

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE

House Bill 151 (Delegate Kach)  
Environmental Matters

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**Real Property - Condominiums - Required Insurance Coverage**

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This bill clarifies existing law to require a condominium’s council of unit owners to repair or replace condominium units, exclusive of improvements or betterments installed by unit owners, in the event of damage or destruction to the condominium. The condominium’s council of unit owners must also maintain property insurance on the common elements and units, exclusive of improvements and betterments installed in units by unit owners.

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**Fiscal Summary**

**State Effect:** The bill does not directly affect State finances or operations.

**Local Effect:** The bill does not directly affect local finances or operations.

**Small Business Effect:** None.

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**Analysis**

**Current Law/Background:** In prior years, the Maryland Condominium Act had been interpreted to require the condominium’s council of unit owners to maintain a master insurance policy that would protect both the common elements and individual condominium units from damage or destruction. However, betterments and improvements made to the original condominium unit by a homeowner – such as draperies, light fixtures, or wallpaper – were excluded under the condominium’s master insurance policy. Typically, a homeowner would maintain a separate insurance policy, known as an HO-6 policy, to cover improvements or betterments made to the original condominium unit.

In 2004, a homeowner suffered severe water damage to her two story townhome at The Gables on Tuckerman Condominium in Montgomery County (Gables), totaling more than \$6,300. In a second, unrelated case in 2003, a grease fire caused more than \$12,000 worth of damage to the walls and cabinetry of a townhome in the Bridgeport Condominium in Prince George's County (Bridgeport).

The councils of unit owners of Gables and Bridgeport carried master insurance policies on each property, and the individual homeowners of the damaged units maintained separate HO-6 insurance policies. Each homeowner requested that the council of unit owners repair, or provide proceeds to repair, the damage to their units. Both councils of unit owners declined to repair the damage to the homeowners' units; after the homeowners paid their HO-6 insurance deductibles, the homeowners' HO-6 insurers paid for the repairs. The homeowners and their HO-6 insurers sued their respective condominium associations to recover the cost of the repairs. The courts ruled against the homeowners in both cases and, on appeal, the cases were consolidated by the Court of Appeals as *Anderson v. Council of Unit Owners of The Gables on Tuckerman Condominium*, 404 Md. 560 (2008).

In the consolidated appeal, the Court of Appeals affirmed the lower courts' rulings and held that the Maryland Condominium Act does not require a condominium association to repair or replace property of an owner in an individual condominium unit after a casualty loss.

In its interpretation of the Maryland Condominium Act, the Court determined that a council of unit owners' master insurance policy is meant not to insure each owner's property or individual unit, but to protect the common interest of all owners as co-owners of the entire condominium.

The Court noted that § 11-114(a)(1) of the Maryland Condominium Act states that the council of owners is required to maintain insurance on the entire condominium property including "the common elements and units, exclusive of improvements and betterments installed in units by unit owners." However, the Court asserted that, under subsection (g) of §11-114, the council of owners is responsible for repairing or replacing "any portion of the condominium damaged or destroyed." (emphasis added by the Court). The Court examined the regulatory scheme of the Maryland Condominium Act and its legislative history to determine the meaning of the word "unit" in §11-114(a)(1).

The Court determined that § 11-114 of the Maryland Condominium Act does not require a condominium's council of unit owners to repair or replace a homeowner's damaged property in an individual condominium unit after a casualty loss; instead, a master insurance policy only covers damage sustained to the condominium's common elements

or structure. The Court cited § 11-108.1 of the Act, which addresses the responsibility for maintenance, repair, and replacement:

“Except to the extent otherwise provided by the declaration or bylaws, 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.”

The homeowners argued that § 11-108.1 is inapplicable and that the section pertains to the repair and replacement of a unit in the course of ordinary maintenance, whereas § 11-114 stipulates the council of unit owners’ obligation in the event of a casualty loss. The Court disagreed, stating that § 11-108.1 “recognizes the hybrid character of condominium ownership by differentiating between the common elements and the individual units, with the owner being responsible for damage to her or his ‘airspace’.” Finally, the Court noted that if the “... Legislature intended to limit Section 11-108.1 as the Owners suggest, it could have fashioned the statutory language accordingly.”

The bill is intended to clarify the statutory language to once again require a condominium’s council of unit owners to repair or replace condominium units, exclusive of improvements or betterments installed by unit owners, in the event of a casualty loss causing damage or destruction to the condominium.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** *Washington Post*, Judiciary (Administrative Office of the Courts), Department of Legislative Services

**Fiscal Note History:** First Reader - February 4, 2009  
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