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April 11, 2011

The Honorable Martin O'Malley
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401-1991

Re: House Bill 679

Dear Governor O'Malley:

We have reviewed House Bill 679, "Real Property - Condominiums - Amendment to Bylaws to Require Unit Insurance Coverage." In our review, we have examined the issue of whether the bill unconstitutionally impairs contracts in violation of the Contract Clause of the United States Constitution. It is our view that the bill does not violate the Contract Clause.

House Bill 679 provides that the bylaws of a condominium may require each unit owner to maintain a condominium unit owner insurance policy on the unit. The bill further provides that:

The bylaws may be amended by the affirmative vote of unit owners having at least 51% of the votes in the council of unit owners for the purpose of requiring all unit owners annually.

Other bylaw changes require at least 66 2/3 percent of the votes, unless the bylaws require a higher percentage. Real Property Article § 11-104(e)(2).

The Contract Clause of the United States Constitution provides that "[n]o State shall ... pass any ... Law impairing the Obligation of Contracts." Article 1, § 10, cl. 1. There is no question that the relation between a condominium regime and unit owners is a contractual one. The preliminary question in determining whether a law impairs a contract is substantial. In *Energy Reserves Group v. Kansas Power & Light*, 459 U.S. 400, 411 (1983). If the impairment is deemed substantial, it can be justified by a

The Honorable Martin O'Malley

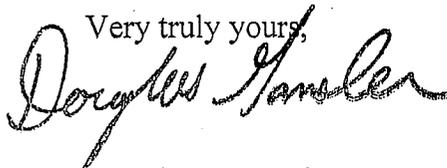
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significant and legitimate public purpose behind the regulation. *Id.* at 411-412. Finally, the adjustment of the rights and responsibilities of the contracting parties must be based upon reasonable conditions and be of a character appropriate to the public purpose justifying the adoption of the legislation. *Id.* at 412, *see also Chevy Chase Savings & Loan*, 306 Md. 384, 416 (1986).

House Bill 679 does not change the method of changing the bylaws in general, but only with respect to this single issue. Such a provision is not unprecedented - prohibitions on family day care homes and no-impact home-based businesses, and the lifting of such prohibitions are both subject to a vote of a simple majority of the eligible voters. Real Property Article § 11-111.1(d)(2) through (4). It is also my understanding that many condominiums provide in their bylaws for vote of 66 2/3 percent unless otherwise provided in law. Given the limited scope of the provision, and the fact that, in many cases, bylaws expressly provide for the provisions of law, it is our view that any impairment is not substantial. To the extent that there is any impairment, it is also our view that the bill is justified by the public interest in permitting a condominium to require unit owner insurance in light of the difficulties that arise if a responsible unit owner cannot pay the deductible imposed under Real Property Article § 11-114(g), or has financial difficulties covering losses that are not covered by the condominium's insurance, including replacement of improvements and betterments installed by them, replacement of their personal property, rental of alternative living quarters during repairs, and continued condominium assessments. The lower vote requirement is clearly a reasonable and appropriate method of achieving this important public purpose.

Very truly yours,



Douglas F. Gansler
Attorney General

DFG/KMR/kk

cc: The Honorable Dana Stein
The Honorable John P. McDonough
Joseph Bryce
Karl Aro