

SENATE BILL 293

N1

0lr3123
CF HB 25

By: **Senator West**

Introduced and read first time: January 22, 2020

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

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

4 FOR the purpose of repealing a certain construction of certain provisions of law concerning
5 the amendment of the declaration of a condominium; establishing that a provision
6 in the declaration of a condominium that requires any action on the part of a holder
7 of a mortgage or deed of trust on a unit in order to amend the declaration shall be
8 deemed satisfied if certain procedures are satisfied under certain circumstances;
9 establishing that a provision in a governing document of a homeowners association
10 that requires any action on the part of a mortgage or deed of trust holder on a lot in
11 order to amend the governing document shall be deemed satisfied if certain
12 procedures are satisfied under certain circumstances; and generally relating to the
13 amendment of the declaration of a condominium or a governing document of a
14 homeowners association.

15 BY repealing and reenacting, with amendments,
16 Article – Real Property
17 Section 11–103(c)(1) and 11B–116
18 Annotated Code of Maryland
19 (2015 Replacement Volume and 2019 Supplement)

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

22 **Article – Real Property**

23 11–103.

24 (c) (1) Except for a corrective amendment under § 11–103.1 of this title or as
25 provided in paragraph (2) of this subsection or subsection (d) of this section, the declaration
26 may be amended only with the written consent of 80 percent of the unit owners listed on

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



the current roster. 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) No provision of this title shall be construed in derogation of any requirement in the declaration or bylaws that all or a specified number of the mortgagees of the condominium units approve specified actions contemplated by the council of unit owners.]

(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.

11B-116.

(a) (1) In this section the following words have the meanings indicated.

(2) "Governing document" includes:

(i) A declaration;

(ii) Bylaws;

(iii) A deed and agreement; and

(iv) Recorded covenants and restrictions.

(3) "In good standing" means not being more than 90 days in arrears in the payment of any assessment or charge due to the homeowners association.

(b) This section does not apply to a homeowners association that issues bonds or other long-term debt secured in whole or in part by annual charges assessed in accordance with a declaration, or to a village community association affiliated with the homeowners association.

(c) Notwithstanding the provisions of a governing document, a homeowners association may amend the governing document by the affirmative vote of lot owners in good standing having at least 60% of the votes in the development, or by a lower percentage if required in the governing document.

(D) (1) (I) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF A GOVERNING DOCUMENT CONTAINS A PROVISION REQUIRING ANY ACTION ON THE PART OF THE HOLDER OF A MORTGAGE OR DEED OF TRUST ON A LOT IN ORDER TO AMEND THE GOVERNING DOCUMENT, THAT PROVISION SHALL BE

1 DEEMED SATISFIED IF THE PROCEDURES UNDER THIS PARAGRAPH ARE SATISFIED.

2 (II) IF THE GOVERNING DOCUMENT CONTAINS A PROVISION
3 DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE HOMEOWNERS
4 ASSOCIATION SHALL CAUSE TO BE DELIVERED TO EACH HOLDER OF A MORTGAGE
5 OR DEED OF TRUST ENTITLED TO NOTICE A COPY OF THE PROPOSED AMENDMENT
6 TO THE GOVERNING DOCUMENT.

7 (III) IF A HOLDER OF THE MORTGAGE OR DEED OF TRUST THAT
8 RECEIVES THE PROPOSED AMENDMENT FAILS TO OBJECT, IN WRITING, TO THE
9 PROPOSED AMENDMENT WITHIN 60 DAYS AFTER THE DATE OF ACTUAL RECEIPT OF
10 THE PROPOSED AMENDMENT, THE HOLDER SHALL BE DEEMED TO HAVE
11 CONSENTED TO THE ADOPTION OF THE AMENDMENT.

12 (2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO
13 AMENDMENTS THAT:

14 (I) ALTER THE PRIORITY OF THE LIEN OF THE MORTGAGE OR
15 DEED OF TRUST;

16 (II) MATERIALLY IMPAIR OR AFFECT THE LOT AS COLLATERAL;
17 OR

18 (III) MATERIALLY IMPAIR OR AFFECT THE RIGHT OF THE
19 HOLDER OF THE MORTGAGE OR DEED OF TRUST TO EXERCISE ANY RIGHTS UNDER
20 THE MORTGAGE, DEED OF TRUST, OR APPLICABLE LAW.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2020.