

HOUSE BILL 40

N1
HB 30/20 – ENT

(PRE-FILED)

2lr0384

By: Delegates Watson, Bagnall, ~~and Terrasa~~ Terrasa, Foley, Hartman, Healey,
Holmes, Jalisi, Lehman, Lierman, and Prettyman

Requested: August 16, 2021

Introduced and read first time: January 12, 2022

Assigned to: Environment and Transportation

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 2, 2022

CHAPTER _____

1 AN ACT concerning

2 **Condominiums – Disclosures to Unit Owners and Prohibited Provisions in**
3 **Instruments**

4 FOR the purpose of clarifying that certain provisions of law related to closed-door meetings
5 of a board of directors of a condominium do not allow the board to withhold or agree
6 to withhold the terms of certain legal agreements from the unit owners; ~~making~~
7 ~~unenforceable a provision of a certain agreement that prohibits the disclosure to unit~~
8 ~~owners or certain purchasers of any term of the agreement~~ making unenforceable a
9 certain contract unless the contract contains certain notice; requiring a board to
10 make certain disclosures to the council of unit owners prior to signing a certain
11 agreement; prohibiting a certain provision from prohibiting certain disclosure by the
12 board to the council of unit owners; requiring a unit owner to include certain
13 statements under certain circumstances in a certificate and a certain notice prior to
14 the resale of a unit; and generally relating to disclosures to unit owners and claims
15 against developers in condominiums.

16 BY repealing and reenacting, with amendments,

17 Article – Real Property

18 Section 11-109.1, ~~11-126(a), and~~ 11-134.1, and 11-135(a)(4)(ix) and (x) and (g)(1)

19 Annotated Code of Maryland

20 (2015 Replacement Volume and 2021 Supplement)

21 BY adding to

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 11–135(a)(4)(xi)
3 Annotated Code of Maryland
4 (2015 Replacement Volume and 2021 Supplement)

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

7 **Article – Real Property**

8 11–109.1.

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

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

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

14 (3) Consultation with legal counsel on legal matters;

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

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

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

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

26 (8) Discussion of individual owner assessment accounts.

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

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

30 (2) A statement of the time, place, and purpose of any closed meeting, the
31 record of the vote of each board member by which any meeting was closed, and the authority

1 under this section for closing any meeting shall be included in the minutes of the next
2 meeting of the board of directors.

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

7 11-126.

8 (a) A contract for the initial sale of a unit to a member of the public is not
9 enforceable by the vendor unless:

10 (1) The purchaser is given on or before the time a contract is entered into
11 between the vendor and the purchaser, a current public offering statement as amended and
12 registered with the Secretary of State containing all of the information set forth in
13 subsection (b) of this section; and

14 (2) The contract of sale contains, in conspicuous type, a notice of:

15 (i) The purchaser's right to receive a public offering statement and
16 his rescission rights under this section; and

17 (ii) 1. The warranties provided by § 11-131 of this title; AND

18 2. WHETHER THE COUNCIL OF UNIT OWNERS HAS
19 ENTERED INTO ANY AGREEMENT THAT SETTLES OR RELEASES THE COUNCIL OF
20 UNIT OWNERS' CLAIMS RELATED TO COMMON ELEMENT WARRANTIES UNDER §
21 11-131 OF THIS TITLE.

22 11-134.1.

23 (a) In this section, "vendor" has the meaning stated in § 10-201 of this article.

24 (b) This section does not apply to:

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

26 (2) An agreement or other instrument entered into by a developer or vendor
27 and a council of unit owners for the purpose of settling a disputed claim after the date on
28 which the unit owners, other than the developer and its affiliates, first elect a controlling
29 majority of the members of the board of directors for the council of unit owners; or

30 (3) An agreement or other instrument entered into by a developer or vendor
31 and a unit owner for the purpose of settling a disputed claim after the date the unit is
32 conveyed to the purchaser of the unit.

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

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

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

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

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

13 ~~(2) EXCEPT IN THE CASE OF AN AGREEMENT RELATED TO A~~
 14 ~~PERSONNEL MATTER OR AN INDIVIDUAL OWNER ASSESSMENT ACCOUNT, ANY~~
 15 ~~PROVISION IN AN AGREEMENT THAT PROHIBITS DISCLOSURE OF ANY TERM OF THE~~
 16 ~~AGREEMENT TO THE UNIT OWNERS, OR TO A PURCHASER UNDER § 11-135 OF THIS~~
 17 ~~TITLE, SHALL BE UNENFORCEABLE~~

18 (I) A BOARD OF DIRECTORS SHALL DISCLOSE TO THE COUNCIL
 19 OF UNIT OWNERS ANY AGREEMENT BY THE BOARD OF DIRECTORS FOR THE PURPOSE
 20 OF SETTLING A DISPUTED COMMON ELEMENT WARRANTY CLAIM UNDER § 11-131 OF
 21 THIS TITLE AT LEAST 21 DAYS BEFORE THE EXECUTION OF THE AGREEMENT.

22 (II) A NONDISCLOSURE PROVISION IN AN AGREEMENT UNDER
 23 SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY NOT PROHIBIT DISCLOSURE BY THE
 24 BOARD OF DIRECTORS TO THE COUNCIL OF UNIT OWNERS.

25 [(2)] (3) Paragraph (1) of this subsection applies only to a provision
 26 relating to any right of a unit owner or council of unit owners to bring a claim under
 27 applicable law alleging the failure to comply with:

28 (i) Applicable building codes;

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

30 (iii) Manufacturer's installation instructions; or

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

1 11-135.

2 (a) Except as provided in subsection (b) of this section, a contract for the resale of
3 a unit by a unit owner other than a developer is not enforceable unless the contract of sale
4 contains in conspicuous type a notice in the form specified in subsection (g)(1) of this
5 section, and the unit owner furnishes to the purchaser not later than 15 days prior to
6 closing:

7 (4) A certificate containing:

8 (ix) A statement as to whether the council of unit owners has actual
9 knowledge of any violation of the health or building codes with respect to the common
10 elements of the condominium; [and]

11 (x) A description of any recreational or other facilities which are to
12 be used by the unit owners or maintained by them or the council of unit owners, and a
13 statement as to whether or not they are to be a part of the common elements; AND

14 (XI) 1. A STATEMENT AS TO WHETHER THE COUNCIL OF UNIT
15 OWNERS HAS ENTERED INTO ANY AGREEMENT THAT SETTLES OR RELEASES THE
16 COUNCIL OF UNIT OWNERS' CLAIMS RELATED TO COMMON ELEMENT WARRANTIES
17 UNDER § 11-131 OF THIS TITLE; AND

18 2. A STATEMENT AS TO WHETHER THE BOARD OF
19 DIRECTORS HAS DISCLOSED TO THE COUNCIL OF UNIT OWNERS IN ACCORDANCE
20 WITH § 11-134.1(C)(2) OF THIS TITLE, THE BOARD'S INTENTION TO ENTER INTO AN
21 AGREEMENT FOR THE PURPOSE OF SETTLING A DISPUTED COMMON ELEMENT
22 WARRANTY CLAIM UNDER § 11-131 OF THIS TITLE;

23 (g) (1) A notice given as required by subsection (a) of this section shall be
24 sufficient for the purposes of this section if it is in substantially the following form:

25 "NOTICE

26 The seller is required by law to furnish to you not later than 15 days prior to closing
27 certain information concerning the condominium which is described in § 11-135 of the
28 Maryland Condominium Act. This information must include at least the following:

29 (i) A copy of the declaration (other than the plats);

30 (ii) A copy of the bylaws;

31 (iii) A copy of the rules and regulations of the condominium;

32 (iv) A certificate containing:

1 1. A statement disclosing the effect on the proposed
2 conveyance of any right of first refusal or other restraint on the free alienability of the unit,
3 other than any restraint created by the unit owner;

4 2. A statement of the amount of the monthly common
5 expense assessment and any unpaid common expense or special assessment currently due
6 and payable from the selling unit owner;

7 3. A statement of any other fees payable by the unit owners
8 to the council of unit owners;

9 4. A statement of any capital expenditures approved by the
10 council of unit owners or its authorized designee planned at the time of the conveyance
11 which are not reflected in the current operating budget included in the certificate;

12 5. The most recently prepared balance sheet and income and
13 expense statement, if any, of the condominium;

14 6. The current operating budget of the condominium,
15 including details concerning the amount of the reserve fund for repair and replacement and
16 its intended use, or a statement that there is no reserve fund;

17 7. A statement of any judgments against the condominium
18 and the existence of any pending suits to which the council of unit owners is a party;

19 8. A statement generally describing any insurance policies
20 provided for the benefit of the unit owners, a notice that the policies are available for
21 inspection stating the location at which they are available, and a notice that the terms of
22 the policy prevail over the general description;

23 9. A statement as to whether the council of unit owners has
24 knowledge that any alteration or improvement to the unit or to the limited common
25 elements assigned to the unit violates any provision of the declaration, bylaws, or rules or
26 regulations;

27 10. A statement as to whether the council of unit owners has
28 knowledge of any violation of the health or building codes with respect to the unit, the
29 limited common elements assigned to the unit, or any other portion of the condominium;

30 11. A statement of the remaining term of any leasehold estate
31 affecting the condominium and the provisions governing any extension or renewal of it;
32 [and]

33 12. A description of any recreational or other facilities which
34 are to be used by the unit owners or maintained by them or the council of unit owners, and
35 a statement as to whether or not they are to be a part of the common elements; and

1 13. A. A STATEMENT AS TO WHETHER THE COUNCIL
2 OF UNIT OWNERS HAS ENTERED INTO ANY AGREEMENT THAT SETTLES OR RELEASES
3 THE COUNCIL OF UNIT OWNERS' CLAIMS RELATED TO COMMON ELEMENT
4 WARRANTIES UNDER § 11-131 OF THIS TITLE; AND

5 B. A STATEMENT AS TO WHETHER THE BOARD OF
6 DIRECTORS HAS DISCLOSED TO THE COUNCIL OF UNIT OWNERS IN ACCORDANCE
7 WITH § 11-134.1(C)(2) OF THIS TITLE, THE BOARD'S INTENTION TO ENTER INTO AN
8 AGREEMENT FOR THE PURPOSE OF SETTling A DISPUTED COMMON ELEMENT
9 WARRANTY CLAIM UNDER § 11-131 OF THIS TITLE; AND

10 (v) A statement by the unit owner as to whether the unit owner has
11 knowledge:

12 1. That any alteration to the unit or to the limited common
13 elements assigned to the unit violates any provision of the declaration, bylaws, or rules and
14 regulations.

15 2. Of any violation of the health or building codes with
16 respect to the unit or the limited common elements assigned to the unit.

17 3. That the unit is subject to an extended lease under §
18 11-137 of this title or under local law, and if so, a copy of the lease must be provided.

19 You will have the right to cancel this contract without penalty, at any time within 7
20 days following delivery to you of all of this information. However, once the sale is closed,
21 your right to cancel the contract is terminated.”.

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

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

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

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