

SB 65 Support with Amendments Letter 2022.pdf

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February 3, 2022

To: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

From: Karen S. Straughn
Consumer Protection Division

Re: Senate Bill 65 – Cooperative Housing Corporations and Condominium Associations –
Evidence of Insurance (SUPPORT WITH AMENDMENT)

The Consumer Protection Division of the Office of the Attorney General submits the following written testimony in support of Senate Bill 65 submitted by Senator Benjamin F. Kramer with the attached amendment. This bill provides that the governing documents of a cooperative housing corporation may require that the member maintain insurance and, if insurance is required, also require the member to provide evidence of that insurance to the association upon request. The bill also expands the annual requirement for unit owners in condominium associations that require insurance to provide evidence of that insurance, to also include providing evidence upon request of the association. We recommend amending the bill to state that the only type of insurance required is liability insurance.

Due to the shared interests between association members and a cooperative housing corporation, the cooperative has an interest in ensuring that the member maintains liability insurance on the property in which they reside. Should an association member be negligent, resulting in damages to another, liability insurance would not only protect the member, but would provide protection against a lawsuit being filed against the association solely due to there being no other viable source of recovery.

The bill as written requires insurance but does not specify what types of insurance must be maintained. By limiting the bill to liability insurance, it protects against an association requiring property insurance in which the association has no interest, or any other form of insurance in which the association does not have a vested interest. Accordingly, we recommend amending the bill to reflect that the only insurance that can be mandated is liability insurance.

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For these reasons, we ask that the Judicial Proceedings Committee return a favorable report on this bill with the amendment.

cc: The Honorable Benjamin F. Kramer
Members, Judicial Proceedings Committee

AMENDMENT TO SB 65 (2022)

Amendment 1

On page 2, line 12 – Insert “liability” after member

Amendment 2

On page 2, line 16 – Insert “liability” before insurance

Amendment 3

On page 2, line 22 – Insert “liability” after owner

Amendment 4

On page 2, line 24 – Insert “liability” before insurance

SB 65 Testimony FINAL.01312022.pdf

Uploaded by: Scott Silverman

Position: FWA

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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 65
Cooperative Housing Corporations and Condominium Associations –
Evidence of Insurance
Hearing Date: February 3, 2022
Position: Support with Amendments

Dear Chairman Sen. 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 6200 community associations (condominiums, homeowners’ associations, and cooperatives) located throughout the State of Maryland.

As you know, SB 65 is cross-filed with HB 117, which is sponsored by Delegate Stewart. The undersigned and other members of the Maryland LAC have been working closely with Delegate Stewart regarding his bill. We have reached consensus on the content of potential amendments to HB117, which, if made, would enable the Maryland 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 units

Maryland Legislative Action Committee
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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. Therefore, requiring a cooperative member to be responsible for insuring any portion of a unit that s/he does not own, and may not have responsibility to maintain, is problematic, especially when s/he is paying carrying charges to the cooperative corporation, a portion of which is used to pay insurance premiums on a master insurance policy that covers all portions of the real property owned by the corporation.

In that context, the problem MD-LAC finds with SB65, as originally drafted, is that it quietly allows a cooperative's Board of Directors to require each member to maintain an insurance policy on the member's unit. This law, while seemingly innocuous and in step with Section 11-114 of the Maryland Condominium Act, the proposed law would allow a cooperative's Board of Directors, without requiring the affirmative vote of any percentage of the cooperative's shareholders, to shift the primacy of the cooperative's master policy to the shareholders. 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 *in conjunction with governing documents that are written on a bare walls basis* (i.e., 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), SB65, as drafted, would allow the Board to bypass the language in its documents pertaining to required master policy coverage, even in cases where the shareholder may have no ownership or maintenance responsibilities.

For the foregoing reasons, MD-LAC would not be able to support the proposed legislation unless it were amended to provide that the cooperative corporation could require an individual member to obtain insurance on his/her individual unit only when the insured peril arose from the failure of a component for which the member had primary maintenance responsibility. In that case, however, the member's policy would have to be secondary to the master policy with respect to property damage, in addition to providing primary coverage for physical damage to any improvements/betterments made to the unit by the member, liability for injuries occurring to the persons/property of others within the unit, and for loss of or damage to the member's personal property.

Finally, as we have shared also with Del. Stewart, coverage under any HO-6 policy should not be triggered by the proposed legislation unless/until 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 transfer any responsibility for coverage—whether primary or secondary—to a cooperative shareholder's policy if the HO-6 carrier were to exclude such coverage. In that 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.

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Community Associations Institute

The concerns MD-LAC has with SB65 also extend to SB145 (cross-filed with HB197), which would assign responsibility for a master policy deductible (up to \$10,000) to a shareholder in a cooperative Association. As with HB117, MD-LAC has been working with Del. Stewart on amendments to that bill. We will be submitting testimony for the cross-filed SB145 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