

Department of Legislative Services  
Maryland General Assembly  
2007 Session

FISCAL AND POLICY NOTE

House Bill 1328 (Delegates McComas and Shewell)  
Environmental Matters

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**Real Property - Condominium Regimes - Liability for Defect of Common Element**

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This bill provides that, under the Maryland Condominium Act, the council of unit owners is liable to a unit owner for any defect of a common element that renders an owner's unit uninhabitable and remains unabated for 30 days. A unit owner is entitled to treble damages (three times amount of damages) for a violation of the bill. The amount of damages is equivalent to the greater of the total condominium fee assessment per diem or the unit's fair market rent.

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**Fiscal Summary**

**State Effect:** The bill would not directly affect governmental finances or operations.

**Local Effect:** None.

**Small Business Effect:** Minimal.

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**Analysis**

**Current Law:** Except to the extent otherwise provided in the declaration or bylaws, the council of unit owners is responsible for maintenance, repair, and replacement of a condominium's common elements. Each unit owner is responsible for the maintenance, repair, and replacement of the owner's unit.

Generally, condominiums are required to carry insurance to cover property damage. Any portion of the condominium that is damaged or destroyed must be repaired or replaced

promptly by the council of unit owners unless: (1) the condominium is terminated; (2) repair or replacement would be illegal; or (3) 80% of the unit owners, including every owner of a unit or assigned limited common element that would not be rebuilt, vote not to rebuild.

The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the cause of the damage to or destruction of any portion of the condominium originates from the common elements, the council of unit owners' property insurance deductible is a common expense. If the cause of the damage or destruction originates from a unit, the council of unit owners' deductible is a common expense unless the bylaws provide otherwise. If the bylaws provide that the owner of the unit where the cause of the damage or destruction originated is responsible for the council of unit owners' deductible, the unit owner's responsibility is limited to \$1,000, and the remainder is a common expense.

**Background:** Generally, under a condominium's declaration or bylaws, a unit owner or group of unit owners is responsible for the maintenance, repair, and replacement of limited common elements to which only the unit owner or group of owners has access.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Secretary of State, Judiciary (Administrative Office of the Courts), Office of the Attorney General (Consumer Protection Division), Department of Legislative Services

**Fiscal Note History:** First Reader - March 19, 2007  
mam/jr

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