

HOUSE BILL 412

N1

4lr2293
CF SB 229

By: ~~Delegates McMillan and Gilchrist~~ Delegate McMillan

Introduced and read first time: January 24, 2014

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 28, 2014

CHAPTER _____

1 AN ACT concerning

2 **Real Property – Condominiums and Homeowners Associations – Disclosures**
3 **to Purchasers on Resale of Unit or Lot – Limitation on Fees**

4 FOR the purpose of limiting the amount of the fee that a condominium council of unit
5 owners may charge a unit owner to furnish a certain certificate; ~~limiting the~~
6 ~~amount of the fee that~~ requiring a homeowners association or certain other
7 persons ~~may charge a lot owner for providing~~ to provide certain information
8 within a certain number of days after a certain request by a lot owner and
9 receipt of a certain fee; and generally relating to the resale of a condominium
10 unit or a lot located in a certain development.

11 BY repealing and reenacting, without amendments,
12 Article – Real Property
13 Section 11–135(a) and (b)
14 Annotated Code of Maryland
15 (2010 Replacement Volume and 2013 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Real Property
18 Section 11–135(c) and 11B–106
19 Annotated Code of Maryland
20 (2010 Replacement Volume and 2013 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 **Article – Real Property**

2 11–135.

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

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

9 (2) The bylaws;

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

11 (4) A certificate containing:

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

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

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

20 (iv) A statement of any capital expenditures approved by the
21 council of unit owners planned at the time of the conveyance which are not reflected in
22 the current operating budget disclosed under item (vi) of this item;

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

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

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

30 (viii) A statement generally describing any insurance policies
31 provided for the benefit of unit owners, a notice that copies of the policies are available

1 for inspection, stating the location at which the copies are available, and a notice that
2 the terms of the policy prevail over the description;

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

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

11 (xi) A statement of the remaining term of any leasehold estate
12 affecting the condominium and the provisions governing any extension or renewal
13 thereof; and

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

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);

34 (2) The bylaws;

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

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

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

6 (c) (1) The council of unit owners, within 20 days after a written request
7 by a unit owner and receipt of a reasonable fee therefor, not to exceed the **LESSER OF**
8 ~~\$50~~ **\$250 OR THE ACTUAL** cost to the council of unit owners, if any, shall furnish a
9 certificate containing the information necessary to enable the unit owner to comply
10 with subsection (a) of this section. A unit owner providing a certificate under
11 subsection (a) of this section is not liable to the purchaser for any erroneous
12 information provided by the council of unit owners and included in the certificate.

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

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

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

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

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

28 11B-106.

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

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

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

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

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

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

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

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

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

33 (2) Occupancy density;

34 (3) Kind, number, or use of vehicles;

35 (4) Renting, leasing, mortgaging, or conveying property;

36 (5) Commercial activity; or

1 (6) Other matters.

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

4 (b) The vendor shall provide the purchaser the following information in
5 writing:

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

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

9 (ii) The total amount of fees, assessments, and other charges
10 imposed by the homeowners association upon the lot during the prior fiscal year of the
11 homeowners association; and

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

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

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

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

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

24 (5) A copy of:

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

30 (ii) The bylaws and rules of the primary development, and of
31 other related developments to the extent reasonably available, to which the purchaser
32 shall become obligated on becoming an owner of the lot, including a statement that
33 these obligations are enforceable against an owner and the owner’s tenants, if
34 applicable.

1 **(C) THE HOMEOWNERS ASSOCIATION, THE MANAGEMENT AGENT OF**
2 **THE HOMEOWNERS ASSOCIATION, OR ANY OTHER AUTHORIZED OFFICER OR**
3 **AGENT OF THE HOMEOWNERS ASSOCIATION, WITHIN 20 DAYS AFTER A WRITTEN**
4 **REQUEST BY A LOT OWNER AND RECEIPT OF A REASONABLE FEE, NOT**
5 **EXCEEDING THE LESSER OF ~~\$50~~ \$250 OR THE ACTUAL COST OF PROVIDING THE**
6 **INFORMATION, SHALL PROVIDE ANY INFORMATION NECESSARY TO ENABLE THE**
7 **LOT OWNER TO COMPLY WITH SUBSECTION (B) OF THIS SECTION.**

8 **[(c)] (D)** (1) Within 30 calendar days of any resale transfer of a lot within
9 a development, the transferor shall notify the homeowners association for the primary
10 development of the transfer.

11 (2) The notification shall include, to the extent reasonably available,
12 the name and address of the transferee, the name and forwarding address of the
13 transferor, the date of transfer, the name and address of any mortgagee, and the
14 proportionate amount of any outstanding homeowners association fee or assessment
15 assumed by each of the parties to the transaction.

16 **[(d)] (E)** The requirements of subsection (b) of this section shall be deemed
17 to have been fulfilled if the information required to be disclosed is provided to the
18 purchaser in writing in a clear and concise manner. The disclosures may be
19 summarized or produced in any collection of documents, including plats, the
20 declaration, or the organizational documents of the homeowners association, provided
21 those documents effectively convey the required information to the purchaser.

22 **[(e)] (F)** In satisfying the requirements of subsection (b) of this section, the
23 vendor shall be entitled to rely upon the disclosures contained in the depository after
24 June 30, 1989.

25 **[(f)] (G)** The provisions of subsections (a), (b), **[(d), and] (e), AND (F)** of this
26 section do not apply to the sale of a lot in an action to foreclose a mortgage or deed of
27 trust.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2014.