

SENATE BILL 201

N1, C4

9lr1044

By: **Senators Kelley, Currie, Middleton, ~~and Stone~~ Stone, Forehand, and Jacobs**

Introduced and read first time: January 23, 2009

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 25, 2009

CHAPTER _____

1 AN ACT concerning

2 **Real Property - Condominiums - ~~Required Insurance Coverage~~ Repair or**
3 **Replacement of Damage or 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 to or
8 destruction of the condominium under certain circumstances; ~~clarifying that the~~
9 council of unit owners is required to maintain certain insurance on a
10 condominium's common elements and units, exclusive of improvements and
11 betterments installed in units by unit owners; ~~making stylistic changes~~
12 clarifying the coverage of certain property insurance required to be maintained
13 by a council of unit owners; providing that the owner of the unit where the
14 cause of certain damage or destruction originated is responsible for a certain
15 insurance deductible up to a certain amount; repealing a condition that a
16 certain responsibility of the unit owner be provided in the bylaws; repealing a
17 provision that the council of unit owners' property insurance deductible is a
18 common expense under certain circumstances; requiring the council of unit
19 owners to inform unit owners of certain responsibilities relating to the property
20 insurance deductible under certain circumstances; requiring a contract for the
21 initial sale of a unit and a contract for the resale of a unit to include a certain
22 notice of the unit owner's responsibility relating to the property insurance
23 deductible under certain circumstances; declaring the intent of the General
24 Assembly; and generally relating to condominiums and insurance coverage
25 under the Maryland 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 Except to the extent ~~for~~ otherwise provided by the declaration ~~for~~, bylaws, ~~or~~ §
 17 ~~11–114(G) OF THIS TITLE~~ AND SUBJECT TO § 11–114 OF THIS SUBTITLE, the
 18 **council of unit owners is responsible for maintenance**, repair, and replacement
 19 of the common elements, and each unit owner is responsible for maintenance, repair,
 20 and replacement of his unit.

21 11–114.

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

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

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

35 (b) The council of unit owners shall give notice to all unit owners of the
 36 termination of any insurance policy within 10 days of termination. The declaration or

1 bylaws may require the council of unit owners to carry any other insurance, and the
2 council of unit owners in any event may carry any other insurance it deems
3 appropriate to protect the council of unit owners or the unit owners.

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

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

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

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

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

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

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

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

1 (g) (1) Any portion of the ~~condominium FOR WHICH INSURANCE IS~~
 2 ~~REQUIRED UNDER THIS SECTION THAT IS~~ **COMMON ELEMENTS AND THE UNITS,**
 3 **EXCLUSIVE OF IMPROVEMENTS AND BETTERMENTS INSTALLED IN THE UNITS BY**
 4 **UNIT OWNERS OTHER THAN THE DEVELOPER,** damaged or destroyed shall be
 5 repaired or replaced promptly by the council of unit owners unless:

6 (i) The condominium is terminated;

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

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

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

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

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

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

22 ~~2. If the council of unit owners' bylaws provides that the~~
 23 ~~owner of the unit where the cause of the damage or destruction originated is~~
 24 ~~responsible for the council of unit owners' property insurance deductible, the unit~~
 25 ~~owner's responsibility may not~~ **TO** exceed \$5,000.

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

28 **A. THE UNIT OWNER'S RESPONSIBILITY FOR THE**
 29 **COUNCIL OF UNIT OWNERS' PROPERTY INSURANCE DEDUCTIBLE; AND**

30 **B. THE AMOUNT OF THE DEDUCTIBLE.**

31 3. The council of unit owners' property insurance
 32 deductible amount exceeding the \$5,000 responsibility of the unit owner is a common
 33 expense.

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

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

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

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

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

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

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

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

26 11-126.

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

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

32 (17) A WRITTEN NOTICE OF THE UNIT OWNER'S RESPONSIBILITY
33 FOR THE COUNCIL OF UNIT OWNERS' PROPERTY INSURANCE DEDUCTIBLE AND
34 THE AMOUNT OF THE DEDUCTIBLE; AND

1 ~~[(17)]~~ **(18)** Any other information required by regulation duly adopted
2 and issued by the Secretary of State.

3 11-135.

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

9 (4) A certificate containing:

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

13 (5) A statement by the unit owner as to whether the unit owner has
14 knowledge:

15 (i) That any alteration to the unit or to the limited common
16 elements assigned to the unit violates any provision of the declaration, bylaws, or
17 rules and regulations;

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

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

22 **(6) A WRITTEN NOTICE OF THE UNIT OWNER'S RESPONSIBILITY**
23 **FOR THE COUNCIL OF UNIT OWNERS' PROPERTY INSURANCE DEDUCTIBLE AND**
24 **THE AMOUNT OF THE DEDUCTIBLE.**

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

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

31 (2) The bylaws;

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

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

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

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

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

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

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

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.