

HOUSE BILL 1080

N1

6lr2550

By: **Delegate Cullison**

Introduced and read first time: February 11, 2016

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Condominiums and Homeowners Associations – Amendments to Governing**
3 **Documents**

4 FOR the purpose of altering the minimum percentage of affirmative votes of unit owners
5 required to amend certain governing documents of a condominium under certain
6 circumstances; providing that the minimum percentage of affirmative votes of unit
7 owners shall be attained in a certain manner; altering the minimum percentage of
8 affirmative votes of lot owners required to amend certain governing documents of a
9 homeowners association under certain circumstances; providing that the minimum
10 percentage of affirmative votes of lot owners shall be attained in a certain manner;
11 making a stylistic change; defining certain terms; and generally relating to
12 amendments to the governing documents of condominiums and homeowners
13 associations.

14 BY repealing and reenacting, with amendments,
15 Article – Real Property
16 Section 11–103, 11–104, and 11B–116
17 Annotated Code of Maryland
18 (2015 Replacement Volume)

19 BY adding to
20 Article – Real Property
21 Section 11–104.1
22 Annotated Code of Maryland
23 (2015 Replacement Volume)

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

26 **Article – Real Property**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 11-103.

2 (a) The declaration shall express at least the following particulars:

3 (1) The name by which the condominium is to be identified, which name
4 shall include the word "condominium" or be followed by the phrase "a condominium".

5 (2) A description of the condominium sufficient to identify it with
6 reasonable certainty together with a statement of the owner's intent to subject the property
7 to the condominium regime established under this title.

8 (3) A general description of each unit, including its perimeters, location,
9 and any other data sufficient to identify it with reasonable certainty. As to condominiums
10 created on or after July 1, 1981, except as provided by the declaration or the plat and subject
11 to paragraph (4)(ii) of this subsection:

12 (i) If walls, floors, or ceilings are designated as boundaries of a unit,
13 all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished
14 flooring, and any other materials constituting any part of the finished surfaces thereof are
15 a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the
16 common elements.

17 (ii) If any chute, flue, duct, wire, conduit, or any other fixture lies
18 partially within and partially outside the designated boundaries of a unit, any portion
19 thereof serving only that unit is a part of that unit, and any portion thereof serving more
20 than one unit or any portion of the common elements is a part of the common elements.

21 (iii) Subject to the provisions of subparagraph (ii) of this paragraph,
22 all spaces, interior partitions, and other fixtures and improvements within the boundaries
23 of a unit are a part of the unit.

24 (iv) Any shutters, awnings, window boxes, doorsteps, stoops, porches,
25 balconies, patios, and all exterior doors and windows or other fixtures designed to serve a
26 single unit, but located outside the unit's boundaries, are limited common elements
27 allocated exclusively to that unit.

28 (4) (i) A general description of the common elements together with a
29 designation of those portions of the common elements that are limited common elements
30 and the unit to which the use of each is restricted initially.

31 (ii) 1. A. This subparagraph applies to any condominium for
32 which a declaration, bylaws, and plat are recorded in the land records of the county where
33 the property is located on or after October 1, 2010.

34 B. This subparagraph does not apply to a condominium that
35 is occupied and used solely for nonresidential purposes.

1 2. The description of the common elements shall include the
2 following improvements to the extent that the improvements are shared by or serve more
3 than one unit or serve any portion of the common elements:

4 A. Roofs;

5 B. Foundations;

6 C. External and supporting walls;

7 D. Mechanical, electrical, and plumbing systems; and

8 E. Other structural elements.

9 3. With the exception of corrective amendments necessary to
10 comply with subparagraph 2 of this subparagraph, the description and designation of
11 the common elements required under subparagraph 2 of this subparagraph may not be
12 amended until after the date on which the unit owners, other than the developer and its
13 affiliates, first elect a controlling majority of the members of the board of directors for the
14 council of unit owners.

15 (5) The percentage interests appurtenant to each unit as provided in §
16 11-107 of this title.

17 (6) The number of votes at meetings of the council of unit owners
18 appurtenant to each unit.

19 (b) The information required by subsection (a)(2) through (4) of this section may
20 be incorporated in the declaration by reference to the condominium plat.

21 (c) (1) Except for a corrective amendment under § 11-103.1 of this title or as
22 provided in paragraph (2) of this subsection, the declaration may be amended only with the
23 [written] consent of [80 percent of] the unit owners [listed on the current roster] **AS**
24 **PROVIDED IN § 11-104.1 OF THIS TITLE.** Amendments under this section are subject to
25 the following limitations:

26 (i) Except to the extent expressly permitted or expressly required
27 by other provisions of this title, an amendment to the declaration may not change the
28 boundaries of any unit, the undivided percentage interest in the common elements of any
29 unit, the liability for common expenses or rights to common profits of any unit, or the
30 number of votes in the council of unit owners of any unit without the written consent of
31 every unit owner and mortgagee.

32 (ii) An amendment to the declaration may not modify in any way
33 rights expressly reserved for the benefit of the developer or provisions required by any
34 governmental authority or for the benefit of any public utility.

1 (iii) Except to the extent expressly permitted by the declaration, an
2 amendment to the declaration may not change residential units to nonresidential units or
3 change nonresidential units to residential units without the written consent of every unit
4 owner and mortgagee.

5 (iv) Except as otherwise expressly permitted by this title and by the
6 declaration, an amendment to the declaration may not redesignate general common
7 elements as limited common elements without the written consent of every unit owner and
8 mortgagee.

9 (v) No provision of this title shall be construed in derogation of any
10 requirement in the declaration or bylaws that all or a specified number of the mortgagees
11 of the condominium units approve specified actions contemplated by the council of unit
12 owners.

13 (2) (i) The council of unit owners may petition the circuit court in equity
14 for the county in which the condominium is located to correct:

15 1. An improper description of the units or common elements;
16 or

17 2. An improper assignment of the percentage interests in the
18 common elements, common expenses, and common profits.

19 (ii) The petition may be brought only if:

20 1. The unit owners, at a special meeting called for that
21 purpose, vote to petition the court to correct a specific error by a vote of at least $66 \frac{2}{3}$
22 percent of the unit owners present and voting at a properly convened meeting;

23 2. The council of unit owners gives notice of the special
24 meeting to each mortgagee of record for the condominium; and

25 3. An opportunity is provided for the mortgagees to speak at
26 the special meeting upon written request to the council of unit owners.

27 (iii) The court may reform the declaration to correct the error or
28 omission as the court considers appropriate, if:

29 1. The council of unit owners gives notice of the filing of the
30 petition to each mortgagee and unit owner within 15 days of filing;

31 2. The council of unit owners files an affidavit with the court
32 stating that the conditions of subparagraph (ii) of this paragraph have been met;

1 3. The council of unit owners proves, by a preponderance of
2 the evidence, that there is an error or omission as provided in subparagraph (i) of this
3 paragraph;

4 4. Any mortgagee with an interest in the condominium is
5 permitted to intervene in the proceedings upon filing a motion to intervene as provided in
6 the Maryland Rules;

7 5. The reformation does not substantially impair the
8 property rights of any unit owner or mortgagee; and

9 6. The court issues an order of reformation.

10 (iv) A final order of reformation may be appealed by any party within
11 30 days of its issuance. An order of reformation may not be recorded until the appeal period
12 has lapsed or all appeals have been completed.

13 (3) An amendment or order of reformation becomes effective on recordation
14 in the same manner as the declaration. If the condominium is registered with the Secretary
15 of State, the council of unit owners shall file a copy of the order of reformation with the
16 Secretary of State within 15 days of recordation.

17 11-104.

18 (a) The administration of every condominium shall be governed by bylaws which
19 shall be recorded with the declaration. If the council of unit owners is incorporated, these
20 bylaws shall be the bylaws of that corporation.

21 (b) The bylaws shall express at least the following particulars:

22 (1) The form of administration, indicating whether the council of unit
23 owners shall be incorporated or unincorporated, and whether, and to what extent, the
24 duties of the council of unit owners may be delegated to a board of directors, manager, or
25 otherwise, and specifying the powers, manner of selection, and removal of them;

26 (2) The mailing address of the council of unit owners;

27 (3) The method of calling the unit owners to assemble; the attendance
28 necessary to constitute a quorum at any meeting of the council of unit owners; the manner
29 of notifying the unit owners of any proposed meeting; who presides at the meetings of the
30 council of unit owners, who keeps the minute book for recording the resolutions of the
31 council of unit owners, and who counts votes [at meetings] of the council of unit owners;
32 and

33 (4) The manner of assessing against and collecting from unit owners their
34 respective shares of the common expenses.

1 (c) The bylaws also may contain any other provision regarding the management
2 and operation of the condominium including any restriction on or requirement respecting
3 the use and maintenance of the units and the common elements.

4 (d) The bylaws may contain a provision prohibiting any unit owner from voting
5 [at a meeting of the council of unit owners] if the council of unit owners has recorded a
6 statement of condominium lien on [his] **THE UNIT OWNER'S** unit and the amount
7 necessary to release the lien has not been paid at the time of the meeting.

8 (e) (1) A corrective amendment to the bylaws may be made in accordance with
9 § 11-103.1 of this title, or as provided in paragraph (2) of this subsection.

10 (2) (i) Except as provided in subparagraph (ii) of this paragraph,
11 [unless a higher percentage is required in the bylaws,] the bylaws may be amended by the
12 affirmative vote of unit owners [having at least 66 2/3 percent of the votes in the council of
13 unit owners] **AS PROVIDED UNDER § 11-104.1 OF THIS TITLE.**

14 (ii) The bylaws may be amended by the affirmative vote of unit
15 owners having at least 51% of the votes in the council of unit owners for the purpose of
16 requiring all unit owners to maintain condominium unit owner insurance policies on their
17 units.

18 (3) (i) Except as provided in paragraph (4) of this subsection, if the
19 declaration or bylaws contain a provision requiring any action on the part of the holder of
20 a mortgage or deed of trust on a unit in order to amend the bylaws, that provision shall be
21 deemed satisfied if the procedures under this paragraph are satisfied.

22 (ii) If the declaration or bylaws contain a provision described in
23 subparagraph (i) of this paragraph, the council of unit owners shall cause to be delivered to
24 each holder of a mortgage or deed of trust entitled to notice, a copy of the proposed
25 amendment to the bylaws.

26 (iii) If a holder of the mortgage or deed of trust that receives the
27 proposed amendment fails to object, in writing, to the proposed amendment within 60 days
28 from the date of actual receipt of the proposed amendment, the holder shall be deemed to
29 have consented to the adoption of the amendment.

30 (4) Paragraph (3) of this subsection does not apply to amendments that:

31 (i) Alter the priority of the lien of the mortgage or deed of trust;

32 (ii) Materially impair or affect the unit as collateral; or

33 (iii) Materially impair or affect the right of the holder of the mortgage
34 or deed of trust to exercise any rights under the mortgage, deed of trust, or applicable law.

1 (5) Each particular set forth in subsection (b) of this section shall be
2 expressed in the bylaws as amended. An amendment under paragraph (2) of this subsection
3 shall be entitled to be recorded if accompanied by a certificate of the person specified in the
4 bylaws to count votes [at the meeting] of the council of unit owners that the amendment
5 was approved by unit owners having the required percentage of the votes and shall be
6 effective on recordation. This certificate shall be conclusive evidence of approval.

7 **11-104.1.**

8 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
9 **INDICATED.**

10 **(2) “GOOD STANDING” MEANS:**

11 **(I) HAVING NOT MORE THAN 3 MONTHS OF CONDOMINIUM**
12 **DUES OR FEES IN ARREARS; AND**

13 **(II) SATISFYING ANY OTHER REQUIREMENTS CONTAINED IN**
14 **THE BYLAWS OF THE CONDOMINIUM.**

15 **(3) “GOVERNING DOCUMENT” MEANS:**

16 **(I) A DECLARATION;**

17 **(II) BYLAWS;**

18 **(III) A DEED AND AGREEMENT; OR**

19 **(IV) RECORDED COVENANTS AND RESTRICTIONS.**

20 **(B) (1) NOTWITHSTANDING THE PROVISIONS OF A GOVERNING**
21 **DOCUMENT, A COUNCIL OF UNIT OWNERS MAY AMEND THE GOVERNING DOCUMENT**
22 **IN ACCORDANCE WITH THIS SUBSECTION.**

23 **(2) A GOVERNING DOCUMENT MAY BE AMENDED BY THE**
24 **AFFIRMATIVE VOTE OF UNIT OWNERS IN GOOD STANDING HAVING AT LEAST**
25 **TWO-THIRDS OF THE VOTES IN THE CONDOMINIUM, OR BY A LOWER PERCENTAGE IF**
26 **REQUIRED IN THE GOVERNING DOCUMENT.**

27 **(3) THE MINIMUM PERCENTAGE REQUIRED UNDER PARAGRAPH (2)**
28 **OF THIS SUBSECTION SHALL BE ATTAINED BY ADDING:**

29 **(I) AT LEAST A MAJORITY OF THE AFFIRMATIVE VOTES OF UNIT**
30 **OWNERS WHO VOTE:**

1 1. **AT A PROPERLY CONVENED MEETING OF THE UNIT**
2 **OWNERS; OR**

3 2. **BY RETURNING A BALLOT BY MAIL OR, IF**
4 **AUTHORIZED UNDER THE GOVERNING DOCUMENTS, ELECTRONIC TRANSMISSION;**
5 **AND**

6 **(II) THE NUMBER OF UNRETURNED BALLOTS.**

7 **(4) (I) FOR PURPOSES OF THIS SUBSECTION, A UNIT OWNER WHO**
8 **FAILS TO VOTE AT A PROPERLY CONVENED MEETING OR BY RETURNING A BALLOT**
9 **AS DESCRIBED IN PARAGRAPH (3) OF THIS SUBSECTION SHALL BE DEEMED TO HAVE**
10 **CONSENTED TO THE ADOPTION OF THE PROPOSED AMENDMENT.**

11 **(II) IF THE MINIMUM PERCENTAGE OF AFFIRMATIVE VOTES**
12 **SPECIFIED UNDER PARAGRAPH (3)(I) OF THIS SUBSECTION IS NOT MET, THE**
13 **NUMBER OF UNRETURNED BALLOTS MAY NOT BE CONSIDERED AND THE PROPOSED**
14 **AMENDMENT FAILS.**

15 11B-116.

16 (a) **(1) In this section[, “governing”] THE FOLLOWING WORDS HAVE THE**
17 **MEANINGS INDICATED.**

18 **(2) “GOOD STANDING” MEANS:**

19 **(I) HAVING NOT MORE THAN 3 MONTHS OF HOMEOWNERS**
20 **ASSOCIATION DUES OR FEES IN ARREARS; AND**

21 **(II) SATISFYING ANY OTHER REQUIREMENTS CONTAINED IN**
22 **THE BYLAWS OF THE HOMEOWNERS ASSOCIATION.**

23 **(3) “GOVERNING document” [includes] MEANS:**

24 **[(1)] (I) A declaration;**

25 **[(2)] (II) Bylaws;**

26 **[(3)] (III) A deed and agreement; [and] OR**

27 **[(4)] (IV) Recorded covenants and restrictions.**

1 (b) Notwithstanding the provisions of a governing document, a homeowners
2 association created before January 1, 1960, may amend the governing document once every
3 5 years, or more frequently if allowed by the governing document, by the affirmative vote
4 of lot owners having at least two-thirds of the votes in the development, or by a lower
5 percentage if required in the governing document.

6 (c) (1) NOTWITHSTANDING THE PROVISIONS OF A GOVERNING
7 DOCUMENT, A HOMEOWNERS ASSOCIATION MAY AMEND THE GOVERNING
8 DOCUMENT IN ACCORDANCE WITH THIS SUBSECTION.

9 (2) A GOVERNING DOCUMENT MAY BE AMENDED BY THE
10 AFFIRMATIVE VOTE OF LOT OWNERS IN GOOD STANDING HAVING AT LEAST
11 TWO-THIRDS OF THE VOTES IN THE DEVELOPMENT, OR BY A LOWER PERCENTAGE
12 IF REQUIRED IN THE GOVERNING DOCUMENT.

13 (3) THE MINIMUM PERCENTAGE REQUIRED UNDER PARAGRAPH (2)
14 OF THIS SUBSECTION MAY BE ATTAINED BY ADDING:

15 (i) AT LEAST A MAJORITY OF THE AFFIRMATIVE VOTES OF LOT
16 OWNERS WHO VOTE:

17 1. AT A PROPERLY CONVENED MEETING OF THE LOT
18 OWNERS; OR

19 2. BY RETURNING A BALLOT BY MAIL OR, IF
20 AUTHORIZED UNDER THE GOVERNING DOCUMENTS, ELECTRONIC TRANSMISSION;
21 AND

22 (ii) THE NUMBER OF UNRETURNED BALLOTS.

23 (4) FOR PURPOSES OF THIS SUBSECTION, A LOT OWNER WHO FAILS
24 TO VOTE AT A PROPERLY CONVENED MEETING OR BY RETURNING A BALLOT AS
25 DESCRIBED IN PARAGRAPH (3) OF THIS SUBSECTION SHALL BE DEEMED TO HAVE
26 CONSENTED TO THE ADOPTION OF THE PROPOSED AMENDMENT.

27 (5) IF THE MINIMUM PERCENTAGE OF AFFIRMATIVE VOTES
28 SPECIFIED UNDER PARAGRAPH (3)(I) OF THIS SUBSECTION IS NOT MET, THE
29 NUMBER OF UNRETURNED BALLOTS MAY NOT BE CONSIDERED AND THE PROPOSED
30 AMENDMENT FAILS.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2016.