

HOUSE BILL 434

N1

3lr1035

By: **Delegate Charles**

Introduced and read first time: January 30, 2023

Assigned to: Environment and Transportation

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 11, 2023

CHAPTER _____

1 AN ACT concerning

2 **Maryland Condominium Act – Amendments to the Declaration**

3 FOR the purpose of reducing the percentage of unit owners listed on the current roster of
4 a condominium needed to consent to an amendment of a condominium's declaration
5 if none of the units of the condominium are owned by a developer of the
6 condominium; and generally relating to amendments to the declaration of a
7 condominium.

8 BY repealing and reenacting, with amendments,
9 Article – Real Property
10 Section 11–103(c)
11 Annotated Code of Maryland
12 (2015 Replacement Volume and 2022 Supplement)

13 BY repealing and reenacting, without amendments,
14 Article – Real Property
15 Section 11–103(d)
16 Annotated Code of Maryland
17 (2015 Replacement Volume and 2022 Supplement)

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

20 **Article – Real Property**

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.



11-103.

(c) (1) (I) 1. Except for a corrective amendment under § 11-103.1 of this title or as provided in paragraph [(2)] (3) of this subsection [or subsection (d) of this section], the declaration may be amended only with the written consent of [80 percent] 60% of the unit owners listed on the current roster. THE DECLARATION MAY BE AMENDED ONLY WITH THE WRITTEN CONSENT OF 66 2/3 PERCENT OF THE UNIT OWNERS LISTED ON THE CURRENT ROSTER.

2. SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH DOES NOT APPLY:

A. TO A CORRECTIVE AMENDMENT UNDER § 11-103.1 OF THIS TITLE;

B. AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH; OR

C. AS PROVIDED IN SUBSECTION (D) OF THIS SECTION.

(II) 1. IF ANY OF THE UNITS OF THE CONDOMINIUM ARE OWNED BY THE DEVELOPER, THE DECLARATION MAY BE AMENDED ONLY WITH THE WRITTEN CONSENT OF 80% OF THE UNIT OWNERS LISTED ON THE CURRENT ROSTER.

2. SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH DOES NOT APPLY:

A. TO A CORRECTIVE AMENDMENT UNDER § 11-103.1 OF THIS TITLE;

B. AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION; OR

C. AS PROVIDED IN SUBSECTION (D) OF THIS SECTION.

(2) Amendments under this section are subject to the following limitations:

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

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

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

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

(v) 1. Except as provided in subparagraph (vi) of this paragraph, if the declaration contains a provision requiring any action on the part of the holder of a mortgage or deed of trust on a unit in order to amend the declaration, that provision shall be deemed satisfied if the procedures under this subparagraph are satisfied.

2. If the declaration contains a provision described in subsubparagraph 1 of this subparagraph, the council of unit owners shall cause to be delivered to each holder of a mortgage or deed of trust entitled to notice a copy of the proposed amendment to the declaration.

3. If a holder of the mortgage or deed of trust that receives the proposed amendment fails to object, in writing, to the proposed amendment within 60 days after the date of actual receipt of the proposed amendment, the holder shall be deemed to have consented to the adoption of the amendment.

(vi) Subparagraph (v) of this paragraph does not apply to amendments that:

1. Alter the priority of the lien of the mortgage or deed of trust;

2. Materially impair or affect the unit as collateral; or

3. Materially impair or affect the right of the holder of the mortgage or deed of trust to exercise any rights under the mortgage, deed of trust, or applicable law.

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

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

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

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

4 1. The unit owners, at a special meeting called for that
5 purpose, vote to petition the court to correct a specific error by a vote of at least 66 2/3
6 percent of the unit owners present and voting at a properly convened meeting;

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

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

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

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

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

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

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

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

25 6. The court issues an order of reformation.

26 (iv) A final order of reformation may be appealed by any party within
27 30 days of its issuance. An order of reformation may not be recorded until the appeal period
28 has lapsed or all appeals have been completed.

29 **[(3)] (4)** An amendment or order of reformation becomes effective on
30 recordation in the same manner as the declaration. If the condominium is registered with
31 the Secretary of State, the council of unit owners shall file a copy of the order of reformation
32 with the Secretary of State within 15 days of recordation.

(d) (1) (i) A declaration may provide for the suspension of the use of parking or recreational facility common elements by a unit owner that is more than 60 days in arrears in the payment of any assessment due to the condominium.

(ii) If a declaration contains a suspension provision authorized under subparagraph (i) of this paragraph, the declaration shall state that a suspension of the use of common elements may not be implemented until the council of unit owners:

1. Mails to the unit owner a demand letter specifying a time period of at least 10 days within which the unit owner may pay the delinquent assessment or request a hearing to contest the suspension; and

2. If a unit owner requests a hearing to contest a suspension, provides notice and holds a hearing in accordance with § 11–113(b)(2) and (3) of this subtitle.

(2) Notwithstanding the provisions of the declaration or bylaws, the council of unit owners may amend the declaration to add or repeal a suspension provision authorized under paragraph (1)(i) of this subsection by the affirmative vote of at least 60% of the total eligible voters of the condominium under the voting procedures contained in the declaration or the bylaws.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.