To:

364 Taylor House Office Building
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Annapolis, MD 21401
Phone 410-841-3310
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Re: HB557 (2025 Session)

This testimony is favorable with the following amendments:

[ ] indicates deletions

ALL CAPS indicates additions

Consistent with the 14th enumerated right proposed in HB557 (Bill of Rights), and to avoid conflict with other existing law, the Real Property Article should be amended as follows:

11-101

(i) "Governing body" means the council of unit owners, board of directors, or any committee of the council of unit owners or board of directors, SUBJECT TO THE PARTICULAR ENTITY SPECIFIED AS THE GOVERNING BODY IN A DECLARATION.

11-111

(a) (1) The council of unit owners MAY PROPOSE OR ADOPT, AND A **[**or the**]** body delegated in the bylaws of a condominium **[**to carry out the responsibilities of the council of unit owners**]** MAY PROPOSE, **[**may adopt**]** rules for the condominium if:…

No Consent of the Governed

HOA law permits 60% of grass roots lot owners to adopt rules; however, as with condominium law, it does not guarantee that other rules will get that community vote.

> 11B-116(c) Notwithstanding the provisions of a governing document, a homeowners association **may amend the governing document** by the affirmative vote of lot owners in good standing having at least 60% of the votes in the development, or by a lower percentage if required in the governing document.

In the HOA act 11B-116, “Governing document” includes a declaration, bylaws, deed and agreement, and recorded covenants and **restrictions**. 11B-101 states:

> “Recorded covenants and restrictions” means any instrument of writing which is recorded in the land records of the jurisdiction within which a lot is located, and which instrument governs or otherwise legally restricts the use of such lot.

Arguably that should include rules, policies, or anything written and ***restrictive***. Clever attorneys would advise boards to evade the law by not recording the restriction and simply calling the rule by some other name, such as a “policy” or “guideline.” See also 11B-106.1, 11B-111, and 11B-111.4 for rules adopted not only by the association itself.

With respect to rules etc. there is no enumeration of homeowner/member powers like there is in the Condominium Act 11-109(d). The HOA Act is even more ambiguous because it defines **governing body** as "the homeowners association, board of directors, or other entity established to govern the development" and defines **homeowners association** as "a person having the authority to enforce the provisions of a declaration." One of the amendments below attempts to clarify that lot owners are members of the homeowners association.

In the condominium act 11-111, the "right" to approve or disapprove rules is not much of a right. A good analogy would be this: Imagine that you are not allowed to vote for Harris or Trump, but if either wins and you don't like it, you have 15 days to assemble 15% of the country to recall the unelected president. By the way, all the voting during the recall is handled by the incumbents or their paid agents and managers.

It makes no sense for "rules" process to be inconsistent with every other governing document. History of the debate over constitutionality of rule-making is below (approx. page 23), courtesy of research at the **Maryland State Archives**.

This body could successfully argue for fairness parity on the HOA side by noting the comparison that condominiums are technically not permitted to regulate use and enjoyment of property without first authorization from the bylaws. 11-109(f)(1) states:

> "A unit owner’s right to possess, use, or enjoy property of the council of unit owners shall be as provided in the bylaws"

HB557 (Bill of Rights) rightfully subjects all restrictions to a full community vote, whether or not the bylaws provide for a sidecar rule-making process bypassing members.

Confusion over Governing Bodies

A declaration is analogous to the community's Constitution. It is the document that establishes the condominium and outlines property (and often voting) rights. Declarations are on file at mdlandrec.net and are required by law to be given to you at the time of purchase of your unit. The laws pertaining to Declarations are 11-103 and 11-124(e).

Your Declaration will be key to determining who is the governing body recognized by state law.

11-101(i) defines a governing body, but your Declaration will narrow the definition further which is key to determining who is responsible (as the governing body) for satisfying 11-109(c)(7)(iv) which states, "The governing body shall convene at least one meeting each year at which the agenda is open to any matter relating to the condominium."

It's peculiar that "council of unit owners" is used almost everywhere in 11-109 except 11-109(c)(7)(iv). Also, 11-109(a) states, "The affairs of the condominium shall be governed by a council of unit owners which, even if unincorporated, is constituted a legal entity for all purposes. The council of unit owners shall be comprised of all unit owners."

Section 11-109(a) establishes only the council of unit owners as the governing body, while 11-101, 11-104, and 11-109(b) allow for delegation to an additional governing body. The law appears to allow two governing bodies, but attorneys who are supposed to represent the interests of all unit owners appear to hide this fact in service to their boards. Communities are led to believe that there is only one governing body authorized to act. Note that 11-111 does not assume the board is the governing body. Instead, it merely refers to the boards as "the body delegated in the bylaws of a condominium to carry out the responsibilities of the council of unit owners."

In that sense, the board is a delegated body but not necessarily a governing body. The Declaration may control when defining the governing body and whether or not delegation mutes the central authority (as in devolution or abdication) or merely creates a day-to-day servile body with authority to act as the council directs or until the council acts otherwise.

HB557 (Bill of Rights) as amended above would end the confusion about governing bodies and return rule-making adoption to the people, consistent with every other governing document and reducing the risk of authoritarian condominium government and burden on the courts.

Additional amendments, consistent with and supplementing HB557, with implementation language to improve **enforceability for courts**, and additional testimony follow:

CITIZEN-DRAFTED BILL TA-503

By: Thomas Allen
Requested: February 7, 2025
Suggested assignment to: Environment and Transportation

AN ACT concerning

Condominiums – Clarification of Governing Body

FOR the purpose of clarifying that the state's definition of a governing body does not create or appoint alternate applicable governing bodies contrary to the one specified in a Declaration

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.

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

11-101

(i) "Governing body" means the council of unit owners, board of directors, or any committee of the council of unit owners or board of directors, SUBJECT TO THE PARTICULAR ENTITY SPECIFIED AS THE GOVERNING BODY IN A DECLARATION.

11-109

(a) (1) The affairs of the condominium shall be governed by a council of unit owners which, even if unincorporated, is constituted a legal entity for all purposes. The council of unit owners shall be comprised of all unit owners.
(2) IF THE DECLARATION DEFINES A COUNCIL OF UNIT OWNERS AS THE GOVERNING BODY, THE BOARD OF DIRECTORS OR MANAGING AGENT MAY NOT PROHIBIT AN ACTION OF THE COUNCIL OF UNIT OWNERS.

(c)(7)(iv) THE COUNCIL OF UNIT OWNERS AND EACH BODY WITH DELEGATED POWERS shall EACH convene at least one meeting each year at which the agenda is open to any matter relating to the condominium.

11-124

(e) If there is any conflict among the provisions of this title, the declaration, condominium plat, bylaws, or rules adopted pursuant to § 11-111 of this title, the provisions of each shall control in the succession listed hereinbefore commencing with “title”.

(F) IF THE DECLARATION DEFINES A COUNCIL OF UNIT OWNERS AS THE GOVERNING BODY, THE BOARD OF DIRECTORS OR MANAGING AGENT MAY NOT PROHIBIT AN ACTION OF THE COUNCIL OF UNIT OWNERS.

[(f)**]** (g) The execution of any instrument by a mortgagee for the purpose of consenting to the legal operation and effect of a declaration, bylaws, and condominium plat does not, unless the contrary is expressly stated, affect the priority of the mortgage or deed of trust. The execution and recordation of a release of a unit in a condominium by a mortgagee which refers to the condominium constitutes consent by that mortgagee to the legal operation and effect of the recorded declaration, bylaws, and condominium plat of that condominium.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2025.

CITIZEN-DRAFTED BILL AH-401

Requested: August 24, 2024

Suggested assignment to: Environment and Transportation

AN ACT concerning

Condominiums and HOA – Priority of Residents over Monetization of Outside Users

FOR the purpose of ensuring that owners and renters who are residents of condominiums are not unfairly burdened by use of facilities by outside users, and to ensure that monetization of resources does not run counter to the interests and access of residents to those resources.

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.

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

Article – Real Property

11-108

(e) TO THE EXTENT THAT THE GOVERNING BODY ALLOWS THE USE OF CONDOMINIUM FACILITIES AND SERVICES OF THE COMMON ELEMENTS BY PERSONS WHO ARE NOT OWNERS OR RENTERS OF THE CONDOMINIUM, THE CORRESPONDING FEES FOR USE OF FACILITIES AND SERVICES OF THE COMMON ELEMENTS BY THOSE PERSONS SHALL BE DOUBLE THE REASONABLE AMOUNT CHARGED TO AN OWNER, RENTER, OR LEASEHOLD ESTATE OF THE CONDOMINIUM.

11B-112.2

(g) The adoption of a budget does not impair the authority of the homeowners association to obligate the homeowners association for expenditures for any purpose consistent with any provision of this title.
(h) TO THE EXTENT THAT THE GOVERNING BODY ALLOWS THE USE OF COMMUNITY FACILITIES AND SERVICES OF THE COMMON ELEMENTS BY PERSONS WHO ARE NOT OWNERS OR RENTERS OF THE COMMON ELEMENTS, THE CORRESPONDING FEES FOR USE OF FACILITIES AND SERVICES OF THE COMMON ELEMENTS BY THOSE PERSONS SHALL BE DOUBLE THE REASONABLE AMOUNT CHARGED TO AN OWNER, RENTER, OR LEASEHOLD ESTATE IN THE COMMUNITY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2025.

CITIZEN-DRAFTED BILL AH-402

Requested: August 24, 2024

Suggested assignment to: Environment and Transportation

AN ACT concerning

Common Ownership – CPA Selection, Election by Secret Ballot, Neutral Parties

FOR the purpose of codifying the right to a fair election administered by neutral parties not under the control of incumbents or their agents, and for establishing basic checks and balances essential to the proper functioning of a valid governing body acting in good faith.

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.

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

Article – Real Property

11-116

(a) The council of unit owners shall keep books and records in accordance with good accounting AND ELECTION practices on a consistent basis.

(b) (1) On the request of the unit owners of at least 5 percent of the units, the council of unit owners shall cause an audit of the FINANCIAL books and records AND/OR ELECTION RECORDS to be made by an independent certified public accountant, provided an audit shall be made not more than once in any consecutive 12-month period.

(2) The cost of the audit shall be a common expense.

(3) THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT SHALL BE SELECTED BY A MAJORITY OF THE UNIT OWNERS OF AT LEAST 5 PERCENT OF THE UNITS AND SHALL BE PART OF THE REQUEST.

(4) IN THE EVENT THAT A REQUEST FAILS TO RECOMMEND A SPECIFIC INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT, THE GOVERNING BODY SHALL SELECT A CERTIFIED PUBLIC ACCOUNTANT WHO HAS NO PREVIOUS CONTRACTS OR WORK EXPERIENCE WITH INCUMBENTS OF THE BOARD OF DIRECTORS OR WITH THE MANAGER OR MANAGEMENT COMPANY.

(5) THE GOVERNING BODY MAY NOT RESTRICT ANY DIRECTOR, OFFICER, MANAGER, OR UNIT OWNER FROM PROVIDING INFORMATION TO THE CERTIFIED PUBLIC ACCOUNTANT.

(6) NOTWITHSTANDING THE BYLAWS, THE CERTIFIED PUBLIC ACCOUNTANT SHALL HAVE THE AUTHORITY TO INVESTIGATE THE ACCURACY OF ANY BALLOT DISQUALIFICATION.

11-109 (c) (16) (viii) NOTWITHSTANDING OTHER PROVISIONS IN THIS TITLE OR THE BYLAWS, THE ELECTION PORTION OF A MEETING OF THE COUNCIL OF UNIT OWNERS TO ELECT A BOARD OF DIRECTORS FOR THE COUNCIL OF UNIT OWNERS SHALL BE ADMINISTERED AND COUNTED BY ELECTION OFFICIALS INCLUSIVE OF AN UNEVEN NUMBER OF ONE OR MORE INSPECTORS EXCLUDING:

(1) CURRENT MEMBERS OR CANDIDATES OF THE BOARD OF DIRECTORS

(2) AGENTS, EMPLOYEES, OR SUPERVISORS OF A MANAGER, OR MANAGEMENT COMPANY

(3) PERSONS UNDER THE CONTROL OF THE BOARD OF DIRECTORS OR MANAGEMENT COMPANY

(4) ANY PERSON NOT DIRECTLY APPOINTED OR AUTHORIZED BY A MAJORITY OF VOTES OF THE UNIT OWNERS LISTED ON THE CURRENT ROSTER PRESENT AND VOTING IN PERSON

11-109 (c) (16) (ix) NOTWITHSTANDING THE BYLAWS, ELECTION COUNTS CONDUCTED BY A DIRECTOR, OFFICER, OR MANAGER SHALL BE CERTIFIED BY AN INSPECTOR UNDER §11-109 (C) (16) (VIII) OF THIS TITLE

11-109 (c) (16) (x) SUBJECT TO PARAGRAPH (c) OF THIS SECTION, AND SUBJECT TO §11-116 OF THIS TITLE, THE ELECTION OF THE MEMBERSHIP OF THE GOVERNING BODY SHALL BE BY SECRET BALLOT.

11A-128

(b) (1) On the request of the owners of at least 5 percent of the time-shares, the association, or developer during the developer control period, shall cause an audit of the FINANCIAL books and records AND/OR ELECTION RECORDS, to be made by an independent certified public accountant at common expense.
(2) An audit may not be required more than once in any consecutive 12-month period.
(3) THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT SHALL BE SELECTED BY A MAJORITY OF AT LEAST 5 PERCENT OF THE TIME-SHARES AND SHALL BE PART OF THE REQUEST.
(4) IN THE EVENT THAT A REQUEST FAILS TO RECOMMEND A SPECIFIC INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT, THE GOVERNING BODY SHALL SELECT A CERTIFIED PUBLIC ACCOUNTANT WHO HAS NO PREVIOUS CONTRACTS OR WORK EXPERIENCE WITH INCUMBENTS OF THE BOARD OF DIRECTORS OR WITH THE MANAGER OR MANAGEMENT COMPANY.
(5) THE GOVERNING BODY MAY NOT RESTRICT ANY DIRECTOR, OFFICER, MANAGER, OR TIME-SHARE FROM PROVIDING INFORMATION TO THE CERTIFIED PUBLIC ACCOUNTANT.
(6) NOTWITHSTANDING THE BYLAWS, THE CERTIFIED PUBLIC ACCOUNTANT SHALL HAVE THE AUTHORITY TO INVESTIGATE THE ACCURACY OF ANY BALLOT DISQUALIFICATION.

11B-112.4 AUDIT

(a) ON THE REQUEST OF THE OWNERS OF AT LEAST 5 PERCENT OF THE LOT OWNERS, THE GOVERNING BODY SHALL CAUSE AN AUDIT OF THE FINANCIAL BOOKS AND RECORDS AND/OR ELECTION RECORDS, TO BE MADE BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT, PROVIDED THAT:
    (1) THE COST OF THE AUDIT SHALL BE A COMMON EXPENSE.
    (2) AN AUDIT SHALL BE MADE NOT MORE THAN ONCE IN ANY CONSECUTIVE 12-MONTH PERIOD.

(3) THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT SHALL BE SELECTED BY A MAJORITY OF AT LEAST 5 PERCENT OF THE LOT OWNERS AND SHALL BE PART OF THE REQUEST.

(4) IN THE EVENT THAT A REQUEST FAILS TO RECOMMEND A SPECIFIC INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT, THE GOVERNING BODY SHALL SELECT A CERTIFIED PUBLIC ACCOUNTANT WHO HAS NO PREVIOUS CONTRACTS OR WORK EXPERIENCE WITH INCUMBENTS OF THE BOARD OF DIRECTORS OR WITH THE MANAGER OR MANAGEMENT COMPANY.

(5) THE GOVERNING BODY MAY NOT RESTRICT ANY DIRECTOR, OFFICER, MANAGER, OR LOT OWNER FROM PROVIDING INFORMATION TO THE CERTIFIED PUBLIC ACCOUNTANT.

(6) NOTWITHSTANDING THE BYLAWS, THE CERTIFIED PUBLIC ACCOUNTANT SHALL HAVE THE AUTHORITY TO INVESTIGATE THE ACCURACY OF ANY BALLOT DISQUALIFICATION.

11B-106.3 ELECTION INSPECTORS AND CERTIFICATION

(a) NOTWITHSTANDING OTHER PROVISIONS IN THIS TITLE OR THE BYLAWS, THE ELECTION PORTION OF A MEETING OF THE LOT OWNERS TO ELECT A BOARD OF DIRECTORS FOR THE HOMEOWNERS ASSOCIATION SHALL BE ADMINISTERED AND COUNTED BY ELECTION OFFICIALS INCLUSIVE OF AN UNEVEN NUMBER OF ONE OR MORE INSPECTORS EXCLUDING:

(1) CURRENT MEMBERS OR CANDIDATES OF THE BOARD OF DIRECTORS

(2) AGENTS, EMPLOYEES, OR SUPERVISORS OF A MANAGER, OR MANAGEMENT COMPANY

(3) PERSONS UNDER THE CONTROL OF THE BOARD OF DIRECTORS OR MANAGEMENT COMPANY

(4) ANY PERSON NOT DIRECTLY APPOINTED OR AUTHORIZED BY A MAJORITY OF VOTES OF THE LOT OWNERS LISTED ON THE CURRENT ROSTER PRESENT AND VOTING IN PERSON

(b) NOTWITHSTANDING THE BYLAWS, ELECTION COUNTS CONDUCTED BY A DIRECTOR, OFFICER, OR MANAGER SHALL BE CERTIFIED BY AN INSPECTOR UNDER PARAGRAPH (a) OF THIS SECTION

(c) SUBJECT TO PARAGRAPH (a) OF THIS SECTION, AND SUBJECT TO §11B-112 AND §11B-112.3 OF THIS TITLE, THE ELECTION OF THE MEMBERSHIP OF THE GOVERNING BODY SHALL BE BY SECRET BALLOT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2025.

CITIZEN-DRAFTED BILL AH-403

Requested: August 24, 2024

Suggested assignment to: Environment and Transportation

AN ACT concerning

Common Ownership – Notice of Closed Meetings, Agendas for Open Meetings

FOR the purpose of increasing transparency of governing bodies so that meetings or meeting purposes are disclosed to the fullest extent permitted by existing law; providing parity between the statutes in their treatment of committees in closed session, clarifying that a session must have provided general meeting notice and have been open and held publicly before it can be closed in most cases, so that meetings cannot be construed permissibly to start as closed without notice and then opened to an audience of none; and clarifying the non-permissibility of a unanimous closed email vote which the OAG has stated is not permitted and for which there is no case law.

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.

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

Article – Real Property

11-109

(c) (4) A regular or special meeting of the council of unit owners may not be held on less than 10 nor more than 90 days':

(i) Written notice WITH PROPOSED AGENDA delivered or mailed to each unit owner at the address shown on the roster on the date of the notice; or

(ii) Notice sent to each unit owner by electronic transmission, if the requirements of §11-139.1 of this title are met

11-109.5 AGENDAS FOR CONDOMINIUMS

(a) AN AGENDA FOR THE PURPOSES OF COMPLYING WITH 11-109 (c) (4) OF THIS TITLE IS PRESUMED TO BE NON-BINDING AS A PROPOSED AGENDA UNLESS ADOPTED OR AMENDED BY THE GOVERNING BODY IN OPEN SESSION.
(b) A QUORUM OF DIRECTORS SHALL REFRAIN FROM DISCUSSING THE MERITS OF ANY PROPOSED AGENDA ITEM UNTIL OPEN SESSION.
(c) THE INCLUSION OF AN AGENDA ITEM ON AN ADOPTED AGENDA SHALL NOT BE CONSTRUED TO GUARANTEE ACTUAL DISCUSSION OF THE ITEM BY THE END OF THE MEETING.

11-109.1

(a) SUBJECT TO THE NOTICE REQUIREMENTS OF §11-109 (c) (4) OF THIS TITLE UNLESS OTHERWISE INDICATED, AND NOTWITHSTANDING THE CORPORATIONS AND ASSOCIATIONS ARTICLE, a meeting of the board of directors OR OTHER GOVERNING BODY OR COMMITTEE OF THE CONDOMINIUM may be held in closed session only for the following purposes:

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(9) TOURING THE COMMON ELEMENTS TO INVESTIGATE A CONDITION WHICH COULD REASONABLY RESULT IN AN IMMEDIATE THREAT TO THE HEALTH OR SAFETY OF THE UNIT OWNERS OR AN IMMEDIATE AND SIGNIFICANT RISK OF DAMAGE TO THE CONDOMINIUM, OR THE NEED FOR MAINTENANCE, REPAIR, OR REPLACEMENT, NOTWITHSTANDING THE NOTICE REQUIREMENT OF §11-109 (c) (4) OF THIS TITLE;

(10) ASSESSING WHETHER OR NOT TO PRE-TREAT COMMON AREAS FOR EASE OF SNOW AND ICE REMOVAL AROUND AN INCLEMENT WEATHER EVENT, NOTWITHSTANDING THE NOTICE REQUIREMENT OF §11-109 (c) (4) OF THIS TITLE.

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

(1) An action UNDER THIS TITLE OR TITLE 5, SUBTITLE 2 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE, SECTION 2-408, may not be taken and a matter may not be discussed if it is not permitted by subsection (a) of this section; and

11A-109

(h) (1) (i) If an association has not held a meeting for 3 years, a special meeting shall be called by the directors. Notice of the meeting WITH PROPOSED AGENDA and sample proxy forms shall be sent to all members at least 30 days prior to the meeting.

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(h) (2) (ii) Notice of the meeting WITH PROPOSED AGENDA and sample proxy forms shall be sent to all members at least 30 days before the meeting.

(h) (3) At any special meeting held under this subsection, any action may be taken by simple majority vote, including amendment of the association's articles of incorporation or bylaws.

11A-109.1 AGENDAS FOR TIME-SHARES

(a) AN AGENDA FOR THE PURPOSES OF COMPLYING WITH 11-109 (c) (4) OF THIS TITLE IS PRESUMED TO BE NON-BINDING AS A PROPOSED AGENDA UNLESS ADOPTED OR AMENDED BY THE GOVERNING BODY IN OPEN SESSION.
(b) A QUORUM OF DIRECTORS SHALL REFRAIN FROM DISCUSSING THE MERITS OF ANY PROPOSED AGENDA ITEM UNTIL OPEN SESSION.
(c) THE INCLUSION OF AN AGENDA ITEM ON AN ADOPTED AGENDA SHALL NOT BE CONSTRUED TO GUARANTEE ACTUAL DISCUSSION OF THE ITEM BY THE END OF THE MEETING.

11A-128

(d) SUBJECT TO THE NOTICE REQUIREMENTS OF §11A-109 OF THIS TITLE UNLESS OTHERWISE INDICATED, AND NOTWITHSTANDING THE CORPORATIONS AND ASSOCIATIONS ARTICLE, a meeting of the board of directors or OTHER governing body OR COMMITTEE of the association may be held in closed session only for the following purposes:

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(8) TOURING THE COMMON ELEMENTS TO INVESTIGATE A CONDITION WHICH COULD REASONABLY RESULT IN AN IMMEDIATE THREAT TO THE HEALTH OR SAFETY OF THE TIME-SHARES OR AN IMMEDIATE AND SIGNIFICANT RISK OF DAMAGE TO THE TIME-SHARES, OR THE NEED FOR MAINTENANCE, REPAIR, OR REPLACEMENT, NOTWITHSTANDING THE NOTICE REQUIREMENT OF §11A-109 OF THIS TITLE;

(9) ASSESSING WHETHER OR NOT TO PRE-TREAT COMMON AREAS FOR EASE OF SNOW AND ICE REMOVAL AROUND AN INCLEMENT WEATHER EVENT, NOTWITHSTANDING THE NOTICE REQUIREMENT OF §11A-109 OF THIS TITLE.

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

(1) An action UNDER THIS TITLE OR TITLE 5, SUBTITLE 2 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE, SECTION 2-408, may not be taken and a matter may not be discussed if it is not permitted by subsection (d) of this section; and

11B-111

(2) All members of the homeowners association shall be given **[**reasonable**]** 10 DAYS' notice, WITH PROPOSED AGENDA, of all regularly scheduled open meetings of the homeowners association;

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(4) SUBJECT TO THE NOTICE REQUIREMENTS OF THIS SECTION UNLESS OTHERWISE INDICATED, AND NOTWITHSTANDING THE CORPORATIONS AND ASSOCIATIONS ARTICLE, a meeting of the board of directors or other governing body **[**of the homeowners association**]** or **[**a**]** committee of the homeowners association may be held in closed session only for the following purposes:

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(ix) TOURING THE COMMON ELEMENTS TO INVESTIGATE A CONDITION WHICH COULD REASONABLY RESULT IN AN IMMEDIATE THREAT TO THE HEALTH OR SAFETY OF THE UNIT OWNERS OR AN

IMMEDIATE AND SIGNIFICANT RISK OF DAMAGE TO THE CONDOMINIUM, OR THE NEED FOR MAINTENANCE, REPAIR, OR REPLACEMENT, NOTWITHSTANDING THE NOTICE REQUIREMENT OF THIS SECTION;

(x) ASSESSING WHETHER OR NOT TO PRE-TREAT COMMON AREAS FOR EASE OF SNOW AND ICE REMOVAL AROUND AN INCLEMENT WEATHER EVENT, NOTWITHSTANDING THE NOTICE REQUIREMENT OF THIS SECTION.

(5) If a meeting is held in closed session under item (4) of this section:

(i) An action UNDER THIS TITLE OR TITLE 5, SUBTITLE 2 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE, SECTION 2-408, may not be taken and a matter may not be discussed if it is not permitted by item (4) of this section; and

11B-111.11 AGENDAS FOR HOMEOWNER ASSOCIATIONS

(a) AN AGENDA FOR THE PURPOSES OF COMPLYING WITH 11B-111 OF THIS TITLE IS PRESUMED TO BE NON-BINDING AS A PROPOSED AGENDA UNLESS ADOPTED OR AMENDED BY THE GOVERNING BODY IN OPEN SESSION.
(b) A QUORUM OF DIRECTORS SHALL REFRAIN FROM DISCUSSING THE MERITS OF ANY PROPOSED AGENDA ITEM UNTIL OPEN SESSION.
(c) THE INCLUSION OF AN AGENDA ITEM ON AN ADOPTED AGENDA SHALL NOT BE CONSTRUED TO GUARANTEE ACTUAL DISCUSSION OF THE ITEM BY THE END OF THE MEETING.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2025.

CITIZEN-DRAFTED BILL AH-405

Requested: August 24, 2024

Suggested assignment to: Environment and Transportation

AN ACT concerning

Common Ownership – Liability for damages; injunction

FOR the purpose of bringing parity and equal opportunity for justice under the law to both sides of bylaw violations which are a breach of contract between the unit owners and the board of directors; aligning liability for all forms of common ownership to be similar to time-share liability; and correcting an egregious oversight where unit owners are liable for attorney fees to the council of unit owners, but the council of unit owners is not liable for attorney fees to unit owners when the council has violated the bylaws, even if it is proven that directors and managers did not act in good faith.

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.

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

Article – Real Property

11-113

(c) (1) IF A PERSON OR ENTITY FAILS TO COMPLY WITH ANY PROVISION OF THIS TITLE, THE DECLARATION, OR BYLAWS, OR A DECISION RENDERED IN ACCORDANCE WITH THIS SECTION, ANY PERSON ADVERSELY AFFECTED BY THE FAILURE TO COMPLY HAS A CLAIM FOR APPROPRIATE RELIEF.

[(1)**]** (2) If any unit owner fails to comply with this title, the declaration, or bylaws, or a decision rendered in accordance with this section, the unit owner may be sued for damages caused by the failure or for injunctive relief, or both, by the council of unit owners or by any other unit owner.

[(2)**]** (3) The prevailing party in any proceeding under this subsection is entitled to an award for REASONABLE counsel fees as determined by court. PUNITIVE DAMAGES MAY BE AWARDED FOR THE WILLFUL AND WANTON FAILURE TO COMPLY WITH THIS TITLE.

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

11A-125

(c) If a **[**developer or any other**]** person OR ENTITY fails to comply with any provision of this title or the time-share instrument, any person adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded for the willful and wanton failure to comply with this title. The court may also award reasonable attorney's fees to the prevailing party.

11B-111.10

(c) (1) IF A PERSON OR ENTITY FAILS TO COMPLY WITH ANY PROVISION OF THIS TITLE, THE DECLARATION, OR BYLAWS, OR A DECISION RENDERED IN ACCORDANCE WITH THIS SECTION, ANY PERSON ADVERSELY AFFECTED BY THE FAILURE TO COMPLY HAS A CLAIM FOR APPROPRIATE RELIEF.

[(1)**]** (2) If any lot owner fails to comply with this title, the declaration, or bylaws, or a decision rendered in accordance with this section, the lot owner may be sued for damages caused by the failure or for injunctive relief, or both, by the homeowners association or by any other lot owner.

[(2)**]** (3) The prevailing party in any proceeding under this subsection is entitled to an award for REASONABLE counsel fees as determined by the court. PUNITIVE DAMAGES MAY BE AWARDED FOR THE WILLFUL AND WANTON FAILURE TO COMPLY WITH THIS TITLE.

(d) The failure of the board of directors or other governing body of the homeowners association to enforce a provision of this title, the declaration, or bylaws on any occasion is not a waiver of the right to enforce the provision on any other occasion.

(e) This section does not apply to the Columbia Association or the village community associations for the villages of Columbia in Howard County.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2025.

CITIZEN-DRAFTED BILL AH-406

Requested: August 24, 2024

Suggested assignment to: Environment and Transportation

AN ACT concerning

Homeowners Associations – Membership

FOR the purpose of clarifying that lot owners are members of the homeowners association since they are liable for assessments and subject to liens under Section 11B-117

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.

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

Article – Real Property

11B-117.1 COMPOSITION; MEMBERS

(a) THE HOMEOWNERS ASSOCIATION VOTING MEMBERS SHALL BE AT LEAST COMPRISED OF ALL LOT OWNERS.
(b) ANY PERSON LIABLE FOR ASSESSMENTS AND SUBJECT TO LIENS SHALL BE ENTITLED TO THE RIGHTS OF MEMBERS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2025.

CITIZEN-DRAFTED BILL TA-407

Requested: August 24, 2024

Suggested assignment to: Environment and Transportation

AN ACT concerning

Common Ownership – Blueprints and Pipe Schematics

FOR the purpose of preserving pipe location documents as described in §11-132 and which are otherwise commonly purged from county records or lost by the council of unit owners or management transitions, and without which there is significant waste and destruction searching inefficiently for pipe pathways

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.

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

Article – Real Property

11-105

(b) The condominium plat may consist of one or more sheets and shall contain at least the following particulars:

…

(5) BLUEPRINTS, PIPE SCHEMATICS, AND OTHER SUITABLE DOCUMENTS UNDER §11-132 OF THIS TITLE SETTING FORTH THE NECESSARY INFORMATION FOR LOCATION, MAINTENANCE, AND REPAIR OF PIPES AND ALL OTHER CONDOMINIUM FACILITIES

11-126

(b) The public offering statement required by subsection (a) of this section shall be sufficient for the purposes of this section if it contains at least the following:

…

(19) BLUEPRINTS, PIPE SCHEMATICS, AND OTHER SUITABLE DOCUMENTS UNDER §11-132 OF THIS TITLE SETTING FORTH THE NECESSARY INFORMATION FOR LOCATION, MAINTENANCE, AND REPAIR OF PIPES AND ALL OTHER CONDOMINIUM FACILITIES

11-135

(a) (4) A certificate containing:

…

(xii) THE NAMES AND CONTACT INFORMATION FOR LONG-TERM CUSTODIANS, COMPRISED OF ANY COMBINATION OF MANAGERS, BOARD MEMBERS, DEVELOPERS, CLERKS, HOMEOWNERS, CONTRACTORS, OR PLUMBERS, WITH VERIFIED POSSESSION OR CONTROL OF DRAWINGS, ARCHITECTURAL PLANS, BLUEPRINTS, PIPE SCHEMATICS, AND OTHER SUITABLE DOCUMENTS SETTING FORTH THE NECESSARY INFORMATION FOR LOCATION, MAINTENANCE, AND REPAIR OF PIPES AND ALL OTHER CONDOMINIUM FACILITIES, OR A STATEMENT THAT THE INFORMATION IS LOST OR DESTROYED

…

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

…

(iv) A certificate containing:

…

14. THE NAMES AND CONTACT INFORMATION FOR LONG-TERM CUSTODIANS, COMPRISED OF ANY COMBINATION OF MANAGERS, BOARD MEMBERS, DEVELOPERS, CLERKS, HOMEOWNERS, CONTRACTORS, OR PLUMBERS, WITH VERIFIED POSSESSION OR CONTROL OF DRAWINGS, ARCHITECTURAL PLANS, BLUEPRINTS, PIPE SCHEMATICS, AND OTHER SUITABLE DOCUMENTS SETTING FORTH THE NECESSARY INFORMATION FOR LOCATION, MAINTENANCE, AND REPAIR OF PIPES AND ALL OTHER CONDOMINIUM FACILITIES, OR A STATEMENT THAT THE INFORMATION IS LOST OR DESTROYED

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2025.

CITIZEN-DRAFTED BILL TA-501

Requested: January 23, 2025

Suggested assignment to: Environment and Transportation

AN ACT concerning

Common Ownership – Prohibition on Water Shut Off

FOR the purpose of promoting public health through continued function of toilets and drinking water notwithstanding a use restriction or delinquency, and prohibiting a cruel and unusual punishment

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.

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

Article – Real Property

11-109

(e) A unit owner may not have any right, title, or interest in any property owned by the council of unit owners other than as holder of a percentage interest in common expenses and common profits appurtenant to his unit.

(f) A unit owner's rights as holder of a percentage interest in common expenses and common profits are such that:

(1) EXCEPT FOR WATER/TOILET SHUT OFF WHICH IS PROHIBITED, A unit owner's right to possess, use, or enjoy property of the council of unit owners shall be as provided in the bylaws IF THE DECLARATION IS SILENT; and

(2) A unit owner's interest in the property is not assignable or attachable separate from his unit except as provided in §§ 11-107(d) and 11-112(g) of this title.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2025.

With Great Power

Comes Great Responsibility

Condominiums: The Definition of Delegation

A council of unit owners is defined as all unit owners. If you own a condominium, you are a member of the council of unit owners. This body is regulated by law, such that all homeowners share power as a body whole. Those powers can be delegated. The instrument of delegation is often a clause in the bylaws, a document controlled by homeowners. That clause can delegate powers. At issue in Maryland law (and many laws nationwide) is the word "delegation" which appears in state condominium law but is undefined. What was the intended meaning?

The Oxford dictionary defines delegation as the "grant of authority to a person to act on behalf of one or more others, for agreed purposes."

Source: https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095708376

Traditional delegation has been at the leisure and for the convenience of an authority, and in all cases delegation does not remove practical, moral, or legal responsibility from the authority for whatever delegated acts occurred in the name of the authority or on the authority's behalf.

False Assumptions

In the case of condominiums, bylaws written by developers may delegate council power and authority to a smaller group such as a board of directors, who may then delegate authority to a managing agent. The board of directors is at all times responsible for the acts of the managing agent. These delegations are often unclear in these respects:

1. The delegation is not explicitly stated as existing only as the council authority does not act otherwise, leaving others to assume and misinterpret delegation as permanent abdication causing the council authority to be unable to act even if it so desired. Assumptions are often conveniently in favor of the board.
2. The procedure for temporarily revoking delegation or over-riding the act of a delegate is not specified.
3. It is unclear as to whether delegated powers overlap, extend, supersede, or complement that of the original authority.

The arbitrary and self-serving interpretation of delegation by boards (and attorneys representing boards) assumes that homeowners have "voluntarily, knowingly, and intelligently" consented to their particular non-Oxford definition. See the standard in **MNCPPC v. Washington National Arena**.

Often, the refusal to adopt (or allow members to adopt) parliamentary procedures such as Robert's Rules of Order is instead a **bad faith effort** to continue to rule by fiat. Under Robert's Rules of Order, the council is the final arbiter of whether or not a motion is out of order.

However, with an arbitrary and/or weaponized interpretation of delegation, almost any motion can be ruled out of order without appeal based on the absurd idea that the original authority has no authority, as if delegating is a forced act and not a voluntary one.

Does delegation require power to be made exclusive to the underling?

When the council's authority is in doubt, absent interpretation by a court, the council can amend its bylaws to clarify the meaning and effect of its delegating. However, it should be noted that a board-friendly interpretation can be logically problematic. For example, if a board feels that it has exclusive power to act when the council has delegated its powers, then it is aware that the council can remove that delegation in whole or in part. However, Maryland law requires all corporations to have at least one director. It does not require that all powers be vested exclusively in that one director. To believe that a board of directors has exclusive authority over its superior council not only defies common sense, but it would mean that a council could never revoke delegation for fear of violating the legal requirement for one director. Condominium law establishes council powers, not board powers. Condominium law merely *allows* but does not *require* a council to delegate its powers to a board. The council-friendly interpretation of delegation is more logical and consistent with law. Under the council-friendly interpretation, the council always has the right to act whether or not the directors enjoy delegated powers. Any act of the council would over-ride the board, as long as that act is consistent with laws, bylaws, articles, and declarations. It would be a misnomer to suggest that an active council making use of its statutory rights would render the board pointless, mute, and impotent. That is a false choice and a false narrative.

History of Condominium Law

The history of §11-109 of the Maryland Condominium Act is fascinating. The Horizontal Property Act of 1979 is the early precursor of condominium law in Maryland. Since 1979, Title 11, 11-109(b) has remain unchanged.

Section 11-109(d) has an interesting evolution.

> "The council of unit owners may be either incorporated as a nonstock corporation or unincorporated. If incorporated, it is subject to those provisions of Title 5, Subtitle 2 of the Corporations and Associations Article of the Code which are not inconsistent with this title. If the council of unit owners is unincorporated, it shall have, subject to any provision of this title, the declaration, and bylaws, the following powers…"

Nine powers were listed in 1979, but they applied only for unincorporated entities. Corporate powers were instead derived from corporate laws, charters, and bylaws.

The Uniform Condominium Act (UCA) was drafted by the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association in 1980. Soon after, the State of Maryland set up a Commission to reorganize Maryland condominium law. Though it borrowed some language from the UCA, Maryland condominium law as a whole was not based on it and was much more developed.

The Committee on Condominiums, Cooperatives and Homeowners' Associations of the Maryland State Bar Association (Bar Committee) reviewed the Commission's work on Senate Bill 1028. On Maryland State Bar Association (MBA) letterhead, Chairman Donovan M. Hamm, Jr. sent a letter to the MBA Section of Real Property, Planning & Zoning, dated March 6, 1981, which included redline recommendations for Senate Bill 1028.

Senate Bill 1028 proposed the **deletion of specific requirements** when bylaws provide for **delegation of power to a board**. Instead, the Bar Committee was apparently in favor of requiring delegation to be controlled, specific, and enumerated, especially when the board delegates to those outside the corporate body (the deleted portion has a specific reference to a "managing agent"). Rather than allow undisclosed, broad, vague, unlimited, endless, or successive delegating with power cascading away from its original source, the Committee defended specificity and transparency, stating:

> "The reason for the deletion of these portions of the existing statute is not evident. They should remain unchanged."

They were changed anyway, and nothing found in the record so far explains why. A theory of this author is that §11-111 established that either the council or board could adopt rules, making clear that acts by delegation are through powers held non-exclusively. The Bar Committee also noted:

> "…a requirement that the By-Laws specify the "powers and duties…" of the Directors and Officers may give rise to a strong implication that if a particular power or duty is not specifically referred to, the officers and directors may not exercise such power even though it may ordinarily be inferred from the scope of their duties in general. The entire proposed addition to the statute is largely unnecessary because it is already covered by the existing statute to the extent required."

Here, the Bar Committee appears to be in favor of wide-ranging delegation within the bounds of the law. However, not requiring specificity here is justified by their desire to restore other deleted text and to dovetail with the Corporations and Associations Article. The attempt to defer to other text may not have fully anticipated that delegation, left unchecked, could conflict with common law rights of members in a nonstock corporation or those of an unincorporated condominium which would now nonetheless be bound by general laws in the Corporations Article. Concern was so serious that the Bar Committee strongly advised against granting rulemaking authorities to councils and boards outside of the corporate articles and bylaws:

> "After much discussion, the Committee concluded that this entire new provision which would permit the adoption and enforcement of "Rules and Regulations" should not be passed. As presently drafted, it poses **significant Constitutional questions**. It would attempt to elevate the Council of Unit Owners to a quasi-governmental position. This issue has been the subject of considerable scholarly discussion. See Note "Judicial Review of Condominium Rulemaking," 94 Har. L. Rev. 647 (Jan. 1981). While some early court decisions have indicated that condominium rulemaking can be judicially supported unless it is **arbitrary or capricious**, the matter is far from settled and the ability of a Council to impose rules or regulations which could have a substantial impact on the use and enjoyment of the Condominium by unit owners should not be permitted without further study. Many of the alleged benefits of rulemaking can be accomplished through the original drafting and subsequent amendment of the By-Laws. In addition, the Committee noted a number of technical deficiencies in the proposed provision."

In this context, if the Bar Committee was not in favor of councils or boards having rulemaking authorities beyond the members' rights to amend bylaws, a process which could begin and end with the unit owners despite any board, it certainly would not have been in favor of delegating all powers, and with it nearly all voting rights, exclusively to a board, away from its original authority to be controlled by a *shadow* quasi-government in perpetuity based on an arbitrary interpretation of delegation.

Some stakeholders, like Dorothy Sager and Thomas R. Burns (of the Montgomery County Association of Condominium Unit Owners, Inc.) were concerned that off-site owners could take control through a board abusing delegated powers and also re-delegating them.

The middle ground was suggested by Roger Winston, Esq. of the Law Offices of Linowes and Blocher in a letter of November 18, 1981. His compromise language attempted to navigate between overzealous boards and homeowner apathy (or ignorance of their own levers of power) by subjecting all proposed rules to veto by a mere 10% (today 15%) of displeased homeowners calling for a re-vote.

However, this solution is weak if homeowners are not informed of their right to veto, as the law does not require disclosure of this right to accompany *the notice* of a proposed rule. The law's tight timeframe in which to object also renders homeowners ill-prepared to self-educate, organize, and act in time. Furthermore, this compromise does nothing to address the abuse of power where the council itself is **prevented from rulemaking,** perhaps in violation of §11-109(c)(7)(iv) where the agenda is required to be open to any matter.

Otherwise with a single obstructionist act the state must tolerate:

- Blocking votes from taking place
- Tortious interference with contract rights
- Violation of voting rights in Declaration
- Parliamentary procedure manipulations or lack of parliamentary procedures
- Other attempts to deny votes based on "finger in the wind" definitions of delegation
- Allowing attorneys to run rampant while boards sit back and neither adopt nor reject legal opinions

Current Law on Delegation to a Board

Section 11-109 (d) states that the

> "council of unit owners has… the following powers…"

Twenty-two powers are so enumerated today, up from nine in 1979. Can these powers, here belonging to all owners, be delegated to a board and then to a single person? Are powers, duties, and decisions the same actions or different actions?

Section 11-109 (c) (15) states,

> "Unless otherwise provided in this title, and subject to provisions in the bylaws requiring a different majority, **decisions of the council of unit owners** shall be made on a majority of votes of the unit owners listed on the current roster present and voting."

Proxy voters are not included, presumably because they would not hear debate of policy questions. Note the law here also does not say "subject to provisions in the bylaws requiring a different majority of a different body." The law is subject to provisions in the bylaws requiring a different majority of the same body (council is defined as all unit owners), unless otherwise provided in this title, which brings us to §11-104:

> "The **bylaws shall express** at least the following particulars: (1) the form of administration, indicating whether the council of unit owners shall be incorporated or unincorporated, and whether, and to what extent, the **duties** of the council of unit owners may be delegated to a board of directors, manager, or otherwise, and **specifying the powers**, manner of selection, and removal of them;"

Note the comma before "and removal of them" did not always exist in Michie's annotated code. "Them" is a pronoun where the antecedent could be referring to removal of "powers" but is most likely referring to removal of "board of directors, manager, or otherwise".

Note also that the law distinguishes between duties (responsibilities) and powers. The law also requires those delegated powers to be specified. The bylaws of a condominium may then borrow from §11-109(d) the powers of the council of unit owners. Perhaps concurring in part, §11-109(b) states:

> "The bylaws may authorize or provide for the delegation of any power of the council of unit owners to a board of directors, officers, managing agent, or other person **for the purpose of carrying out the responsibilities** of the council of unit owners."

However, the law (especially §11-111) does not permit a council to delegate itself into bondage by sacrificing its owners' property and voting rights. To the contrary, those rights are enshrined in law (and often in the Declaration) which no bylaw can delegate away. The law does not permit delegation for general or unlimited purposes. The law permits delegation only for the specific, narrow, limited purpose of carrying out the duties or responsibilities that were created in part by the actions and decisions of the Council in §11-109(c)(15).

If instead a general, unlimited, arbitrary, or capricious purpose was permitted, then a Council could delegate its right to elect Directors, delegate its right to amend and approve annual meeting minutes, and delegate its right to vote for adjournment. None of these purposes are in any way connected to carrying out responsibilities. A council has no responsibility to elect Directors; it has the power and privilege to do so at its leisure. Through apathy it can fail to elect Directors and allow them to hold over and no contract or law will have been violated. A council has no responsibility to approve its meeting minutes; it has the power and privilege to do so at its leisure. A council has no responsibility to adjourn a meeting; it has the power and privilege to do so at its leisure.

Let us further explore the potential consequences of violating §11-111 and §11-109 (c) (15).

Section 11-109(d)(2) cites the power **"to adopt and amend reasonable rules and regulations".** If a council delegated its statutory rulemaking authority and §11-109 (c) (15) did not apply, it would only be able to veto rules under §11-111(b) not adopt or amend them unless the power to veto was also interpreted as rulemaking rather than "rule-killing". Such delegation would not be for the purpose of carrying out responsibilities. The only purpose would be to cannibalize the property rights and voting rights of unit owners, and to avoid any and all responsibilities from being placed upon it.

Section 11-109(d)(4) refers to the power **"to sue and be sued, complain and defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium"**. If a council delegated its power to sue and §11-109 (c) (15) did not apply, the council could not sue a majority of board members for embezzlement unless the majority of the embezzlers agreed to be sued. This is not in the public interest. Instead, some unit owners would have to expend their personal funds to sue. This use of delegation is not for the purpose of carrying out the responsibilities of the council of unit owners; it is for evading those responsibilities. If 98.5% of unit owners supported one person to sue on their behalf to secure their voting rights under the Declaration, the board representing 1.5% of unit owners could rack up tens of thousands of owners' dollars defending the suit to hold onto their abuse of power, and 98.5% of unit owners would be unable to intervene and settle the lawsuit in their own interests in their own name as the council.

Section 11-109(d)(10) refers to the power "to purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge or otherwise dispose of, and otherwise use and deal in and

with, shares or other interests in, or obligation of corporations of the State, or foreign corporations, and of associations, partnerships, and individuals". For clarity, let's shorten this to the power to **"vote… interests in… corporations of the State… and of associations…"** If a council delegated this power and §11-109 (c) (15) did not apply, then a unit owner could not vote his own interest in his own condo association. Such delegation would not be for the purpose of carrying out the responsibilities of the Council of Unit Owners. A greater extreme would be that the power to elect directors could be considered delegated to the board; absent context the text technically gives aid and comfort to the idea of homeowners never voting on anything ever again.

Section 11-109(d)(21) refers to the power "generally, to exercise the powers set forth in this title and the declaration or bylaws and to do every other act **not inconsistent with law**, which may be appropriate to promote and attain the purposes set forth in this title, the declaration or bylaws". If a council delegated this power, it would effectively be delegating all power, except that delegating all power is inconsistent with law, especially delegation that interferes with a council's right to make decisions under §11-109(c)(15) and under the Declaration. Delegation of any or all power is only consistent with law if it does not interfere with this right. However, that does not make the rights mutually exclusive. A board delegated to act can act unless or until the council acts otherwise under §11-111 or §11-109(c)(15), but the council should be able to act otherwise with proper notice and meeting procedure. A board should not be able to re-define the concept of delegation as abdication, rendering the council mute except for elections. The right to make decisions is an enumerated power, and any delegated power of the board is subject to the enumerated power of the council. This is consistent with all rulemaking authority under the law which, despite any board, can begin and end with unit owners, whether amending a declaration or bylaw or reasonable rule or regulation.

It is in complete abrogation of legislative intent and constitutional rights to elevate the board of directors to a quasi-governmental position over the Council of Unit Owners. If legal scholars were concerned about councils affecting constitutional rights normally adjudicated by courts, they should be horrified at the risk of smaller boards doing the same without an immediate and plausible check on those powers.

If in the eyes of the law, delegation (to a board) rendered the original council authority mute and powerless on general business matters, then would it not also render the board mute and powerless when the board delegates to a manager at a management company? If a board delegates all its loaned powers to a management company for 10 years, would the council be powerless to undo the bondage? Has ownership of people by false authorities returned to America via the condominium regime? Or would such a 10-year contract be **ultra vires** if voted exclusively by board members?

Constitutional Support

In "'The People Surrender Nothing': Social Compact Theory, Republicanism, and the Modern Administrative State", American legal scholar Joseph Postell argues that the nondelegation doctrine is rooted in social compact theory. Postell states that social compact theory "maintains that sovereignty–the power to create and establish governments and to vest them with power–resides in the people alone. Governments derive their just powers from the consent of the governed, who must agree to vest the government with its powers. Furthermore, social compact theory holds that the sovereignty of the people is inalienable. That is, the people may not transfer their power and responsibility to govern themselves to any other body. When they vest powers in a government, they are not giving their sovereignty away but merely delegating it to a trustee who acts on their behalf. Those officers who hold government power, consequently, are merely the temporary holders of power, rather than the new owners of the powers vested in them. The people, as the sole fountain of authority, delegate power to the government, but only in a limited way, connected to the specific ends for which the people designate that power to be exercised."[2]

Postell likens social compact theory to a principal-agent relationship between the people and the legislature. The people are the principal who have delegated their rulemaking ability to the legislature. Unlike other principal agent relationships, the people are unable to approve of a further delegation of the legislative power. He writes, "[A]ccording to social compact theory, only the people can delegate legislative power, and when legislative power is delegated by the people to their agents in the legislature, the legislature cannot delegate its powers away because legislative power was never fully alienated by the people."[2]

Source:
https://ballotpedia.org/Arguments_in_favor_of_the_nondelegation_doctrine,_and_against_delegation:_Delegation_violates_social_compact_theory

Loving v. United States (1996)

In Loving v. United States, Justice Scalia echoes the habitual misuse or misapplication of delegation in a federal context:

> "While it has become the practice in our opinions to refer to "unconstitutional delegations of legislative authority" versus "lawful delegations of legislative authority," in fact the latter category does not exist. Legislative power is nondelegable. Congress can no more "delegate" some of its Article I power to the Executive than it could "delegate" some to one of its committees. What Congress does is to *assign responsibilities* to the Executive; and when the Executive undertakes those assigned responsibilities it acts, not as the "delegate" of Congress, but as the agent of the People. At some point the responsibilities assigned can become so extensive and so unconstrained that Congress has in effect delegated its legislative power; but until that point of excess is reached there exists, not a "lawful" delegation, but no delegation at all."

In the context of condominiums, the responsibilities assigned are commonly extensive and unconstrained. There is no doubt the threshold of delegation has been cleared; the question remains whether that delegation renders a mute sovereign as some Maryland attorneys would have us believe.

The Federalist Papers

The Federalist No. 37, at 235 (James Madison) (J. Cooke ed., 1961). And see:

> "There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission [constitution] under which it is exercised, is void. No legislative act therefore contrary to the constitution can be valid. To deny this would be to affirm that the deputy is greater than his principle; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid."

A court should not adopt a different view of principal-to-agent delegation when no Maryland statute requires it to do so. There is no compelling state interest to define delegation inconsistent with history, and delegation law is not narrowly tailored to further a state interest. The legislative power is a shared power, and council-to-board delegation is an act of extending power and not abdicating, alienating, or disinheriting it.

Effect on Bylaws

If the council's rights under Real Property §11-111 are not recognized in spite of delegation, then what should pass as minor rules and regulations could instead have a corrosive effect on bylaws which may be amended frivolously simply to get around the obstruction of rights. This chaos would not be in the public interest. In this sense, the dispute over homeowner rights to use the power to adopt rules directly under §11-111 ultimately comes down, not to any principle of delegation, but to whether or not homeowners can adopt rules by two-thirds (via bylaw) or by simple undelegated majority (via §11-111). Proponents of the bylaw-only approach could be subjecting a founding document to constant amendment, a needless exercise except to serve the insular interest of denying a homeowner power while claiming it exclusively for the board. These same proponents are in effect telling founding father James Madison that the deputy is greater than the principle, and that board members "own" their homeowners rather than truly "serve" homeowners.

Hypocrisy of Big Lobbies

Builders, developers, lenders, attorneys, and governments have supported the concept of binding covenants that run with the land, subjecting all owners to these covenants as a condition of sale in the name of promoting uniformity and protecting property values. In most cases, the covenants can not be changed without 80 to 100 percent agreement of all owners. How interesting it is that, when it comes to protecting dollars, the big lobbies are totally in favor of "power to the people" when it means preserving the established order and covenants. This interest is too great to subject it to the whims of boards where usually only 3 people can make changes. However, when it comes to protecting people's rights to due process, these same interests are all too willing to eschew that power in favor of board power. Therefore, big lobbies are only in favor of democracy when it serves them.

State actor doctrine

The fact that state law (in §11-109) explicitly permits the (non-exclusive?) delegation of homeowner powers to the board could also be the key to establishing that common ownership communities are not private governments but are in fact arms of the state. There are several case laws touching on "state actor" designations. For example, a public government may not empower a private police force to police its citizens without the constitutional obligations of Miranda rights.

> Flagg Bros. v. Brooks, 436 U.S. 149, 176 (1978)
> 42 U.S.C. § 1983 (2006)
> Dennis v. Sparks, 449 U.S. 24, 27 (1980)
> Polk County v. Dodson, 454 U.S. 312, 317–18 (1981)
> United States v. Classic, 313 U.S. 299, 326 (1941)
> Griffin v. Maryland, 378 U.S. 130, 135 (1964)

In the same way, a public government may not empower developers to create private governments without constitutional protections such as inalienable voting rights and due process.

Kramer vs. Kramer

In 1984, Senator Kramer introduced a very simple bill (SB 468) attempting to clarify the limits of delegation:

> 11-109 (b)
>
> > (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, IF A MAJORITY OF THE COUNCIL OF UNIT OWNERS LISTED ON THE CURRENT ROSTER VOTE TO TAKE OR PROHIBIT AN ACTION AT A SPECIAL MEETING CALLED FOR THAT PURPOSE, THE BODY OR PERSON TO WHOM POWER HAS BEEN DELEGATED UNDER PARAGRAPH (1) OF THIS SUBSECTION IS BOUND BY THE VOTE.
> >
> > (3) THE PROVISIONS OF PARAGRAPH (2) OF THIS SUBSECTION DO NOT APPLY TO THE ADOPTION OF THE BUDGET.

The bill simply clarified for special meetings what was already existing law for meetings, but it got an unfavorable review over concern about unwinding contracts. Although the same problems would exist for either the board or the council, the "concern" succeeded as many red herrings often do to kill legislation. The concern could have been addressed accordingly:

> NOTWITHSTANDING BOARD ACTION, A COUNCIL OF UNIT OWNERS MAY SETTLE ANY LAWSUIT OR RESCIND A FINE, SUSPENSION, OR EXECUTED CONTRACT OR AGREEMENT PURSUANT TO THE CANCELLATION TERMS OF THE AGREEMENT, EXCEPT THAT AFTER DEVELOPER CONTROL EXPIRES, NO CONTRACT OR LEASE SHALL EXCEED FIVE YEARS.

Alas, the issue has never come up again. A 501c6 non-profit organization that used to advocate for 5 stakeholders, including homeowners with equal veto power over organization policy and position statements, restructured in 1992 with the membership ratio favoring management companies. Conveniently, the myth of delegation as abdication of a mute sovereign now continues to metastasize. Senator Kramer's son, also a Senator Kramer, is currently in office as of December 27, 2024.

Conclusion

The yoke of ambiguous delegation is a framework originally set not by the people of a council but by special interest developers who reshaped ownership structures nationwide and found legislators all too willing to abide almost any form of government so as not to interfere with previous flawed contracts and regimes. This deference to the lowest common denominator of the past, rather than to enabling a more perfect union, served only to render unclear and murky even the most basic rights of common ownership, the right to decide and the right to self-government.

The law of this state should more clearly elevate the rights under §11-111 and §11-109 (c) (15) and interpret delegation to a board as limited and non-exclusive so that no council can ever be obstructed on rule-making. These rights should be self-evident; they should not require massive political movements to amend bylaws en masse when declarations, laws, legislative intent, and legal scholars have already laid out the constitutional, property, and contract rights that this State should not allow to be obscured any further by overzealous actors who represent their insular interests over that of homeowners.

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ADDITIONAL MEMORANDUM

REGARDING MEMBER VOTING RIGHTS

I am a Maryland condominium owner disturbed to find that many volunteer boards believe, with little actual knowledge of Maryland law, that it permits the obstruction of homeowner member voting rights, contrary to all other *membership-based* nonprofit organizations.

Maryland condominium law permits delegation of homeowner powers, defining the **powers** but not the *delegation,* which is arguably defined in the historical body of law going back to the Federalist Papers. Re-defining the word delegation is effectively what must occur in order for homeowners to be denied the right to introduce and vote on anything of substance, such as rules and appeals. Denying the right to vote has transpired statewide despite its inconsistency; homeowners are paradoxically permitted by boards to introduce and vote on minutes and adjournments. Denial of voting rights is only possible because commissions, legislators, courts, and attorneys general have never addressed the precise question of what delegation exactly is, perhaps because they never contemplated authoritarian behavior of this extreme.

General Voting Rights

1. Does the requirement in Real Property Article §11-109(c)(7)(iv) for the agenda to be open to any matter override any bylaw provision delegating any of those same matters to the board?
2. Does §11-109(c)(15) permit only different majorities (over 50%) of *unit owners* to make decisions at a meeting of the council, or can it subject decisions *at a meeting of the council* to the decision of a *different body*, such as a delegated body (board or committee)?
3. Does the law exclude introduction of voting questions from its meaning of "decisions"?

Rulemaking

4. Does §11-111 permit the council to adopt a rule in accordance with §11-109(c)(15) in spite of the decision of any other delegated body?
5. If the time to veto a rule has expired (as described in §11-111) and members have delegated their powers and/or voting rights, does the law permit the adopted rule to be repealed in accordance with §11-109(c)(15) in spite of the decision or permission of any other delegated body?

Effect on Elections

6. Is the right to vote for directors alienable or inalienable? Note that Maryland law requires that a proxy vote *as directed*, which appears to be evidence that the right to vote for directors is inalienable. Otherwise, the homeowner could delegate the proxy to vote freely.
7. If voting rights are alienable, is it legal or constitutional for them to be alienated permanently?
8. Does §11-109(d)(10) technically permit directors to vote **exclusively** in condominium elections (and deny all other voters) when homeowners have **delegated** all their neighbors' powers and/or voting rights and "interests in… corporations of the State… and of associations" (of which the condominium is one), and if any view of delegation permits denial of the right to vote

for directors (because the right was delegated), is the denial only not permitted by the State in the event that other State laws conflict with that view of delegation?

9. Is it legally possible for a delegated body to have more power than its original authority, or must the original authority have equal or greater power since Maryland law only authorizes delegation "for the purpose of carrying out the responsibilities of the council of unit owners" and not for other discretionary purposes of the council?
10. Does Maryland law consider the act of delegation to be a **transfer** of power that can only be revoked by the repeal of the instrument or vote that created the delegation, or does the law itself provide for that temporary revocation (or supersession or over-riding) in §11-109(c)(7)(iv) and §11-109(c)(15), suggesting that delegated power remains **inherently vested** with the council as original authority and is only usable by others *until the council has acted otherwise*?

I thank you greatly for your commitment to provide clarity for citizens. Given that these laws are executed by volunteer boards who may not be experts at law, it is imperative that the law be as clear and unambiguous as possible. These questions are complex and far-reaching with fundamental implications for property rights.

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