

CHAPTER 523

(House Bill 287)

AN ACT concerning

Real Property – Condominiums – Repair or Replacement of ~~Unit~~ Damage or Destruction by Council of Unit Owners

FOR the purpose of clarifying that the council of unit owners of a condominium is responsible for the repair or replacement of the common elements and condominium units, exclusive of improvements and betterments installed in units by unit owners other than the developer, in the event of damage or destruction of the condominium under certain circumstances; clarifying the coverage of certain property insurance required to be maintained by a council of unit owners; providing that the owner of the unit where the cause of certain damage or destruction originated is responsible for a certain insurance deductible up to a certain amount; repealing a condition that ~~the a certain~~ responsibility of the unit owner be provided in the bylaws; ~~repealing a provision that a property insurance deductible is not a cost of repair or replacement in excess of insurance proceeds~~; repealing a provision that the council of unit owners' property insurance deductible is a common expense under certain circumstances; ~~altering the amount of a property insurance deductible for which a unit owner is responsible~~; requiring the council of unit owners to inform unit owners of certain responsibilities relating to the property insurance deductible under certain circumstances; requiring a contract for the initial sale of a unit and a contract for the resale of a unit to include a certain notice of the unit owner's responsibility relating to the property insurance deductible under certain circumstances; declaring the intent of the General Assembly; and generally relating to condominiums and insurance coverage under the Maryland Condominium Act.

BY repealing and reenacting, with amendments,

Article – Real Property

Section 11-108.1 ~~and~~ 11-114, 11-126(b)(16) and (17), and 11-135(a)(4)(xii) and (5) and (b)

Annotated Code of Maryland

(2003 Replacement Volume and 2008 Supplement)

BY adding to

Article – Real Property

Section 11-126(b)(17) and 11-135(a)(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 - Real Property

11-108.1.

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

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

11-114.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The condominium is terminated;

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

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

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

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

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

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

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

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

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

B. THE AMOUNT OF THE DEDUCTIBLE.

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

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

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

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

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

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

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

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

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

11-126.

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

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

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

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

11-135.

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

(4) A certificate containing:

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

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

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

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

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

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

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

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

(2) The bylaws;

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

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

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

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

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

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

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

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

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

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

Approved by the Governor, May 19, 2009.