

# HOUSE BILL 825

N1

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By: **Delegate Holmes**

Introduced and read first time: February 8, 2019

Assigned to: Environment and Transportation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Condominiums and Homeowners Associations – Amendments to Declarations**  
3 **and Governing Documents**

4 FOR the purpose of repealing a certain construction of certain provisions of law concerning  
5 the amendment of the declaration of a condominium; establishing that a provision  
6 in the declaration of a condominium that requires any action on the part of a holder  
7 of a mortgage or deed of trust on a unit in order to amend the declaration shall be  
8 deemed satisfied if certain procedures are satisfied under certain circumstances;  
9 establishing that a provision in a governing document of a homeowners association  
10 that requires any action on the part of a mortgage or deed of trust holder on a lot in  
11 order to amend the governing document shall be deemed satisfied if certain  
12 procedures are satisfied under certain circumstances; and generally relating to the  
13 amendment of the declaration of a condominium or a governing document of a  
14 homeowners association.

15 BY repealing and reenacting, with amendments,  
16 Article – Real Property  
17 Section 11–103(c)(1) and 11B–116  
18 Annotated Code of Maryland  
19 (2015 Replacement Volume and 2018 Supplement)

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

22 **Article – Real Property**

23 11–103.

24 (c) (1) Except for a corrective amendment under § 11–103.1 of this title or as  
25 provided in paragraph (2) of this subsection or subsection (d) of this section, the declaration  
26 may be amended only with the written consent of 80 percent of the unit owners listed on

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 the current roster. Amendments under this section are subject to the following limitations:

2 (i) Except to the extent expressly permitted or expressly required  
3 by other provisions of this title, an amendment to the declaration may not change the  
4 boundaries of any unit, the undivided percentage interest in the common elements of any  
5 unit, the liability for common expenses or rights to common profits of any unit, or the  
6 number of votes in the council of unit owners of any unit without the written consent of  
7 every unit owner and mortgagee.

8 (ii) An amendment to the declaration may not modify in any way  
9 rights expressly reserved for the benefit of the developer or provisions required by any  
10 governmental authority or for the benefit of any public utility.

11 (iii) Except to the extent expressly permitted by the declaration, an  
12 amendment to the declaration may not change residential units to nonresidential units or  
13 change nonresidential units to residential units without the written consent of every unit  
14 owner and mortgagee.

15 (iv) Except as otherwise expressly permitted by this title and by the  
16 declaration, an amendment to the declaration may not redesignate general common  
17 elements as limited common elements without the written consent of every unit owner and  
18 mortgagee.

19 [(v) No provision of this title shall be construed in derogation of any  
20 requirement in the declaration or bylaws that all or a specified number of the mortgagees  
21 of the condominium units approve specified actions contemplated by the council of unit  
22 owners.]

23 **(v) 1. EXCEPT AS PROVIDED IN SUBPARAGRAPH (VI) OF**  
24 **THIS PARAGRAPH, IF THE DECLARATION CONTAINS A PROVISION REQUIRING ANY**  
25 **ACTION ON THE PART OF THE HOLDER OF A MORTGAGE OR DEED OF TRUST ON A**  
26 **UNIT IN ORDER TO AMEND THE DECLARATION, THAT PROVISION SHALL BE DEEMED**  
27 **SATISFIED IF THE PROCEDURES UNDER THIS SUBPARAGRAPH ARE SATISFIED.**

28 **2. IF THE DECLARATION CONTAINS A PROVISION**  
29 **DESCRIBED IN SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH, THE COUNCIL OF**  
30 **UNIT OWNERS SHALL CAUSE TO BE DELIVERED TO EACH HOLDER OF A MORTGAGE**  
31 **OR DEED OF TRUST ENTITLED TO NOTICE A COPY OF THE PROPOSED AMENDMENT**  
32 **TO THE DECLARATION.**

33 **3. IF A HOLDER OF THE MORTGAGE OR DEED OF TRUST**  
34 **THAT RECEIVES THE PROPOSED AMENDMENT FAILS TO OBJECT, IN WRITING, TO THE**  
35 **PROPOSED AMENDMENT WITHIN 60 DAYS AFTER THE DATE OF ACTUAL RECEIPT OF**  
36 **THE PROPOSED AMENDMENT, THE HOLDER SHALL BE DEEMED TO HAVE**  
37 **CONSENTED TO THE ADOPTION OF THE AMENDMENT.**

1                   **(VI) SUBPARAGRAPH (V) OF THIS PARAGRAPH DOES NOT APPLY**  
2 **TO AMENDMENTS THAT:**

3                   **1. ALTER THE PRIORITY OF THE LIEN OF THE**  
4 **MORTGAGE OR DEED OF TRUST;**

5                   **2. MATERIALLY IMPAIR OR AFFECT THE UNIT AS**  
6 **COLLATERAL; OR**

7                   **3. MATERIALLY IMPAIR OR AFFECT THE RIGHT OF THE**  
8 **HOLDER OF THE MORTGAGE OR DEED OF TRUST TO EXERCISE ANY RIGHTS UNDER**  
9 **THE MORTGAGE, DEED OF TRUST, OR APPLICABLE LAW.**

10 11B-116.

11           (a) (1) In this section the following words have the meanings indicated.

12                   (2) “Governing document” includes:

13                           (i) A declaration;

14                           (ii) Bylaws;

15                           (iii) A deed and agreement; and

16                           (iv) Recorded covenants and restrictions.

17                   (3) “In good standing” means not being more than 90 days in arrears in the  
18 payment of any assessment or charge due to the homeowners association.

19           (b) This section does not apply to a homeowners association that issues bonds or  
20 other long-term debt secured in whole or in part by annual charges assessed in accordance  
21 with a declaration, or to a village community association affiliated with the homeowners  
22 association.

23           (c) Notwithstanding the provisions of a governing document, a homeowners  
24 association may amend the governing document by the affirmative vote of lot owners in  
25 good standing having at least 60% of the votes in the development, or by a lower percentage  
26 if required in the governing document.

27           **(D) (1) (I) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
28 **SUBSECTION, IF A GOVERNING DOCUMENT CONTAINS A PROVISION REQUIRING ANY**  
29 **ACTION ON THE PART OF THE HOLDER OF A MORTGAGE OR DEED OF TRUST ON A LOT**  
30 **IN ORDER TO AMEND THE GOVERNING DOCUMENT, THAT PROVISION SHALL BE**

1 DEEMED SATISFIED IF THE PROCEDURES UNDER THIS PARAGRAPH ARE SATISFIED.

2 (II) IF THE GOVERNING DOCUMENT CONTAINS A PROVISION  
3 DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE HOMEOWNERS  
4 ASSOCIATION SHALL CAUSE TO BE DELIVERED TO EACH HOLDER OF A MORTGAGE  
5 OR DEED OF TRUST ENTITLED TO NOTICE A COPY OF THE PROPOSED AMENDMENT  
6 TO THE GOVERNING DOCUMENT.

7 (III) IF A HOLDER OF THE MORTGAGE OR DEED OF TRUST THAT  
8 RECEIVES THE PROPOSED AMENDMENT FAILS TO OBJECT, IN WRITING, TO THE  
9 PROPOSED AMENDMENT WITHIN 60 DAYS AFTER THE DATE OF ACTUAL RECEIPT OF  
10 THE PROPOSED AMENDMENT, THE HOLDER SHALL BE DEEMED TO HAVE  
11 CONSENTED TO THE ADOPTION OF THE AMENDMENT.

12 (2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO  
13 AMENDMENTS THAT:

14 (I) ALTER THE PRIORITY OF THE LIEN OF THE MORTGAGE OR  
15 DEED OF TRUST;

16 (II) MATERIALLY IMPAIR OR AFFECT THE LOT AS COLLATERAL;  
17 OR

18 (III) MATERIALLY IMPAIR OR AFFECT THE RIGHT OF THE  
19 HOLDER OF THE MORTGAGE OR DEED OF TRUST TO EXERCISE ANY RIGHTS UNDER  
20 THE MORTGAGE, DEED OF TRUST, OR APPLICABLE LAW.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22 October 1, 2019.