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January 17, 2022

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Delegate Kumar P. Barve, Chair
Delegate Dana M. Stein, Vice Chair
Environment and Transportation Committee
251 Taylor House Office Building House Office Building
6 Bladen Street
Annapolis, Maryland 21401

Re: House Bill 117
Cooperative Housing Corporations and Condominium Associations –
Evidence of Insurance
Hearing Date: January 18, 2022
Position: Oppose

Dear Delegate Barve, Delegate Stein, and Environment and Transportation Committee Members:

This letter is submitted on behalf of the Maryland Legislative Action Committee (“MD-LAC”) of the Community Associations Institute (“CAI”). CAI represents individuals and professionals who reside in or work with community associations (condominiums, homeowners’ associations, and cooperatives) throughout the State of Maryland.

In theory, Maryland LAC could support the amendments to existing law. As the MD-LAC’s insurance chair, I worked on similar existing law with Del. Dana Stein, in 2012, to allow condominium associations that wanted to (and with a 51% majority of its owners), could require their owners to carry a condominium unit owners’ policy. The bill made sense because the Maryland Condominium Act (§11-114. Required Insurance Coverage; Reconstruction (a) (1)

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requires that condominium associations carry ‘Property insurance on the common elements and units, exclusive of improvements and betterments installed in units by unit owner.’ Cooperatives, however, have their own Act (the Maryland Cooperative House Corporation Act), and the Act is silent as to how the Cooperative is to be insured, instead relying on an individual Cooperative Association’s governing documents (Articles of Incorporation, Bylaws, and House Rules) to define how the building(s) and units should be insured.

It is important to understand the differences, too, between a Condominium Association and a Cooperative Association. In a Condominium, a “unit” is an owned real property space, wherein the owner owns everything within the four walls and may own (and have maintenance responsibilities) for components on the opposite side of the finished walls (pipes and wiring, for example, which serve only the owned unit).

In a Cooperative, however, a “unit” means a portion of the cooperative project leased for the exclusive occupancy by a member under a proprietary lease – cooperative owners are shareholders and do not own any real property.

The problem MD-LAC finds with HB117, then, is that it quietly allows a Cooperative’s Board of Directors to require each member to maintain an insurance policy on the member’s entire unit. This law, while seemingly innocuous and in step with Maryland Condominium Act law (§11-104 Bylaws. (e) (2) (ii), allows the Board (without any majority vote of its shareholders) to shift the primacy of any Master Policy requirements in the governing documents to a shareholder who does not actually own the unit. While the HO-6 (condominium unit owners’) policy, (which can also be written for shareholders of a cooperative association) can be written to cover the entire unit *with governing documents that are written on a bare walls basis* (the Association insures the shell and core of a building up to the unfinished walls and the owner covers everything from the unfinished walls in, including originally conveyed or improved floor, ceiling, and wall coverings, cabinets, counters, appliances, fixtures, and equipment), HB117 would allow the Board to bypass its Master Policy requirement language even in cases where the shareholder may have no ownership or maintenance responsibilities of the share-hold lease they own.

Because it is unlikely that an HO-6 insurance carrier would respond to a shift of primacy from the Master Policy when its insured shareholder has no actual ownership of the components in a unit (including improvements, betterments, alterations, and additions, which may be made at the expense of the shareholder, but by the governing documents’ definition are still owned by the Association), and may have few if any maintenance responsibilities, MD-LAC would urge the Committee to oppose HB117 until such time as a study could be convened for the purposes of better understanding the fine nuances of Cooperative-style living and why the laws that apply to Condominiums do not necessarily cross over to apply to Cooperatives. Part of any future study should also include research among the HO-6 carriers (State Farm, Nationwide, Farmers, USAA, for example) as to their appetite for accepting primary coverage for losses to a unit wherein the

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Association owns the actual real property of that unit, as it does little good to transfer primary coverage to a shareholder's policy if the HO-6 carrier excludes such coverage. The concern, then, particularly among Cooperative Associations with older residents living on fixed incomes, such as those in Leisure World, is that a loss in a unit where the HO-6 policy will not cover the loss could represent a catastrophic financial burden to those shareholders.

The concerns MD-LAC has with HB117 also extend to HB197 (cross-filed with SB145), which assign deductible responsibility to a shareholder in a Cooperative Association, and MD-LAC will be submitting testimony for those bills, as well.

We are available to answer any questions the Committee Members may have. Please feel free to contact Lisa Harris Jones, lobbyist for the MD-LAC, at 410-366-1500, or by e-mail at lisa.jones@mdlobbyist.com, or Steven Randol, Chair of the MD-LAC, 410-279-8054, or by e-mail at srandol@pineorchard.com, or Robin C. Manougian, Member, of the MD-LAC, at 240-401-0855, or by e-mail at rmanougian@jgsinsurance.com.

Sincerely,

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