

# SENATE BILL 541

N1, C1

9lr1569  
CF HB 687

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By: **Senator Kelley**

Introduced and read first time: February 5, 2009

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 18, 2009

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## CHAPTER \_\_\_\_\_

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)

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#### 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.



BY adding to  
Article – Real Property  
Section 11–114.1 and 11B–111.6  
Annotated Code of Maryland  
(2003 Replacement Volume and 2008 Supplement)

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~~ SALE OF A  
COOPERATIVE INTEREST WITH RESPECT TO 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  
AGENT OR 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~~ \$3,000,000.

(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)~~ 5-6B-12 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 AGENT OR 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.

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 ASSESSMENTS  
4 AND THE TOTAL AMOUNT HELD IN ALL INVESTMENT ACCOUNTS AT THE TIME  
5 THE FIDELITY INSURANCE IS ISSUED; OR

6                       (II)   ~~\$5,000,000~~ \$3,000,000.

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 UNIT OWNER BELIEVES THAT THE COUNCIL OF UNIT OWNERS  
11 OR OTHER GOVERNING BODY OF A CONDOMINIUM HAS FAILED TO COMPLY WITH  
12 THE REQUIREMENTS OF THIS SECTION, THE AGGRIEVED UNIT OWNER MAY  
13 SUBMIT THE DISPUTE ~~FOR ADJUDICATION~~ TO THE DIVISION OF CONSUMER  
14 PROTECTION OF THE OFFICE OF THE ATTORNEY GENERAL UNDER § ~~11-130(c)~~  
15 11-130 OF THIS TITLE.

16   11B-111.6.

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

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

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

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

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

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

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

9                   **(II) ~~\$5,000,000~~ \$3,000,000.**

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

13           **(D) IF A LOT OWNER BELIEVES THAT THE BOARD OF DIRECTORS OR**  
14 **OTHER GOVERNING BODY OF A HOMEOWNERS ASSOCIATION HAS FAILED TO**  
15 **COMPLY WITH THE REQUIREMENTS OF THIS SECTION, THE AGGRIEVED LOT**  
16 **OWNER MAY SUBMIT THE DISPUTE ~~FOR ADJUDICATION~~ TO THE DIVISION OF**  
17 **CONSUMER PROTECTION OF THE OFFICE OF THE ATTORNEY GENERAL UNDER**  
18 **§ ~~11B-115(c)~~ 11B-115 OF THIS TITLE.**

19           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
20 October 1, 2009.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.