

HOUSE BILL 1141

N1

3lr2490
CF 3lr2658

By: **Delegates Frush and Braveboy**

Introduced and read first time: February 8, 2013

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Condominiums – Warranty Claims**

3 FOR the purpose of establishing that, notwithstanding any provision in the
4 declaration, bylaws, or rules and regulations of the condominium, a council of
5 unit owners has the right to be involved in a certain manner in certain litigation
6 or administrative proceedings affecting the condominium and to enforce implied
7 warranties made to the council of unit owners by the developer; making
8 unenforceable a provision of a declaration, a bylaw, a contract for sale of a unit,
9 or any other instrument made by a developer in accordance with certain
10 provisions of law that purports to shorten the statute of limitations applicable to
11 any claim, purports to waive the application of a certain rule, or requires a unit
12 owner or the council of unit owners to assert a certain claim within a certain
13 period of time under certain circumstances; making unenforceable a provision of
14 a declaration, a bylaw, a contract for sale of a unit, or any other instrument
15 made by a developer in accordance with certain provisions of law that requires a
16 certain vote of unit owners as a precondition to the institution or maintenance
17 of certain proceedings unless the council of unit owners adopts the provision
18 under certain circumstances; and generally relating to warranty claims for
19 condominiums.

20 BY repealing and reenacting, with amendments,
21 Article – Real Property
22 Section 11–109(d)
23 Annotated Code of Maryland
24 (2010 Replacement Volume and 2012 Supplement)

25 BY adding to
26 Article – Real Property
27 Section 11–134.1
28 Annotated Code of Maryland
29 (2010 Replacement Volume and 2012 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Real Property**

4 11–109.

5 (d) The council of unit owners may be either incorporated as a nonstock
6 corporation or unincorporated and it is subject to those provisions of Title 5, Subtitle 2
7 of the Corporations and Associations Article which are not inconsistent with this title.
8 The council of unit owners has, subject to any provision of this title, and except as
9 provided in [item] **ITEMS (4), (19), AND (22)** of this subsection, the declaration, and
10 bylaws, the following powers:

11 (1) To have perpetual existence, subject to the right of the unit owners
12 to terminate the condominium regime as provided in § 11–123 of this title;

13 (2) To adopt and amend reasonable rules and regulations;

14 (3) To adopt and amend budgets for revenues, expenditures, and
15 reserves and collect assessments for common expenses from unit owners;

16 (4) To sue and be sued, complain and defend, or intervene in litigation
17 or administrative proceedings in its own name on behalf of itself or two or more unit
18 owners on matters affecting the condominium, **NOTWITHSTANDING ANY PROVISION**
19 **IN THE DECLARATION, BYLAWS, OR RULES AND REGULATIONS;**

20 (5) To transact its business, carry on its operations and exercise the
21 powers provided in this subsection in any state, territory, district, or possession of the
22 United States and in any foreign country;

23 (6) To make contracts and guarantees, incur liabilities and borrow
24 money, sell, mortgage, lease, pledge, exchange, convey, transfer, and otherwise dispose
25 of any part of its property and assets;

26 (7) To issue bonds, notes, and other obligations and secure the same
27 by mortgage or deed of trust of any part of its property, franchises, and income;

28 (8) To acquire by purchase or in any other manner, to take, receive,
29 own, hold, use, employ, improve, and otherwise deal with any property, real or
30 personal, or any interest therein, wherever located;

31 (9) To hire and terminate managing agents and other employees,
32 agents, and independent contractors;

1 (10) To purchase, take, receive, subscribe for or otherwise acquire, own,
2 hold, vote, use, employ, sell, mortgage, loan, pledge or otherwise dispose of, and
3 otherwise use and deal in and with, shares or other interests in, or obligation of
4 corporations of the State, or foreign corporations, and of associations, partnerships,
5 and individuals;

6 (11) To invest its funds and to lend money in any manner appropriate
7 to enable it to carry on the operations or to fulfill the purposes named in the
8 declaration or bylaws, and to take and to hold real and personal property as security
9 for the payment of funds so invested or loaned;

10 (12) To regulate the use, maintenance, repair, replacement, and
11 modification of common elements;

12 (13) To cause additional improvements to be made as a part of the
13 general common elements;

14 (14) To grant easements, rights-of-way, licenses, leases in excess of 1
15 year, or similar interests through or over the common elements in accordance with §
16 11-125(f) of this title;

17 (15) To impose and receive any payments, fees, or charges for the use,
18 rental, or operation of the common elements other than limited common elements;

19 (16) To impose charges for late payment of assessments and, after
20 notice and an opportunity to be heard, levy reasonable fines for violations of the
21 declaration, bylaws, and rules and regulations of the council of unit owners, under §
22 11-113 of this title;

23 (17) To impose reasonable charges for the preparation and recordation
24 of amendments to the declaration, bylaws, rules, regulations, or resolutions, resale
25 certificates, or statements of unpaid assessments;

26 (18) To provide for the indemnification of and maintain liability
27 insurance for officers, directors, and any managing agent or other employee charged
28 with the operation or maintenance of the condominium;

29 (19) To enforce the implied warranties made to the council of unit
30 owners by the developer under § 11-131 of this title, **NOTWITHSTANDING ANY**
31 **PROVISION IN THE DECLARATION, BYLAWS, OR RULES AND REGULATIONS;**

32 (20) To enforce the provisions of this title, the declaration, bylaws, and
33 rules and regulations of the council of unit owners against any unit owner or occupant;

34 (21) Generally, to exercise the powers set forth in this title and the
35 declaration or bylaws and to do every other act not inconsistent with law, which may

1 be appropriate to promote and attain the purposes set forth in this title, the
2 declaration or bylaws; and

3 (22) To designate parking for individuals with disabilities,
4 notwithstanding any provision in the declaration, bylaws, or rules and regulations.

5 **11-134.1.**

6 (A) THIS SECTION DOES NOT APPLY TO A CONDOMINIUM THAT IS
7 OCCUPIED AND USED SOLELY FOR NONRESIDENTIAL PURPOSES.

8 (B) ANY PROVISION OF A DECLARATION, A BYLAW, A CONTRACT FOR
9 THE SALE OF A UNIT TO A MEMBER OF THE PUBLIC, OR ANY OTHER
10 INSTRUMENT MADE BY A DEVELOPER IN ACCORDANCE WITH THIS TITLE SHALL
11 BE UNENFORCEABLE IF THE PROVISION:

12 (1) PURPORTS TO SHORTEN THE STATUTE OF LIMITATIONS
13 APPLICABLE TO ANY CLAIM;

14 (2) PURPORTS TO WAIVE THE APPLICATION OF THE “DISCOVERY
15 RULE”; OR

16 (3) REQUIRES A UNIT OWNER OR THE COUNCIL OF UNIT OWNERS
17 TO ASSERT A CLAIM SUBJECT TO ARBITRATION WITHIN A PERIOD OF TIME THAT
18 IS SHORTER THAN THE STATUTE OF LIMITATIONS APPLICABLE TO THE CLAIM.

19 (C) (1) ANY PROVISION OF A DECLARATION, A BYLAW, A CONTRACT
20 FOR THE SALE OF A UNIT TO A MEMBER OF THE PUBLIC, OR ANY OTHER
21 INSTRUMENT MADE BY A DEVELOPER IN ACCORDANCE WITH THIS TITLE THAT
22 REQUIRES THE COUNCIL OF UNIT OWNERS TO OBTAIN A VOTE OF UNIT OWNERS
23 OR THE APPROVAL OF THE DEVELOPER OR ANY NONUNIT OWNERS AS A
24 PRECONDITION TO THE INSTITUTION OR MAINTENANCE OF A LAWSUIT, AN
25 ARBITRATION, A MEDIATION, OR A SIMILAR PROCEEDING SHALL BE
26 UNENFORCEABLE UNLESS THE COUNCIL OF UNIT OWNERS ADOPTS THE
27 PROVISION ON A DATE FOLLOWING THE DATE ON WHICH THE UNIT OWNERS,
28 OTHER THAN THE DEVELOPER AND ITS AFFILIATES, FIRST ELECT A
29 CONTROLLING MAJORITY OF THE MEMBERS OF THE BOARD OF DIRECTORS FOR
30 THE COUNCIL OF UNIT OWNERS.

31 (2) THE ADOPTION OF THE PROVISION DESCRIBED IN
32 PARAGRAPH (1) OF THIS SUBSECTION SHALL BE ACCOMPLISHED IN
33 ACCORDANCE WITH THE SAME REQUIREMENTS NECESSARY TO AMEND THE
34 DECLARATION OR BYLAWS UNDER THIS TITLE.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2013.