

HOUSE BILL 287

N1

9lr1513
CF 9lr1802

By: **Delegates Beidle, Healey, Holmes, King, Kipke, Lafferty, Love, Mathias, McConkey, and Niemann Niemann, Kach, Glenn, and V. Clagett**

Introduced and read first time: January 29, 2009

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2009

CHAPTER _____

1 AN ACT concerning

2 **Real Property - Condominiums - Repair or Replacement of Unit Damage or**
3 **Destruction by Council 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 the common elements and
6 condominium units, exclusive of improvements and betterments installed in
7 units by unit owners other than the developer, in the event of damage or
8 destruction of the condominium under certain circumstances; clarifying the
9 coverage of certain property insurance required to be maintained by a council of
10 unit owners; providing that the owner of the unit where the cause of certain
11 damage or destruction originated is responsible for a certain insurance
12 deductible up to a certain amount; repealing a condition that ~~the a certain~~
13 responsibility of the unit owner be provided in the bylaws; ~~repealing a provision~~
14 ~~that a property insurance deductible is not a cost of repair or replacement in~~
15 ~~excess of insurance proceeds~~; repealing a provision that the council of unit
16 owners' property insurance deductible is a common expense under certain
17 circumstances; ~~altering the amount of a property insurance deductible for which~~
18 ~~a unit owner is responsible~~; requiring the council of unit owners to inform unit
19 owners of certain responsibilities relating to the property insurance deductible
20 under certain circumstances; requiring a contract for the initial sale of a unit
21 and a contract for the resale of a unit to include a certain notice of the unit
22 owner's responsibility relating to the property insurance deductible under
23 certain circumstances; declaring the intent of the General Assembly; and
24 generally relating to condominiums and insurance coverage under the Maryland
25 Condominium Act.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,
 2 Article – Real Property
 3 Section 11–108.1 ~~and~~, 11–114, 11–126(b)(16) and (17), and 11–135(a)(4)(xii) and
 4 (5) and (b)
 5 Annotated Code of Maryland
 6 (2003 Replacement Volume and 2008 Supplement)

7 BY adding to
 8 Article – Real Property
 9 Section 11–126(b)(17) and 11–135(a)(6)
 10 Annotated Code of Maryland
 11 (2003 Replacement Volume and 2008 Supplement)

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

14 **Article – Real Property**

15 11–108.1.

16 ~~(A)~~ Except to the extent otherwise provided by the declaration or bylaws,
 17 **AND SUBJECT TO § 11–114 OF THIS SUBTITLE,** the council of unit owners is
 18 responsible for maintenance, repair, and replacement of the common elements, and
 19 each unit owner is responsible for maintenance, repair, and replacement of his unit.

20 ~~(B) WHEN REPAIR OR REPLACEMENT OF A UNIT RESULTS FROM A~~
 21 ~~PROPERTY LOSS INSURABLE BY THE COUNCIL OF UNIT OWNERS UNDER~~
 22 ~~SECTION 11–114 OF THIS SUBTITLE, THE COUNCIL OF UNIT OWNERS IS~~
 23 ~~RESPONSIBLE FOR REPAIR OR REPLACEMENT OF THE UNIT.~~

24 11–114.

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

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

33 (2) Comprehensive general liability insurance, including medical
 34 payments insurance, in an amount determined by the council of unit owners, but not
 35 less than any amount specified in the declaration or bylaws, covering occurrences

1 commonly insured against for death, bodily injury, and property damage arising out of
2 or in connection with the use, ownership, or maintenance of the common elements.

3 (b) The council of unit owners shall give notice to all unit owners of the
4 termination of any insurance policy within 10 days of termination. The declaration or
5 bylaws may require the council of unit owners to carry any other insurance, and the
6 council of unit owners in any event may carry any other insurance it deems
7 appropriate to protect the council of unit owners or the unit owners.

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

10 (1) ~~Each~~ **FOR PROPERTY AND CASUALTY LOSSES TO THE COMMON**
11 **ELEMENTS AND THE UNITS, EXCLUSIVE OF IMPROVEMENTS AND BETTERMENTS**
12 **INSTALLED IN THE UNITS BY UNIT OWNERS OTHER THAN THE DEVELOPER,**
13 **EACH** unit owner is an insured person under the policy with respect to liability arising
14 out of his ownership of an undivided interest in the common elements or membership
15 in the council of unit owners;

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

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

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

24 (d) Any loss covered by the property policy under subsection (a)(1) of this
25 section shall be adjusted with the council of unit owners, but the insurance proceeds
26 for that loss shall be payable to any insurance trustee designated for that purpose, or
27 otherwise to the council of unit owners, and not to any mortgagee. The insurance
28 trustee or the council of unit owners shall hold any insurance proceeds in trust for unit
29 owners and lien holders as their interests may appear. Subject to the provisions of
30 subsection (g) of this section, the proceeds shall be disbursed first for the repair or
31 restoration of the damaged common elements and units, and unit owners and lien
32 holders are not entitled to receive payment of any portion of the proceeds unless there
33 is a surplus of proceeds after the common elements and units have been completely
34 repaired or restored, or the condominium is terminated.

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

37 (f) An insurer that has issued an insurance policy under this section shall
38 issue certificates or memoranda of insurance to the council of unit owners and, upon

1 request, to any unit owner, mortgagee, or beneficiary under a deed of trust. The
 2 insurance may not be canceled until 30 days after the notice of the proposed
 3 cancellation has been mailed to the council of unit owners, each unit owner and each
 4 mortgagee to whom certificates of insurance have been issued.

5 (g) (1) Any portion of the ~~condominium~~ **COMMON ELEMENTS AND THE**
 6 **UNITS, EXCLUSIVE OF IMPROVEMENTS AND BETTERMENTS INSTALLED IN THE**
 7 **UNITS BY UNIT OWNERS OTHER THAN THE DEVELOPER,** damaged or destroyed
 8 shall be repaired or replaced promptly by the council of unit owners unless:

9 (i) The condominium is terminated;

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

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

14 (2) (i) ~~¶1.~~ The cost of repair or replacement in excess of
 15 insurance proceeds and reserves is a common expense.

16 ~~¶2.~~ A property insurance deductible is not a cost of repair
 17 or replacement in excess of insurance proceeds.~~¶~~

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

21 (iii) 1. ~~Except as otherwise provided in the council of unit~~
 22 ~~owners' bylaws, if~~ **IF** the cause of any damage to or destruction of any portion of the
 23 condominium originates from a unit, [the council of unit owners' property insurance
 24 deductible is a common expense.

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

29 **2. THE COUNCIL OF UNIT OWNERS SHALL INFORM**
 30 **EACH UNIT OWNER ANNUALLY IN WRITING OF:**

31 **A. THE UNIT OWNER'S ~~LIABILITY~~ RESPONSIBILITY**
 32 **FOR THE COUNCIL OF UNIT OWNERS' PROPERTY INSURANCE DEDUCTIBLE; AND**

33 **B. THE AMOUNT OF THE DEDUCTIBLE.**

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

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

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

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

12 (ii) The insurance proceeds attributable to units and limited
13 common elements which are not rebuilt shall be distributed to the owners of those
14 units and the owners of the units to which those limited common elements were
15 assigned; and

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

18 (4) If the unit owners vote not to rebuild any unit, that unit's entire
19 common element interest, votes in the council of unit owners, and common expense
20 liability are automatically reallocated upon the vote as if the unit had been condemned
21 under § 11-112 of this title, and the council of unit owners promptly shall prepare,
22 execute, and record an amendment to the declaration reflecting the reallocations.
23 Notwithstanding the provisions of this subsection, § 11-123 of this title governs the
24 distribution of insurance proceeds if the condominium is terminated.

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

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

29 11-126.

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

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

1 **(17) A WRITTEN NOTICE OF THE UNIT OWNER'S RESPONSIBILITY**
2 **FOR THE COUNCIL OF UNIT OWNERS' PROPERTY INSURANCE DEDUCTIBLE AND**
3 **THE AMOUNT OF THE DEDUCTIBLE; AND**

4 ~~[(17)]~~ **(18) Any other information required by regulation duly adopted**
5 **and issued by the Secretary of State.**

6 **11-135.**

7 (a) **Except as provided in subsection (b) of this section, a contract for the**
8 **resale of a unit by a unit owner other than a developer is not enforceable unless the**
9 **contract of sale contains in conspicuous type a notice in the form specified in**
10 **subsection (g)(1) of this section, and the unit owner furnishes to the purchaser not**
11 **later than 15 days prior to closing:**

12 (4) **A certificate containing:**

13 (ii) **A description of any recreational or other facilities which are**
14 **to be used by the unit owners or maintained by them or the council of unit owners, and**
15 **a statement as to whether or not they are to be a part of the common elements; [and]**

16 (5) **A statement by the unit owner as to whether the unit owner has**
17 **knowledge:**

18 (i) **That any alteration to the unit or to the limited common**
19 **elements assigned to the unit violates any provision of the declaration, bylaws, or**
20 **rules and regulations;**

21 (ii) **Of any violation of the health or building codes with respect**
22 **to the unit or the limited common elements assigned to the unit; and**

23 (iii) **That the unit is subject to an extended lease under § 11-137**
24 **of this title or under local law, and if so, a copy of the lease must be provided[.]; AND**

25 **(6) A WRITTEN NOTICE OF THE UNIT OWNER'S RESPONSIBILITY**
26 **FOR THE COUNCIL OF UNIT OWNERS' PROPERTY INSURANCE DEDUCTIBLE AND**
27 **THE AMOUNT OF THE DEDUCTIBLE.**

28 (b) **A contract for the resale by a unit owner other than a developer of a unit**
29 **in a condominium containing less than 7 units is not enforceable unless the contract of**
30 **sale contains in conspicuous type a notice in the form specified in subsection (g)(2) of**
31 **this section, and the unit owner furnishes to the purchaser not later than 15 days**
32 **prior to closing:**

33 (1) **A copy of the declaration (other than the plats);**

34 (2) **The bylaws;**

1 (3) The rules and regulations of the condominium; [and]

2 (4) A statement by the unit owner of the unit owner's expenses during
3 the preceding 12 months relating to the common elements; AND

4 (5) A WRITTEN NOTICE OF THE UNIT OWNER'S RESPONSIBILITY
5 FOR THE COUNCIL OF UNIT OWNERS' PROPERTY INSURANCE DEDUCTIBLE AND
6 THE AMOUNT OF THE DEDUCTIBLE.

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

9 (a) Overturn the Court of Appeals ruling in Diane Anderson, et al. v. Council
10 of Unit Owners of The Gables on Tuckerman Condominium, et al., 404 Md. 560 (2008);

11 (b) Place an affirmative duty on the council of unit owners of a condominium
12 association to:

13 (1) Repair damage or destruction to the condominium that originated
14 in a unit; and

15 (2) Purchase property insurance that reflects this duty; and

16 (c) Make the cost of the property insurance purchased by the council of unit
17 owners of a condominium association under this Act a common expense, except in the
18 case of damage or destruction originating from a unit, the payment of the property
19 insurance deductible shall be the responsibility, up to the maximum amount provided
20 under § 11-114(g) of the Real Property Article, of the owner of the unit where the
21 cause of the damage or destruction originated.

22 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
23 effect ~~October~~ June 1, 2009.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.