

HOUSE BILL 1007

N1
HB 412/14 – ENV

5lr1070

By: **Delegates McMillan, Davis, and Holmes**
Introduced and read first time: February 13, 2015
Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Condominiums and Homeowners Associations – Disclosures to**
3 **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; requiring a
6 homeowners association or certain other persons to provide certain information
7 within a certain number of days after a certain request by a lot owner and receipt of
8 a certain fee; and generally relating to the resale of a condominium unit or a lot
9 located in a certain development.

10 BY repealing and reenacting, without amendments,
11 Article – Real Property
12 Section 11–135(a) and (b)
13 Annotated Code of Maryland
14 (2010 Replacement Volume and 2014 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article – Real Property
17 Section 11–135(c) and 11B–106
18 Annotated Code of Maryland
19 (2010 Replacement Volume and 2014 Supplement)

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

Article – Real Property

22 11–135.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 contains in conspicuous type a notice in the form specified in subsection (g)(1) of this
2 section, and the unit owner furnishes to the purchaser not later than 15 days prior to
3 closing:

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

5 (2) The bylaws;

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

7 (4) A certificate containing:

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

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

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

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

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

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

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

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

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

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

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

10 (5) A statement by the unit owner as to whether the unit owner has
11 knowledge:

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

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

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

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

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

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

27 (2) The bylaws;

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

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

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

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

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

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

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

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

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

22 11B-106.

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

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

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

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

35 "This sale is subject to the requirements of the Maryland Homeowners Association
36 Act (the "Act"). The Act requires that the seller disclose to you at or before the time the

1 contract is entered into, or within 20 calendar days of entering into the contract, certain
2 information concerning the development in which the lot you are purchasing is located. The
3 content of the information to be disclosed is set forth in § 11B-106(b) of the Act (the “MHAA
4 information”) as follows:

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

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

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

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

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

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

- 31 (1) A statement as to whether the lot is located within a development;
- 32 (2) (i) The current monthly fees or assessments imposed by the
33 homeowners association upon the lot;

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

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

6 (3) The name, address, and telephone number of the management agent of
7 the homeowners association, or other officer or agent authorized by the homeowners
8 association to provide to members of the public, information regarding the homeowners
9 association and the development, or a statement that no agent or officer is presently so
10 authorized by the homeowners association;

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

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

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

16 (5) A copy of:

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

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

26 **(C) THE HOMEOWNERS ASSOCIATION, THE MANAGEMENT AGENT OF THE**
27 **HOMEOWNERS ASSOCIATION, OR ANY OTHER AUTHORIZED OFFICER OR AGENT OF**
28 **THE HOMEOWNERS ASSOCIATION, WITHIN 20 DAYS AFTER A WRITTEN REQUEST BY**
29 **A LOT OWNER AND RECEIPT OF A REASONABLE FEE, NOT EXCEEDING THE LESSER**
30 **OF \$250 OR THE ACTUAL COST OF PROVIDING THE INFORMATION, SHALL PROVIDE**
31 **ANY INFORMATION NECESSARY TO ENABLE THE LOT OWNER TO COMPLY WITH**
32 **SUBSECTION (B) OF THIS SECTION.**

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

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

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

12 ~~[(e)]~~ **(F)** In satisfying the requirements of subsection (b) of this section, the
13 vendor shall be entitled to rely upon the disclosures contained in the depository after June
14 30, 1989.

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

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2015.