

# SENATE BILL 541

N1, C1

9lr1569  
CF 9lr1570

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By: **Senator Kelley**

Introduced and read first time: February 5, 2009

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Common Ownership Communities – Fidelity Insurance**

3 FOR the purpose of requiring certain governing bodies of a cooperative housing  
4 corporation, a condominium, or a homeowners association to purchase fidelity  
5 insurance not later than a certain time and to keep the insurance in place each  
6 year; requiring the fidelity insurance to provide for the indemnification of  
7 certain governing bodies of a cooperative housing corporation, a condominium,  
8 or a homeowners association against loss resulting from certain acts or  
9 omissions of certain persons under certain circumstances; requiring a copy of  
10 the fidelity insurance policy of a cooperative housing corporation, a  
11 condominium, or a homeowners association to be kept and made available for  
12 inspection under certain circumstances; requiring the fidelity insurance of a  
13 cooperative housing corporation, a condominium, or a homeowners association  
14 to be in a certain amount; allowing an aggrieved member of a cooperative  
15 housing corporation, an aggrieved unit owner of a condominium, or an  
16 aggrieved lot owner of a homeowners association to submit a dispute regarding  
17 fidelity insurance to the Division of Consumer Protection of the Office of the  
18 Attorney General under certain circumstances; and generally relating to fidelity  
19 insurance and common ownership communities.

20 BY adding to

21 Article – Corporations and Associations  
22 Section 5–6B–18.6  
23 Annotated Code of Maryland  
24 (2007 Replacement Volume and 2008 Supplement)

25 BY adding to

26 Article – Real Property  
27 Section 11–114.1 and 11B–111.6  
28 Annotated Code of Maryland  
29 (2003 Replacement Volume and 2008 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

**Article – Corporations and Associations**

**5-6B-18.6.**

(A) (1) THE BOARD OF DIRECTORS OR OTHER GOVERNING BODY OF A COOPERATIVE HOUSING CORPORATION SHALL PURCHASE FIDELITY INSURANCE NOT LATER THAN THE TIME OF THE FIRST CONVEYANCE OF A UNIT TO A PERSON OTHER THAN THE DEVELOPER AND SHALL KEEP FIDELITY INSURANCE IN PLACE FOR EACH YEAR THEREAFTER.

(2) THE FIDELITY INSURANCE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL PROVIDE FOR THE INDEMNIFICATION OF THE BOARD OF DIRECTORS OR OTHER GOVERNING BODY OF A COOPERATIVE HOUSING CORPORATION AGAINST LOSS RESULTING FROM ACTS OR OMISSIONS ARISING FROM FRAUD, DISHONESTY, OR CRIMINAL ACTS BY:

(I) ANY OFFICER, DIRECTOR, MANAGING AGENT, OR OTHER EMPLOYEE CHARGED WITH THE OPERATION OR MAINTENANCE OF THE COOPERATIVE HOUSING CORPORATION WHO CONTROLS OR DISBURSES FUNDS; AND

(II) ANY MANAGEMENT COMPANY EMPLOYING A MANAGEMENT AGENT OR OTHER EMPLOYEE CHARGED WITH THE OPERATION OR MAINTENANCE OF THE COOPERATIVE HOUSING CORPORATION WHO CONTROLS OR DISBURSES FUNDS.

(B) A COPY OF THE FIDELITY INSURANCE POLICY SHALL BE INCLUDED IN THE BOOKS AND RECORDS KEPT AND MADE AVAILABLE BY OR ON BEHALF OF THE COOPERATIVE HOUSING CORPORATION UNDER § 5-6B-18.5 OF THIS SUBTITLE.

(C) (1) THE AMOUNT OF THE FIDELITY INSURANCE REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL EQUAL AT LEAST THE LESSER OF:

(I) 3 MONTHS' WORTH OF GROSS COMMON CHARGES AND THE TOTAL AMOUNT HELD IN ALL INVESTMENT ACCOUNTS AT THE TIME THE FIDELITY INSURANCE IS ISSUED; OR

(II) \$5,000,000.

**(2) THE TOTAL LIABILITY OF THE INSURANCE TO ALL INSURED PERSONS UNDER THE FIDELITY INSURANCE MAY NOT EXCEED THE SUM OF THE FIDELITY INSURANCE.**

(D) IF A MEMBER BELIEVES THAT THE BOARD OF DIRECTORS OR OTHER GOVERNING BODY OF A COOPERATIVE HOUSING CORPORATION HAS FAILED TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION, THE AGGRIEVED MEMBER MAY SUBMIT THE DISPUTE FOR ADJUDICATION TO THE DIVISION OF CONSUMER PROTECTION OF THE OFFICE OF THE ATTORNEY GENERAL UNDER § 5-6B-12(C) OF THIS SUBTITLE.

## Article – Real Property

**11-114.1.**

**(A) (1) THE COUNCIL OF UNIT OWNERS OR OTHER GOVERNING BODY OF A CONDOMINIUM SHALL PURCHASE FIDELITY INSURANCE NOT LATER THAN THE TIME OF THE FIRST CONVEYANCE OF A UNIT TO A PERSON OTHER THAN THE DEVELOPER AND SHALL KEEP FIDELITY INSURANCE IN PLACE FOR EACH YEAR THEREAFTER.**

**(2) THE FIDELITY INSURANCE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL PROVIDE FOR THE INDEMNIFICATION OF THE COUNCIL OF UNIT OWNERS OR OTHER GOVERNING BODY OF THE CONDOMINIUM AGAINST LOSS RESULTING FROM ACTS OR OMISSIONS ARISING FROM FRAUD, DISHONESTY, OR CRIMINAL ACTS BY:**

**(I) ANY OFFICER, DIRECTOR, MANAGING AGENT, OR OTHER EMPLOYEE CHARGED WITH THE OPERATION OR MAINTENANCE OF THE CONDOMINIUM WHO CONTROLS OR DISBURSES FUNDS; AND**

(II) ANY MANAGEMENT COMPANY EMPLOYING A MANAGEMENT AGENT OR OTHER EMPLOYEE CHARGED WITH THE OPERATION OR MAINTENANCE OF THE CONDOMINIUM WHO CONTROLS OR DISBURSES FUNDS.

**(B) A COPY OF THE FIDELITY INSURANCE POLICY SHALL BE INCLUDED IN THE BOOKS AND RECORDS KEPT AND MADE AVAILABLE BY THE COUNCIL OF UNIT OWNERS UNDER § 11-116 OF THIS TITLE.**

(C) (1) THE AMOUNT OF THE FIDELITY INSURANCE REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL EQUAL AT LEAST THE LESSER OF:

1                   (I)    3 MONTHS' WORTH OF GROSS ANNUAL ASSESSMENTS  
2 AND THE TOTAL AMOUNT HELD IN ALL INVESTMENT ACCOUNTS AT THE TIME  
3 THE FIDELITY INSURANCE IS ISSUED; OR

4                   (II)   \$5,000,000.

5                   (2)    THE TOTAL LIABILITY OF THE INSURANCE TO ALL INSURED  
6 PERSONS UNDER THE FIDELITY INSURANCE MAY NOT EXCEED THE SUM OF THE  
7 FIDELITY INSURANCE.

8                   (D)    IF A UNIT OWNER BELIEVES THAT THE COUNCIL OF UNIT OWNERS  
9 OR OTHER GOVERNING BODY OF A CONDOMINIUM HAS FAILED TO COMPLY WITH  
10 THE REQUIREMENTS OF THIS SECTION, THE AGGRIEVED UNIT OWNER MAY  
11 SUBMIT THE DISPUTE FOR ADJUDICATION TO THE DIVISION OF CONSUMER  
12 PROTECTION OF THE OFFICE OF THE ATTORNEY GENERAL UNDER § 11-130(C)  
13 OF THIS TITLE.

14   11B-111.6.

15                (A)    (1)   THE BOARD OF DIRECTORS OR OTHER GOVERNING BODY OF A  
16 HOMEOWNERS ASSOCIATION SHALL PURCHASE FIDELITY INSURANCE NOT  
17 LATER THAN THE TIME OF THE FIRST CONVEYANCE OF A LOT TO A PERSON  
18 OTHER THAN THE DECLARANT AND SHALL KEEP FIDELITY INSURANCE IN PLACE  
19 FOR EACH YEAR THEREAFTER.

20                (2)    THE FIDELITY INSURANCE REQUIRED UNDER PARAGRAPH (1)  
21 OF THIS SUBSECTION SHALL PROVIDE FOR THE INDEMNIFICATION OF THE  
22 HOMEOWNERS ASSOCIATION AGAINST LOSS RESULTING FROM ACTS OR  
23 OMISSIONS ARISING FROM FRAUD, DISHONESTY, OR CRIMINAL ACTS BY:

24                   (I)    ANY OFFICER, DIRECTOR, MANAGING AGENT, OR OTHER  
25 EMPLOYEE CHARGED WITH THE OPERATION OR MAINTENANCE OF THE  
26 HOMEOWNERS ASSOCIATION WHO CONTROLS OR DISBURSES FUNDS; AND

27                   (II)   ANY MANAGEMENT COMPANY EMPLOYING A  
28 MANAGEMENT AGENT OR OTHER EMPLOYEE CHARGED WITH THE OPERATION  
29 OR MAINTENANCE OF THE HOMEOWNERS ASSOCIATION WHO CONTROLS OR  
30 DISBURSES FUNDS.

31                (B)    A COPY OF THE FIDELITY INSURANCE POLICY SHALL BE INCLUDED  
32 IN THE BOOKS AND RECORDS KEPT AND MADE AVAILABLE BY OR ON BEHALF OF  
33 THE HOMEOWNERS ASSOCIATION UNDER § 11B-112 OF THIS TITLE.

1           **(C)   (1)   THE AMOUNT OF THE FIDELITY INSURANCE REQUIRED UNDER**  
2           **SUBSECTION (A) OF THIS SECTION SHALL EQUAL AT LEAST THE LESSER OF:**

3                           **(I)    3 MONTHS' WORTH OF GROSS ANNUAL HOMEOWNERS**  
4           **ASSOCIATION FEES AND THE TOTAL AMOUNT HELD IN ALL INVESTMENT**  
5           **ACCOUNTS AT THE TIME THE FIDELITY INSURANCE IS ISSUED; OR**

6                           **(II)   \$5,000,000.**

7                           **(2)   THE TOTAL LIABILITY OF THE INSURANCE TO ALL INSURED**  
8           **PERSONS UNDER THE FIDELITY INSURANCE MAY NOT EXCEED THE SUM OF THE**  
9           **FIDELITY INSURANCE.**

10                          **(D)   IF A LOT OWNER BELIEVES THAT THE BOARD OF DIRECTORS OR**  
11           **OTHER GOVERNING BODY OF A HOMEOWNERS ASSOCIATION HAS FAILED TO**  
12           **COMPLY WITH THE REQUIREMENTS OF THIS SECTION, THE AGGRIEVED LOT**  
13           **OWNER MAY SUBMIT THE DISPUTE FOR ADJUDICATION TO THE DIVISION OF**  
14           **CONSUMER PROTECTION OF THE OFFICE OF THE ATTORNEY GENERAL UNDER**  
15           **§ 11B-115(C) OF THIS TITLE.**

16                          **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**  
17           **October 1, 2009.**