HOUSE BILL 40

By: Delegates Watson, Bagnall, and Terrasa
Requested: August 16, 2021
Introduced and read first time: January 12, 2022
Assigned to: Environment and Transportation

A BILL ENTITLED

AN ACT concerning

Condominiums – Disclosures to Unit Owners and Prohibited Provisions in Instruments

FOR the purpose of clarifying that certain provisions of law related to closed-door meetings of a board of directors of a condominium do not allow the board to withhold or agree to withhold the terms of certain legal agreements from the unit owners; making unenforceable a provision of a certain agreement that prohibits the disclosure to unit owners or certain purchasers of any term of the agreement; and generally relating to disclosures to unit owners and claims against developers in condominiums.

BY repealing and reenacting, with amendments,
Article – Real Property
Section 11–109.1 and 11–134.1
Annotated Code of Maryland
(2015 Replacement Volume and 2021 Supplement)

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

Article – Real Property

11–109.1.

(a) A meeting of the board of directors may be held in closed session only for the following purposes:

(1) Discussion of matters pertaining to employees and personnel;

(2) Protection of the privacy or reputation of individuals in matters not related to the council of unit owners’ business;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
(3) Consultation with legal counsel on legal matters;

(4) Consultation with staff personnel, consultants, attorneys, board members, or other persons in connection with pending or potential litigation or other legal matters;

(5) Investigative proceedings concerning possible or actual criminal misconduct;

(6) Consideration of the terms or conditions of a business transaction in the negotiation stage if the disclosure could adversely affect the economic interests of the council of unit owners;

(7) Complying with a specific constitutional, statutory, or judicially imposed requirement protecting particular proceedings or matters from public disclosure; or

(8) Discussion of individual owner assessment accounts.

(b) If a meeting is held in closed session under subsection (a) of this section:

(1) An action may not be taken and a matter may not be discussed if it is not permitted by subsection (a) of this section; and

(2) A statement of the time, place, and purpose of any closed meeting, the record of the vote of each board member by which any meeting was closed, and the authority under this section for closing any meeting shall be included in the minutes of the next meeting of the board of directors.

(C) NOTHING IN THIS SECTION MAY BE INTERPRETED TO AUTHORIZE THE BOARD OF DIRECTORS TO WITHHOLD OR AGREE TO WITHHOLD FROM THE UNIT OWNERS THE TERMS OF ANY LEGAL AGREEMENT TO WHICH THE COUNCIL OF UNIT OWNERS IS A PARTY.

(a) In this section, “vendor” has the meaning stated in § 10–201 of this article.

(b) This section does not apply to:

(1) A unit that is occupied and used solely for nonresidential purposes;

(2) An agreement or other instrument entered into by a developer or vendor and a council of unit owners for the purpose of settling a disputed claim after the date on which the unit owners, other than the developer and its affiliates, first elect a controlling majority of the members of the board of directors for the council of unit owners; or
(3) An agreement or other instrument entered into by a developer or vendor and a unit owner for the purpose of settling a disputed claim after the date the unit is conveyed to the purchaser of the unit.

(c) (1) Any provision of a declaration, a bylaw, a contract for the initial sale of a unit to a member of the public, or any other instrument made by a developer or vendor in accordance with this title shall be unenforceable if the provision:

(i) Shortens the statute of limitations applicable to any claim;

(ii) Waives the application of the discovery rule or other accrual date applicable to a claim;

(iii) Requires a unit owner or the council of unit owners to assert a claim subject to arbitration within a period of time that is shorter than the statute of limitations applicable to the claim; or

(iv) Operates to prevent a unit owner or the council of unit owners from filing a lawsuit, initiating arbitration proceedings for a claim subject to arbitration, or otherwise asserting a claim within the statute of limitations applicable to the claim.

(2) Except in the case of an agreement related to a personnel matter or an individual owner assessment account, any provision in an agreement that prohibits disclosure of any term of the agreement to the unit owners, or to a purchaser under § 11–135 of this title, shall be unenforceable.

[(2)] (3) Paragraph (1) of this subsection applies only to a provision relating to any right of a unit owner or council of unit owners to bring a claim under applicable law alleging the failure to comply with:

(i) Applicable building codes;

(ii) Plans and specifications approved by a county or municipality;

(iii) Manufacturer’s installation instructions; or

(iv) Warranty provisions under § 10–203 of this article and § 11–131 of this title.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to:

(1) any provision of a declaration or bylaws of a condominium recorded in
the land records of the county where the property is located before the effective date of this Act; or

(2) any other instrument executed before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.