

SENATE BILL 264

N1

11r0513

By: **Senator Kelley**

Introduced and read first time: January 31, 2011

Assigned to: Judicial Proceedings

Committee Report: Favorable

Senate action: Adopted

Read second time: March 8, 2011

CHAPTER _____

1 AN ACT concerning

2 **Common Ownership Communities – Fidelity Insurance – Indemnification**

3 FOR the purpose of altering the scope of indemnification provided by fidelity
4 insurance that the board of directors or other governing body of a cooperative
5 housing corporation, council of unit owners or other governing body of a
6 condominium, or board of directors or other governing body of a homeowners
7 association is required to purchase under certain circumstances; requiring a
8 management company that provides certain services to a cooperative housing
9 corporation, condominium, or homeowners association to purchase certain
10 fidelity insurance under certain circumstances; making stylistic changes; and
11 generally relating to common ownership communities and fidelity insurance.

12 BY repealing and reenacting, with amendments,
13 Article – Corporations and Associations
14 Section 5–6B–18.6
15 Annotated Code of Maryland
16 (2007 Replacement Volume and 2010 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Real Property
19 Section 11–114.1 and 11B–111.6
20 Annotated Code of Maryland
21 (2010 Replacement Volume and 2010 Supplement)

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

3 **Article – Corporations and Associations**

4 5–6B–18.6.

5 (a) In this section, “fidelity insurance” includes a fidelity bond.

6 (b) This section does not apply to a cooperative housing corporation:

7 (1) That has four or fewer members; and

8 (2) For which 3 months’ worth of gross common charges is less than
9 \$2,500.

10 (c) [(1)] The board of directors or other governing body of a cooperative
11 housing corporation shall purchase fidelity insurance not later than the time of the
12 first sale of a cooperative interest with respect to a unit to a person other than the
13 developer and shall keep fidelity insurance in place for each year thereafter.

14 [(2)] (D) The fidelity insurance required under [paragraph (1) of this]
15 subsection (C) OF THIS SECTION shall provide for the indemnification of the
16 cooperative housing corporation against loss resulting from acts or omissions arising
17 from fraud, dishonesty, or criminal acts by[:

18 (i) Any] ANY officer, director, managing agent, or other agent
19 or employee charged with the operation or maintenance of the cooperative housing
20 corporation who [controls]:

21 (1) CONTROLS or disburses funds; and

22 (2) IS UNDER THE DIRECT SUPERVISION OF THE BOARD OF
23 DIRECTORS OR OTHER GOVERNING BODY OF THE COOPERATIVE HOUSING
24 CORPORATION.

25 [(ii)] (E) [Any management company employing a
26 management] IF THE BOARD OF DIRECTORS OR OTHER GOVERNING BODY OF A
27 COOPERATIVE HOUSING CORPORATION CONTRACTS WITH A MANAGEMENT
28 COMPANY FOR OPERATION OR MAINTENANCE SERVICES FOR THE COOPERATIVE
29 HOUSING CORPORATION, THE MANAGEMENT COMPANY SHALL PURCHASE
30 FIDELITY INSURANCE THAT PROVIDES FOR THE INDEMNIFICATION OF THE
31 COOPERATIVE HOUSING CORPORATION AGAINST LOSS RESULTING FROM ACTS
32 OR OMISSIONS ARISING FROM FRAUD, DISHONESTY, OR CRIMINAL ACTS BY ANY
33 agent or [other] employee OF THE MANAGEMENT COMPANY charged with the

1 operation or maintenance of the cooperative housing corporation who controls or
2 disburses funds.

3 **[(d)] (F)** A copy of the fidelity insurance policy or fidelity bond **PURCHASED**
4 **UNDER SUBSECTION (D) OR (E) OF THIS SECTION** shall be included in the books
5 and records kept and made available by or on behalf of the cooperative housing
6 corporation under § 5–6B–18.5 of this subtitle.

7 **[(e)] (G)** (1) The amount of the fidelity insurance required under
8 **[subsection (c)] SUBSECTIONS (D) AND (E)** of this section shall equal at least the
9 lesser of:

10 (i) 3 months' worth of gross common charges and the total
11 amount held in all investment accounts at the time the fidelity insurance is issued; or

12 (ii) \$3,000,000.

13 (2) The total liability of the insurance to all insured persons under the
14 fidelity insurance may not exceed the sum of the fidelity insurance.

15 **[(f)] (H)** If a member believes that the board of directors or other governing
16 body of a cooperative housing corporation has failed to comply with the requirements
17 of this section, the aggrieved member may submit the dispute to the Division of
18 Consumer Protection of the Office of the Attorney General under § 5–6B–12 of this
19 subtitle.

20 **Article – Real Property**

21 11–114.1.

22 (a) In this section, “fidelity insurance” includes a fidelity bond.

23 (b) This section does not apply to a condominium:

24 (1) That has four or fewer units; and

25 (2) For which 3 months' worth of gross annual assessments is less
26 than \$2,500.

27 (c) **[(1)]** The council of unit owners or other governing body of a
28 condominium shall purchase fidelity insurance not later than the time of the first
29 conveyance of a unit to a person other than the developer and shall keep fidelity
30 insurance in place for each year thereafter.

31 **[(2)] (D)** The fidelity insurance required under **[paragraph (1) of this]**
32 **subsection (C) OF THIS SECTION** shall provide for the indemnification of the

1 condominium against loss resulting from acts or omissions arising from fraud,
2 dishonesty, or criminal acts by[:

3 (i) Any] ANY officer, director, managing agent, or other agent
4 or employee charged with the operation or maintenance of the condominium who
5 [controls]:

6 (1) CONTROLS or disburses funds; and

7 (2) IS UNDER THE DIRECT SUPERVISION OF THE COUNCIL OF
8 UNIT OWNERS OR OTHER GOVERNING BODY OF THE CONDOMINIUM.

9 [(ii)] (E) [Any management company employing a
10 management] IF THE COUNCIL OF UNIT OWNERS OR OTHER GOVERNING BODY
11 OF A CONDOMINIUM CONTRACTS WITH A MANAGEMENT COMPANY FOR
12 OPERATION OR MAINTENANCE SERVICES FOR THE CONDOMINIUM, THE
13 MANAGEMENT COMPANY SHALL PURCHASE FIDELITY INSURANCE THAT
14 PROVIDES FOR THE INDEMNIFICATION OF THE CONDOMINIUM AGAINST LOSS
15 RESULTING FROM ACTS OR OMISSIONS ARISING FROM FRAUD, DISHONESTY, OR
16 CRIMINAL ACTS BY ANY agent or [other] employee OF THE MANAGEMENT
17 COMPANY charged with the operation or maintenance of the condominium who
18 controls or disburses funds.

19 [(d)] (F) A copy of the fidelity insurance policy or fidelity bond PURCHASED
20 UNDER SUBSECTION (D) OR (E) OF THIS SECTION shall be included in the books
21 and records kept and made available by the council of unit owners under § 11–116 of
22 this title.

23 [(e)] (G) (1) The amount of the fidelity insurance required under
24 [subsection (c)] SUBSECTIONS (D) AND (E) of this section shall equal at least the
25 lesser of:

26 (i) 3 months' worth of gross annual assessments and the total
27 amount held in all investment accounts at the time the fidelity insurance is issued; or

28 (ii) \$3,000,000.

29 (2) The total liability of the insurance to all insured persons under the
30 fidelity insurance may not exceed the sum of the fidelity insurance.

31 [(f)] (H) If a unit owner believes that the council of unit owners or other
32 governing body of a condominium has failed to comply with the requirements of this
33 section, the aggrieved unit owner may submit the dispute to the Division of Consumer
34 Protection of the Office of the Attorney General under § 11–130 of this title.

35 11B–111.6.

1 (a) In this section, “fidelity insurance” includes a fidelity bond.

2 (b) This section does not apply to a homeowners association:

3 (1) That has four or fewer lot owners; and

4 (2) For which 3 months’ worth of gross annual homeowners
5 association fees is less than \$2,500.

6 (c) [(1)] The board of directors or other governing body of a homeowners
7 association shall purchase fidelity insurance not later than the time of the first
8 conveyance of a lot to a person other than the declarant and shall keep fidelity
9 insurance in place for each year thereafter.

10 [(2)] (D) The fidelity insurance required under [paragraph (1) of this]
11 subsection (C) OF THIS SECTION shall provide for the indemnification of the
12 homeowners association against loss resulting from acts or omissions arising from
13 fraud, dishonesty, or criminal acts by[:

14 (i) Any] ANY officer, director, managing agent, or other agent
15 or employee charged with the operation or maintenance of the homeowners association
16 who [controls]:

17 (1) CONTROLS or disburses funds; and

18 (2) IS UNDER THE DIRECT SUPERVISION OF THE BOARD OF
19 DIRECTORS OR OTHER GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION.

20 [(ii)] (E) [Any management company employing a
21 management] IF THE BOARD OF DIRECTORS OR OTHER GOVERNING BODY OF A
22 HOMEOWNERS ASSOCIATION CONTRACTS WITH A MANAGEMENT COMPANY FOR
23 OPERATION OR MAINTENANCE SERVICES FOR THE HOMEOWNERS ASSOCIATION,
24 THE MANAGEMENT COMPANY SHALL PURCHASE FIDELITY INSURANCE THAT
25 PROVIDES FOR THE INDEMNIFICATION OF THE HOMEOWNERS ASSOCIATION
26 AGAINST LOSS RESULTING FROM ACTS OR OMISSIONS ARISING FROM FRAUD,
27 DISHONESTY, OR CRIMINAL ACTS BY ANY agent or [other] employee OF THE
28 MANAGEMENT COMPANY charged with the operation or maintenance of the
29 homeowners association who controls or disburses funds.

30 [(d)] (F) A copy of the fidelity insurance policy or fidelity bond PURCHASED
31 UNDER SUBSECTION (D) OR (E) OF THIS SECTION shall be included in the books
32 and records kept and made available by or on behalf of the homeowners association
33 under § 11B–112 of this title.

1 **[(e)] (G)** (1) The amount of the fidelity insurance required under
2 **[subsection (c)] SUBSECTIONS (D) AND (E)** of this section shall equal at least the
3 lesser of:

4 (i) 3 months' worth of gross annual homeowners association
5 fees and the total amount held in all investment accounts at the time the fidelity
6 insurance is issued; or

7 (ii) \$3,000,000.

8 (2) The total liability of the insurance to all insured persons under the
9 fidelity insurance may not exceed the sum of the fidelity insurance.

10 **[(f)] (H)** If a lot owner believes that the board of directors or other
11 governing body of a homeowners association has failed to comply with the
12 requirements of this section, the aggrieved lot owner may submit the dispute to the
13 Division of Consumer Protection of the Office of the Attorney General under §
14 11B-115 of this title.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2011.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.