

HOUSE BILL 287

N1

9lr1513
CF 9lr1802

By: **Delegates Beidle, Healey, Holmes, King, Kipke, Lafferty, Love, Mathias, McConkey, and Niemann**

Introduced and read first time: January 29, 2009

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Condominiums – Repair or Replacement of Unit by Council**
3 **of Unit Owners**

4 FOR the purpose of clarifying that the council of unit owners of a condominium is
5 responsible for the repair or replacement of condominium units, exclusive of
6 improvements and betterments installed in units by unit owners other than the
7 developer, in the event of damage or destruction of the condominium; clarifying
8 the coverage of certain property insurance required to be maintained by a
9 council of unit owners; providing that the owner of the unit where the cause of
10 certain damage or destruction originated is responsible for a certain insurance
11 deductible up to a certain amount; repealing a condition that the responsibility
12 of the unit owner be provided in the bylaws; repealing a provision that a
13 property insurance deductible is not a cost of repair or replacement in excess of
14 insurance proceeds; repealing a provision that the council of unit owners'
15 property insurance deductible is a common expense; altering the amount of a
16 property insurance deductible for which a unit owner is responsible; requiring
17 the council of unit owners to inform unit owners of certain responsibilities
18 relating to the property insurance deductible; and generally relating to
19 condominiums and insurance coverage under the Maryland Condominium Act.

20 BY repealing and reenacting, with amendments,
21 Article – Real Property
22 Section 11–108.1 and 11–114
23 Annotated Code of Maryland
24 (2003 Replacement Volume and 2008 Supplement)

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

27 **Article – Real Property**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 11-108.1.

2 (A) Except to the extent otherwise provided by the declaration or bylaws, the
3 council of unit owners is responsible for maintenance, repair, and replacement of the
4 common elements, and each unit owner is responsible for maintenance, repair, and
5 replacement of his unit.

6 (B) **WHEN REPAIR OR REPLACEMENT OF A UNIT RESULTS FROM A**
7 **PROPERTY LOSS INSURABLE BY THE COUNCIL OF UNIT OWNERS UNDER**
8 **SECTION 11-114 OF THIS SUBTITLE, THE COUNCIL OF UNIT OWNERS IS**
9 **RESPONSIBLE FOR REPAIR OR REPLACEMENT OF THE UNIT.**

10 11-114.

11 (a) Commencing not later than the time of the first conveyance of a unit to a
12 person other than the developer, the council of unit owners shall maintain, to the
13 extent reasonably available:

14 (1) Property insurance on the common elements and units, exclusive of
15 improvements and betterments installed in units by unit owners **OTHER THAN THE**
16 **DEVELOPER**, insuring against those risks of direct physical loss commonly insured
17 against, in amounts determined by the council of unit owners but not less than any
18 amounts specified in the declaration or bylaws; and

19 (2) Comprehensive general liability insurance, including medical
20 payments insurance, in an amount determined by the council of unit owners, but not
21 less than any amount specified in the declaration or bylaws, covering occurrences
22 commonly insured against for death, bodily injury, and property damage arising out of
23 or in connection with the use, ownership, or maintenance of the common elements.

24 (b) The council of unit owners shall give notice to all unit owners of the
25 termination of any insurance policy within 10 days of termination. The declaration or
26 bylaws may require the council of unit owners to carry any other insurance, and the
27 council of unit owners in any event may carry any other insurance it deems
28 appropriate to protect the council of unit owners or the unit owners.

29 (c) Insurance policies carried pursuant to subsection (a) of this section shall
30 provide that:

31 (1) Each unit owner is an insured person under the policy with respect
32 to liability arising out of his ownership of an undivided interest in the common
33 elements or membership in the council of unit owners;

34 (2) The insurer waives its right to subrogation under the policy
35 against any unit owner of the condominium or members of his household;

1 (3) An act or omission by any unit owner, unless acting within the
2 scope of his authority on behalf of the council of unit owners, does not void the policy
3 and is not a condition to recovery under the policy; and

4 (4) If, at the time of a loss under the policy, there is other insurance in
5 the name of a unit owner covering the same property covered by the policy, the policy
6 is primary insurance not contributing with the other insurance.

7 (d) Any loss covered by the property policy under subsection (a)(1) of this
8 section shall be adjusted with the council of unit owners, but the insurance proceeds
9 for that loss shall be payable to any insurance trustee designated for that purpose, or
10 otherwise to the council of unit owners, and not to any mortgagee. The insurance
11 trustee or the council of unit owners shall hold any insurance proceeds in trust for unit
12 owners and lien holders as their interests may appear. Subject to the provisions of
13 subsection (g) of this section, the proceeds shall be disbursed first for the repair or
14 restoration of the damaged common elements and units, and unit owners and lien
15 holders are not entitled to receive payment of any portion of the proceeds unless there
16 is a surplus of proceeds after the common elements and units have been completely
17 repaired or restored, or the condominium is terminated.

18 (e) An insurance policy issued to the council of unit owners does not prevent
19 a unit owner from obtaining insurance for his own benefit.

20 (f) An insurer that has issued an insurance policy under this section shall
21 issue certificates or memoranda of insurance to the council of unit owners and, upon
22 request, to any unit owner, mortgagee, or beneficiary under a deed of trust. The
23 insurance may not be canceled until 30 days after the notice of the proposed
24 cancellation has been mailed to the council of unit owners, each unit owner and each
25 mortgagee to whom certificates of insurance have been issued.

26 (g) (1) Any portion of the condominium damaged or destroyed shall be
27 repaired or replaced promptly by the council of unit owners unless:

28 (i) The condominium is terminated;

29 (ii) Repair or replacement would be illegal under any State or
30 local health or safety statute or ordinance; or

31 (iii) 80 percent of the unit owners, including every owner of a
32 unit or assigned limited common element which will not be rebuilt, vote not to rebuild.

33 (2) (i) [1.] The cost of repair or replacement in excess of
34 insurance proceeds and reserves is a common expense.

35 [2. A property insurance deductible is not a cost of repair
36 or replacement in excess of insurance proceeds.]

1 (ii) If the cause of any damage to or destruction of any portion of
2 the condominium originates from the common elements, the council of unit owners'
3 property insurance deductible is a common expense.

4 (iii) 1. Except as otherwise provided in the council of unit
5 owners' bylaws, if the cause of any damage to or destruction of any portion of the
6 condominium originates from a unit, [the council of unit owners' property insurance
7 deductible is a common expense.

8 2. If the council of unit owners' bylaws provides that]
9 the owner of the unit where the cause of the damage or destruction originated is
10 responsible for the council of unit owners' property insurance deductible, [the unit
11 owner's responsibility may not exceed \$5,000.] **UP TO \$10,000.**

12 **2. THE COUNCIL OF UNIT OWNERS SHALL INFORM**
13 **EACH UNIT OWNER OF:**

14 **A. THE UNIT OWNER'S LIABILITY FOR THE COUNCIL**
15 **OF UNIT OWNERS' PROPERTY INSURANCE DEDUCTIBLE; AND**

16 **B. THE AMOUNT OF THE DEDUCTIBLE.**

17 3. The council of unit owners' property insurance
18 deductible amount exceeding the [\$5,000] **\$10,000** responsibility of the unit owner is
19 a common expense.

20 (iv) In the same manner as provided under § 11-110 of this
21 subtitle, the council of unit owners may make an annual assessment against the unit
22 owner responsible under subparagraph (iii) of this paragraph.

23 (3) If the damaged or destroyed portion of the condominium is not
24 repaired or replaced:

25 (i) The insurance proceeds attributable to the damaged
26 common elements shall be used to restore the damaged area to a condition compatible
27 with the remainder of the condominium;

28 (ii) The insurance proceeds attributable to units and limited
29 common elements which are not rebuilt shall be distributed to the owners of those
30 units and the owners of the units to which those limited common elements were
31 assigned; and

32 (iii) The remainder of the proceeds shall be distributed to all the
33 unit owners in proportion to their percentage interest in the common elements.

34 (4) If the unit owners vote not to rebuild any unit, that unit's entire
35 common element interest, votes in the council of unit owners, and common expense

1 liability are automatically reallocated upon the vote as if the unit had been condemned
2 under § 11–112 of this title, and the council of unit owners promptly shall prepare,
3 execute, and record an amendment to the declaration reflecting the reallocations.
4 Notwithstanding the provisions of this subsection, § 11–123 of this title governs the
5 distribution of insurance proceeds if the condominium is terminated.

6 (h) The council of unit owners shall maintain and make available for
7 inspection a copy of all insurance policies maintained by the council of unit owners.

8 (i) The provisions of this section do not apply to a condominium all of whose
9 units are intended for nonresidential use.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2009.