

# SENATE BILL 176

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CF HB 23

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By: **Senator Kelley**

Introduced and read first time: January 17, 2013

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Condominiums and Homeowners Associations – Contracts for Resale – Notice**  
3 **of Potential Special Assessments**

4 FOR the purpose of providing that a contract for the resale of a unit in a condominium  
5 by a unit owner other than a developer is not enforceable unless the contract  
6 contains a certain notice, and the unit owner furnishes to the purchaser certain  
7 information, concerning potential special assessments under certain  
8 circumstances; providing that a contract for the resale of a lot in a development  
9 subject to the authority of a homeowners association is not enforceable by the  
10 vendor unless the purchaser is given a certain notice concerning potential  
11 special assessments under certain circumstances; providing for the application  
12 of this Act; and generally relating to notice of potential special assessments in  
13 contracts for resale in condominiums and homeowners associations.

14 BY repealing and reenacting, with amendments,  
15 Article – Real Property  
16 Section 11–135 and 11B–106  
17 Annotated Code of Maryland  
18 (2010 Replacement Volume and 2012 Supplement)

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

21 **Article – Real Property**

22 11–135.

23 (a) Except as provided in subsection (b) of this section, a contract for the  
24 resale of a unit by a unit owner other than a developer is not enforceable unless the  
25 contract of sale contains in conspicuous type a notice in the form specified in

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 subsection (g)(1) of this section, and the unit owner furnishes to the purchaser not  
2 later than 15 days prior to closing:

3 (1) A copy of the declaration (other than the plats);

4 (2) The bylaws;

5 (3) The rules or regulations of the condominium;

6 (4) A certificate containing:

7 (i) A statement disclosing the effect on the proposed conveyance  
8 of any right of first refusal or other restraint on the free alienability of the unit other  
9 than any restraint created by the unit owner;

10 (ii) A statement setting forth the amount of the monthly  
11 common expense assessment and any unpaid common expense or special assessment  
12 currently due and payable from the selling unit owner;

13 (iii) A statement of any other fees payable by the unit owners to  
14 the council of unit owners;

15 (iv) A statement of any capital expenditures approved by the  
16 council of unit owners planned at the time of the conveyance which are not reflected in  
17 the current operating budget disclosed under subparagraph (vi) of this paragraph;

18 (v) The most recent regularly prepared balance sheet and  
19 income expense statement, if any, of the condominium;

20 (vi) The current operating budget of the condominium including  
21 details concerning the reserve fund for repair and replacement and its intended use, or  
22 a statement that there is no reserve fund;

23 (vii) A statement of any judgments against the condominium and  
24 the existence of any pending suits to which the council of unit owners is a party;

25 (viii) A statement generally describing any insurance policies  
26 provided for the benefit of unit owners, a notice that copies of the policies are available  
27 for inspection, stating the location at which the copies are available, and a notice that  
28 the terms of the policy prevail over the description;

29 (ix) A statement as to whether the council of unit owners has  
30 knowledge that any alteration or improvement to the unit or to the limited common  
31 elements assigned to the unit violates any provision of the declaration, bylaws, or  
32 rules or regulations;

1 (x) A statement as to whether the council of unit owners has  
2 knowledge of any violation of the health or building codes with respect to the unit, the  
3 limited common elements assigned to the unit, or any other portion of the  
4 condominium;

5 (xi) A statement of the remaining term of any leasehold estate  
6 affecting the condominium and the provisions governing any extension or renewal  
7 thereof; [and]

8 (xii) A description of any recreational or other facilities which are  
9 to be used by the unit owners or maintained by them or the council of unit owners, and  
10 a statement as to whether or not they are to be a part of the common elements; **AND**

11 **(XIII) A NOTICE OF ANY POTENTIAL SPECIAL ASSESSMENT**  
12 **THAT IS REFERENCED WITHIN THE PRECEDING 12 MONTHS IN:**

13 **1. THE AGENDA OR MINUTES OF ANY MEETING OF**  
14 **THE BOARD OF DIRECTORS; OR**

15 **2. A VOTE AT A MEETING OF THE COUNCIL OF UNIT**  
16 **OWNERS;**

17 (5) A statement by the unit owner as to whether the unit owner has  
18 knowledge:

19 (i) That any alteration to the unit or to the limited common  
20 elements assigned to the unit violates any provision of the declaration, bylaws, or  
21 rules and regulations;

22 (ii) Of any violation of the health or building codes with respect  
23 to the unit or the limited common elements assigned to the unit; and

24 (iii) That the unit is subject to an extended lease under § 11-137  
25 of this title or under local law, and if so, a copy of the lease must be provided; and

26 (6) A written notice of the unit owner's responsibility for the council of  
27 unit owners' property insurance deductible and the amount of the deductible.

28 (b) A contract for the resale by a unit owner other than a developer of a unit  
29 in a condominium containing less than 7 units is not enforceable unless the contract of  
30 sale contains in conspicuous type a notice in the form specified in subsection (g)(2) of  
31 this section, and the unit owner furnishes to the purchaser not later than 15 days  
32 prior to closing:

33 (1) A copy of the declaration (other than the plats);

1 (2) The bylaws;

2 (3) The rules and regulations of the condominium;

3 (4) A statement by the unit owner of the unit owner's expenses during  
4 the preceding 12 months relating to the common elements; [and]

5 (5) A written notice of the unit owner's responsibility for the council of  
6 unit owners' property insurance deductible and the amount of the deductible; AND

7 **(6) A NOTICE OF ANY POTENTIAL SPECIAL ASSESSMENT THAT IS**  
8 **REFERENCED WITHIN THE PRECEDING 12 MONTHS IN:**

9 **(I) THE AGENDA OR MINUTES OF ANY MEETING OF THE**  
10 **BOARD OF DIRECTORS; OR**

11 **(II) A VOTE AT A MEETING OF THE COUNCIL OF UNIT**  
12 **OWNERS.**

13 (c) (1) The council of unit owners, within 20 days after a written request  
14 by a unit owner and receipt of a reasonable fee therefor, not to exceed the cost to the  
15 council of unit owners, if any, shall furnish a certificate containing the information  
16 necessary to enable the unit owner to comply with subsection (a) of this section. A unit  
17 owner providing a certificate under subsection (a) of this section is not liable to the  
18 purchaser for any erroneous information provided by the council of unit owners and  
19 included in the certificate.

20 (2) With respect to the remaining information that the unit owner is  
21 required to disclose under subsection (a) of this section that is not provided by the  
22 council of unit owners and included in the certificate, a unit owner:

23 (i) Except as provided in subparagraph (ii) of this paragraph, is  
24 liable to the purchaser under this section for damages proximately caused by:

25 1. An untrue statement about a material fact; and

26 2. An omission of a material fact that is necessary to  
27 make the statements made not misleading, in light of the circumstances under which  
28 the statements were made; and

29 (ii) Is not liable to the purchaser under this section if the owner  
30 had, after reasonable investigation, reasonable grounds to believe, and did believe, at  
31 the time the information was provided to the purchaser, that the statements were true  
32 and that there was no omission to state a material fact necessary to make the  
33 statements made not misleading, in light of the circumstances under which the  
34 statements were made.

1 (d) A purchaser is not liable for any unpaid assessment or fee greater than  
2 the amount set forth in the certificate prepared by the council of unit owners. A unit  
3 owner is not liable to a purchaser for the failure or delay of the council of unit owners  
4 to provide the certificate in a timely manner.

5 (e) The rights of a purchaser under this section may not be waived in the  
6 contract of sale, and any attempted waiver is void. However, if a purchaser proceeds to  
7 closing, his right to rescind the contract under subsection (f) of this section is  
8 terminated.

9 (f) (1) Any purchaser may at any time within 7 days following receipt of  
10 all of the information required under subsection (a) or (b) of this section, whichever is  
11 applicable, rescind in writing the contract of sale without stating any reason and  
12 without any liability on his part.

13 (2) The purchaser, upon rescission, is entitled to the return of any  
14 deposits made on account of the contract.

15 (3) If any deposits are held in trust by a licensed real estate broker,  
16 the return of the deposits to a purchaser under this subsection shall comply with the  
17 procedures set forth in § 17–505 of the Business Occupations and Professions Article.

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

20 “NOTICE

21 The seller is required by law to furnish to you not later than 15 days prior to  
22 closing certain information concerning the condominium which is described in  
23 § 11–135 of the Maryland Condominium Act. This information must include at least  
24 the following:

- 25 (i) A copy of the declaration (other than the plats);
- 26 (ii) A copy of the bylaws;
- 27 (iii) A copy of the rules and regulations of the condominium;
- 28 (iv) A certificate containing:

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

- 1                   2.     A statement of the amount of the monthly common  
2 expense assessment and any unpaid common expense or special assessment currently  
3 due and payable from the selling unit owner;
- 4                   3.     A statement of any other fees payable by the unit  
5 owners to the council of unit owners;
- 6                   4.     A statement of any capital expenditures approved by  
7 the council of unit owners or its authorized designee planned at the time of the  
8 conveyance which are not reflected in the current operating budget included in the  
9 certificate;
- 10                  5.     The most recently prepared balance sheet and income  
11 and expense statement, if any, of the condominium;
- 12                  6.     The current operating budget of the condominium,  
13 including details concerning the amount of the reserve fund for repair and  
14 replacement and its intended use, or a statement that there is no reserve fund;
- 15                  7.     A statement of any judgments against the  
16 condominium and the existence of any pending suits to which the council of unit  
17 owners is a party;
- 18                  8.     A statement generally describing any insurance  
19 policies provided for the benefit of the unit owners, a notice that the policies are  
20 available for inspection stating the location at which they are available, and a notice  
21 that the terms of the policy prevail over the general description;
- 22                  9.     A statement as to whether the council of unit owners  
23 has knowledge that any alteration or improvement to the unit or to the limited  
24 common elements assigned to the unit violates any provision of the declaration,  
25 bylaws, or rules or regulations;
- 26                  10.    A statement as to whether the council of unit owners  
27 has knowledge of any violation of the health or building codes with respect to the unit,  
28 the limited common elements assigned to the unit, or any other portion of the  
29 condominium;
- 30                  11.    A statement of the remaining term of any leasehold  
31 estate affecting the condominium and the provisions governing any extension or  
32 renewal of it; **[and]**
- 33                  12.    A description of any recreational or other facilities  
34 which are to be used by the unit owners or maintained by them or the council of unit  
35 owners, and a statement as to whether or not they are to be a part of the common  
36 elements; and

1                   **13. A NOTICE OF ANY POTENTIAL SPECIAL**  
2 **ASSESSMENT THAT IS REFERENCED WITHIN THE PRECEDING 12 MONTHS IN:**

3                   **A. THE AGENDA OR MINUTES OF ANY MEETING OF**  
4 **THE BOARD OF DIRECTORS; OR**

5                   **B. A VOTE AT A MEETING OF THE COUNCIL OF UNIT**  
6 **OWNERS; AND**

7                   (v) A statement by the unit owner as to whether the unit owner  
8 has knowledge:

9                   1. That any alteration to the unit or to the limited  
10 common elements assigned to the unit violates any provision of the declaration,  
11 bylaws, or rules and regulations.

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

14                   3. That the unit is subject to an extended lease under §  
15 11–137 of this title or under local law, and if so, a copy of the lease must be provided.

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

19                   (2) A notice given as required by subsection (b) of this section shall be  
20 sufficient for the purposes of this section if it is in substantially the following form:

21                   “NOTICE

22                   The seller is required by law to furnish to you not later than 15 days prior to  
23 closing certain information concerning the condominium which is described in  
24 § 11–135 of the Maryland Condominium Act. This information must include at least  
25 the following:

26                   (1) A copy of the declaration (other than the plats);

27                   (2) A copy of the bylaws;

28                   (3) A copy of the rules and regulations of the condominium; [and]

29                   (4) A statement by the seller of his expenses relating to the common  
30 elements during the preceding 12 months; **AND**

1           **(5) A NOTICE OF ANY POTENTIAL SPECIAL ASSESSMENT THAT IS**  
2 **REFERENCED WITHIN THE PRECEDING 12 MONTHS IN:**

3                   **(I) THE AGENDA OR MINUTES OF ANY MEETING OF THE**  
4 **BOARD OF DIRECTORS; OR**

5                   **(II) A VOTE AT A MEETING OF THE COUNCIL OF UNIT**  
6 **OWNERS.**

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

10           (h) Upon any sale of a condominium unit, the purchaser or his agent shall  
11 provide to the council of unit owners to the extent available, the name and forwarding  
12 address of the prior unit owner, the name and address of the purchaser, the name and  
13 address of any mortgagee, the date of settlement, and the proportionate amounts of  
14 any outstanding condominium fees or assessments assumed by each of the parties to  
15 the transaction.

16           (i) This section does not apply to the sale of any unit which is to be used and  
17 occupied for nonresidential purposes.

18           (j) Subsections (a), (b), (c), (d), (e), (f), and (g) of this section do not apply to a  
19 sale of a unit in an action to foreclose a mortgage or deed of trust.

20 11B-106.

21           (a) A contract for the resale of a lot within a development, or for the initial  
22 sale of a lot within a development containing 12 or fewer lots, to a member of the  
23 public who intends to occupy or rent the lot for residential purposes, is not enforceable  
24 by the vendor unless:

25                   (1) The purchaser is given, on or before entering into the contract for  
26 the sale of such lot, or within 20 calendar days of entering into the contract, the  
27 disclosures set forth in subsection (b) of this section;

28                   (2) The purchaser is given any changes in mandatory fees and  
29 payments exceeding 10 percent of the amount previously stated to exist and any other  
30 substantial and material amendment to the disclosures after they become known to  
31 the vendor; and

32                   (3) The contract of sale contains a notice in conspicuous type, which  
33 shall include bold and underscored type, in a form substantially the same as the  
34 following:

1           “This sale is subject to the requirements of the Maryland Homeowners  
2 Association Act (the “Act”). The Act requires that the seller disclose to you at or before  
3 the time the contract is entered into, or within 20 calendar days of entering into the  
4 contract, certain information concerning the development in which the lot you are  
5 purchasing is located. The content of the information to be disclosed is set forth in §  
6 11B–106(b) of the Act (the “MHAA information”) as follows:

7           (The notice shall include at this point the text of § 11B–106(b) in its entirety).

8           If you have not received all of the MHAA information 5 calendar days or more  
9 before entering into the contract, you have 5 calendar days to cancel this contract after  
10 receiving all of the MHAA information. You must cancel the contract in writing, but  
11 you do not have to state a reason. The seller must also provide you with notice of any  
12 changes in mandatory fees exceeding 10% of the amount previously stated to exist and  
13 copies of any other substantial and material amendment to the information provided  
14 to you. You have 3 calendar days to cancel this contract after receiving notice of any  
15 changes in mandatory fees, or copies of any other substantial and material  
16 amendment to the MHAA information which adversely affects you. If you do cancel the  
17 contract you will be entitled to a refund of any deposit you made on account of the  
18 contract. However, unless you return the MHAA information to the seller when you  
19 cancel the contract, the seller may keep out of your deposit the cost of reproducing the  
20 MHAA information, or \$100, whichever amount is less.

21           By purchasing a lot within this development, you will automatically be subject  
22 to various rights, responsibilities, and obligations, including the obligation to pay  
23 certain assessments to the homeowners association within the development. The lot  
24 you are purchasing may have restrictions on:

- 25           (1) Architectural changes, design, color, landscaping, or appearance;
- 26           (2) Occupancy density;
- 27           (3) Kind, number, or use of vehicles;
- 28           (4) Renting, leasing, mortgaging, or conveying property;
- 29           (5) Commercial activity; or
- 30           (6) Other matters.

31           You should review the MHAA information carefully to ascertain your rights,  
32 responsibilities, and obligations within the development.”

33           (b) The vendor shall provide the purchaser the following information in  
34 writing:

- 35           (1) A statement as to whether the lot is located within a development;

1                   (2)   (i)    The current monthly fees or assessments imposed by the  
2 homeowners association upon the lot;

3                               (ii)   The total amount of fees, assessments, and other charges  
4 imposed by the homeowners association upon the lot during the prior fiscal year of the  
5 homeowners association; [and]

6                               (iii)   A statement of whether any of the fees, assessments, or  
7 other charges against the lot are delinquent; AND

8                                       **(IV)   IF THE CONTRACT IS FOR THE RESALE OF A LOT WITHIN**  
9 **A DEVELOPMENT, A NOTICE OF ANY POTENTIAL SPECIAL ASSESSMENT THAT IS**  
10 **REFERENCED WITHIN THE PRECEDING 12 MONTHS IN:**

11   **1.    THE AGENDA OR MINUTES OF ANY MEETING OF**  
12 **THE GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION; OR**

13   **2.    A VOTE AT A MEETING OF THE HOMEOWNERS**  
14 **ASSOCIATION;**

15                   (3)    The name, address, and telephone number of the management  
16 agent of the homeowners association, or other officer or agent authorized by the  
17 homeowners association to provide to members of the public, information regarding  
18 the homeowners association and the development, or a statement that no agent or  
19 officer is presently so authorized by the homeowners association;

20                   (4)    A statement as to whether the owner has actual knowledge of:

21                               (i)    The existence of any unsatisfied judgments or pending  
22 lawsuits against the homeowners association; and

23                               (ii)   Any pending claims, covenant violations actions, or notices  
24 of default against the lot; and

25                   (5)    A copy of:

26                               (i)    The articles of incorporation, the declaration, and all  
27 recorded covenants and restrictions of the primary development, and of other related  
28 developments to the extent reasonably available, to which the purchaser shall become  
29 obligated on becoming an owner of the lot, including a statement that these obligations  
30 are enforceable against an owner's tenants, if applicable; and

31                               (ii)   The bylaws and rules of the primary development, and of  
32 other related developments to the extent reasonably available, to which the purchaser  
33 shall become obligated on becoming an owner of the lot, including a statement that

1 these obligations are enforceable against an owner and the owner's tenants, if  
2 applicable.

3 (c) (1) Within 30 calendar days of any resale transfer of a lot within a  
4 development, the transferor shall notify the homeowners association for the primary  
5 development of the transfer.

6 (2) The notification shall include, to the extent reasonably available,  
7 the name and address of the transferee, the name and forwarding address of the  
8 transferor, the date of transfer, the name and address of any mortgagee, and the  
9 proportionate amount of any outstanding homeowners association fee or assessment  
10 assumed by each of the parties to the transaction.

11 (d) The requirements of subsection (b) of this section shall be deemed to have  
12 been fulfilled if the information required to be disclosed is provided to the purchaser in  
13 writing in a clear and concise manner. The disclosures may be summarized or  
14 produced in any collection of documents, including plats, the declaration, or the  
15 organizational documents of the homeowners association, provided those documents  
16 effectively convey the required information to the purchaser.

17 (e) In satisfying the requirements of subsection (b) of this section, the vendor  
18 shall be entitled to rely upon the disclosures contained in the depository after June 30,  
19 1989.

20 (f) The provisions of subsections (a), (b), (d), and (e) of this section do not  
21 apply to the sale of a lot in an action to foreclose a mortgage or deed of trust.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
23 construed to apply only prospectively and may not be applied or interpreted to have  
24 any effect on or application to any contract for the resale of a unit in a condominium  
25 or a lot in a development subject to the authority of a homeowners association that is  
26 entered into before the effective date of this Act.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
28 October 1, 2013.