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January 31, 2022

Sen. William C. Smith, Jr., Chair
Senate Judicial Proceedings Committee
Miller Senate Office Building – 2 East
Annapolis, Maryland 21401

Re: Senate Bill 145
Cooperative Housing Corporations – Property Insurance Deductibles –
Member Responsibility
Hearing Date: February 2, 2022
Position: Support with Amendments

Dear Chairman Smith and Members of the Judicial Proceedings Committee:

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 more than 6,200 community associations (condominiums, homeowners’ associations, and cooperatives) located throughout the State of Maryland.

As you know, SB145 is cross-filed with HB197, which is sponsored by Delegate Vaughn Stewart. The undersigned and other members of the MD-LAC have been working closely with Delegate Stewart regarding his bill. We have reached consensus on the content of potential amendments to HB197, which, if made, would enable the MD-LAC to offer CAI’s support for the legislation. Those amendments have been furnished to Delegate Stewart for his consideration, and we are optimistic that they will receive his endorsement.

Unlike in condominiums, where the owner of an individual unit owns, in fee simple, the unit, as defined in the condominium’s declaration and plats, the cooperative member has no real property *ownership* interest in the unit that s/he occupies. Rather, the cooperative member is a shareholder in the cooperative corporation, which owns the physical structure, including the

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units and all common areas. The member owns a share of stock in the corporation and has a proprietary lease to occupy the unit in which s/he resides. The documents that govern cooperatives vary as to whether the member has any responsibility for maintenance, repair, or replacement of any component(s) of the unit.

SB145, as drafted, seeks to bring cooperatives and their members into parity with condominium associations and the unit owners therein. Section 11-114 of the Maryland Condominium Act requires a condominium association to obtain property insurance for the entire condominium, including the units and common elements. The only exclusions are improvements and betterments made to a unit by a unit owner other than the declarant and the unit owner's personal property. The property insurance policy that the condominium association is required to obtain is required also to serve as primary coverage and to be paid for as a common expense. The deductible that a condominium incurs in connection with a claim made under the master policy may be charged back to the individual unit owner in whose unit a loss originates. In that case, the unit owner can be held responsible for the master policy's property damage deductible not to exceed \$10,000. Conversely, when a loss originates outside of the units, the deductible is to be paid by the association as a common expense.

Pursuant to amendments made to Section 11-114 of the Maryland Condominium Act in 2008 (eff. June 01, 2009), responsibility for the master policy deductible is assigned without regard to fault of the unit owner; if the loss originates in the unit, the unit owner can be required to pay the master policy deductible, irrespective of whether the unit owner was negligent. Prior to the 2008 changes to Section 11-114, condominiums wrestled with applying a negligence standard when attempting to allocate responsibility for the master policy deductible. This led to a disparate application of the law with results that were both non-uniform and occasionally inequitable. The 2008 amendments to Section 11-114 made the application of the law uniform and predictable. MD-LAC is concerned that any proposed legislation not take cooperative members down the same "rabbit hole" in which condominium owners found themselves before the amendments made in 2008 took effect. Therefore, any legislation purporting to authorize a cooperative to charge a member for any portion of the master policy deductible must be written to provide that responsibility for the deductible be assigned without regard to negligence, and only when the member had primary responsibility to maintain, repair, or replace the component(s) of his/her unit that caused the loss.

In 2008, when Section 11-114 responsibility for the master policy deductible was assigned on a "no fault" basis, the maximum deductible that could be charged back to a unit owner was \$5,000. That amount was raised to \$10,000 in 2020 in recognition of changing industry standards and the need for condominiums to accept higher deductibles to avoid increased premiums. In 2020, MD-LAC took the lead in securing confirmation from the carriers writing HO-6 policies (the form of policy issued to the owners of individual condominium units) that they would insure individual owners for increased deductible responsibility. Indeed, the Office of the Maryland Attorney General conditioned its support for the 2020 amendment to Section 11-114 upon the carriers' agreement to insure owners of individual units for a higher portion of the master policy deductible.

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In that context, the problem MD-LAC finds with SB145, as originally drafted, is that it would allow a cooperative's Board of Directors to charge a member for a portion of the master policy deductible without regard for whether the member could have taken any action to avoid occurrence of the loss, and without knowing whether the individual member could obtain his/her own insurance coverage for that liability. For that reason, MD-LAC would not be able to support SB145 unless it were amended to provide that the cooperative corporation could require an individual member to pay no more than \$10,000 of the cooperative's master policy deductible only if: (1) the insured peril arose from the failure of a component for which the member had primary maintenance responsibility; and, (2) the principal carriers that write HO-6 policies (e.g., State Farm, Nationwide, Farmers, USAA) confirm that they will accept responsibility to provide coverage under those policies. It would do little good to empower a cooperative to charge back its members for any portion of the master policy deductible if the member had no ability to avoid occurrence of the loss triggering the deductible through the exercise of prudent maintenance/repair, or if the member's HO-6 carrier were to exclude such coverage. In the latter case, cooperative members, particularly those living on fixed incomes, such as those in Leisure World, could find themselves liable for losses without the benefit of applicable insurance coverage, resulting in a catastrophic financial burden upon those shareholders.

The concerns MD-LAC has with SB145 also extend to SB65 (cross-filed with HB117), which would empower a cooperative association to require a cooperative member to obtain insurance on his/her unit. As with HB197, MD-LAC has been working with Del. Stewart on amendments to HB117. We will be submitting testimony for the cross-filed SB65 to reflect our concerns with that legislation, 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 Scott Silverman, Member, of the MD-LAC, at 410-707-6363, or by e-mail at ssilverman@schildlaw.com.

Sincerely,
Scott J. Silverman

Scott J. Silverman
Member, CAI MD-LAC

Steven Randol

Steven Randol
Chair, CAI MD-LAC