

# SENATE BILL 201

N1, C4

9lr1044

---

By: **Senators Kelley, Currie, Middleton, and Stone**

Introduced and read first time: January 23, 2009

Assigned to: Judicial Proceedings

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Condominiums – Required Insurance Coverage**

3 FOR the purpose of clarifying that the council of unit owners of a condominium is  
4 responsible for the repair or replacement of condominium units, exclusive of  
5 improvements and betterments installed in units by unit owners, in the event of  
6 damage to or destruction of the condominium; clarifying that the council of unit  
7 owners is required to maintain certain insurance on a condominium's common  
8 elements and units, exclusive of improvements and betterments installed in  
9 units by unit owners; making stylistic changes; and generally relating to  
10 condominiums and insurance coverage under the Maryland Condominium Act.

11 BY repealing and reenacting, with amendments,  
12 Article – Real Property  
13 Section 11–108.1 and 11–114  
14 Annotated Code of Maryland  
15 (2003 Replacement Volume and 2008 Supplement)

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

18 **Article – Real Property**

19 11–108.1.

20 Except to the extent [otherwise] provided by the declaration [or], bylaws, **OR §**  
21 **11–114(G) OF THIS TITLE**, the council of unit owners is responsible for maintenance,  
22 repair, and replacement of the common elements, and each unit owner is responsible  
23 for maintenance, repair, and replacement of his unit.

24 11–114.

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

4 (1) Property insurance on the common elements and units, exclusive of  
5 improvements and betterments installed in units by unit owners, insuring against  
6 those risks of direct physical loss commonly insured against, in amounts determined  
7 by the council of unit owners but not less than any amounts specified in the  
8 declaration or bylaws; and

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

14 (b) The council of unit owners shall give notice to all unit owners of the  
15 termination of any insurance policy within 10 days of termination. The declaration or  
16 bylaws may require the council of unit owners to carry any other insurance, and the  
17 council of unit owners in any event may carry any other insurance it deems  
18 appropriate to protect the council of unit owners or the unit owners.

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

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

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

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

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

32 (d) Any loss covered by the property policy under subsection (a)(1) of this  
33 section shall be adjusted with the council of unit owners, but the insurance proceeds  
34 for that loss shall be payable to any insurance trustee designated for that purpose, or  
35 otherwise to the council of unit owners, and not to any mortgagee. The insurance  
36 trustee or the council of unit owners shall hold any insurance proceeds in trust for unit  
37 owners and lien holders as their interests may appear. Subject to the provisions of  
38 subsection (g) of this section, the proceeds shall be disbursed first for the repair or  
39 restoration of the damaged common elements and units, and unit owners and lien

1 holders are not entitled to receive payment of any portion of the proceeds unless there  
2 is a surplus of proceeds after the common elements and units have been completely  
3 repaired or restored, or the condominium is terminated.

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

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

12 (g) (1) Any portion of the condominium **FOR WHICH INSURANCE IS**  
13 **REQUIRED UNDER THIS SECTION THAT IS** damaged or destroyed shall be repaired  
14 or replaced promptly by the council of unit owners unless:

15 (i) The condominium is terminated;

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

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

20 (2) (i) 1. The cost of repair or replacement in excess of  
21 insurance proceeds and reserves is a common expense.

22 2. A property insurance deductible is not a cost of repair  
23 or replacement in excess of insurance proceeds.

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

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

31 2. If the council of unit owners' bylaws provides that the  
32 owner of the unit where the cause of the damage or destruction originated is  
33 responsible for the council of unit owners' property insurance deductible, the unit  
34 owner's responsibility may not exceed \$5,000.

1                   3.     The council of unit owners' property insurance  
2 deductible amount exceeding the \$5,000 responsibility of the unit owner is a common  
3 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                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
30 October 1, 2009.