

COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND

2004 Legislative Session

Bill No. 2004-05

Chapter. No. _____

Introduced by _____

Date of Introduction _____

BILL

1 AN ACT concerning

2 **Homeowners' Associations - Dispute Resolution**

3

4 FOR the purpose of

5
6 Amending the Charles County Code to establish a Homeowners' Association Dispute
7 Review Board to hear and resolve disputes between a homeowners' association and a
8 homeowner regarding the enforcement of recorded covenants or restrictions of the
9 homeowners' association.

10

11 BY adding to:
12 Chapter 247 – Homeowners' Associations
13 *Code of Charles County, Maryland*
14 (1994 Edition, 2000 Supplement)

15
16 **SECTION 1.** BE IT ENACTED BY THE COUNTY COMMISSIONERS OF
17 CHARLES COUNTY, MARYLAND, that the Laws of Charles County, Maryland read as
18 follows:

19 **SEC. 247-1. HOMEOWNERS' ASSOCIATION DISPUTE RESOLUTION -**

1 BOARD.

2
3 C. COMMON OWNERSHIP COMMUNITY MEANS A DEVELOPMENT
4 SUBJECT TO A DECLARATION ENFORCED BY A HOMEOWNERS'
5 ASSOCIATION, AS THOSE TERMS ARE USED IN STATE LAW;
6

7 D. HOMEOWNER'S ASSOCIATION MEANS THE LEGAL ENTITY,
8 INCORPORATED OR UNINCORPORATED, THAT IS RESPONSIBLE FOR
9 THE GOVERNANCE OR COMMON PROPERTY OF A COMMON
10 OWNERSHIP COMMUNITY.
11

12 E. DISPUTE MEANS ANY DISAGREEMENT BETWEEN TWO OR MORE
13 PARTIES THAT INVOLVES:

14 (1) THE AUTHORITY OF A GOVERNING BODY, UNDER ANY LAW
15 OR ASSOCIATION DOCUMENT, TO:

16 (a) REQUIRE ANY PERSON TO TAKE ANY ACTION, OR NOT
17 TO TAKE ANY ACTION, INVOLVING A UNIT OR
18 PROPERTY;

19 (b) REQUIRE ANY PERSON TO PAY A FEE, FINE, OR
20 ASSESSMENT; OR

21 (c) ALTER OR ADD TO A COMMON AREA OR ELEMENT; OR

22 (2) THE FAILURE OF A GOVERNING BODY, WHEN REQUIRED BY
23 LAW OR AN ASSOCIATION DOCUMENT, TO:

24 (a) PROPERLY CONDUCT AN ELECTION;

25 (b) GIVE ADEQUATE NOTICE OF A MEETING OR OTHER
26 ACTION;

27 (c) PROPERLY CONDUCT A MEETING;

28 (d) PROPERLY ADOPT A BUDGET OR RULES;

29 (e) MAINTAIN OR AUDIT BOOKS AND RECORDS; OR

1 (f) ALLOW INSPECTION OF BOOKS AND RECORDS.

2
3 F. DISPUTE DOES NOT INCLUDE ANY DISAGREEMENT THAT ONLY
4 INVOLVES:

- 5 (1) TITLE TO ANY UNIT OR ANY COMMON AREA OR ELEMENT;
6 (2) THE PERCENTAGE INTEREST OR VOTE ALLOCATABLE TO A
7 UNIT;
8 (3) THE INTERPRETATION OR ENFORCEMENT OF ANY
9 WARRANTY;
10 (4) THE COLLECTION OF AN ASSESSMENT VALIDLY LEVIED
11 AGAINST A PARTY; OR
12 (5) THE JUDGMENT OR DISCRETION OF A GOVERNING BODY IN
13 TAKING OR DECIDING NOT TO TAKE ANY LEGALLY
14 AUTHORIZED ACTION.
15 (6) AN ALLEGATION OF A PUBLIC NUISANCE WHICH IS THE
16 SUBJECT OF A COMPLAINT FILED WITH THE CHARLES
17 COUNTY NUISANCE BOARD.

18
19 G. GOVERNING BODY OF A HOMEOWNER'S ASSOCIATION MEANS THE
20 COUNCIL OF UNIT OWNERS, BOARD OF DIRECTORS, OR ANY OTHER
21 BODY AUTHORIZED BY AN ASSOCIATION DOCUMENT TO ADOPT
22 BINDING RULES OR REGULATIONS.

23
24 H. OWNER MEANS A LOT OWNER IN A HOMEOWNERS' ASSOCIATION.

25
26 I. PARTY INCLUDES:

- 27 (1) AN OWNER; AND
28 (2) A GOVERNING BODY.

29

1 **SEC. 247-3. HOMEOWNERS' ASSOCIATION DISPUTE REVIEW BOARD**

2 A. THE COUNTY COMMISSIONERS SHALL APPOINT A HOMEOWNERS'
3 ASSOCIATION DISPUTE REVIEW BOARD CONSISTING OF SEVEN
4 VOTING MEMBERS.

5 (1) TWO MEMBERS SHOULD BE SELECTED FROM RESIDENTS OF
6 SELF-MANAGED AND PROFESSIONALLY MANAGED
7 HOMEOWNERS' ASSOCIATIONS WITHIN CHARLES COUNTY,
8 AND MAY INCLUDE MEMBERS OR FORMER MEMBERS OF
9 GOVERNING BOARDS.

10 (2) ONE MEMBER SHOULD BE SELECTED FROM PERSONS
11 INVOLVED IN HOUSING DEVELOPMENT AND REAL ESTATE
12 SALES.

13 (3) TWO MEMBERS SHOULD BE SELECTED FROM PERSONS WHO
14 ARE MEMBERS OF PROFESSIONS ASSOCIATED WITH COMMON
15 OWNERSHIP COMMUNITIES (SUCH AS ATTORNEYS WHO
16 REPRESENT ASSOCIATIONS, DEVELOPERS, HOUSING
17 MANAGEMENT OR TENANTS) OR INVESTOR-OWNERS OF
18 UNITS IN COMMON OWNERSHIP COMMUNITIES, INCLUDING
19 AT LEAST ONE PERSON WHO IS A PROFESSIONAL
20 COMMUNITY ASSOCIATION MANAGER.

21 (4) TWO MEMBERS SHOULD BE CHARLES COUNTY RESIDENTS
22 WHO ARE NOT MEMBERS OF THE CLASSES SET FORTH IN
23 SUBSECTIONS (1), (2), AND (3) OF THIS SECTION.

24 B. DESIGNEES OF THE COUNTY COMMISSIONERS AND DEPARTMENT
25 OF PLANNING AND GROWTH MANAGEMENT ARE EX-OFFICIO
26 NONVOTING MEMBERS OF THE BOARD

27
28 C. EACH MEMBER SERVES A 3-YEAR TERM. OF THE MEMBERS FIRST
29 APPOINTED, TWO MUST BE APPOINTED FOR 1-YEAR TERMS, TWO

1 MUST BE APPOINTED FOR 2-YEAR TERMS, AND THREE MUST BE
2 APPOINTED FOR 3-YEAR TERMS. A MEMBER APPOINTED TO FILL A
3 VACANCY SERVES THE REST OF THE UNEXPIRED TERM. MEMBERS
4 CONTINUE IN OFFICE UNTIL THEIR SUCCESSORS ARE APPOINTED.

5
6 D. VOTING MEMBERS OF THE BOARD RECEIVE NO COMPENSATION
7 FOR THEIR SERVICES.

8
9 E. THE BOARD MUST SUBMIT AN ANNUAL REPORT BY SEPTEMBER 1
10 TO THE COUNTY COMMISSIONERS SUMMARIZING ITS ACTIVITIES,
11 NEEDS, AND RECOMMENDATIONS, AND THE EXTENT TO WHICH
12 THE GOALS OF THIS CHAPTER ARE BEING MET.

13
14 **SEC. 247-4. FILING OF DISPUTES; EXHAUSTION OF ASSOCIATION REMEDIES.**

15
16 A. THE BOARD MAY HEAR ANY DISPUTE BETWEEN OR AMONG
17 PARTIES. EITHER PARTY MAY FILE A DISPUTE WITH THE BOARD BY
18 SUBMITTING, IN WRITING, A DESCRIPTION OF THE DISPUTE,
19 NAMING ALL PARTIES, IN A FORM APPROVED BY THE BOARD. THE
20 COUNTY COMMISSIONERS MAY SET A FEE FOR FILING DISPUTES
21 WITH THE BOARD TO OFFSET ADMINISTRATIVE COSTS.

22
23 B. A PARTY MUST NOT FILE A DISPUTE WITH THE BOARD UNTIL THE
24 PARTY MAKES A GOOD FAITH ATTEMPT TO EXHAUST ALL
25 PROCEDURES OR REMEDIES PROVIDED IN THE ASSOCIATION
26 DOCUMENTS.

27
28 C. HOWEVER, A PARTY MAY FILE A DISPUTE WITH THE BOARD 60
29 DAYS AFTER ANY PROCEDURE OR REMEDY PROVIDED IN THE

1 ASSOCIATION DOCUMENTS HAS BEEN INITIATED BEFORE THE
2 ASSOCIATION.

3
4 D. AFTER A HOMEOWNER'S ASSOCIATION FINDS THAT A DISPUTE
5 EXISTS, THE ASSOCIATION MUST NOTIFY THE OTHER PARTIES OF
6 THEIR RIGHTS TO FILE THE DISPUTE WITH THE BOARD. THE
7 ASSOCIATION MUST NOT TAKE ANY ACTION TO ENFORCE OR
8 IMPLEMENT ITS DECISION FOR 14 DAYS AFTER IT NOTIFIES THE
9 OTHER PARTIES OF THEIR RIGHTS.

10
11 E. WHEN A DISPUTE IS FILED WITH THE BOARD, A HOMEOWNERS'
12 ASSOCIATION MUST NOT TAKE ANY ACTION TO ENFORCE OR
13 IMPLEMENT THE ASSOCIATION'S DECISION, EXCEPT FILING A CIVIL
14 ACTION UNDER SUBSECTION F., BELOW, UNTIL THE PROCESS
15 UNDER THIS CHAPTER IS COMPLETED.

16
17 F. ANY PARTY MAY FILE A CIVIL ACTION ARISING OUT OF AN
18 ASSOCIATION DOCUMENT OR A LAW REGULATING THE
19 ASSOCIATION'S POWERS AND PROCEDURES AT ANY TIME. THE
20 COURT MAY STAY ALL PROCEEDINGS FOR AT LEAST 90 DAYS
21 AFTER THE COURT IS NOTIFIED THAT A DISPUTE HAS BEEN
22 PROPERLY FILED UNDER THIS CHAPTER SO THAT A HEARING
23 UNDER SECTION 247-7 MAY BE COMPLETED.

24
25 **SEC. 247-5. PRODUCTION OF EVIDENCE.**

26
27 A. THE BOARD MAY:
28 (1) COMPEL THE ATTENDANCE AT A HEARING OF WITNESSES
29 AND PARTIES, ADMINISTER OATHS, TAKE THE TESTIMONY OF

1 ANY PERSON UNDER OATH AND, IN CONNECTION WITH ANY
2 DISPUTE, REQUIRE THE PRODUCTION OF ANY RELEVANT
3 EVIDENCE; AND

4 (2) ISSUE SUMMONSES TO COMPEL THE ATTENDANCE OF
5 WITNESSES AND PARTIES AND THE PRODUCTION OF
6 DOCUMENTS, RECORDS AND OTHER EVIDENCE IN ANY
7 MATTER TO WHICH THIS CHAPTER APPLIES.

8
9 B. IF ANY PERSON DOES NOT COMPLY WITH ANY SUMMONS ISSUED
10 UNDER THIS CHAPTER TO COMPEL THE ATTENDANCE OF PERSONS
11 OR THE PRODUCTION OF DOCUMENTS, RECORDS OR OTHER
12 EVIDENCE IN ANY MATTER TO WHICH THIS CHAPTER APPLIES, THE
13 COUNTY ATTORNEY, ON BEHALF OF THE BOARD, MAY ENFORCE
14 THE SUMMONS IN A COURT WITH JURISDICTION.

15
16 C. ANY COURT WITH JURISDICTION MAY, ON REQUEST OF THE BOARD,
17 IN ACCORDANCE WITH STATE LAW AND THE MARYLAND RULES OF
18 PROCEDURE:

- 19 (1) REQUIRE COMPLIANCE WITH A SUMMONS;
20 (2) REQUIRE THE ATTENDANCE OF A NAMED PERSON BEFORE
21 THE BOARD AT A SPECIFIED TIME AND PLACE;
22 (3) REQUIRE THE PRODUCTION OF RECORDS, DOCUMENTS, OR
23 OTHER EVIDENCE;
24 (4) REQUIRE THE TRANSFER OF CUSTODY OF RECORDS,
25 DOCUMENTS, OR OTHER EVIDENCE TO THE COURT; OR
26 (5) PROHIBIT THE DESTRUCTION OF ANY RECORDS,
27 DOCUMENTS, OR OTHER EVIDENCE UNTIL A LAWFUL
28 INVESTIGATION BY THE BOARD IS ENDED.

1 D. THE FAILURE TO COMPLY WITH ANY ORDER ENTERED UNDER THIS
2 SECTION MAY BE PUNISHABLE AS CONTEMPT OF COURT.

3
4 **SEC. 247-6. MEDIATION; DISMISSAL BEFORE HEARING**

5 A. THE BOARD MAY INVESTIGATE FACTS AND ASSEMBLE
6 DOCUMENTS RELEVANT TO A DISPUTE FILED WITH THE BOARD,
7 AND MAY NOTIFY A PARTY IF, IN ITS OPINION, A DISPUTE WAS NOT
8 PROPERLY FILED WITH THE BOARD.

9
10 B. IF THE BOARD, AFTER REVIEWING AND CONSIDERING A DISPUTE,
11 FINDS THAT, ASSUMING ALL FACTS ALLEGED BY THE PARTY
12 WHICH FILED THE DISPUTE ARE TRUE, THERE ARE NO REASONABLE
13 GROUNDS TO CONCLUDE A VIOLATION OF APPLICABLE LAW OR
14 ANY ASSOCIATION DOCUMENT HAS OCCURRED, IT MAY IN ITS
15 DISCRETION DISMISS THE DISPUTE. THE BOARD MAY RECONSIDER
16 THE DISMISSAL OF A DISPUTE UNDER THIS SUBSECTION IF ANY
17 PARTY, IN A MOTION TO RECONSIDER FILED WITHIN 30 DAYS AFTER
18 THE DISPUTE IS DISMISSED, SHOWS THAT:

- 19 (1) THE BOARD ERRONEOUSLY INTERPRETED OR APPLIED
20 APPLICABLE LAW OR AN ASSOCIATION DOCUMENT; OR
21 (2) MATERIAL ISSUES OF FACT WHICH ARE NECESSARY TO A
22 FAIR RESOLUTION OF THE DISPUTE REMAIN UNRESOLVED.

23
24 C. ANY PARTY MAY REQUEST MEDIATION.

25
26 D. IF A PARTY REQUESTS MEDIATION, THE BOARD MUST NOTIFY ALL
27 PARTIES OF THE FILING AND OF THE MEDIATION SESSION.

28
29 E. THE COUNTY MUST PROVIDE A QUALIFIED MEDIATOR TO MEET

1 WITH THE PARTIES WITHIN 30 DAYS AFTER A PARTY REQUESTS
2 MEDIATION TO ATTEMPT TO SETTLE THE DISPUTE.

3
4 F. IF ANY PARTY REFUSES TO ATTEND A MEDIATION SESSION, OR IF
5 MEDIATION DOES NOT SUCCESSFULLY RESOLVE THE DISPUTE
6 WITHIN 10 DAYS AFTER THE FIRST MEDIATION SESSION IS HELD,
7 THE BOARD MUST PROMPTLY SCHEDULE A HEARING UNDER
8 SECTION 247-7 UNLESS A HEARING HAS ALREADY BEEN
9 SCHEDULED UNDER SECTION 247-7.

10
11 **SEC. 247-7. ADMINISTRATIVE HEARING.**

- 12
13 A. THE BOARD SHALL HOLD A HEARING ON EACH DISPUTE THAT IS
14 PROPERLY FILED UNLESS THE BOARD FINDS THAT:
- 15 (1) THE DISPUTE IS ESSENTIALLY IDENTICAL TO ANOTHER
16 DISPUTE BETWEEN THE SAME PARTIES ON WHICH A HEARING
17 HAS ALREADY BEEN HELD UNDER THIS SECTION; OR
 - 18 (2) THE DISPUTE IS CLEARLY NOT WITHIN THE JURISDICTION OF
19 THE BOARD.
- 20
21 B. THE BOARD SHALL GIVE NOTICE TO THE PARTIES TO A DISPUTE BY
22 EITHER PERSONAL DELIVERY OR BY CERTIFIED MAIL RESTRICTED
23 DELIVERY, RETURN RECEIPT REQUESTED. SAID NOTICE SHALL BE
24 RECEIVED BY THE PARTIES AT LEAST FOURTEEN (14) DAYS PRIOR
25 TO THE PUBLIC HEARING REGARDING THE DISPUTE, AND SHALL
26 GIVE NOTICE OF THE TIME AND PLACE OF THE HEARING AND A
27 DESCRIPTION OF THE DISPUTE.
- 28
29 C. AT ANY HEARING, A PARTY OR A WITNESS MAY BE ADVISED BY

1 COUNSEL.

2
3 D. EACH PARTICIPATING BOARD MEMBER MUST NOT HAVE ANY
4 INTEREST IN THE DISPUTE TO BE HEARD.

5
6 E. IF ANY PARTY, AFTER PROPER NOTICE, DOES NOT APPEAR AT THE
7 SCHEDULED HEARING, THE BOARD MAY ORDER ANY RELIEF TO
8 ANOTHER PARTY THAT THE FACTS ON RECORD WARRANT.

9
10 F. THE BOARD MUST APPLY STATE AND COUNTY LAWS AND ALL
11 RELEVANT CASE LAW TO THE FACTS OF THE DISPUTE. AT THE
12 CLOSE OF ALL OF THE EVIDENCE, THE BOARD SHALL DELIBERATE
13 AND WITHIN FOURTEEN (14) DAYS, THE BOARD SHALL ISSUE ITS
14 WRITTEN DECISION AND ORDER.

15
16 G. A DECISION OF THE BOARD AUTHORIZED UNDER THIS CHAPTER IS
17 BINDING ON THE PARTIES, SUBJECT TO REVIEW ONLY BY THE
18 CIRCUIT COURT FOR CHARLES COUNTY UPON A PETITION FOR
19 JUDICIAL REVIEW FILED PURSUANT TO THE MARYLAND RULES OF
20 PROCEDURE BY ANY PARTY AGGRIEVED BY THE DECISION WITHIN
21 THE TIME PRESCRIBED FOR PETITIONS FOR REVIEW OF
22 ADMINISTRATIVE AGENCY DECISIONS BY SUCH RULES OF
23 PROCEDURE.

24
25 H. FAILURE TO COMPLY WITH A LAWFUL ORDER OF THE BOARD
26 ISSUED UNDER THIS CHAPTER IS A CIVIL INFRACTION UNDER
27 ARTICLE 25B, SECTION 13C OF THE MARYLAND CODE. EACH DAY
28 THAT A PERSON DOES NOT COMPLY WITH A BOARD ORDER IS A
29 SEPARATE OFFENSE.

1 **SECTION 2.** BE IT FURTHER ENACTED, that this Act shall take effect FORTY-
2 FIVE (45) calendar days after it becomes law.

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18 COUNTY COMMISSIONERS OF
19 CHARLES COUNTY, MARYLAND

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23 Murray D. Levy, President

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27 Wayne Cooper

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Robert J. Fuller

Wm. Daniel Mayer

Attest:

Allan R. Smith

Linda C. Rollins, Clerk