

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Community Benefit Associations**

3 FOR the purpose of defining and establishing Maryland Community Benefit  
4 Associations; establishing that certain provisions of Article 11B of the  
5 Real Property Title of the Code apply to a community benefit association;  
6 requiring certain meetings of the board of directors of a community benefit  
7 association or a committee of the board to be open to certain individuals; requiring  
8 the board of directors of the association to provide a designated period of time for  
9 comments under certain circumstances; requiring the board of directors to convene  
10 at least one meeting each year at which attendees may comment on any matter  
11 relating to the association; authorizing a meeting of the board of directors or a  
12 committee of the board to be held in closed session under certain circumstances;  
13 prohibiting an action from being taken or a matter being discussed in a closed  
14 session except under certain circumstances; requiring certain books and records of  
15 a community benefit association to be made available for review or copying, or  
16 both, by certain individuals under certain circumstances; requiring requests to  
17 review or copy books and records to be made in writing; requiring certain copies  
18 of financial statements or minutes of the board of directors to be compiled and sent  
19 within certain periods of time under certain circumstances; authorizing certain  
20 books and records to be withheld from public inspection under certain  
21 circumstances; authorizing the board of directors to impose only a reasonable  
22 charge that does not exceed certain limits for reviewing or copying books and  
23 records; requiring community benefit associations to maintain fidelity insurance;  
24 stating certain findings and declarations; and generally relating to community  
25 benefit associations.

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

1 BY adding to  
2 Article — Corporations and Associations  
3 Section 5-6D-01, 02, 03, 04 Under the new Subtitle “Subtitle 6D – Community  
4 Benefit Associations”  
5 Annotated Code of Maryland  
6 (2014 Replacement Volume and 2017 Supplement)

7 BY repealing and reenacting, with amendments,  
8 Article – Real Property  
9 Section 11B-102  
10 Annotated Code of Maryland  
11 (2015 Replacement Volume and 2017 Supplement)

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

14 Article — Corporations and Associations  
15  
16 Subtitle 6D. Community Benefit Associations

17 5-6D-01.

18 "COMMUNITY BENEFIT ASSOCIATION" MEANS A NON PROFIT CORPORATION  
19 PROVIDING SERVICES AND AMENITIES TO, AND MAINTAINING FACILITIES FOR THE BENEFIT  
20 OF, A COMMUNITY WITH OVER 20,000 LOTS, INCLUDING WITHOUT LIMITATION, COLUMBIA  
21 ASSOCIATION, INC. IN HOWARD COUNTY SERVING COLUMBIA AND ITS ENVIRONS UNDER  
22 THE DECLARATION OF COVENANTS, EASEMENTS, CHARGES, AND LIENS DATED  
23 DECEMBER 13, 1966, AND RECORDED IN THE LAND RECORDS OF HOWARD COUNTY.

24 5-6D-02.

25 (A) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

26 (1) COLUMBIA ASSOCIATION, INC. IN HOWARD COUNTY IS A COMMUNITY  
27 BENEFIT ASSOCIATION;

28 (2) ARTICLE 11B OF THE REAL PROPERTY TITLE OF THE CODE WAS  
29 ENACTED IN 1987, 20 YEARS AFTER THE CREATION OF COLUMBIA ASSOCIATION, INC.; AND

30 (3) COLUMBIA ASSOCIATION'S GOVERNING DOCUMENTS, INCLUDING THE  
31 DECLARATION, CHARTER, AND BYLAWS, ADDRESS MANY OF THE SUBJECT MATTERS  
32 COVERED BY ARTICLE 11B OF THE REAL PROPERTY TITLE OF THE CODE AND, THEREFORE,

33 SUBJECTING COLUMBIA ASSOCIATION, INC. TO THOSE PROVISIONS IS UNNECESSARY AND  
34 REDUNDANT.

35 (B) ONLY THE PROVISIONS OF §§ 11B-101, 11B-102(G), 11B-104, 11B-105,  
36 11B-106, 11B-106.2, 11B-107, 11B-108, 11B-109, 11B-110, 11B-112.1, 11B-112.2, 11B-  
37 113, 11B-113.1, 11B-113.2, 11B-113.3, 11B-113.4, 11B-113.5, 11B-114, AND 11B-117 OF  
38 THE REAL PROPERTY TITLE OF THE CODE APPLY TO A COMMUNITY BENEFIT ASSOCIATION.  
39 THE OTHER SECTIONS OF ARTICLE 11B OF THE REAL PROPERTY TITLE OF THE CODE DO NOT  
40 APPLY TO A COMMUNITY BENEFIT ASSOCIATION.

41 (C) THE FIRST-PRIORITY STATUS OF THE ANNUAL CHARGES IMPOSED BY THE  
42 DECLARATION REFERENCED IN SUBSECTION 5-6D-01 OF THIS TITLE IS PRESERVED AND  
43 REMAINS UNAFFECTED BY THE DESIGNATION OF COLUMBIA ASSOCIATION, INC. AS A  
44 COMMUNITY BENEFIT ASSOCIATION, AND A FIRST PRIORITY LIEN FOR SAID ANNUAL  
45 CHARGES MAY BE ENFORCED EITHER ACCORDING TO THE PROCEDURES PROVIDED IN THE  
46 DECLARATION OR BY ANY OTHER PROCEDURES PROVIDED OR PERMITTED BY STATUTE.

47 5-6D-03.

48 EXCEPT AS PROVIDED IN THIS TITLE, AND NOTWITHSTANDING ANYTHING  
49 CONTAINED IN ANY OF THE GOVERNING DOCUMENTS OF THE COMMUNITY BENEFIT  
50 ASSOCIATION:

51 (A) SUBJECT TO THE PROVISIONS OF PARAGRAPH (C) OF THIS SECTION,  
52 ALL MEETINGS OF THE BOARD OF DIRECTORS OF A COMMUNITY BENEFIT ASSOCIATION OR A  
53 COMMITTEE OF THE BOARD OF DIRECTORS SHALL BE OPEN TO ALL INDIVIDUALS LIVING,  
54 WORKING, OR OWNING PROPERTY IN THE COMMUNITY SERVED BY THE COMMUNITY  
55 BENEFIT ASSOCIATION;

56 (B) (1) THE BOARD OF DIRECTORS SHALL PROVIDE A DESIGNATED  
57 PERIOD OF TIME DURING AN OPEN MEETING TO ALLOW ANY INDIVIDUAL ATTENDING THE  
58 MEETING TO COMMENT ON TOPICS LISTED ON THE MEETING AGENDA; AND

59 (2) THE BOARD OF DIRECTORS SHALL CONVENE AT LEAST ONE  
60 MEETING EACH YEAR AT WHICH ATTENDEES MAY COMMENT ON ANY MATTER RELATING TO  
61 THE BUSINESS OF THE COMMUNITY BENEFIT ASSOCIATION;

62 (C) A MEETING OF THE BOARD OF DIRECTORS OF THE COMMUNITY  
63 BENEFIT ASSOCIATION OR A COMMITTEE OF THE BOARD OF DIRECTORS MAY BE HELD IN  
64 CLOSED SESSION UPON A MAJORITY VOTE OF THE BOARD AND ONLY FOR THE FOLLOWING  
65 PURPOSES:

66 (1) DISCUSSION OF MATTERS PERTAINING TO EMPLOYEES AND  
67 PERSONNEL;

68 (2) PROTECTION OF THE PRIVACY OR REPUTATION OF INDIVIDUALS  
69 IN MATTERS NOT RELATED TO THE COMMUNITY BENEFIT ASSOCIATION'S BUSINESS;

70 (3) CONSULTATION WITH LEGAL COUNSEL ON LEGAL MATTERS;

71 (4) CONSULTATION WITH STAFF PERSONNEL, CONSULTANTS,  
72 ATTORNEYS, BOARD MEMBERS, OR OTHER PERSONS IN CONNECTION WITH PENDING OR  
73 POTENTIAL LITIGATION OR OTHER LEGAL MATTERS;

74 (5) INVESTIGATIVE PROCEEDINGS CONCERNING POSSIBLE OR  
75 ACTUAL CRIMINAL MISCONDUCT;

76 (6) CONSIDERATION OF THE TERMS OR CONDITIONS OF A BUSINESS  
77 TRANSACTION IN THE NEGOTIATION STAGE;

78 (7) COMPLIANCE WITH A SPECIFIC CONSTITUTIONAL, STATUTORY,  
79 OR JUDICIALLY IMPOSED REQUIREMENT PROTECTING PARTICULAR PROCEEDINGS OR  
80 MATTERS FROM PUBLIC DISCLOSURE; OR

81 (8) DISCUSSION OF A LOT OWNER'S PAYMENT OF, OR FAILURE TO  
82 PAY, THE COMMUNITY BENEFIT ASSOCIATION'S ANNUAL CHARGE; AND

83 (D) IF A MEETING IS HELD IN CLOSED SESSION UNDER PARAGRAPH (C) OF  
84 THIS SECTION, AN ACTION MAY NOT BE TAKEN AND A MATTER MAY NOT BE DISCUSSED IF IT  
85 IS NOT PERMITTED BY PARAGRAPH (C) OF THIS SECTION.

86 5-6D-04.

87 (A) (1) (I) EXCEPT AS PROVIDED IN SUBSECTION (A)(2) OF THIS SECTION,  
88 ALL BOOKS AND RECORDS KEPT BY OR ON BEHALF OF A COMMUNITY BENEFIT ASSOCIATION  
89 AND WHICH ARE COMPRISED OF EXISTING DOCUMENTS PREPARED OR RECEIVED BY THE  
90 CORPORATION IN THE ORDINARY COURSE OF ITS BUSINESS SHALL BE MADE AVAILABLE FOR  
91 REVIEW, OR COPYING, OR BOTH, BY A PERSON LIVING, WORKING, OR OWNING PROPERTY IN  
92 THE COMMUNITY SERVED BY THE COMMUNITY BENEFIT ASSOCIATION.

93 (II) A REQUEST FOR REVIEW OR COPYING OF BOOKS AND RECORDS  
94 MADE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE MADE IN WRITING.

95 (III) IF A REQUEST IS MADE FOR A COPY OF FINANCIAL STATEMENTS  
96 OF THE COMMUNITY BENEFIT ASSOCIATION OR FOR THE MINUTES OF AN OPEN MEETING OF

97 THE BOARD OF DIRECTORS OF THE COMMUNITY BENEFIT ASSOCIATION, IT SHALL COMPILE  
98 AND SEND THE REQUESTED INFORMATION:

99 1. WITHIN 21 DAYS AFTER RECEIPT OF THE WRITTEN REQUEST,  
100 IF THE FINANCIAL STATEMENTS OR MINUTES WERE PREPARED WITHIN THE 3 YEARS  
101 IMMEDIATELY PRECEDING RECEIPT OF THE REQUEST; OR

102 2. WITHIN 45 DAYS AFTER RECEIPT OF THE WRITTEN REQUEST,  
103 IF THE FINANCIAL STATEMENTS OR MINUTES WERE PREPARED MORE THAN 3 YEARS BEFORE  
104 RECEIPT OF THE REQUEST.

105 (2) BOOKS AND RECORDS KEPT BY OR ON BEHALF OF A COMMUNITY  
106 BENEFIT ASSOCIATION MAY BE WITHHELD FROM PUBLIC INSPECTION, EXCEPT FOR REVIEW  
107 BY THE PERSON WHO IS THE SUBJECT OF THE RECORD OR THE PERSON'S DESIGNEE OR LEGAL  
108 GUARDIAN, TO THE EXTENT THAT THEY CONCERN:

109 (I) PERSONNEL RECORDS, OTHER THAN EMPLOYEE COMPENSATION  
110 INFORMATION NOT SPECIFICALLY IDENTIFIABLE BY EMPLOYEE NAME OR OTHER  
111 INDIVIDUAL IDENTIFYING INFORMATION;

112 (II) AN INDIVIDUAL'S MEDICAL RECORDS;

113 (III) AN INDIVIDUAL'S PERSONAL FINANCIAL RECORDS, INCLUDING  
114 INFORMATION ABOUT ASSETS, INCOME, LIABILITIES, NET WORTH, BANK BALANCES,  
115 FINANCIAL HISTORY, OR CREDITWORTHINESS;

116 (IV) AN INDIVIDUAL LOT OWNER'S PAYMENT OF OR FAILURE TO PAY  
117 THE COMMUNITY BENEFIT ASSOCIATION'S ANNUAL CHARGE;

118 (V) RECORDS RELATING TO BUSINESS TRANSACTIONS THAT ARE  
119 CURRENTLY IN NEGOTIATION;

120 (VI) RECORDS RELATING TO THE ADVICE OF LEGAL COUNSEL; OR

121 (VII) MINUTES OF A CLOSED MEETING OF THE BOARD OF DIRECTORS  
122 OR A COMMITTEE OF THE BOARD, UNLESS A MAJORITY OF THE BOARD OF DIRECTORS OF THE  
123 COMMUNITY BENEFIT ASSOCIATION APPROVES UNSEALING THE MINUTES FOR PUBLIC  
124 INSPECTION.

125 (B) (1) A COMMUNITY BENEFIT ASSOCIATION MAY IMPOSE A REASONABLE  
126 CHARGE ON A PERSON REQUESTING REVIEW OR COPYING OF THE COMMUNITY BENEFIT  
127 ASSOCIATION'S BOOKS AND RECORDS OR DELIVERY OF COPIES OF SUCH BOOKS AND  
128 RECORDS.

129 (2) A CHARGE IMPOSED UNDER PARAGRAPH (1) OF THIS SUBSECTION FOR  
130 REVIEW AND COPYING OF BOOKS AND RECORDS MAY NOT EXCEED THE LIMITS AUTHORIZED  
131 UNDER TITLE 7, SUBTITLE 2 OF THE COURTS & JUDICIAL PROCEEDINGS ARTICLE OF THE  
132 CODE.

133 5-6D-05

134 SUBJECT TO REASONABLE RESTRICTIONS, A COMMUNITY BENEFIT ASSOCIATION  
135 SHALL PERMIT

136 (A) THE DISTRIBUTION OF WRITTEN MATERIALS BY A LOT OWNER REGARDING THE  
137 OPERATION OF THE COMMUNITY BENEFIT ASSOCIATION IN A LOCATION WHERE ITS  
138 GOVERNING BODY DISTRIBUTES WRITTEN MATERIALS, AND

139 (B) A MEETING OF LOT OWNERS TO DISCUSS THE OPERATION OF THE COMMUNITY  
140 BENEFIT ASSOCIATION IN A LOCATION THAT THE GOVERNING BODY USES FOR  
141 SCHEDULED MEETINGS.

142 5-6D-06

143 A COMMUNITY BENEFIT ASSOCIATION SHALL MAINTAIN AT LEAST \$3,000,000 IN  
144 FIDELITY INSURANCE THAT PROVIDES FOR THE INDEMNIFICATION OF THE COMMUNITY  
145 BENEFIT ASSOCIATION AGAINST LOSS ARISING FROM FRAUD, DISHONESTY OR CRIMINAL  
146 ACTS BY ANY OFFICER, DIRECTOR, AGENT OR EMPLOYEE CHARGED WITH THE OPERATION  
147 OR MAINTENANCE OF THE COMMUNITY BENEFIT ASSOCIATION AND WHO CONTROLS AND  
148 DISBURSES FUNDS.

149

150 Article – Real Property

151 § 11B-102(G)

152 (G) EXCEPT AS PROVIDED IN SUBSECTION 5-6D-02(B) OF THE CORPORATIONS  
153 AND ASSOCIATIONS ARTICLE OF THE CODE, THIS TITLE DOES NOT APPLY TO A COMMUNITY  
154 BENEFIT ASSOCIATION.

155 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
156 June 1, 2019.

*Note: The text of the law is taken from Michie's Annotated Code of Maryland (the official codification of Maryland statutes), Real Property Article, which contains the Maryland Homeowners Association (HOA) Act in Title 11B.*

*Note: Black/Green text indicates that the HOA Act section will apply to the proposed Community Benefit Association (CBA); Red/Blue text indicates the section will **NOT** apply to the CBA.*

*In those cases where it is indicated that an HOA Act section will not apply to a CBA, the reason is provided.*

## **Title 11B Maryland Homeowners Association Act**

### **SECTION 11B-101 will apply to a CBA.**

#### § 11B-101. Definitions.

(a) *In general.* - In this title the following words have the meanings indicated, unless the context requires otherwise.

(b) *Common areas.* - “Common areas” means property which is owned or leased by a homeowners association.

(c) *Declarant.* - “Declarant” means any person who subjects property to a declaration.

(d) *Declaration.* - (1) “Declaration” means an instrument, however denominated, recorded among the land records of the county in which the property of the declarant is located, that creates the authority for a homeowners association to impose on lots, or on the owners or occupants of lots, or on another homeowners association, condominium, or cooperative housing corporation any mandatory fee in connection with the provision of services or otherwise for the benefit of some or all of the lots, the owners or occupants of lots, or the common areas.

(2) “Declaration” includes any amendment or supplement to the instruments described in paragraph (1) of this subsection.

(3) “Declaration” does not include a private right-of-way or similar agreement unless it requires a mandatory fee payable annually or at more frequent intervals.

(e) *Depository; homeowners association depository.* - “Depository” or “homeowners association depository” means the document file created by the clerk of the court of each county and the City of Baltimore where a homeowners association may periodically deposit information as required by this title.

(f) *“Development”* - (1) “Development” means property subject to a declaration.

(2) “Development” includes property comprising a condominium or cooperative housing corporation to the extent that the property is part of a development.

(3) “Development” does not include a cooperative housing corporation or a condominium.

(g) *Electronic transmission.* - “Electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that:

(1) May be retained, retrieved, and reviewed by a recipient of the communication; and

(2) May be reproduced directly in paper form by a recipient through an automated process.

(h) *Governing body*. - "Governing body" means the homeowners association, board of directors, or other entity established to govern the development.

(i) *Homeowners association*. - (1) "Homeowners association" means a person having the authority to enforce the provisions of a declaration.

(2) "Homeowners association" includes an incorporated or unincorporated association.

(j) *Lot*. - (1) "Lot" means any plot or parcel of land on which a dwelling is located or will be located within a development.

(2) "Lot" includes a unit within a condominium or cooperative housing corporation if the condominium or cooperative housing corporation is part of a development.

(k) *Primary development*. - "Primary development" means a development such that the purchaser of a lot will pay fees directly to its homeowners association.

(l) *Recorded covenants and restrictions*. - "Recorded covenants and restrictions" means any instrument of writing which is recorded in the land records of the jurisdiction within which a lot is located, and which instrument governs or otherwise legally restricts the use of such lot.

(m) *Related development*. - "Related development" means a development such that the purchaser of a lot will pay fees to the homeowners association of such development through the homeowners association of a primary development or another development.

(n) *Unaffiliated declarant*. - "Unaffiliated declarant" means a person who is not affiliated with the vendor of a lot but who has subjected such property to a declaration required to be disclosed by this title.

SECTION 11B-102 will not apply to a CBA

**Reason: This Section is being replaced by Section 5-6D-02(B) of the CBC law, which lists those sections of the HOA Act that apply to a CBC, and a new section 11-102(G) of the HOA Act that references section 5-6D-02(B) of the CBC law.**

§ 11B-102. Applicability of title and 11B-105 through 11B-108 and 11B-110.

(a) *Homeowners associations in existence after July 1, 1987*. - Except as expressly provided in this title, the provisions of this title apply to all homeowners associations that exist in the State after July 1, 1987.

Initial sales of lots within developments

(b) *Applicability of §§ 11B-105 and 11B-108*. - The provisions of §§ 11B-105 and 11B-108 of this title do not apply to the initial sale of lots within the development to members of the public if on July 1, 1987:

(1) More than 50 percent of the lots included within or to be included within the development have been sold under a bona fide arm's length contract to members of the public who intend to occupy or rent the lots for residential purposes; and

(2) Less than 100 lots included within or to be included within the development have not been sold under a bona fide arm's length contract to members of the public who intend to occupy or rent the lots for residential purposes.

(c) *Applicability of § 11B-110*. - The provisions of § 11B-110 of this title do not apply to common area improvements substantially completed before July 1, 1987.



(d) *Applicability of § 11B-105.* - The provisions of § 11B-105 of this title do not apply to developments containing 12 or fewer lots or in which 12 or fewer lots remain to be sold as of July 1, 1987.

(e) *Property to which title does not apply; exception.* - Except as provided in § 11B-101(f) of this title, this title does not apply to any property which is:

- (1) Part of a condominium regime governed by Title 11 of this article;
- (2) Part of a cooperative housing corporation; or
- (3) To be occupied and used for nonresidential purposes.

(f) *Contracts to which §§ 11B-105, 11B-106, 11B-107, and 11B-108 do not apply.* - For any contract for the sale of a lot that is entered into before July 1, 1987, the provisions of §§ 11B-105, 11B-106, 11B-107, and 11B-108 of this title do not apply.

**SECTION 11B-103 will not apply to a CBA**

**Reason: Because CA will be a CBA, this section would have no applicability to CA.**

§ 11B-103. Variance of title's provisions and waiver of rights conferred thereby, and evasion of title's requirements, limitations, or prohibitions prohibited.

Except as expressly provided in this title, the provisions of this title may not be varied by agreement, and rights conferred by this title may not be waived. A declarant or vendor may not act under a power of attorney or use any other device to evade the requirements, limitations, or prohibitions of this title.

**SECTION 11B-104 will apply to a CBA**

§ 11B-104. Building code or zoning laws, ordinances, and regulations to be given full force and effect; local laws, ordinances, or regulations; alternative dispute resolution.

(a) *Building code or zoning laws, ordinances and regulations to be given full force and effect.* - The provisions of all laws, ordinances, and regulations concerning building codes or zoning shall have full force and effect to the extent that they apply to a development and shall be construed and applied with reference to the overall nature and use of the property without regard to whether the property is part of a development.

(b) *Local laws, ordinances, or regulations.* - A local government may not enact any law, ordinance, or regulation which would:

(1) Impose a burden or restriction on property which is part of a development because it is part of a development;

(2) Require that additional disclosures relating to the development be made to purchasers of lots within the development, other than the disclosures required by § 11B-105, § 11B-106, or § 11B-107 of this title;

(3) Provide that the disclosures required by § 11B-105, § 11B-106, or § 11B-107 of this title be registered or otherwise subject to the approval of any governmental agency;

(4) Provide that additional cancellation rights be provided to purchasers, other than the cancellation rights under § 11B-108(b) and (c) of this title;

(5) Create additional implied warranties or require additional express warranties on improvements to common areas other than those warranties described in § 11B-110 of this title; or

(6) Expand the open meeting requirements of § 11B-111 of this title or open record requirements of § 11B-112 of this title.

(c) *Alternative Dispute Resolution.* - Subject to the provisions of this title, a code home rule county located in the Southern Maryland class, as identified in § 9-302 of the Local Government Article, may establish a homeowners association commission with the authority to hear and resolve disputes between a homeowners association and a homeowner regarding the enforcement of the recorded covenants or restrictions of the homeowners association by providing alternative dispute resolution services, including binding arbitration.

### **SECTION 11B-105 will apply to a CBA**

#### **§ 11B-105. Initial sale of lots in developments containing more than 12 lots.**

(a) *Contract.* A contract for the initial sale of a lot in a development containing more than 12 lots to a member of the public who intends to occupy or rent the lot for residential purposes is not enforceable by the vendor unless:

(1) The purchaser is given, at or before the time a contract is entered into between the vendor and the purchaser, or within 7 calendar days of entering into the contract, the disclosures set forth in subsection (b) of this section;

(2) The purchaser is given notice of any changes in mandatory fees and payments exceeding 10 percent of the amount previously stated to exist or any other substantial and material amendment to the disclosures after the same becomes known to the vendor; and

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

“This sale is subject to the requirements of the Maryland Homeowners Association Act (the “Act”). The Act requires that the seller disclose to you at or before the time the contract is entered into, or within 7 calendar days of entering into the contract, certain information concerning the development in which the lot you are purchasing is located. The content of the information to be disclosed is set forth in § 11B-105(b) of the Act (the “MHAA information”) as follows: (The notice shall include at this point the text of § 11B-105(b) in its entirety).

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

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

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

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

(b) *Information to be supplied by vendor.* - The vendor shall provide the purchaser the following information in writing:

(1) (i) The name, principal address, and telephone number of the vendor and of the declarant, if the declarant is not the vendor; or

(ii) If the vendor is a corporation or partnership, the names and addresses of the principal officers of the corporation, or general partners of the partnership;

(2) (i) The name, if any, of the homeowners association; and

(ii) If incorporated, the state in which the homeowners association is incorporated and the name of the Maryland resident agent;

(3) A description of:

(i) The location and size of the development, including the minimum and maximum number of lots currently planned or permitted, if applicable, which may be contained within the development; and

(ii) Any property owned by the declarant or the vendor contiguous to the development which is to be dedicated to public use;

(4) If the development is or will be within or a part of another development, a general description of the other development;

(5) If the declarant has reserved in the declaration the right to annex additional property to the development, a description of the size and location of the additional property and the approximate number of lots currently planned to be contained in the development, as well as any time limits within which the declarant may annex such property;

(6) A copy of:

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

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

(7) A description or statement of any property which is currently planned to be owned, leased, or maintained by the homeowners association;

(8) A copy of the estimated proposed or actual annual budget for the homeowners association for the current fiscal year, including a description of the replacement reserves for common area improvements, if any, and a copy of the current projected budget for the

homeowners association based upon the development fully expanded in accordance with expansion rights contained in the declaration;

(9) A statement of current or anticipated mandatory fees or assessments to be paid by owners of lots within the development for the use, maintenance, and operation of common areas and for other purposes related to the homeowners association and whether the declarant or vendor will be obligated to pay the fees in whole or in part;

(10) (i) A brief description of zoning and other land use requirements affecting the development; or

(ii) A written disclosure of where the information is available for inspection;

(11) A statement regarding:

(i) When mandatory homeowners association fees or assessments will first be levied against owners of lots;

(ii) The procedure for increasing or decreasing such fees or assessments;

(iii) How fees or assessments and delinquent charges will be collected;

(iv) Whether unpaid fees or assessments are a personal obligation of owners of lots;

(v) Whether unpaid fees or assessments bear interest and if so, the rate of interest;

(vi) Whether unpaid fees or assessments may be enforced by imposing a lien on a lot under the terms of the Maryland Contract Lien Act; and

(vii) Whether lot owners will be assessed late charges or attorneys' fees for collecting unpaid fees or assessments and any other consequences for the nonpayment of the fees or assessments;

(12) If any sums of money are to be collected at settlement for contribution to the homeowners association other than prorated fees or assessments, a statement of the amount to be collected and the intended use of such funds; and

(13) A description of special rights or exemptions reserved by or for the benefit of the declarant or the vendor, including:

(i) The right to conduct construction activities within the development;

(ii) The right to pay a reduced homeowners association fee or assessment; and

(iii) Exemptions from use restrictions or architectural control provisions contained in the declaration or provisions by which the declarant or the vendor intends to maintain control over the homeowners association.

(c) *Standard for compliance with subsection (b).* – *In general.* - Except as provided in subsection (d) of this section, the requirements of subsection (b) of this section shall be deemed to have been fulfilled if the information required to be disclosed is provided to the purchaser in writing in a clear and concise manner. The disclosure may be summarized or produced in a collection of documents, including plats, the declaration, or the organizational documents of the homeowners association, provided those documents effectively convey the required information to the purchaser.

(d) *Standard for compliance with subsection (b).* – *Exception.* (1)(i) Subject to the provisions of subparagraph (ii) of this paragraph, if any of the information required to be disclosed by subsection (b) of this section concerns property that is subjected to a declaration by a person who is not affiliated with the vendor, within 20 calendar days after receipt of a written request from the vendor of such property, and receipt of a reasonable fee therefor not to exceed the cost, if any, of reproduction, an unaffiliated declarant shall notify the vendor in writing of the information that is contained in the depository, and

furnish the information necessary to enable the vendor to comply with subsection (b) of this section; and

(ii) An unaffiliated declarant may not be required to furnish information regarding a homeowners association over which the unaffiliated declarant has no control, or with respect to any declaration which the unaffiliated declarant did not file.

(2) A vendor is not liable to the purchaser for any erroneous information provided by an unaffiliated declarant, so long as the vendor provides the purchaser with a certificate stating the name of the person who provided the information along with an address and telephone number for contacting such person.

(e) *Standard for compliance with subsection (b) – Information and disclosures contained in depository.* - (1) In satisfying the requirements of subsection (b) of this section, the vendor shall be entitled to rely upon the disclosures contained in the depository after June 30, 1989.

(2) In satisfying a vendor's request for any information described under subsection (b) of this section, a homeowners association:

(i) Shall be entitled to direct the vendor to obtain such information from the depository for all disclosures contained in the depository after June 30, 1989; and

(ii) May not be required to supply a vendor with any information which is contained in the depository.

(f) *Requirements inapplicable to foreclosure sale.* - The provisions of this section do not apply to a sale of a lot in an action to foreclose a mortgage or deed of trust.

### **SECTION 11B-106 will apply to a CBA**

#### **11B-106. Resale of lot; initial sale of lot in development containing 12 or fewer lots.**

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

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

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

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

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

If you have not received all of the MHAA information 5 calendar days or more before entering into the contract, you have 5 calendar days to cancel this contract after

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

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

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

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

(b) *Information to be supplied by vendor.* - The vendor shall provide the purchaser the following information in writing:

- (1) A statement as to whether the lot is located within a development;
- (2) (i) The current monthly fees or assessments imposed by the homeowners association upon the lot;  
(ii) The total amount of fees, assessments, and other charges imposed by the homeowners association upon the lot during the prior fiscal year of the homeowners association; and  
(iii) A statement of whether any of the fees, assessments, or other charges against the lot are delinquent;
- (3) The name, address, and telephone number of the management agent of the homeowners association, or other officer or agent authorized by the homeowners association to provide to members of the public, information regarding the homeowners association and the development, or a statement that no agent or officer is presently so authorized by the homeowners association;
- (4) A statement as to whether the owner has actual knowledge of:
  - (i) The existence of any unsatisfied judgments or pending lawsuits against the homeowners association; and
  - (ii) Any pending claims, covenant violations actions, or notices of default against the lot; and
- (5) A copy of:

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

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

(c) *Providing information listed in (b) to lot owner other than declarant; additional fees.* -

(1) Except as provided in paragraph (4) of this subsection, within 20 days after a written request by a lot owner other than a declarant and receipt of a reasonable fee, not to exceed the cost to the homeowners association, if any, up to a maximum of \$250, the homeowners association, the management agent of the homeowners association, or any other authorized officer or agent of the homeowners association, shall provide the information listed under subsection (b) of this section.

(2) In addition to the fee under paragraph (1) of this subsection, the homeowners association is entitled to a reasonable fee not to exceed \$50 for an inspection of the lot owner's lot if the inspection is required by the governing documents of the homeowners association.

(3) In addition to the fees under paragraphs (1) and (2) of this subsection, the homeowners association is entitled to a reasonable fee:

(i) Not to exceed \$50 for delivery of the information within 14 days after the request for the information; and

(ii) Not to exceed \$100 for delivery of the information within 7 days after the request for the information.

(4) (i) The Department of Housing and Community Development shall adjust the maximum fee authorized under paragraph (1) of this subsection every 2 years, beginning on October 1, 2018, to reflect any aggregate increase in the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, or any successor index, for the previous 2 years.

(ii) The Department of Housing and Community Development shall maintain on its Web site a list of the maximum fees authorized under paragraph (1) of this subsection as adjusted every 2 years in accordance with subparagraph (i) of this paragraph.

(d) *Notice of resale to homeowners association* - (1) Within 30 calendar days of any resale transfer of a lot within a development, the transferor shall notify the homeowners association for the primary development of the transfer.

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

(e) *Standard for compliance with subsection (b) – In general.* - The requirements of subsection (b) of this section shall be deemed to have been fulfilled if the information required to be disclosed is provided to the purchaser in writing in a clear and concise manner. The disclosures may be summarized or produced in any collection of documents,

including plats, the declaration, or the organizational documents of the homeowners association, provided those documents effectively convey the required information to the purchaser.

(f) *Standard for compliance with subsection (b) – Reliance on disclosures in depository.* - In satisfying the requirements of subsection (b) of this section, the vendor shall be entitled to rely upon the disclosures contained in the depository after June 30, 1989.

(g) *Certain provisions inapplicable to foreclosure sale.* - The provisions of subsections (a), (b), (e), and (f) of this section do not apply to the sale of a lot in an action to foreclose a mortgage or deed of trust.

SECTION 11B-106.1 will not apply to a CBA

**Reason: This section applies to new HOAs in which control of the HOA is being turned over by the developer to the governing body of the HOA formed by the lot owners. In CA's case, this of course already occurred decades ago.**

§ 11B-106.1. Meeting to elect governing body of homeowners association.

(a) *Time of meeting.* - A meeting of the members of the homeowners association to elect a governing body of the homeowners association shall be held within:

(1) 60 days from the date that at least 75% of the total number of lots that may be part of the development after all phases are complete are sold to members of the public for residential purposes; or

(2) If a lesser percentage is specified in the governing documents of the homeowners association, 60 days from the date the specified lesser percentage of the total number of lots in the development after all phases are complete are sold to members of the public for residential purposes.

(b) *Notice to lot owners.* - (1) Before the date of the meeting held under subsection (a) of this section, the declarant shall deliver to each lot owner notice that the requirements of subsection (a) of this section have been met.

(2) The notice shall include the date, time, and place of the meeting to elect the governing body of the homeowners association.

(c) *Term of members of governing body.* - The term of each member of the governing body of the homeowners association appointed by the declarant shall end 10 days after the meeting under subsection (a) of this section is held, if a replacement board member is elected.

(d) *Delivery of required items to governing body.* - Within 30 days from the date of the meeting held under subsection (a) of this section, the declarant shall deliver the following items to the governing body at the declarant's expense:

(1) The deeds to the common areas;

(2) Copies of the homeowners association's filed articles of incorporation, declaration, and all recorded covenants, plats, restrictions, and any other records of the primary development and of related developments;

(3) A copy of the bylaws and rules of the primary development and of other related developments as filed in the depository of the county in which the development is located;

(4) The minute books, including all minutes;

(5) Subject to the restrictions of § 11B-112 of this title, all books and records of the homeowners association, including financial statements, minutes of any meeting of the governing body, and completed business transactions;



- (6) Any policies, rules, and regulations adopted by the governing body;
- (7) The financial records of the homeowners association from the date of creation to the date of transfer of control, including budget information regarding estimated and actual expenditures by the homeowners association and any report relating to the reserves required for major repairs and replacement of the common areas of the homeowners association;
- (8) A copy of all contracts to which the homeowners association is a party;
- (9) The name, address, and telephone number of any contractor or subcontractor employed by the homeowners association;
- (10) Any insurance policies in effect;
- (11) Any permit or notice of code violations issued to the homeowners association by the county, local, State, or federal government;
- (12) Any warranty in effect and all prior insurance policies;
- (13) The homeowners association funds, including operating funds, replacement reserves, investment accounts, and working capital;
- (14) The tangible property of the homeowners association;
- (15) A roster of current lot owners, including their mailing addresses, telephone numbers, and lot numbers, if known;
- (16) Individual member files and records, including assessment account records, correspondence, and notices of any violations; and
- (17) Drawings, architectural plans, or other suitable documents setting forth the necessary information for location, maintenance, and repairs of all common areas.

(e) *Contracts of homeowners association.* - (1) This subsection does not apply to a contract entered into before October 1, 2009.

(2) (i) In this subsection, “contract” means an agreement with a company or individual to handle financial matters, maintenance, or services for the homeowners association.

(ii) “Contract” does not include an agreement relating to the provision of utility services or communication systems.

(3) Until all members of the governing body are elected by the lot owners at a transitional meeting under subsection (a) of this section, a contract entered into by the governing body may be terminated, at the discretion of the governing body and without liability for the termination, not later than 30 days after notice.

(f) *Failure to comply with section.* - If the declarant fails to comply with the requirements of this section, an aggrieved lot owner may submit the dispute to the Division of Consumer Protection of the Office of the Attorney General under § 11B-115(c) of this title.

## **SECTION 11B-106.2 will apply to a CBA**

### **§ 11B-106.2. Sale of common elements.**

(a) *Notice required.* - Notwithstanding any bylaw, provision of a declaration, rule, or other provision of law, the governing body of a homeowners association or, if control of the governing body has not yet transitioned to the lot owners, the declarant shall give notice in accordance with subsection (b) of this section no less than 30 days before the sale, including a tax sale, of any common area located on property that has been transferred to the homeowners association.

(b) *Manner of providing notice.* - The notice requirement under subsection (a) of this section shall be satisfied by:

- (1) Providing written notice about the sale to each lot owner; or
- (2) (i) Posting a sign about the sale on the property to be sold, in a manner similar to signage required for a zoning modification; and  
(ii) If the homeowners association has a Web site, providing notice about the sale on the home page of the Web site of the homeowners association.

### **SECTION 11B-107 will apply to a CBA**

#### **§ 11B-107. Initial sale of lot not intended to be occupied or rented for residential purposes.**

(a) *Contract.* - A contract for the initial sale of a lot in a development of any size to a person who does not intend to occupy or rent the lot for residential purposes is not enforceable by the vendor unless:

(1) The purchaser is given, at or before the time a contract is entered into between the vendor and the purchaser, or within 7 calendar days of entering into the contract, the disclosures set forth in subsection (b) of this section;

(2) The purchaser is given notice of any change in mandatory fees and payments exceeding 10 percent of the amount previously stated to exist or any other substantial and material amendment to the disclosures after the same becomes known to the vendor; and

(3) The purchaser is given at or before the time a contract is entered into between the vendor and the purchaser, a notice in a form substantially the same as the following:

#### “NOTICE

The seller is required by law to furnish you at or before the time a contract is entered into, or within 7 calendar days of entering into the contract, all of the information listed in § 11B-107(b) of the Maryland Homeowners Association Act. The information is as follows: (The notice shall include at this point the text of § 11B-107(b) in its entirety).”

(b) *Information to be supplied by vendor.* - The vendor shall provide the purchaser the following information in writing:

(1) The name, principal address, and telephone number of the vendor and of the declarant, if the declarant is not the vendor;

(2) A description of:

(i) The location and size of the development, including the minimum and maximum number of lots currently planned or permitted, if applicable, which may be contained within the development; and

(ii) Any property owned by the declarant or the vendor contiguous to the development which is to be dedicated to public use; and

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

(c) *Information contained in depository.* - In satisfying a vendor's request for any information described under subsection (b) of this section, a homeowners association:

(1) Shall be entitled to direct the vendor to obtain the information from the depository for all disclosures contained in the depository after June 30, 1989; and

(2) May not be required to supply a vendor with any information which is contained in the depository.

(d) *Provisions inapplicable to foreclosure sale.* - The provisions of this section do not apply to a sale of a lot in an action to foreclose a mortgage or deed of trust.

## **SECTION 11B-108 will apply to a CBA**

### **§ 11B-108. Cancellation of contract.**

(a) *Failure to receive disclosures required by § 11B-105, § 11B-106 or § 11B-107 – Entry into contract.* - A person who enters into a contract as a purchaser but who has not received all of the disclosures required by § 11B-105, § 11B-106, or § 11B-107 of this title, as applicable, shall, prior to settlement, be entitled to cancel the contract and to the immediate return of deposits made on account of the contract.

(b) *Failure to receive disclosures required by § 11B-105, § 11B-106 or § 11B-107 – Five calendar days before entry into contract.* - (1) Any purchaser who has not received all of the disclosures required under § 11B-105 or § 11B-106 of this title, as applicable, 5 calendar days or more before the contract was entered into, within 5 calendar days following receipt by the purchaser of the disclosures required by § 11B-105(a) and (b) or § 11B-106(a) and (b) of this title, as applicable, may cancel in writing the contract without stating a reason and without liability on the part of the purchaser.

(2) The purchaser shall be entitled to the return of any deposits made on account of the contract, except that the vendor shall be entitled to retain the cost of reproducing the information specified in § 11B-105(b), § 11B-106(b), or § 11B-107(b) of this title, as applicable, or \$100, whichever amount is less, if the disclosures are not returned to the vendor at the time the contract is canceled.

(c) *Receipt of amendment to disclosure which adversely affects purchaser.* - Any purchaser may within 3 calendar days following receipt by the purchaser of a change in mandatory fees and payments exceeding 10 percent of the amount previously stated to exist or any other substantial and material amendment to the disclosures required by § 11B-105 or § 11B-106 of this title, as applicable, which adversely affects the purchaser, cancel in writing the contract without stating a reason and without liability on the part of the purchaser, and the purchaser shall be entitled to the return of deposits made on account of the contract.

(c-1) *Return of deposits held in trust by licensed real estate broker.* - If any deposits are held in trust by a licensed real estate broker, the return of the deposits to a purchaser under subsection (a), (b), or (c) of this section shall comply with the procedures set forth in § 17-505 of the Business Occupations and Professions Article.

(d) *Waiver of termination of purchaser's rights under section.* - The rights of a purchaser under this section may not be waived in the contract and any attempted waiver is void. However, if any purchaser proceeds to settlement, the purchaser's right to cancel under this section is terminated.

(e) *Reliance on disclosures contained in depository.* - In satisfying the requirements of subsection (b) of this section, the vendor shall be entitled to rely upon the disclosures contained in the depository after June 30, 1989.

(f) *Provisions inapplicable to foreclosure sale.* - The provisions of this section do not apply to a sale of a lot in an action to foreclose a mortgage or deed of trust.

## **SECTION 11B-109 will apply to a CBA**

### § 11B-109. Untrue statements or omissions by vendor.

(a) *Liability for damages; limitations period.* - Any vendor, required under § 11B-105, § 11B-106, or § 11B-107 of this title to disclose information to a purchaser, who makes an untrue statement of a material fact, or who omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, shall be liable for damages proximately caused by the untrue statement or omission to the person purchasing a lot from that vendor. However, an action may not be maintained to enforce a liability created under this section unless brought within one year after the facts constituting the cause of action have or should have been discovered.

(b) *Exception to liability.* - A vendor may not be liable under subsection (a) of this section if the vendor had, after reasonable investigation, reasonable grounds to believe, and did believe, at the time the information required to be disclosed under § 11B-105, § 11B-106, or § 11B-107 of this title was provided to the purchaser, that the statements were true and that there was no omission to state a material fact necessary to make the statements not misleading.

(c) *Provisions inapplicable to foreclosure sale.* - The provisions of this section do not apply to trustees, mortgagees, assignees of mortgagees or other persons selling a lot in an action to foreclose a mortgage or deed of trust.

## **SECTION 11B-110 will apply to a CBA**

### § 11B-110. Warranties; notice of defect.

(a) *Implied and express warranties.* - (1) In addition to the implied warranties on private dwelling units under § 10-203 of this article and the express warranties on private dwelling units under § 10-202 of this article, there shall be an implied warranty to the homeowners association that the improvements to common areas are:

- (i) Free from faulty materials;
- (ii) Constructed in accordance with sound engineering standards; and
- (iii) Constructed in a workmanlike manner.

(2) (i) Subject to the provisions of subparagraph (ii) of this paragraph, if the improvements to the common areas were constructed by the vendor, its agents, servants, employees, contractors, or subcontractors, then the warranty on improvements shall be from the vendor of the lots within the development.

(ii) If the improvements to the common areas were constructed on the common areas prior to its conveyance to the homeowners association, then the warranty on improvements shall be from the grantor of the common areas.

(3) (i) The warranty on improvements to the common areas begins with the first transfer of title to a lot to a member of the public by the vendor of the lot.

(ii) The warranty on improvements to common areas not completed at the first transfer of title to a lot shall begin with the completion of the improvement or with its availability for use by lot owners, whichever occurs later.

(iii) The warranty extends for a period of 2 years from commencement under subparagraph (i) or (ii) of this paragraph or 2 years from the date on which the lot owners, other than the declarant and its affiliates, first elect a controlling majority of the members of the governing body of the homeowners association, whichever occurs later.

(4) Suit for enforcement of the warranty on improvements to the common areas may be brought by either the homeowners association or by an individual lot owner.

(b) *Notice of defect.* - Notice of a defect shall be given within the warranty period and suit for enforcement of the warranty shall be brought within one year of the expiration of the warranty period.

(c) *Applicability of warranties.* - Warranties shall not apply to defects caused through abuse or failure to perform maintenance by a lot owner or the homeowners association.

SECTION 11B-111 will not apply to a CBA

**Reason: This section is being replaced by Section 5-6D-03 of the CBA law, which requires that board of directors meetings be open to all individuals living, working or owning property in the community, provides for public comment, and allows meetings to be closed for enumerated purposes paralleling those set forth in section 11B-111 of the HOA Act.**

§ 11B-111. Meetings of homeowners association or its governing body.

Except as provided in this title, and notwithstanding anything contained in any of the documents of the homeowners association:

(1) Subject to the provisions of item (4) of this section, all meetings of the homeowners association, including meetings of the board of directors or other governing body of the homeowners association or a committee of the homeowners association, shall be open to all members of the homeowners association or their agents;

(2) All members of the homeowners association shall be given reasonable notice of all regularly scheduled open meetings of the homeowners association;

(3) (i) This item does not apply to any meeting of a governing body that occurs at any time before the lot owners, other than the developer, have a majority of votes in the homeowners association, as provided in the declaration;

(ii) Subject to item (iii) of this item and to reasonable rules adopted by a governing body, a governing body shall provide a designated period of time during a meeting to allow lot owners an opportunity to comment on any matter relating to the homeowners association;

(iii) During a meeting at which the agenda is limited to specific topics or at a special meeting, the lot owners' comments may be limited to the topics listed on the meeting agenda; and

(iv) The governing body shall convene at least one meeting each year at which the agenda is open to any matter relating to the homeowners association;

(4) A meeting of the board of directors or other governing body of the homeowners association or a committee of the homeowners association may be held in closed session only for the following purposes:

(i) Discussion of matters pertaining to employees and personnel;

(ii) Protection of the privacy or reputation of individuals in matters not related to the homeowners association's business;

(iii) Consultation with legal counsel on legal matters;

(iv) Consultation with staff personnel, consultants, attorneys, board members, or other persons in connection with pending or potential litigation or other legal matters;

(v) Investigative proceedings concerning possible or actual criminal misconduct;

(vi) Consideration of the terms or conditions of a business transaction in the negotiation stage if the disclosure could adversely affect the economic interests of the homeowners association;

(vii) Compliance with a specific constitutional, statutory, or judicially imposed requirement protecting particular proceedings or matters from public disclosure; or

(viii) Discussion of individual owner assessment accounts; and

(5) If a meeting is held in closed session under item (4) of this section:

(i) An action may not be taken and a matter may not be discussed if it is not permitted by item (4) of this section; and

(ii) A statement of the time, place, and purpose of a closed meeting, the record of the vote of each board or committee member by which the meeting was closed, and the authority under this section for closing a meeting shall be included in the minutes of the next meeting of the board of directors or the committee of the homeowners association.

SECTION 11B-111.1 will not apply to a CBA

**Reason: CA's governing documents do not contain any provision that restricts or prohibits commercial or business activities, and CA already has an architectural review process in place to address enforcement of the Villages' covenants on home-based businesses.**

§ 11B-111.1. Family child care homes – No-impact home-based businesses.

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

(2) "Child care provider" means the adult who has primary responsibility for the operation of a family child care home.

(3) "Family child care home" means a unit registered under Title 9.5, Subtitle 3 of the Education Article.

(4) "No-impact home-based business" means a business that:

(i) Is consistent with the residential character of the dwelling unit;

(ii) Is subordinate to the use of the dwelling unit for residential purposes and requires no external modifications that detract from the residential appearance of the dwelling unit;

(iii) Uses no equipment or process that creates noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable by neighbors or that causes an increase of common expenses that can be solely and directly attributable to a no-impact home-based business; and

(iv) Does not involve use, storage, or disposal of any grouping or classification of materials that the United States Secretary of Transportation or the State or any local governing body designates as a hazardous material.

(b) *Applicability.* - (1) The provisions of this section relating to family child care homes do not apply to a homeowners association that is limited to housing for older persons, as defined under the federal Fair Housing Act.

(2) The provisions of this section relating to no-impact home-based businesses do not apply to a homeowners association that has adopted, prior to July 1, 1999, procedures in accordance with its covenants, declaration, or bylaws for the prohibition or regulation of no-impact home-based businesses.

(c) *Permitted activities.* - (1) Subject to the provisions of subsections (d) and (e)(1) of this section, a recorded covenant or restriction, a provision in a declaration, or a provision of

the bylaws or rules of a homeowners association that prohibits or restricts commercial or business activity in general, but does not expressly apply to family child care homes or no-impact home-based businesses, may not be construed to prohibit or restrict:

(i) The establishment and operation of family child care homes or no-impact home-based businesses; or

(ii) Use of the roads, sidewalks, and other common areas of the homeowners association by users of the family child care home.

(2) Subject to the provisions of subsections (d) and (e)(1) of this section, the operation of a family child care home or no-impact home-based business shall be:

(i) Considered a residential activity; and

(ii) A permitted activity.

(d) *Express prohibition.* - (1) (i) Except as provided in subparagraph (ii) of this paragraph and subject to the provisions of paragraphs (2) and (3) of this subsection, a homeowners association may include in its declaration, bylaws, or recorded covenants and restrictions a provision expressly prohibiting the use of a residence as a family child care home or no-impact home-based business.

(ii) A homeowners association may not include a provision described under subparagraph (i) of this paragraph expressly prohibiting the use of a residence as a family child care home in its declaration, bylaws, or recorded covenants and restrictions until the lot owners, other than the developer, have 90% of the votes in the homeowners association.

(iii) A provision described under subparagraph (i) of this paragraph expressly prohibiting the use of a residence as a family child care home or no-impact home-based business shall apply to an existing family child care home or no-impact home-based business in the homeowners association.

(2) A provision described under paragraph (1)(i) of this subsection expressly prohibiting the use of a residence as a family child care home or no-impact home-based business may not be enforced unless it is approved by a simple majority of the total eligible voters of the homeowners association, not including the developer, under the voting procedures contained in the declaration or bylaws of the homeowners association.

(3) If a homeowners association includes in its declaration, bylaws, or recorded covenants and restrictions a provision prohibiting the use of a residence as a family child care home or no-impact home-based business, it shall also include a provision stating that the prohibition may be eliminated and family child care homes or no-impact home-based businesses may be approved by a simple majority of the total eligible voters of the homeowners association under the voting procedures contained in the declaration or bylaws of the homeowners association.

(4) If a homeowners association includes in its declaration, bylaws, or recorded covenants and restrictions a provision expressly prohibiting the use of a residence as a family child care home or no-impact home-based business, the prohibition may be eliminated and family child care or no-impact home-based business activities may be permitted by the approval of a simple majority of the total eligible voters of the homeowners association under the voting procedures contained in the declaration or bylaws of the homeowners association.

(e) *Regulation of operation.* - A homeowners association may include in its declaration, bylaws, rules, or recorded covenants and restrictions a provision that:

(1) Requires child care providers to pay on a pro rata basis based on the total number of family child care homes operating in the homeowners association any increase in insurance costs of the homeowners association that are solely and directly attributable to the operation of family child care homes in the homeowners association; and

(2) Imposes a fee for use of common areas in a reasonable amount not to exceed \$50 per year on each family child care home or no-impact home-based business which is registered and operating in the homeowners association.

(f) *Notice.* - (1) If the homeowners association regulates the number or percentage of family child care homes under subsection (e)(1) of this section, in order to assure compliance with this regulation, the homeowners association may require residents to notify the homeowners association before opening a family child care home.

(2) The homeowners association may require residents to notify the homeowners association before opening a no-impact home-based business.

(g) *Liability insurance.* - (1) A child care provider in a homeowners association:

(i) Shall obtain the liability insurance described under §§ 19-106 and 19-203 of the Insurance Article in at least the minimum amount described under that statute; and

(ii) May not operate without the liability insurance described under item (i) of this paragraph.

(2) A homeowners association may not require a child care provider to obtain insurance in an amount greater than the minimum amount required under paragraph (1) of this subsection.

(h) *Home-based businesses.* - A homeowners association may restrict or prohibit a no-impact home-based business in any common areas.

SECTION 11B-111.2 will not apply to a CBA

**Reason: CA's governing documents do not contain any provision regulating signs, and CA already has an architectural review process in place to enforce the Villages' covenants on signs. In addition, CA already is subject to the County's sign code.**

§ 11B-111.2. Candidate or proposition sign.

(a) *In general.* - In this section, "candidate sign" means a sign on behalf of a candidate for public office or a slate of candidates for public office.

(b) *Exceptions.* - Except as provided in subsection (c) of this section, a recorded covenant or restriction, a provision in a declaration, or a provision in the bylaws or rules of a homeowners association may not restrict or prohibit the display of:

(1) A candidate sign; or

(2) A sign that advertises the support or defeat of any question submitted to the voters in accordance with the Election Law Article.

(c) *Restriction.* - A recorded covenant or restriction, a provision in a declaration, or a provision in the bylaws or rules of a homeowners association may restrict the display of a candidate sign or a sign that advertises the support or defeat of any proposition:

(1) In the common areas;

(2) In accordance with provisions of federal, State, and local law; or

(3) If a limitation to the time period during which signs may be displayed is not specified by a law of the jurisdiction in which the homeowners association is located, to a time period not less than:



- (i) 30 days before the primary election, general election, or vote on the proposition;
- and
- (ii) 7 days after the primary election, general election, or vote on the proposition.

SECTION 11B-111.3 will not apply to a CBA

**Reason: This section is being replaced by section 5-6D-05 of the CBA law, which requires a CBA, with reasonable restrictions, to allow the distribution of information by lot owners.**

§ 11B-111.3. Distribution of written information and materials.

(a) *Applicability.* - This section does not apply to the distribution of information or materials at any time before the lot owners, other than the developer, have a majority of votes in the homeowners association, as provided in the declaration.

(b) *Door-to-door distribution.* - In this section, the door-to-door distribution of any of the following information or materials may not be considered a distribution for purposes of determining the manner in which a governing body distributes information under this section:

(1) Any information or materials reflecting the assessments imposed on lot owners in accordance with a recorded covenant, the declaration, bylaw, or rule of the homeowners association; and

(2) Any meeting notices of the governing body.

(c) *Written information or materials.* - Except for reasonable restrictions to the time of distribution, a recorded covenant or restriction, a provision in a declaration, or a provision of the bylaws or rules of a homeowners association may not restrict a lot owner from distributing written information or materials regarding the operation of or matters relating to the operation of the homeowners association in any manner or place that the governing body distributes written information or materials.

SECTION 11B-111.4 will not apply to a CBA

**Reason: This section is being replaced by section 5-6D-05 of the CBA law, which requires a CBA, with reasonable restrictions, to allow lot owner meetings.**

§ 11B-111.4. Meetings.

(a) *Applicability.* - This section does not apply to any meetings of lot owners occurring at any time before the lot owners, other than the developer, have a majority of the votes in the homeowners association, as provided in the declaration.

(b) *Meetings.* - Subject to reasonable rules adopted by the governing body, lot owners may meet for the purpose of considering and discussing the operation of and matters relating to the operation of the homeowners association in any common areas or in any building or facility in the common areas that the governing body of the homeowners association uses for scheduled meetings.

SECTION 11B-111.5 will not apply to a CBA

**Reason: CA's governing documents have provisions and procedures in place for filling any vacancy on the board of directors.**

§ 11B-111.5. Court appointment of receiver.

(a) *Receiver appointed if quorum fails.* - If a homeowners association fails to fill vacancies on the governing body sufficient to constitute a quorum in accordance with the

bylaws, three or more owners of lots may petition the circuit court for the county where the condominium is located to appoint a receiver to manage the affairs of the homeowners association.

(b) *Notice required.* - (1) At least 30 days before petitioning the circuit court, the lot owners acting under the authority granted by subsection (a) of this section shall mail to the governing body a notice describing the petition and the proposed action.

(2) The lot owners shall mail a copy of the notice to the owner of each lot in the development.

(c) *No quorum within notice period.* - If the governing body fails to fill vacancies sufficient to constitute a quorum within the notice period, the lot owners may proceed with the petition.

(d) *Limitations on receiver.* - A receiver appointed by a court under this section may not reside in or own a lot in the development governed by the homeowners association.

(e) *Powers and duties of receiver; length of service.* - (1) A receiver appointed under this section shall have all powers and duties of a duly constituted governing body.

(2) The receiver shall serve until the homeowners association fills vacancies on the governing body sufficient to constitute a quorum.

(f) *Common expenses.* - The salary of the receiver, court costs, and reasonable attorney's fees are expenses of the homeowners association.

**SECTION 11B-111.6 will not apply to a CBA**

**Reason: This section is being replaced by section 5-6D-06 of the CBA law, which requires a CBA to maintain fidelity insurance.**

§ 11B-111.6. Fidelity insurance.

(a) *Fidelity insurance.* - In this section, "fidelity insurance" includes a fidelity bond.

(b) *Section not applicable to homeowner's association.* - This section does not apply to a homeowners association:

(1) That has four or fewer lot owners; and

(2) For which 3 months' worth of gross annual homeowners association fees is less than \$2,500.

(c) *Purchase; requirements.* - (1) The board of directors or other governing body of a homeowners association shall purchase fidelity insurance not later than the time of the first conveyance of a lot to a person other than the declarant and shall keep fidelity insurance in place for each year thereafter.

(2) The fidelity insurance required under paragraph (1) of this subsection shall provide for the indemnification of the homeowners association against loss resulting from acts or omissions arising from fraud, dishonesty, or criminal acts by:

(i) Any officer, director, managing agent, or other agent or employee charged with the operation or maintenance of the homeowners association who controls or disburses funds; and

(ii) Any management company employing a management agent or other employee charged with the operation or maintenance of the homeowners association who controls or disburses funds.

(d) *Copy included in books and records.* - A copy of the fidelity insurance policy or fidelity bond shall be included in the books and records kept and made available by or on behalf of the homeowners association under § 11B-112 of this title.

(e) *Amount.* - (1) The amount of the fidelity insurance required under subsection (c) of this section shall equal at least the lesser of:

(i) 3 months' worth of gross annual homeowners association fees and the total amount held in all investment accounts at the time the fidelity insurance is issued; or (ii) \$3,000,000.

(2) The total liability of the insurance to all insured persons under the fidelity insurance may not exceed the sum of the fidelity insurance.

(f) *Dispute for failure to comply.* - If a lot owner believes that the board of directors or other governing body of a homeowners association has failed to comply with the requirements of this section, the aggrieved lot owner may submit the dispute to the Division of Consumer Protection of the Office of the Attorney General under § 11B-115 of this title.

SECTION 11B-111.7 will not apply to a CBA

**Reason: The circumstances in which this section would be operative do not apply to CA.**

§ 11B-111.7. Number of declarant votes.

Notwithstanding any other provision of law or any provision in the declaration, bylaws, rules, deeds, agreements, or recorded covenants or restrictions of a homeowners association, until the time all lots in a homeowners association have been subdivided and recorded in the land records of the county in which the homeowners association is located, the declarant, when voting on a homeowners association matter, shall have a number of votes that is equal to the number of lots that:

(1) Have been subdivided and recorded in the land records of the county in which the homeowners association is located; and

(2) Have not been sold to members of the public.

SECTION 11B-112 will not apply to a CBA

**Reason: This section is being replaced by Section 5-6D-04 of the CBA law, which allows anyone living, working or owning property in the community to review and/or copy CA's books and records and permits books and records to be withheld from inspection for enumerated reasons paralleling those set forth in section 11B-112 of the HOA Act.**

§ 11B-112. Books and records of homeowners association; disclosures to be deposited into depository.

(a) *Books and records – Examination; public inspection.* - (1) (i) Subject to the provisions of paragraph (2) of this subsection, all books and records kept by or on behalf of the homeowners association shall be made available for examination or copying, or both, by a lot owner, a lot owner's mortgagee, or their respective duly authorized agents or attorneys, during normal business hours, and after reasonable notice.

(ii) Books and records required to be made available under subparagraph (i) of this paragraph shall first be made available to a lot owner no later than 15 business days after a lot is conveyed by the declarant and the lot owner requests to examine or copy the books and records.

(iii) If a lot owner requests in writing a copy of financial statements of the homeowners association or the minutes of a meeting of the governing body of the

homeowners association to be delivered, the governing body of the homeowners association shall compile and send the requested information by mail, electronic transmission, or personal delivery:

1. Within 21 days after receipt of the written request, if the financial statements or minutes were prepared within the 3 years immediately preceding receipt of the request; or

2. Within 45 days after receipt of the written request, if the financial statements or minutes were prepared more than 3 years before receipt of the request.

(2) Books and records kept by or on behalf of a homeowners association may be withheld from public inspection, except for inspection by the person who is the subject of the record or the person's designee or guardian, to the extent that they concern:

(i) Personnel records, not including information on individual salaries, wages, bonuses, and other compensation paid to employees;

(ii) An individual's medical records;

(iii) An individual's personal financial records, including assets, income, liabilities, net worth, bank balances, financial history or activities, and creditworthiness;

(iv) Records relating to business transactions that are currently in negotiation;

(v) The written advice of legal counsel; or

(vi) Minutes of a closed meeting of the governing body of the homeowners association, unless a majority of a quorum of the governing body of the homeowners association that held the meeting approves unsealing the minutes or a recording of the minutes for public inspection.

(b) *Books and records – Charge for review or copying.* - (1) Except for a reasonable charge imposed on a person desiring to review or copy the books and records or who requests delivery of information, the homeowners association may not impose any charges under this section.

(2) A charge imposed under paragraph (1) of this subsection for copying books and records may not exceed the limits authorized under Title 7, Subtitle 2 of the Courts Article.

(c) *Disclosures to be deposited into depository.* - (1) Each homeowners association that was in existence on June 30, 1987 shall deposit in the depository by December 31, 1988, and each homeowners association established subsequent to June 30, 1987 shall deposit in the depository by the later of the date 30 days following its establishment, or December 31, 1988, all disclosures, current to the date of deposit, specified:

(i) By § 11B-105(b) of this title except for those disclosures required by paragraphs (6)(i), (8), (9), and (12);

(ii) By § 11B-106(b) of this title except for those disclosures required by paragraphs (1), (2), (4), and (5)(i); and

(iii) By § 11B-107(b) of this title.

(2) Beginning January 1, 1989, within 30 days of the adoption of or amendment to any of the disclosures required by this title to be deposited in the depository, a homeowners association shall deposit the adopted or amended disclosures in the depository.

(3) If a homeowners association fails to deposit in the depository any of the disclosures required to be deposited by this section, or by § 11B-105(b)(6)(ii) or § 11B-106(b)(5)(ii) of this title, then those disclosures which were not deposited shall be unenforceable until the time they are deposited.

## **SECTION 11B-112.1 will apply to a CBA**

### § 11B-112.1. Late charges.

The declaration or bylaws of a homeowners association may provide for a late charge of \$15 or one-tenth of the total amount of any delinquent assessment or installment, whichever is greater, provided the charge may not be imposed more than once for the same delinquent payment and may be imposed only if the delinquency has continued for at least 15 calendar days.

## **SECTION 11B-112.2 will apply to a CBA**

### § 11B-112.2. Annual budget.

(a) *Applicability.* - This section applies only to a homeowners association that has responsibility under its declaration for maintaining and repairing common areas.

(b) *Preparation and submission.* - (1) The board of directors or other governing body of a homeowners association shall cause to be prepared and submitted to the lot owners an annual proposed budget at least 30 days before its adoption.

(2) The annual proposed budget may be sent to each lot owner by electronic transmission, by posting on the homeowners association's home page, or by including the annual proposed budget in the homeowners association's newsletter.

(c) *Items required to be included.* - The annual budget shall provide information on or expenditures for at least the following items:

- (1) Income;
- (2) Administration;
- (3) Maintenance;
- (4) Utilities;
- (5) General expenses;
- (6) Reserves; and
- (7) Capital expenses.

(d) *Adoption at open meeting; notice.* - (1) The budget shall be adopted at an open meeting of the homeowners association or any other body to which the homeowners association delegates responsibilities for preparing and adopting the budget.

(2) (i) Notice of the meeting at which the proposed budget will be considered shall be sent to each lot owner.

(ii) Notice under subparagraph (i) of this paragraph may be sent by electronic transmission, by posting on the homeowners association's home page, or by including the notice in the homeowners association's newsletter.

(e) *Certain expenditures in excess of 15% of budgeted amount to be approved by amendment.* - Except for an expenditure made by the homeowners association because of a condition that, if not corrected, could reasonably result in a threat to the health or safety of the lot owners or a significant risk of damage to the development, any expenditure that would result in an increase in an amount of assessments for the current fiscal year of the homeowners association in excess of 15% of the budgeted amount previously adopted shall be approved by an amendment to the budget adopted at a special meeting for which not less than 10 days' written notice shall be provided to the lot owners.

(f) *Authority of homeowners association to obligate itself for certain expenditures unimpaired.* - The adoption of a budget does not impair the authority of the homeowners

association to obligate the homeowners association for expenditures for any purpose consistent with any provision of this title.

### **SECTION 11B-113 will apply to a CBA**

#### **§ 11B-113. Homeowners association depository.**

(a) *Location.* - There is a homeowners association depository in the office of the clerk of the court in each county and the City of Baltimore.

Establishment and maintenance of depository

(b) *Establishment and maintenance.* - Consistent with the duties of a clerk of a court as enumerated in § 2-201 of the Courts and Judicial Proceedings Article, the clerk of the court shall establish and thereafter maintain a depository for the purpose of making available to the public upon request the information to be deposited by homeowners associations.

(c) *Document file separate from land records; contents; availability for public view or copying.* - The depository shall:

(1) Be established and maintained in each county and the City of Baltimore as a document file separate from the land records of the county or City;

(2) Contain a record of the names of all homeowners associations for each county and the City of Baltimore;

(3) Contain all disclosures deposited by a homeowners association; and

(4) Be available to the public for viewing and for obtaining copies during the regular business hours of the office of the clerk.

(d) *Duties of the clerk and State Court Administrator.* - (1) The clerk of the court is authorized to regulate the form and manner of documents deposited into the depository and to collect fees for a deposit.

(2) The clerk of the court shall permit the deposit of copies of disclosures, however reproduced.

(3) The clerk of the court may adopt regulations as necessary or desirable to implement the depository.

(4) The State Court Administrator shall establish, so as to cover the reasonable and ordinary expenses of maintaining the depository, the amount of the fees that the clerk of the court may charge for deposits in the depository.

(5) (i) The clerk of the court shall maintain a depository index; and

(ii) All disclosures shall be filed under the name of the homeowners association.

(e) *Contents not recordation under Title 3.* - Material contained in the depository may not be viewed as recordation under Title 3 of this article.

### **SECTION 11B-113.1 will apply to a CBA**

#### **§ 11B-113.1. Electronic transmission of notice.**

(a) *In general.* - Notwithstanding language contained in the governing documents of a homeowners association, the homeowners association may provide notice of a meeting or deliver information to a lot owner by electronic transmission if:

(1) The board of directors or other governing body of the homeowners association gives the homeowners association the authority to provide notice of a meeting or deliver information by electronic transmission;

(2) The lot owner gives the homeowners association prior written authorization to provide notice of a meeting or deliver information by electronic transmission; and

(3) An officer or agent of the homeowners association certifies in writing that the homeowners association has provided notice of a meeting or delivered material or information as authorized by the lot owner.

(b) *Ineffective notice.* - Notice or delivery by electronic transmission shall be considered ineffective if:

(1) The homeowners association is unable to deliver two consecutive notices; and

(2) The inability to deliver the electronic transmission becomes known to the person responsible for sending the electronic transmission.

(c) *Ineffective notice – Effect.* - The inadvertent failure to deliver notice by electronic transmission does not invalidate any meeting or other action.

### **SECTION 11B-113.2 will apply to a CBA**

#### **§ 11B-113.2. Electronic transmission of votes or proxies.**

(a) *In general.* - Notwithstanding language contained in the governing documents of the homeowners association, the board of directors or other governing body of the homeowners association may authorize lot owners to submit a vote or proxy by electronic transmission if the electronic transmission contains information that verifies that the vote or proxy is authorized by the lot owner or the lot owner's proxy.

(b) *When anonymous voting required.* - If the governing documents of the homeowners association require voting by secret ballot and the anonymity of voting by electronic transmission cannot be guaranteed, voting by electronic transmission shall be permitted if lot owners have the option of casting anonymous printed ballots.

### **SECTION 11B-113.3 will apply to a CBA**

#### **§ 11B-113.3. Deletion of ownership restrictions based on race, religion, or national origin.**

(a) *Applicability.* - This section applies to any recorded covenant or restriction that restricts ownership based on race, religious belief, or national origin, including a covenant or restriction that is part of a uniform general scheme or plan of development.

(b) *On or before September 30, 2019.* - (1) On or before September 30, 2019, the governing body of a homeowners association shall delete any recorded covenant or restriction that restricts ownership based on race, religious belief, or national origin from the common area deeds or other declarations of property in the development.

(2) Notwithstanding the provisions of a governing document, the governing body of a homeowners association may delete a recorded covenant or restriction that restricts ownership based on race, religious belief, or national origin from the common area deeds or other declarations of property in the development without approval of the lot owners.

(3) The governing body of the homeowners association shall record with the clerk of the court in the jurisdiction where the development is located an amendment to the common area deeds or other declarations that include the recorded covenant or restriction that provides for the deletion of the recorded covenant or restriction from the common area deeds or declarations of the property in the development.

(c) *Beginning on October 1, 2019.* - Beginning on October 1, 2019, within 180 days after receiving a written request from a lot owner, the governing body of a homeowners association shall delete a recorded covenant or restriction that restricts ownership based on race, religious belief, or national origin from the common area deeds or other declarations of property in the development, in accordance with this section.

**SECTION 11B-113.4 will apply to a CBA**

§ 11B-113.4. Annual charge.

(a) *Legislative intent.* - It is the intent of the General Assembly to prevent unfair treatment of property owners by a homeowners association when annual charges based on the assessed value of property imposed by the homeowners association increase at such a rate that it creates an unexpected windfall for the homeowners association.

(b) *“Annual charge” defined.* - In this section, the term “annual charge” means a charge based on the current assessed value of property for county and State property taxes that is levied by a homeowners association on property in a development.

(c) *Applicability of section.* - This section only applies to a development that:

(1) Contains at least 13,000 acres of land and has a population of at least 80,000; and

(2) Is governed by a homeowners association that levies an annual charge on property within the development.

(d) *Calculating the annual charge.* - (1) A homeowners association shall base the annual charge for the revalued properties on the phased in value of property as provided under § 8-103 of the Tax--Property Article.

(2) If the value of an improved property has been reduced by the State or county assessments office after, or by reason of, a protest, appeal, credit, or other adjustment, the homeowners association shall reduce the annual charge on the property based on the reduced value.

(e) *Calculating the annual charge – Rebate or credit.* - Until the annual charge for the revalued property is based on the phased in value of property as required under subsection (d) of this section, if the value of the properties revalued as of the most recent date of finality as provided in § 8-104 of the Tax--Property Article exceeds the prior valuation by more than 10%:

(1) The increase shall be considered an unexpected windfall to the homeowners association that should be offset; and

(2) Beginning with the first year following the revaluation of the property for State property tax purposes, the homeowners association shall provide to the owner of the revalued property a rebate or credit in an amount equal to the portion of the annual charge that is attributable to the growth in the value of the revalued property in excess of 10%.

(f) *Applicability of subsections (d) and (e).* - Subsections (d) and (e) of this section do not apply if a governing body certifies on or before April 1 in the first year following the revaluation of property values for State property tax purposes that the revenues from the annual charges are insufficient to meet the debt service requirements during the next taxable year on all bonds that the governing body anticipates will be outstanding during that year.

(g) *Rate of assessed value of property.* - Notwithstanding any provision of the law to the contrary, when calculating an annual charge, a homeowners association may not consider the rate of assessed value of property to have increased by more than 10% in a taxable year.

**SECTION 11B-113.5 will apply to a CBA**

§ 11B-113.5. Annexation of land in Howard County.



(a) *Scope.* - This section establishes the process for the annexation of parcels of land that are subject to the deed, agreement, and declaration establishing any of the villages or town center in Columbia in Howard County.

(b) *In general.* - Notwithstanding any provision of law or contract, a parcel of land located in that area of land in Howard County that is subject to the deed, agreement, and declaration of covenants, easements, charges, and liens dated December 13, 1966, and recorded in the land records of Howard County in Liber W.H.H. 463, Folio 158, et seq. (the Columbia Association Declaration) that is not part of the village or town center in which the land is located may be annexed into the village or town center if:

(1) The owner or developer of the land makes an application for annexation to the village or town center community association; and

(2) The Columbia Association or its successor and the village or town center community association approve the annexation.

(c) *Execution and filing of instruments.* - An instrument that consolidates a parcel of land into the village or town center in which the land is located shall be executed and filed for recordation in the land records of Howard County.

(d) *Applicability of covenants, restrictions, or contract provisions.* - (1) A parcel of land that is annexed into a village or town center in accordance with this section shall be subject to the recorded covenants and restrictions of the village or town center in which the parcel of land is located.

(2) An annexation completed in accordance with this section may not abrogate or in any other way affect any approval previously granted or condition previously imposed under a recorded covenant or contract regarding improvements constructed on the annexed property.

### **SECTION 11B-114 will apply to a CBA**

#### **§ 11B-114. Electronic payment fees.**

(a) *“Electronic payment” defined.* - In this section, “electronic payment” means payment by credit card or debit card.

(b) *In general.* - A homeowners association may require a person from whom payment is due to pay a reasonable electronic payment fee if the person elects to pay the homeowners association by means of electronic payment.

(c) *Amount of fee.* - An electronic payment fee may not exceed the amount of any fee that may be charged to the homeowners association in connection with use of the credit card or debit card.

(d) *Notice.* - If a homeowners association elects to charge an electronic payment fee under this section, the homeowners association shall specify on or include notice with each bill and other invoices for which electronic payment is authorized that an electronic payment fee will be charged.

### **SECTION 11B-115 will not apply to a CBA**

**Reason: As a CBA, CA like any Maryland corporation would be subject to the State's consumer protection laws.**

§ 11B-115. Enforcement authority of Division of Consumer Protection.

(a) *"Consumer" defined.* - (1) In this section, "consumer" means an actual or prospective purchaser, lessee, assignee, or recipient of a lot in a development.

(2) "Consumer" includes a co-obligor or surety for a consumer.

(b) *Intent.* - This section is intended to provide minimum standards for protection of consumers in the State.

(c) *Scope of enforcement.* - (1) To the extent that a violation of any provision of this title affects a consumer, that violation shall be within the scope of the enforcement duties and powers of the Division of Consumer Protection of the Office of the Attorney General, as described in Title 13 of the Commercial Law Article.

(2) The provisions of this title shall otherwise be enforced by each unit of State government within the scope of the authority of the unit.

(d) *Adoption of local law allowed.* - (1) A county or municipal corporation may adopt a law, ordinance, or regulation for the protection of a consumer to the extent and in the manner provided for under § 13-103 of the Commercial Law Article.

(2) Within 30 days of the effective date of a law, ordinance, or regulation adopted under this subsection that is expressly applicable to a development, the county or municipal corporation shall forward a copy of the law, ordinance, or regulation to the homeowners association depository in the office of the clerk of the court in the county where the development is located.

SECTION 11B-115.1 will not apply to a CBA

**Reason: As a CBA, CA in any event would be subject to the State's consumer protection laws.**

§ 11B-115.1. Enforcement by Division of Consumer Protection.

A lot owner who believes that the board of directors or other governing body of a homeowners association has failed to comply with the election procedures provisions of the governing documents of the homeowners association may submit the dispute to the Division of Consumer Protection of the Office of the Attorney General if the provisions concern:

(1) Notice about the date, time, and place for the election of the board of directors or other governing body;

(2) The manner in which a call is made for nominations for the board of directors or other governing body;

(3) The format of the election ballot;

(4) The format, provision, and use of proxies during the election process; or

(5) The manner in which a quorum is determined for election purposes.

SECTION 11B-116 will not apply to a CBA

**Reason: By virtue of subsection (b) of this section, CA is already exempted from this provision.**

§ 11B-116. Amendment of governing document.

(a) *Definitions.* - (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) *Applicability.* - 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) *Timing of amendment.* - 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.

**SECTION 11B-117 will apply to a CBA**

§ 11B-117. Liability for homeowners association assessments and charges on lots.

(a) *In general.* - As provided in the declaration, a lot owner shall be liable for all homeowners association assessments and charges that come due during the time that the lot owner owns the lot.

(b) *Enforcement.* - In addition to any other remedies available at law, a homeowners association may enforce the payment of the assessments and charges provided in the declaration by the imposition of a lien on a lot in accordance with the Maryland Contract Lien Act1.

(c) *Foreclosure; priority of liens.* - (1) This subsection does not limit or affect the priority of:

(i) A lien for the annual charge provided first priority over a deed of trust or mortgage by the deed, agreement, and declaration of covenants, easements, charges, and liens dated December 13, 1966, and recorded in the land records of Howard County (the Columbia Association Declaration); or

(ii) Any lien, secured interest, or other encumbrance with priority that is held by or for the benefit of, purchased by, assigned to, or securing any indebtedness to:

- 1. The State or any county or municipal corporation in the State;
- 2. Any unit of State government or the government of any county or municipal corporation in the State; or
- 3. An instrumentality of the State or any county or municipal corporation in the State.

(2) In the case of a foreclosure of a mortgage or deed of trust on a lot in a homeowners association, a portion of the homeowners association's liens on the lot, as prescribed in paragraph (3) of this subsection, shall have priority over a claim of the holder of a first mortgage or a first deed of trust that is recorded against the lot on or after October 1, 2011.

(3) The portion of the homeowners association's liens that has priority under paragraph (2) of this subsection:

(i) Shall consist solely of not more than 4 months, or the equivalent of 4 months, of unpaid regular assessments for common expenses that are levied by the homeowners association in accordance with the requirements of the declaration or bylaws of the homeowners association;

(ii) May not include:

1. Interest;
2. Costs of collection;
3. Late charges;
4. Fines;
5. Attorney's fees;
6. Special assessments; or
7. Any other costs or sums due under the declaration or bylaws of the homeowners association or as provided under any contract, law, or court order; and

(iii) May not exceed a maximum of \$1,200.

(4) (i) Subject to subparagraph (ii) of this paragraph, at the request of the holder of a first mortgage or first deed of trust on a lot in a homeowners association, the governing body shall provide to the holder written information about the portion of any lien filed under the Maryland Contract Lien Act that has priority as prescribed under paragraph (3) of this subsection, including information that is sufficient to allow the holder to determine the basis for the portion of the lien that has priority.

(ii) At the time of making a request under subparagraph (i) of this paragraph, the holder shall provide the governing body of the homeowners association with the written contact information of the holder.

(iii) If the governing body of the homeowners association fails to provide written information to the holder under subparagraph (i) of this paragraph within 30 days after the filing of the statement of lien among the land records of each county in which the homeowners association is located, the portion of the homeowners association's liens does not have priority as prescribed under paragraph (2) of this subsection.

**SECTION 11B-118 will not apply to a CBA**

**Reason: CA will be a CBA.**

**§ 11B-118. Short title.**

**This title may be cited as the Maryland Homeowners Association Act.**

**SECTIONS OF TITLE 11B OF THE REAL PROPERTY ARTICLE OF THE  
MARYLAND CODE (THE HOMEOWNERS ASSOCIATION ACT) THAT WOULD  
APPLY TO COMMUNITY BENEFIT ASSOCIATIONS**

11B-101 – Definitions

11B-102(g) [This subsection would be added to the HOA Act by the Community Benefit Association legislation] - Provides that with the exception of sections of Title 11B of the Real Property Article specified in the Community Benefit Associations subtitle, Title 11B does not apply to community benefit associations

11B-104 - Prohibits local governments from enacting laws creating obligations different than or in addition to those stated in certain sections of Title 11B

11B-105 - Sets forth certain requirements in connection with the initial sale of a lot in a development regarding such matters as notice to the purchaser, contract of sale language, and information and documents to be provided to the purchaser

11B-106 - Sets forth requirements similar to those in section 105 regarding the resale of a lot in a development

11B-106.2 - specifies requirements regarding notice of a sale of common areas

11B-107 - Sets forth certain requirements regarding the initial sale of a lot in a development to a non-residential purchaser

11B-108 – States the grounds for cancellation of a purchase contract by a prospective buyer and for the return of deposits

11B-109 – Imposes liability for damages on the seller of a lot making false statements to a buyer, unless the seller had reasonable grounds to believe and did believe the statements were true

11B-110 – Creates an implied 2-year warranty for a homeowners association that improvements to common areas made by the developer are free from faulty materials and constructed in a workmanlike manner in accordance with sound engineering standards

11B-112.1 – Allows a homeowners association to impose a late charge (with certain limitations) on delinquent assessment payments

11B-112.2 - specifies budget requirements for maintaining and repairing common areas

11B-113 – Creates a homeowners association records depository in the office of the clerk of the county court

11B-113.1 - Allows notice of meetings by electronic transmission

11B-113.2 - Allows lot owners to vote by electronic transmission

11B-113.3 – Allows the deletion of covenants restricting ownership on the basis of race, religion or national origin

11B-113.4 - Imposes an annual cap of 10% on any increase in the annual charge attributable to a revaluation of properties for county and State property taxes, except under certain circumstances

11B-113.5 – Establishes a process for annexation of properties to CA villages

11B-114 - Authorizes the imposition of a reasonable electronic payment fee for assessments paid by credit/debit card

11B-117 – Allows a homeowners association, in addition to other legal remedies, to enforce the payment of assessments by imposing a lien on a lot in accordance with the Maryland Contract Lien Act

## **Exhibit B**

### **SECTIONS OF TITLE 11B OF THE REAL PROPERTY ARTICLE OF THE MARYLAND CODE (THE HOMEOWNERS ASSOCIATION ACT) THAT WOULD NOT APPLY TO COMMUNITY BENEFIT ASSOCIATIONS**

11B-102 - identifies certain exceptions to the HOA Act

11B-103 - prohibits variations in provisions of HOA Act achieved by agreement or waiver

11B-106.1 - addresses meetings and records of HOA upon transfer of control from developer to property owners

11B-111 - sets forth rules governing open meetings and lists purposes for which a meeting may be closed (*this section would be excluded because Section 5-6D-03 of the Community Benefit Associations subtitle covers open meetings*)

11B-111.1 - defines family child-care homes and no impact home-based businesses as permitted residential activities

11B-111.2 - addresses restrictions on candidate signs

11B-111.3 - addresses lot owner's distribution of written information (*this section would be excluded because it is being replaced by Section 5-6D-05 of the Community Benefit Associations subtitle*)

11B-111.4 - permits lot owners to meet in certain locations to discuss the HOA's operations (*this section would be excluded because it is being replaced by Section 5-6D-05 of the Community Benefit Associations subtitle*)

11B-111.5 - permits petitioning of Court if HOA fails to fill board vacancies

11B-111.6 - requires HOAs to maintain fidelity insurance (*this section would be excluded because it is being replaced by Section 5-6D-06 of the Community Benefit Associations subtitle*)

11B-111.7 – addresses number of votes held by developer before lots are subdivided and recorded

11B-112 - sets forth rules regarding review and copying of HOA's books and records (*this section would be excluded because Section 5-6D-04 of the Community Benefit Associations subtitle covers access to books and records*)

11B-115 - places violation of Title 11B within scope of enforcement duties of Consumer Protection Division

11B-115.1 – allows complaint to Consumer Protection Division regarding certain election procedure provisions

11B-116 - CA is already excluded from this section

11B-118 – allows Title 11B to be cited as the Maryland Homeowners Association Act



Dear Village Managers and Village Board Members,

Thank you to everyone who was able to join us last week to learn more about a proposal being considered by Columbia Association's Board of Directors to request a change to Maryland state law that would recognize CA as a brand new type of entity called a "community benefit association" instead of as a homeowners association, or HOA.

We have posted several question and answers on CA's website at [ColumbiaAssociation.org/CBA](http://ColumbiaAssociation.org/CBA). But we also know that many were not able to attend last week's information session. Here are some additional questions and answers that were discussed:

**Are there any other community benefit associations in Maryland?**

No. This would be a brand new entity reflecting CA's unique role. The "community benefit association" would be recognized under Maryland law as a type of corporation.

Maryland recognizes several different types of corporations. The newest type is a "public benefit corporation." However, CA does not completely fit within the definition for that type of corporation.

**How does this affect me as a resident or business owner?**

Nothing will be different in the way CA conducts its operations.

**If CA becomes a CBA, will this change the relationship between CA and the villages?**

The relationship will not change. For example, CA will continue to provide funding to the villages via the annual charge assessment share and will continue to assist the villages in lawsuits to enforce their covenants.

**CA considered a similar measure several years ago. At that time, the village community associations were included in that proposed legislation. Why have they not been included this time?**

In 2012 and 2013, the proposed legislation included Columbia Association and all 10 of Columbia's village community associations and would have required that they all participate. However, some of the villages were not interested in participating, which meant CA could not proceed.

This time, CA is considering pioneering the new CBA legislation. Each village can decide on its own — and on its own time frame — whether to opt in. Village community associations can observe CA's experience and fully evaluate how the proposed CBA legislation could benefit

them and their communities. Each village community association can decide whether this is the right choice for them.

**If CA becomes a CBA and the village community associations remain HOAs, who will lobby in Annapolis for the village community associations?**

CA will continue to monitor legislation in Annapolis, including proposed amendments to the HOA Act, and will inform the village managers when matters arise that CA thinks may impact the village community associations. The village community association boards would then need to decide what, if any, action to take — and CA would help get the villages' letters to the appropriate legislators. CA also would let the villages know the dates of hearings for bills on which the villages decide to act, so that the villages may decide whether to give testimony.

**The draft legislation defines a CBA as having more than 20,000 lots. How would villages be allowed to become CBAs?**

CA would seek an amendment of the definition of a CBA so that the affiliated villages would not need to meet the 20,000 lot definition/requirement.

**Why can't this wait until next year, so the villages have time to decide whether to participate?**

As mentioned previously, CA is unlike other HOAs. There is a strategic need to be recognized as a unique entity rather than continue with the same level of lobbying efforts each year.

During the last two legislative sessions alone, CA followed 55 bills filed in Annapolis, of which 32 were HOA bills. Of those 32 HOA bills, CA was compelled to seek amendments to or exemptions from 22 because of the bills' significant, unintended negative consequences for CA. Given these facts, CA's Board of Directors has been discussing this proposal and working on the language of the actual bill and materials to provide to the public to explain the proposal. Since the bill can still be filed in this legislative session, there is no reason to wait until the 2020 session.

The timing of CA's proposal does not affect the villages, who can make their own decisions within their own timeframes.