

HOUSE BILL 25

N1
HB 825/19 – ENT

(PRE-FILED)

01r0968

By: **Delegate Holmes**

Requested: October 17, 2019

Introduced and read first time: January 8, 2020

Assigned to: Environment and Transportation

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 2019 Supplement)

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

Article – Real Property

22 11–103.

23
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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 may be amended only with the written consent of 80 percent of the unit owners listed on
2 the current roster. Amendments under this section are subject to the following limitations:

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

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

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

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

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

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

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

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

1 CONSENTED TO THE ADOPTION OF THE AMENDMENT.

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

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

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

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

11 11B-116.

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

13 (2) "Governing document" includes:

14 (i) A declaration;

15 (ii) Bylaws;

16 (iii) A deed and agreement; and

17 (iv) Recorded covenants and restrictions.

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

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

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

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

1 IN ORDER TO AMEND THE GOVERNING DOCUMENT, THAT PROVISION SHALL BE
2 DEEMED SATISFIED IF THE PROCEDURES UNDER THIS PARAGRAPH ARE SATISFIED.

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

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

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

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

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

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

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2020.