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## By: **Senator Benson** Introduced and read first time: February 1, 2017 Assigned to: Judicial Proceedings

## A BILL ENTITLED

#### 1 AN ACT concerning

## 2 Condominiums – Delinquent Owners – Restrictions on Common Element Usage

- 3 FOR the purpose of authorizing a council of unit owners to enact certain bylaws prohibiting 4 or restricting the use of common elements by a unit owner who is delinquent in  $\mathbf{5}$ payment of assessments under certain circumstances; providing certain 6 requirements for bylaws implementing a prohibition or restriction on the use of 7 certain common elements by certain delinquent owners; establishing the minimum 8 percentage of affirmative votes of unit owners required to amend certain governing 9 documents of a condominium for certain purposes; authorizing a council of unit owners to prohibit or restrict a delinquent owner's use of common elements under a 10 11 certain provision of the declaration or bylaws; making conforming changes; and 12generally relating to the restriction or prohibition of the use of common elements in a condominium. 13
- 14 BY repealing and reenacting, without amendments,
- 15 Article Real Property
- 16 Section 11–104(d)
- 17 Annotated Code of Maryland
- 18 (2015 Replacement Volume and 2016 Supplement)
- 19 BY adding to
- 20 Article Real Property
- 21 Section 11–104(e)
- 22 Annotated Code of Maryland
- 23 (2015 Replacement Volume and 2016 Supplement)
- 24 BY repealing and reenacting, with amendments,
- 25 Article Real Property
- 26 Section 11–104(e), 11–108(a), and 11–109(d)
- 27 Annotated Code of Maryland
- 28 (2015 Replacement Volume and 2016 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

**Article - Real Property** 3 4 11 - 104. $\mathbf{5}$ (d) The bylaws may contain a provision prohibiting any unit owner from voting 6 at a meeting of the council of unit owners if the council of unit owners has recorded a 7 statement of condominium lien on his unit and the amount necessary to release the lien 8 has not been paid at the time of the meeting. 9 **(E)** THE BYLAWS MAY CONTAIN A PROVISION PROHIBITING OR RESTRICTING THE USE OF COMMON ELEMENTS BY A UNIT OWNER WHO IS 10 11 DELINQUENT IN PAYMENT OF ASSESSMENTS IF: 12(1) THE COUNCIL OF UNIT OWNERS HAS RECORDED A STATEMENT OF 13CONDOMINIUM LIEN ON THE UNIT OF THE DELINQUENT OWNER; AND 14(2) THE DELINQUENT OWNER: 15**(I)** IS NOT ON A PAYMENT PLAN AGREED TO BY THE 16 DELINQUENT OWNER AND THE COUNCIL OF UNIT OWNERS; 17**(II)** IS DELINQUENT ON A PAYMENT PLAN AGREED TO BY THE DELINQUENT OWNER AND THE COUNCIL OF UNIT OWNERS; OR 18 19(III) HAS DEFAULTED ON A PREVIOUS PAYMENT PLAN. 20[(e)] **(F)** (1)A corrective amendment to the bylaws may be made in 21accordance with § 11–103.1 of this title, or as provided in paragraph (2) of this subsection. 22(2)Except as provided in subparagraph (ii) of this paragraph, unless (i) 23a higher percentage is required in the bylaws, the bylaws may be amended by the 24affirmative vote of unit owners having at least 66 2/3 percent of the votes in the council of 25unit owners. 26The bylaws may be amended by the affirmative vote of unit (ii) owners having at least 51% of the votes in the council of unit owners for the purpose of 2728[requiring]: 291. **REQUIRING** all unit owners to maintain condominium

30 unit owner insurance policies on their units; OR

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That the Laws of Maryland read as follows:

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12. ADOPTING OR REPEALING A PROVISION2PROHIBITING OR RESTRICTING THE USE OF COMMON ELEMENTS BY DELINQUENT3OWNERS UNDER SUBSECTION (E) OF THIS SECTION.

4 (3) (i) Except as provided in paragraph (4) of this subsection, if the 5 declaration or bylaws contain a provision requiring any action on the part of the holder of 6 a mortgage or deed of trust on a unit in order to amend the bylaws, that provision shall be 7 deemed satisfied if the procedures under this paragraph are satisfied.

8 (ii) If the declaration or bylaws contain a provision described in 9 subparagraph (i) of this paragraph, the council of unit owners shall cause to be delivered to 10 each holder of a mortgage or deed of trust entitled to notice, a copy of the proposed 11 amendment to the bylaws.

12 (iii) If a holder of the mortgage or deed of trust that receives the 13 proposed amendment fails to object, in writing, to the proposed amendment within 60 days 14 from the date of actual receipt of the proposed amendment, the holder shall be deemed to 15 have consented to the adoption of the amendment.

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  - (4) Paragraph (3) of this subsection does not apply to amendments that:
- 17 (i) Alter the priority of the lien of the mortgage or deed of trust;
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- (ii) Materially impair or affect the unit as collateral; or
- (iii) Materially impair or affect the right of the holder of the mortgage
  or deed of trust to exercise any rights under the mortgage, deed of trust, or applicable law.

(5) Each particular set forth in subsection (b) of this section shall be expressed in the bylaws as amended. An amendment under paragraph (2) of this subsection shall be entitled to be recorded if accompanied by a certificate of the person specified in the bylaws to count votes at the meeting of the council of unit owners that the amendment was approved by unit owners having the required percentage of the votes and shall be effective on recordation. This certificate shall be conclusive evidence of approval.

27 11–108.

(a) Subject to the provisions of subsection (c) of this section, the common elements
may be used only for the purposes for which they were intended and, except as provided in
the declaration OR BYLAWS, the common elements shall be subject to mutual rights of
support, access, use, and enjoyment by all unit owners. However, subject to the provisions
of subsection (b) of this section, any portion of the common elements designated as limited
common elements shall be used only by the unit owner of the unit to which their use is
limited in the declaration or condominium plat.

35 11–109.

The council of unit owners may be either incorporated as a nonstock

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(d)

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 $\mathbf{2}$ corporation or unincorporated and it is subject to those provisions of Title 5, Subtitle 2 of 3 the Corporations and Associations Article which are not inconsistent with this title. The 4 council of unit owners has, subject to any provision of this title, and except as provided in  $\mathbf{5}$ item (22) of this subsection, the declaration, and bylaws, the following powers: 6 (1)To have perpetual existence, subject to the right of the unit owners to 7terminate the condominium regime as provided in § 11–123 of this title; 8 (2)To adopt and amend reasonable rules and regulations; 9 (3)To adopt and amend budgets for revenues, expenditures, and reserves 10 and collect assessments for common expenses from unit owners; 11 (4)To sue and be sued, complain and defend, or intervene in litigation or 12administrative proceedings in its own name on behalf of itself or two or more unit owners 13on matters affecting the condominium; 14To transact its business, carry on its operations and exercise the powers (5)provided in this subsection in any state, territory, district, or possession of the United 15States and in any foreign country; 1617To make contracts and guarantees, incur liabilities and borrow money, (6)18 sell, mortgage, lease, pledge, exchange, convey, transfer, and otherwise dispose of any part 19of its property and assets; 20To issue bonds, notes, and other obligations and secure the same by (7)21mortgage or deed of trust of any part of its property, franchises, and income; 22(8)To acquire by purchase or in any other manner, to take, receive, own, 23hold, use, employ, improve, and otherwise deal with any property, real or personal, or any 24interest therein, wherever located;

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

(10) To purchase, take, receive, subscribe for or otherwise acquire, own,
hold, vote, use, employ, sell, mortgage, loan, pledge or otherwise dispose of, and otherwise
use and deal in and with, shares or other interests in, or obligation of corporations of the
State, or foreign corporations, and of associations, partnerships, and individuals;

31 (11) To invest its funds and to lend money in any manner appropriate to 32 enable it to carry on the operations or to fulfill the purposes named in the declaration or 33 bylaws, and to take and to hold real and personal property as security for the payment of 34 funds so invested or loaned;

1 (12)To regulate the use, maintenance, repair, replacement, and  $\mathbf{2}$ modification of common elements: 3 To cause additional improvements to be made as a part of the general (13)4 common elements:  $\mathbf{5}$ (14)To grant easements, rights-of-way, licenses, leases in excess of 1 year, 6 or similar interests through or over the common elements in accordance with 11-125(f)7of this title; 8 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; 9 10 To impose charges for late payment of assessments and, after notice (16)and an opportunity to be heard, levy reasonable fines for violations of the declaration, 11 12bylaws, and rules and regulations of the council of unit owners, under § 11–113 of this title; 13(17)To impose reasonable charges for the preparation and recordation of 14amendments to the declaration, bylaws, rules, regulations, or resolutions, resale 15certificates, or statements of unpaid assessments; 16To provide for the indemnification of and maintain liability insurance (18)for officers, directors, and any managing agent or other employee charged with the 1718 operation or maintenance of the condominium; 19To enforce the implied warranties made to the council of unit owners by (19)20the developer under § 11–131 of this title; 21To enforce the provisions of this title, the declaration, bylaws, and rules (20)22and regulations of the council of unit owners against any unit owner or occupant; 23Generally, to exercise the powers set forth in this title and the (21)24declaration or bylaws and to do every other act not inconsistent with law, which may be 25appropriate to promote and attain the purposes set forth in this title, the declaration or bylaws; [and] 2627(22)To designate parking for individuals with disabilities, notwithstanding any provision in the declaration, bylaws, or rules and regulations; AND 2829(23) TO PROHIBIT OR RESTRICT A DELINQUENT OWNER'S USE OF COMMON ELEMENTS UNDER A PROVISION OF THE DECLARATION OR BYLAWS UNDER 30 31§11–104(E) OF THIS SUBTITLE. SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect 32October 1, 2017. 33