

HOUSE BILL 392

N1
HB 1097/18 – ENV

9lr1389
CF SB 723

By: **Delegates Healey, Cullison, Glenn, Haynes, Holmes, Ivey, J. Lewis, R. Lewis, Shoemaker, and Stein**

Introduced and read first time: January 30, 2019

Assigned to: Environment and Transportation

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 27, 2019

CHAPTER _____

1 AN ACT concerning

2 **Real Property – Condominiums and Homeowners Associations – Dispute**
3 **Settlement**

4 FOR the purpose of altering the procedures a council of unit owners or a board of directors
5 of a condominium shall take before a penalty for a violation of the rules of the
6 condominium can be imposed on an alleged violator; altering the procedures a council
7 of unit owners or a board of directors shall take if an alleged violator does not comply
8 with a certain written demand to cease and desist in a certain period of time;
9 requiring the written notice from a council of unit owners or a board of directors to
10 include certain information; authorizing a council of unit owners or a board of
11 directors to take certain action if an alleged violator does not respond to a certain
12 written notice; establishing the procedures a board of directors or another governing
13 body of the homeowners association shall take before a penalty for a violation of the
14 rules of the homeowners association can be imposed on an alleged violator;
15 establishing the procedures the board of directors or other governing body of the
16 homeowners association shall take if an alleged violator does not comply with a
17 certain written demand to cease and desist in a certain period of time; authorizing
18 the board of directors or other governing body of the homeowners association to take
19 certain action if an alleged violator does not respond to a certain written notice;
20 providing that certain provisions of this Act do not apply to certain associations;
21 making stylistic changes; providing for the application of this Act; and generally
22 relating to dispute settlement in condominiums and homeowners associations.

23 BY repealing and reenacting, with amendments,

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 Article – Real Property
 2 Section 11–113
 3 Annotated Code of Maryland
 4 (2015 Replacement Volume and 2018 Supplement)

5 BY adding to
 6 Article – Real Property
 7 Section 11B–111.8
 8 Annotated Code of Maryland
 9 (2015 Replacement Volume and 2018 Supplement)

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

12 **Article – Real Property**

13 11–113.

14 (a) Unless the declaration or bylaws state otherwise, the dispute settlement
 15 mechanism provided by this section is applicable to complaints or demands formally arising
 16 on or after [January 1, 1982] **OCTOBER 1, 2019**.

17 (b) **(1)** The council of unit owners or board of directors may not impose a fine,
 18 suspend voting, or infringe upon any other rights of a unit owner or other occupant for
 19 violations of rules until the [following procedure is] **PROCEDURES IN THIS SUBSECTION**
 20 **ARE** followed[:].

21 **[(1)] (2)** [Written] **A WRITTEN** demand to cease and desist from an
 22 alleged violation [is served upon] **SHALL BE PROVIDED TO** the alleged violator specifying:

23 (i) The alleged violation;

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

25 (iii) A time period, not less than 10 days, during which the violation
 26 may be abated without further sanction, if the violation is a continuing one, or a statement
 27 that any further violation of the same rule may result in the imposition of sanction after
 28 notice and **OPPORTUNITY FOR** hearing if the violation is not continuing.

29 **[(2)] (3)** Within 12 months of the demand, if the violation continues past
 30 the period allowed in the demand for abatement without penalty or if the same rule is
 31 violated subsequently, the board [serves] **SHALL PROVIDE** the alleged violator with **A**
 32 written notice of **THE ALLEGED VIOLATOR’S RIGHT TO REQUEST** a hearing to be held by
 33 the board in **EXECUTIVE** session[. The notice shall contain] **CONTAINING**:

34 (i) The nature of the alleged violation;

1 (ii) [The time and place of the] **THE PROCEDURES FOR**
2 **REQUESTING A hearing**[, which time] **AT WHICH THE ALLEGED VIOLATOR MAY**
3 **PRODUCE ANY STATEMENT, EVIDENCE, OR WITNESSES ON BEHALF OF THE ALLEGED**
4 **VIOLATOR;**

5 (iii) **THE PERIOD OF TIME FOR REQUESTING A HEARING, WHICH**
6 may [be] not **BE** less than 10 days from the giving of the notice; **AND**

7 [(iii) An invitation to attend the hearing and produce any statement,
8 evidence, and witnesses on his or her behalf; and]

9 (iv) The proposed sanction to be imposed.

10 (4) (i) **IF THE ALLEGED VIOLATOR REQUESTS A HEARING WITHIN**
11 **THE PERIOD OF TIME SPECIFIED IN THE NOTICE PROVIDED UNDER PARAGRAPH (3)**
12 **OF THIS SUBSECTION, THE BOARD SHALL PROVIDE THE ALLEGED VIOLATOR WITH**
13 **WRITTEN NOTICE OF THE TIME AND PLACE OF THE HEARING, WHICH TIME MAY NOT**
14 **BE LESS THAN 10 DAYS AFTER THE DATE THE REQUEST FOR A HEARING WAS**
15 **PROVIDED.**

16 [(3)] (ii) 1. [A hearing occurs at which] **AT THE HEARING,** the
17 alleged violator has the right to present evidence and present and cross-examine witnesses.

18 2. The hearing shall be held in executive session pursuant to
19 this notice and shall afford the alleged violator a reasonable opportunity to be heard.

20 3. A. Prior to the [effectiveness] **TAKING EFFECT** of any
21 sanction hereunder, proof of notice [and the invitation to be heard] shall be [placed]
22 **ENTERED** in the minutes of the meeting.

23 B. [This] **THE** proof **OF NOTICE** shall be deemed adequate if
24 a copy of the notice, together with a statement of the date and manner [of delivery] **OF**
25 **PROVIDING THE NOTICE,** is entered **IN THE MINUTES** by the officer or director who
26 [delivered] **PROVIDED** the notice.

27 C. The notice requirement shall be deemed satisfied if the
28 alleged violator appears at the meeting.

29 4. The minutes of the meeting shall contain a written
30 statement of the results of the hearing and the sanction, if any, imposed.

31 (5) **IF THE ALLEGED VIOLATOR DOES NOT REQUEST A HEARING**
32 **WITHIN THE PERIOD OF TIME SPECIFIED IN THE NOTICE PROVIDED UNDER**
33 **PARAGRAPH (3) OF THIS SUBSECTION, THE BOARD, AT THE NEXT MEETING, SHALL**

1 DELIBERATE AS TO WHETHER THE VIOLATION OCCURRED AND DECIDE WHETHER A
2 SANCTION IS APPROPRIATE FOR THE VIOLATION.

3 [(4)] (6) A decision [pursuant to] IN ACCORDANCE WITH these
4 procedures shall be appealable to the courts of Maryland.

5 (c) (1) If any unit owner fails to comply with this title, the declaration, or
6 bylaws, or a decision rendered [pursuant to] IN ACCORDANCE WITH this section, the unit
7 owner may be sued for damages caused by the failure or for injunctive relief, or both, by the
8 council of unit owners or by any other unit owner.

9 (2) The prevailing party in any [such] proceeding UNDER THIS
10 SUBSECTION is entitled to an award for counsel fees as determined by court.

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

14 **11B-111.8.**

15 (A) UNLESS THE DECLARATION OR BYLAWS STATE OTHERWISE, THE
16 DISPUTE SETTLEMENT MECHANISM PROVIDED BY THIS SECTION IS APPLICABLE TO
17 COMPLAINTS OR DEMANDS FORMALLY ARISING ON OR AFTER OCTOBER 1, ~~2018~~
18 **2019.**

19 (B) (1) THE BOARD OF DIRECTORS OR OTHER GOVERNING BODY OF THE
20 HOMEOWNERS ASSOCIATION MAY NOT IMPOSE A FINE, SUSPEND VOTING, OR
21 INFRINGE ON ANY OTHER RIGHT OF A LOT OWNER OR OTHER OCCUPANT FOR
22 VIOLATIONS OF RULES UNTIL THE PROCEDURES IN THIS SUBSECTION ARE
23 FOLLOWED.

24 (2) A WRITTEN DEMAND TO CEASE AND DESIST FROM AN ALLEGED
25 VIOLATION SHALL BE PROVIDED TO THE ALLEGED VIOLATOR SPECIFYING:

26 (I) THE NATURE OF THE ALLEGED VIOLATION;

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

28 (III) A PERIOD OF TIME, NOT LESS THAN 10 DAYS, DURING
29 WHICH THE VIOLATION MAY BE ABATED WITHOUT FURTHER SANCTION, IF THE
30 VIOLATION IS A CONTINUING VIOLATION, OR A STATEMENT THAT ANY FURTHER
31 VIOLATION OF THE SAME RULE MAY RESULT IN THE IMPOSITION OF SANCTION
32 AFTER NOTICE AND OPPORTUNITY FOR HEARING IF THE VIOLATION IS NOT
33 CONTINUING.

1 **(3) WITHIN 12 MONTHS OF THE DEMAND, IF THE VIOLATION**
2 **CONTINUES PAST THE PERIOD OF TIME ALLOWED IN THE DEMAND FOR ABATEMENT**
3 **WITHOUT PENALTY OR IF THE SAME RULE IS VIOLATED SUBSEQUENTLY, THE BOARD**
4 **SHALL PROVIDE THE ALLEGED VIOLATOR WITH A WRITTEN NOTICE OF THE ALLEGED**
5 **VIOLATOR'S RIGHT TO REQUEST A HEARING TO BE HELD BY THE BOARD IN**
6 **EXECUTIVE SESSION CONTAINING:**

7 **(I) THE NATURE OF THE ALLEGED VIOLATION;**

8 **(II) THE PROCEDURES FOR REQUESTING A HEARING AT WHICH**
9 **THE ALLEGED VIOLATOR MAY PRODUCE ANY STATEMENT, EVIDENCE, OR WITNESSES**
10 **ON BEHALF OF THE ALLEGED VIOLATOR;**

11 **(III) THE PERIOD OF TIME FOR REQUESTING A HEARING, WHICH**
12 **MAY NOT BE LESS THAN 10 DAYS FROM THE GIVING OF THE NOTICE; AND**

13 **(IV) THE PROPOSED SANCTION TO BE IMPOSED.**

14 **(4) (I) IF THE ALLEGED VIOLATOR REQUESTS A HEARING WITHIN**
15 **THE PERIOD OF TIME SPECIFIED IN THE NOTICE PROVIDED UNDER PARAGRAPH (3)**
16 **OF THIS SUBSECTION, THE BOARD SHALL PROVIDE THE ALLEGED VIOLATOR WITH A**
17 **WRITTEN NOTICE OF THE TIME AND PLACE OF THE HEARING, WHICH TIME MAY NOT**
18 **BE LESS THAN 10 DAYS AFTER THE DATE THE REQUEST FOR A HEARING WAS**
19 **PROVIDED.**

20 **(II) 1. AT THE HEARING, THE ALLEGED VIOLATOR HAS THE**
21 **RIGHT TO PRESENT EVIDENCE AND CROSS-EXAMINE WITNESSES.**

22 **2. THE HEARING SHALL BE HELD IN EXECUTIVE SESSION**
23 **IN ACCORDANCE WITH THIS NOTICE AND SHALL AFFORD THE ALLEGED VIOLATOR A**
24 **REASONABLE OPPORTUNITY TO BE HEARD.**

25 **3. A. PRIOR TO THE TAKING EFFECT OF ANY**
26 **SANCTION UNDER THIS SECTION, PROOF OF NOTICE SHALL BE ENTERED IN THE**
27 **MINUTES OF THE MEETING.**

28 **B. THE PROOF OF NOTICE SHALL BE DEEMED ADEQUATE**
29 **IF A COPY OF THE NOTICE, TOGETHER WITH A STATEMENT OF THE DATE AND**
30 **MANNER OF PROVIDING THE NOTICE, IS ENTERED IN THE MINUTES BY THE OFFICER**
31 **OR DIRECTOR WHO PROVIDED THE NOTICE.**

32 **C. THE NOTICE REQUIREMENT SHALL BE DEEMED**
33 **SATISFIED IF THE ALLEGED VIOLATOR APPEARS AT THE MEETING.**

1 4. **THE MINUTES OF THE MEETING SHALL CONTAIN A**
2 **WRITTEN STATEMENT OF THE RESULTS OF THE HEARING AND THE SANCTION, IF**
3 **ANY, IMPOSED.**

4 **(5) IF THE ALLEGED VIOLATOR DOES NOT REQUEST A HEARING**
5 **WITHIN THE PERIOD OF TIME SPECIFIED IN THE NOTICE PROVIDED UNDER**
6 **PARAGRAPH (3) OF THIS SUBSECTION, THE BOARD, AT THE NEXT MEETING, SHALL**
7 **DELIBERATE AS TO WHETHER THE VIOLATION OCCURRED AND DECIDE WHETHER A**
8 **SANCTION IS APPROPRIATE FOR THE VIOLATION.**

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

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

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

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

23 **(E) THIS SECTION DOES NOT APPLY TO THE COLUMBIA ASSOCIATION OR**
24 **THE VILLAGE COMMUNITY ASSOCIATIONS FOR THE VILLAGES OF COLUMBIA IN**
25 **HOWARD COUNTY.**

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
27 apply only prospectively and may not be applied or interpreted to have any effect on or
28 application to any complaints or demands formally arising under the rules of a
29 condominium or homeowners association before the effective date of this Act, unless the
30 declaration or bylaws of the condominium or homeowners association state otherwise.

31 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2019.