

# HOUSE BILL 829

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HB 259/14 – ENV

5lr2129  
CF SB 570

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By: **Delegate Frush**

Introduced and read first time: February 13, 2015

Assigned to: Environment and Transportation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Condominiums – Warranty Claims**

3 FOR the purpose of establishing that, notwithstanding any provision in the declaration,  
4 bylaws, or rules and regulations of the condominium, a council of unit owners has  
5 the right to be involved in a certain manner in certain litigation or administrative  
6 proceedings affecting the condominium and to enforce implied warranties made to  
7 the council of unit owners by the developer; making unenforceable a provision of a  
8 declaration, a bylaw, a contract for the initial sale of a unit, or any other instrument  
9 made by a developer or vendor in accordance with certain provisions of law relating  
10 to certain claims that purports to shorten the statute of limitations applicable to the  
11 claim, purports to waive the application of a certain rule, or requires a unit owner or  
12 the council of unit owners to assert a certain claim within a certain period of time  
13 under certain circumstances; making unenforceable a provision of a declaration, a  
14 bylaw, a contract for the initial sale of a unit, or any other instrument made by a  
15 developer or vendor in accordance with certain provisions of law that requires a  
16 certain vote of unit owners as a precondition to the institution or maintenance of  
17 certain proceedings unless the council of unit owners adopts the provision under  
18 certain circumstances; and generally relating to warranty claims for condominiums.

19 BY repealing and reenacting, with amendments,  
20 Article – Real Property  
21 Section 11–109(d)  
22 Annotated Code of Maryland  
23 (2010 Replacement Volume and 2014 Supplement)

24 BY adding to  
25 Article – Real Property  
26 Section 11–134.1  
27 Annotated Code of Maryland  
28 (2010 Replacement Volume and 2014 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Real Property**

4 11–109.

5 (d) The council of unit owners may be either incorporated as a nonstock  
6 corporation or unincorporated and it is subject to those provisions of Title 5, Subtitle 2 of  
7 the Corporations and Associations Article which are not inconsistent with this title. The  
8 council of unit owners has, subject to any provision of this title, and except as provided in  
9 [item] **ITEMS (4), (19), AND (22)** of this subsection, the declaration, and bylaws, the  
10 following powers:

11 (1) To have perpetual existence, subject to the right of the unit owners to  
12 terminate the condominium regime as provided in § 11–123 of this title;

13 (2) To adopt and amend reasonable rules and regulations;

14 (3) To adopt and amend budgets for revenues, expenditures, and reserves  
15 and collect assessments for common expenses from unit owners;

16 (4) To sue and be sued, complain and defend, or intervene in litigation or  
17 administrative proceedings in its own name on behalf of itself or two or more unit owners  
18 on matters affecting the condominium, **NOTWITHSTANDING ANY PROVISION IN THE**  
19 **DECLARATION, BYLAWS, OR RULES AND REGULATIONS;**

20 (5) To transact its business, carry on its operations and exercise the powers  
21 provided in this subsection in any state, territory, district, or possession of the United  
22 States and in any foreign country;

23 (6) To make contracts and guarantees, incur liabilities and borrow money,  
24 sell, mortgage, lease, pledge, exchange, convey, transfer, and otherwise dispose of any part  
25 of its property and assets;

26 (7) To issue bonds, notes, and other obligations and secure the same by  
27 mortgage or deed of trust of any part of its property, franchises, and income;

28 (8) To acquire by purchase or in any other manner, to take, receive, own,  
29 hold, use, employ, improve, and otherwise deal with any property, real or personal, or any  
30 interest therein, wherever located;

31 (9) To hire and terminate managing agents and other employees, agents,  
32 and independent contractors;

33 (10) To purchase, take, receive, subscribe for or otherwise acquire, own,  
34 hold, vote, use, employ, sell, mortgage, loan, pledge or otherwise dispose of, and otherwise

1 use and deal in and with, shares or other interests in, or obligation of corporations of the  
2 State, or foreign corporations, and of associations, partnerships, and individuals;

3 (11) To invest its funds and to lend money in any manner appropriate to  
4 enable it to carry on the operations or to fulfill the purposes named in the declaration or  
5 bylaws, and to take and to hold real and personal property as security for the payment of  
6 funds so invested or loaned;

7 (12) To regulate the use, maintenance, repair, replacement, and  
8 modification of common elements;

9 (13) To cause additional improvements to be made as a part of the general  
10 common elements;

11 (14) To grant easements, rights-of-way, licenses, leases in excess of 1 year,  
12 or similar interests through or over the common elements in accordance with § 11-125(f)  
13 of this title;

14 (15) To impose and receive any payments, fees, or charges for the use, rental,  
15 or operation of the common elements other than limited common elements;

16 (16) To impose charges for late payment of assessments and, after notice  
17 and an opportunity to be heard, levy reasonable fines for violations of the declaration,  
18 bylaws, and rules and regulations of the council of unit owners, under § 11-113 of this title;

19 (17) To impose reasonable charges for the preparation and recordation of  
20 amendments to the declaration, bylaws, rules, regulations, or resolutions, resale  
21 certificates, or statements of unpaid assessments;

22 (18) To provide for the indemnification of and maintain liability insurance  
23 for officers, directors, and any managing agent or other employee charged with the  
24 operation or maintenance of the condominium;

25 (19) To enforce the implied warranties made to the council of unit owners by  
26 the developer under § 11-131 of this title, **NOTWITHSTANDING ANY PROVISION IN THE**  
27 **DECLARATION, BYLAWS, OR RULES AND REGULATIONS;**

28 (20) To enforce the provisions of this title, the declaration, bylaws, and rules  
29 and regulations of the council of unit owners against any unit owner or occupant;

30 (21) Generally, to exercise the powers set forth in this title and the  
31 declaration or bylaws and to do every other act not inconsistent with law, which may be  
32 appropriate to promote and attain the purposes set forth in this title, the declaration or  
33 bylaws; and

34 (22) To designate parking for individuals with disabilities, notwithstanding  
35 any provision in the declaration, bylaws, or rules and regulations.

1 11-134.1.

2 (A) THIS SECTION DOES NOT APPLY TO A CONDOMINIUM THAT IS OCCUPIED  
3 AND USED SOLELY FOR NONRESIDENTIAL PURPOSES.

4 (B) (1) ANY PROVISION OF A DECLARATION, A BYLAW, A CONTRACT FOR  
5 THE INITIAL SALE OF A UNIT TO A MEMBER OF THE PUBLIC, OR ANY OTHER  
6 INSTRUMENT MADE BY A DEVELOPER OR VENDOR IN ACCORDANCE WITH THIS TITLE  
7 SHALL BE UNENFORCEABLE IF THE PROVISION:

8 (I) PURPORTS TO SHORTEN THE STATUTE OF LIMITATIONS  
9 APPLICABLE TO ANY CLAIM;

10 (II) PURPORTS TO WAIVE THE APPLICATION OF THE  
11 "DISCOVERY RULE" OR OTHER ACCRUAL DATE APPLICABLE TO A CLAIM;

12 (III) REQUIRES A UNIT OWNER OR THE COUNCIL OF UNIT  
13 OWNERS TO ASSERT A CLAIM SUBJECT TO ARBITRATION WITHIN A PERIOD OF TIME  
14 THAT IS SHORTER THAN THE STATUTE OF LIMITATIONS APPLICABLE TO THE CLAIM;  
15 OR

16 (IV) OPERATES TO PREVENT A UNIT OWNER OR THE COUNCIL OF  
17 UNIT OWNERS FROM FILING A LAWSUIT, INITIATING ARBITRATION PROCEEDINGS,  
18 OR OTHERWISE ASSERTING A CLAIM WITHIN THE STATUTE OF LIMITATIONS  
19 APPLICABLE TO THE CLAIM.

20 (2) PARAGRAPH (1) OF THIS SUBSECTION APPLIES ONLY TO A  
21 PROVISION RELATING TO THE RIGHT OF A UNIT OWNER OR COUNCIL OF UNIT  
22 OWNERS TO BRING A CLAIM ALLEGING THE FAILURE TO COMPLY WITH:

23 (I) APPLICABLE BUILDING CODES;

24 (II) COUNTY-APPROVED PLANS AND SPECIFICATIONS;

25 (III) MANUFACTURER'S INSTALLATION INSTRUCTIONS; OR

26 (IV) OTHER APPLICABLE CONSTRUCTION INDUSTRY  
27 STANDARDS.

28 (C) (1) ANY PROVISION OF A DECLARATION, A BYLAW, A CONTRACT FOR  
29 THE INITIAL SALE OF A UNIT TO A MEMBER OF THE PUBLIC, OR ANY OTHER  
30 INSTRUMENT MADE BY A DEVELOPER OR VENDOR IN ACCORDANCE WITH THIS TITLE

1 THAT REQUIRES THE COUNCIL OF UNIT OWNERS TO OBTAIN A VOTE OF UNIT  
2 OWNERS OR THE APPROVAL OF THE DEVELOPER OR ANY NONUNIT OWNERS AS A  
3 PRECONDITION TO THE INSTITUTION OR MAINTENANCE OF A LAWSUIT, AN  
4 ARBITRATION, A MEDIATION, OR A SIMILAR PROCEEDING SHALL BE  
5 UNENFORCEABLE UNLESS THE COUNCIL OF UNIT OWNERS ADOPTS THE PROVISION  
6 ON A DATE FOLLOWING THE DATE ON WHICH THE UNIT OWNERS, OTHER THAN THE  
7 DEVELOPER AND ITS AFFILIATES, FIRST ELECT A CONTROLLING MAJORITY OF THE  
8 MEMBERS OF THE BOARD OF DIRECTORS FOR THE COUNCIL OF UNIT OWNERS.

9           **(2) THE ADOPTION OF THE PROVISION DESCRIBED IN PARAGRAPH (1)**  
10 **OF THIS SUBSECTION SHALL BE ACCOMPLISHED IN ACCORDANCE WITH THE SAME**  
11 **REQUIREMENTS NECESSARY TO AMEND THE DECLARATION OR BYLAWS UNDER THIS**  
12 **TITLE.**

13           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
14 October 1, 2015.