 this section, and the unit owner furnishes to the purchaser not later than 15 days
26 prior to closing:

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

28 (2) The bylaws;

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

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

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

1 (c) (1) The council of unit owners, within 20 days after a written request
2 by a unit owner and receipt of a reasonable fee therefor, not to exceed the **LESSER OF**
3 **\$50 OR THE ACTUAL** cost to the council of unit owners, if any, shall furnish a
4 certificate containing the information necessary to enable the unit owner to comply
5 with subsection (a) of this section. A unit owner providing a certificate under
6 subsection (a) of this section is not liable to the purchaser for any erroneous
7 information provided by the council of unit owners and included in the certificate.

8 (2) With respect to the remaining information that the unit owner is
9 required to disclose under subsection (a) of this section that is not provided by the
10 council of unit owners and included in the certificate, a unit owner:

11 (i) Except as provided in item (ii) of this paragraph, is liable to
12 the purchaser under this section for damages proximately caused by:

13 1. An untrue statement about a material fact; and

14 2. An omission of a material fact that is necessary to
15 make the statements made not misleading, in light of the circumstances under which
16 the statements were made; and

17 (ii) Is not liable to the purchaser under this section if the owner
18 had, after reasonable investigation, reasonable grounds to believe, and did believe, at
19 the time the information was provided to the purchaser, that the statements were true
20 and that there was no omission to state a material fact necessary to make the
21 statements made not misleading, in light of the circumstances under which the
22 statements were made.

23 11B-106.

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

28 (1) The purchaser is given, on or before entering into the contract for
29 the sale of such lot, or within 20 calendar days of entering into the contract, the
30 disclosures set forth in subsection (b) of this section;

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

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

1 “This sale is subject to the requirements of the Maryland Homeowners
2 Association Act (the “Act”). The Act requires that the seller disclose to you at or before
3 the time the contract is entered into, or within 20 calendar days of entering into the
4 contract, certain information concerning the development in which the lot you are
5 purchasing is located. The content of the information to be disclosed is set forth in §
6 11B–106(b) of the Act (the “MHAA information”) as follows:

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

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

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

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

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

33 (b) The vendor shall provide the purchaser the following information in
34 writing:

- 1 (1) A statement as to whether the lot is located within a development;
- 2 (2) (i) The current monthly fees or assessments imposed by the
3 homeowners association upon the lot;
- 4 (ii) The total amount of fees, assessments, and other charges
5 imposed by the homeowners association upon the lot during the prior fiscal year of the
6 homeowners association; and
- 7 (iii) A statement of whether any of the fees, assessments, or
8 other charges against the lot are delinquent;
- 9 (3) The name, address, and telephone number of the management
10 agent of the homeowners association, or other officer or agent authorized by the
11 homeowners association to provide to members of the public, information regarding
12 the homeowners association and the development, or a statement that no agent or
13 officer is presently so authorized by the homeowners association;
- 14 (4) A statement as to whether the owner has actual knowledge of:
- 15 (i) The existence of any unsatisfied judgments or pending
16 lawsuits against the homeowners association; and
- 17 (ii) Any pending claims, covenant violations actions, or notices
18 of default against the lot; and
- 19 (5) A copy of:
- 20 (i) The articles of incorporation, the declaration, and all
21 recorded covenants and restrictions of the primary development, and of other related
22 developments to the extent reasonably available, to which the purchaser shall become
23 obligated on becoming an owner of the lot, including a statement that these obligations
24 are enforceable against an owner's tenants, if applicable; and
- 25 (ii) The bylaws and rules of the primary development, and of
26 other related developments to the extent reasonably available, to which the purchaser
27 shall become obligated on becoming an owner of the lot, including a statement that
28 these obligations are enforceable against an owner and the owner's tenants, if
29 applicable.
- 30 **(C) THE HOMEOWNERS ASSOCIATION, THE MANAGEMENT AGENT OF**
31 **THE HOMEOWNERS ASSOCIATION, OR ANY OTHER AUTHORIZED OFFICER OR**
32 **AGENT OF THE HOMEOWNERS ASSOCIATION, WITHIN 20 DAYS AFTER A WRITTEN**
33 **REQUEST BY A LOT OWNER AND RECEIPT OF A REASONABLE FEE, NOT**
34 **EXCEEDING THE LESSER OF \$50 OR THE ACTUAL COST OF PROVIDING THE**

1 INFORMATION, SHALL PROVIDE ANY INFORMATION NECESSARY TO ENABLE THE
2 LOT OWNER TO COMPLY WITH SUBSECTION (B) OF THIS SECTION.

3 ~~[(c)] (D)~~ (1) Within 30 calendar days of any resale transfer of a lot within
4 a development, the transferor shall notify the homeowners association for the primary
5 development of the transfer.

6 (2) The notification shall include, to the extent reasonably available,
7 the name and address of the transferee, the name and forwarding address of the
8 transferor, the date of transfer, the name and address of any mortgagee, and the
9 proportionate amount of any outstanding homeowners association fee or assessment
10 assumed by each of the parties to the transaction.

11 ~~[(d)] (E)~~ The requirements of subsection (b) of this section shall be deemed
12 to have been fulfilled if the information required to be disclosed is provided to the
13 purchaser in writing in a clear and concise manner. The disclosures may be
14 summarized or produced in any collection of documents, including plats, the
15 declaration, or the organizational documents of the homeowners association, provided
16 those documents effectively convey the required information to the purchaser.

17 ~~[(e)] (F)~~ In satisfying the requirements of subsection (b) of this section, the
18 vendor shall be entitled to rely upon the disclosures contained in the depository after
19 June 30, 1989.

20 ~~[(f)] (G)~~ The provisions of subsections (a), (b), ~~[(d), and] (e), AND (F)~~ of this
21 section do not apply to the sale of a lot in an action to foreclose a mortgage or deed of
22 trust.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2014.