

SENATE BILL 75

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By: **Senator Kelley**

Introduced and read first time: January 16, 2012

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Condominiums and Homeowners Associations – Sales Contracts – Notice of**
3 **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 of
6 sale contains a certain notice and the unit owner furnishes to the purchaser
7 certain information concerning potential special assessments under certain
8 circumstances; providing that a contract for the resale of a lot in a development,
9 or for the initial sale of a lot in a certain development, 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 the sale of 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 2011 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

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;**

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

17 **3. ANY WRITTEN DOCUMENT DISTRIBUTED TO UNIT**
18 **OWNERS BY THE BOARD OF DIRECTORS OR ANY MANAGEMENT COMPANY**
19 **RETAINED BY THE BOARD;**

20 (5) A statement by the unit owner as to whether the unit owner has
21 knowledge:

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

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

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

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

31 (b) A contract for the resale by a unit owner other than a developer of a unit
32 in a condominium containing less than 7 units is not enforceable unless the contract of
33 sale contains in conspicuous type a notice in the form specified in subsection (g)(2) of

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

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

4 (2) The bylaws;

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

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

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

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

12 **(I) THE AGENDA OR MINUTES OF ANY MEETING OF THE**
13 **BOARD OF DIRECTORS;**

14 **(II) A VOTE AT A MEETING OF THE COUNCIL OF UNIT**
15 **OWNERS; OR**

16 **(III) ANY WRITTEN DOCUMENT DISTRIBUTED TO UNIT**
17 **OWNERS BY THE BOARD OF DIRECTORS OR ANY MANAGEMENT COMPANY**
18 **RETAINED BY THE BOARD.**

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

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

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

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

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

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

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

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

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

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

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

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

29 “NOTICE

30 The seller is required by law to furnish to you not later than 15 days prior to
31 closing certain information concerning the condominium which is described in
32 § 11–135 of the Maryland Condominium Act. This information must include at least
33 the following:

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

35 (ii) A copy of the bylaws;

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

2 (iv) A certificate containing:

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

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

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

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

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

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

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

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

27 9. A statement as to whether the council of unit owners
28 has knowledge that any alteration or improvement to the unit or to the limited
29 common elements assigned to the unit violates any provision of the declaration,
30 bylaws, or rules or regulations;

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

1 11. A statement of the remaining term of any leasehold
2 estate affecting the condominium and the provisions governing any extension or
3 renewal of it; **[and]**

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

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

10 **A. THE AGENDA OR MINUTES OF ANY MEETING OF**
11 **THE BOARD OF DIRECTORS;**

12 **B. A VOTE AT A MEETING OF THE COUNCIL OF UNIT**
13 **OWNERS; OR**

14 **C. ANY WRITTEN DOCUMENT DISTRIBUTED TO UNIT**
15 **OWNERS BY THE BOARD OF DIRECTORS OR ANY MANAGEMENT COMPANY**
16 **RETAINED BY THE BOARD; AND**

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

19 1. That any alteration to the unit or to the limited
20 common elements assigned to the unit violates any provision of the declaration,
21 bylaws, or rules and regulations.

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

24 3. That the unit is subject to an extended lease under §
25 11–137 of this title or under local law, and if so, a copy of the lease must be provided.

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

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

31 “NOTICE

32 The seller is required by law to furnish to you not later than 15 days prior to
33 closing certain information concerning the condominium which is described in

1 § 11–135 of the Maryland Condominium Act. This information must include at least
2 the following:

- 3 (1) A copy of the declaration (other than the plats);
4 (2) A copy of the bylaws;
5 (3) A copy of the rules and regulations of the condominium; [and]
6 (4) A statement by the seller of his expenses relating to the common
7 elements during the preceding 12 months; AND

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

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

12 (II) **A VOTE AT A MEETING OF THE COUNCIL OF UNIT**
13 **OWNERS; OR**

14 (III) **ANY WRITTEN DOCUMENT DISTRIBUTED TO UNIT**
15 **OWNERS BY THE BOARD OF DIRECTORS OR ANY MANAGEMENT COMPANY**
16 **RETAINED BY THE BOARD.**

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

20 (h) Upon any sale of a condominium unit, the purchaser or his agent shall
21 provide to the council of unit owners to the extent available, the name and forwarding
22 address of the prior unit owner, the name and address of the purchaser, the name and
23 address of any mortgagee, the date of settlement, and the proportionate amounts of
24 any outstanding condominium fees or assessments assumed by each of the parties to
25 the transaction.

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

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

30 11B–106.

31 (a) A contract for the resale of a lot within a development, or for the initial
32 sale of a lot within a development containing 12 or fewer lots, to a member of the

1 public who intends to occupy or rent the lot for residential purposes, is not enforceable
2 by the vendor unless:

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

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

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

13 “This sale is subject to the requirements of the Maryland Homeowners
14 Association Act (the “Act”). The Act requires that the seller disclose to you at or before
15 the time the contract is entered into, or within 20 calendar days of entering into the
16 contract, certain information concerning the development in which the lot you are
17 purchasing is located. The content of the information to be disclosed is set forth in §
18 11B–106(b) of the Act (the “MHAA information”) as follows:

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

20 If you have not received all of the MHAA information 5 calendar days or more
21 before entering into the contract, you have 5 calendar days to cancel this contract after
22 receiving all of the MHAA information. You must cancel the contract in writing, but
23 you do not have to state a reason. The seller must also provide you with notice of any
24 changes in mandatory fees exceeding 10% of the amount previously stated to exist and
25 copies of any other substantial and material amendment to the information provided
26 to you. You have 3 calendar days to cancel this contract after receiving notice of any
27 changes in mandatory fees, or copies of any other substantial and material
28 amendment to the MHAA information which adversely affects you. If you do cancel the
29 contract you will be entitled to a refund of any deposit you made on account of the
30 contract. However, unless you return the MHAA information to the seller when you
31 cancel the contract, the seller may keep out of your deposit the cost of reproducing the
32 MHAA information, or \$100, whichever amount is less.

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

37 (1) Architectural changes, design, color, landscaping, or appearance;

38 (2) Occupancy density;

- 1 (3) Kind, number, or use of vehicles;
- 2 (4) Renting, leasing, mortgaging, or conveying property;
- 3 (5) Commercial activity; or
- 4 (6) Other matters.

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

7 (b) The vendor shall provide the purchaser the following information in
8 writing:

- 9 (1) A statement as to whether the lot is located within a development;
- 10 (2) (i) The current monthly fees or assessments imposed by the
11 homeowners association upon the lot;
- 12 (ii) The total amount of fees, assessments, and other charges
13 imposed by the homeowners association upon the lot during the prior fiscal year of the
14 homeowners association; [and]
- 15 (iii) A statement of whether any of the fees, assessments, or
16 other charges against the lot are delinquent; AND

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

19 **1. THE AGENDA OR MINUTES OF ANY MEETING OF**
20 **THE GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION;**

21 **2. A VOTE AT A MEETING OF THE HOMEOWNERS**
22 **ASSOCIATION; OR**

23 **3. ANY WRITTEN DOCUMENT DISTRIBUTED TO LOT**
24 **OWNERS BY THE GOVERNING BODY OR ANY MANAGEMENT COMPANY RETAINED**
25 **BY THE GOVERNING BODY;**

26 (3) The name, address, and telephone number of the management
27 agent of the homeowners association, or other officer or agent authorized by the
28 homeowners association to provide to members of the public, information regarding
29 the homeowners association and the development, or a statement that no agent or
30 officer is presently so authorized by the homeowners association;

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

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

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

6 (5) A copy of:

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

12 (ii) The bylaws and rules of the primary development, and of
13 other related developments to the extent reasonably available, to which the purchaser
14 shall become obligated on becoming an owner of the lot, including a statement that
15 these obligations are enforceable against an owner and the owner's tenants, if
16 applicable.

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

20 (2) The notification shall include, to the extent reasonably available,
21 the name and address of the transferee, the name and forwarding address of the
22 transferor, the date of transfer, the name and address of any mortgagee, and the
23 proportionate amount of any outstanding homeowners association fee or assessment
24 assumed by each of the parties to the transaction.

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

31 (e) In satisfying the requirements of subsection (b) of this section, the vendor
32 shall be entitled to rely upon the disclosures contained in the depository after June 30,
33 1989.

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

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

6 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2012.