

SENATE BILL 224

N1
HB 887/11 – ENV

2lr0370
CF HB 156

By: **Senator Gladden**

Introduced and read first time: January 20, 2012

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Condominiums – Rescission of Sales Contracts**

3 FOR the purpose of limiting a condominium purchaser's right to rescind in writing a
4 contract of sale based on amended material in a vendor's public offering
5 statement to certain amendments that affect materially and adversely the
6 purchaser's rights; requiring a purchaser to state in writing the purchaser's
7 reason for rescission when it is based on certain amended material in a vendor's
8 public offering statement; stating the intent of the General Assembly; making
9 stylistic changes; and generally relating to the rescission of condominium sales
10 contracts.

11 BY repealing and reenacting, without amendments,
12 Article – Real Property
13 Section 11–126(a), (b), and (d)
14 Annotated Code of Maryland
15 (2010 Replacement Volume and 2011 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Real Property
18 Section 11–126(e)
19 Annotated Code of Maryland
20 (2010 Replacement Volume and 2011 Supplement)

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

23 **Article – Real Property**

24 11–126.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) A contract for the initial sale of a unit to a member of the public is not
2 enforceable by the vendor unless:

3 (1) The purchaser is given on or before the time a contract is entered
4 into between the vendor and the purchaser, a current public offering statement as
5 amended and registered with the Secretary of State containing all of the information
6 set forth in subsection (b) of this section; and

7 (2) The contract of sale contains, in conspicuous type, a notice of:

8 (i) The purchaser's right to receive a public offering statement
9 and his rescission rights under this section; and

10 (ii) The warranties provided by § 11–131 of this title.

11 (b) The public offering statement required by subsection (a) of this section
12 shall be sufficient for the purposes of this section if it contains at least the following:

13 (1) A copy of the proposed contract of sale for the unit;

14 (2) A copy of the proposed declaration, bylaws, and rules and
15 regulations;

16 (3) A copy of the proposed articles of incorporation of the council of
17 unit owners, if it is to be incorporated;

18 (4) A copy of any proposed management contract, insurance contract,
19 employment contract, or other contract affecting the use of, maintenance of, or access
20 to all or part of the condominium to which it is anticipated the unit owners or the
21 council of unit owners will be a party, and a statement of the right of the council of
22 unit owners to terminate contracts entered into during the developer control period
23 under § 11–133 of this title;

24 (5) A copy of the actual annual operating budget for the condominium
25 or, if no actual operating budget exists, a copy of the projected annual operating
26 budget for the condominium including reasonable details concerning:

27 (i) The estimated monthly payments by the purchaser for
28 assessments;

29 (ii) Monthly charges for the use, rental, or lease of any facilities
30 not part of the condominium;

31 (iii) The amount of the reserve fund for repair and replacement
32 and its intended use; and

1 (iv) Any initial capital contribution or similar fee, other than
2 assessments for common expenses, to be paid by unit owners to the council of unit
3 owners or vendor, and a statement of how the fees will be used;

4 (6) A plain language statement of the policy and procedures for
5 collecting assessments and handling collection of delinquencies, including reasonable
6 details concerning:

7 (i) The number and percentage of unit owners who are
8 delinquent or in arrears in an amount equal to or greater than 50% of the annual
9 assessment of the unit owner;

10 (ii) The number of unsatisfied liens currently recorded against
11 unit owners under the Maryland Contract Lien Act;

12 (iii) The number of unsatisfied judgments obtained against unit
13 owners for unpaid assessments; and

14 (iv) The total amount of arrearages among all unit owners;

15 (7) A copy of any lease to which it is anticipated the unit owners or the
16 council of unit owners will be a party following closing;

17 (8) A description of any contemplated expansion of the condominium
18 with a general description of each stage of expansion and the maximum number of
19 units that can be added to the condominium;

20 (9) A copy of the floor plan of the unit or the proposed condominium
21 plats;

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

25 (11) A statement as to whether streets within the condominium are to
26 be dedicated to public use or maintained by the council of unit owners;

27 (12) A statement of any judgments against the council of unit owners
28 and the existence of any pending suits to which the council of unit owners is a party;

29 (13) In the case of a condominium containing buildings substantially
30 completed more than 5 years prior to the filing of the application for registration under
31 § 11–127 of this title, a statement of the physical condition and state of repair of the
32 major structural, mechanical, electrical, and plumbing components of the
33 improvements, to the extent reasonably ascertainable, and estimated costs of repairs
34 for which a present need is disclosed in the statement and a statement of repairs

1 which the vendor intends to make. The vendor is entitled to rely on the reports of
2 architects or engineers authorized to practice their profession in this State;

3 (14) A description of any provision in the declaration or bylaws limiting
4 or providing for the duration of developer control or requiring the phasing-in of unit
5 owner participation, or a statement that there is no such provision;

6 (15) If the condominium is one which will be created by the conversion
7 of a rental facility, a copy of the notice and materials required by §§ 11-102.1 and
8 11-137 of this title;

9 (16) A statement of whether the unit being purchased is subject to an
10 extended lease under § 11-137 of this title, or local law, and a copy of any extended
11 lease;

12 (17) A written notice of the unit owner's responsibility for the council of
13 unit owners' property insurance deductible and the amount of the deductible; and

14 (18) Any other information required by regulation duly adopted and
15 issued by the Secretary of State.

16 (d) (1) Following execution of a contract of sale by a purchaser, the vendor
17 may not amend any of the material required to be furnished by subsection (a) of this
18 section without the approval of the purchaser if the amendment would affect
19 materially the rights of the purchaser.

20 (2) Approval is not required if the amendment is required by any
21 governmental authority or public utility, or if the amendment is made as a result of
22 actions beyond the control of the vendor or in the ordinary course of affairs of the
23 council of unit owners.

24 (3) A copy of any amendments shall be delivered promptly to any
25 purchaser and to the Secretary of State.

26 (e) (1) Any purchaser may **RESCIND IN WRITING THE CONTRACT OF**
27 **SALE, WITHOUT ANY LIABILITY ON THE PURCHASER'S PART,** at any time [(i)]
28 within:

29 **(I)** 15 days following receipt of all of the information required
30 under subsection (b) of this section or the signing of the contract, whichever is later[;
31 and (ii) within], **WITHOUT STATING ANY REASON; OR**

32 **(II)** 5 days following receipt of the information required **TO BE**
33 **DELIVERED** under subsection [(d)] **(D)(3)** of this section[, rescind in writing the
34 contract of sale without stating any reason and without any liability on his part, and
35 he shall be entitled to the return of any deposits made on account of the contract] **IF:**

1 **1. THE PURCHASER HAS APPROVAL RIGHTS UNDER**
2 **SUBSECTION (D)(1) OF THIS SECTION;**

3 **2. THE AMENDMENT AFFECTS MATERIALLY AND**
4 **ADVERSELY THE RIGHTS OF THE PURCHASER; AND**

5 **3. THE PURCHASER STATES IN WRITING THE**
6 **REASON FOR RESCISSION.**

7 **(2) A PURCHASER WHO RESCINDS IN WRITING A CONTRACT OF**
8 **SALE UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE ENTITLED TO THE**
9 **RETURN OF ANY DEPOSITS MADE ON ACCOUNT OF THE CONTRACT.**

10 **(3) IF THE PURCHASER'S APPROVAL OF AN AMENDMENT IS NOT**
11 **REQUIRED UNDER SUBSECTION (D)(1) OF THIS SECTION, A PURCHASER MAY**
12 **NOT RESCIND A CONTRACT OF SALE UNDER PARAGRAPH (1)(II) OF THIS**
13 **SUBSECTION.**

14 **[(2)] (4) The return of any deposits held in trust by a licensed real**
15 **estate broker to a purchaser under this subsection shall comply with the procedures**
16 **set forth in § 17-505 of the Business Occupations and Professions Article.**

17 **SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the**
18 **General Assembly that this Act:**

19 **(a) abrogate a holding of the Court of Special Appeals in Herlson v. RTS**
20 **Residential Block 5, LLC, 191 Md. App. 719 (2010); and**

21 **(b) clarify that the right of a condominium unit purchaser to rescind a**
22 **contract of sale when there is a change to the public offering statement only applies if**
23 **the change materially and adversely affects the rights of the purchaser.**

24 **SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect**
25 **October 1, 2012.**