

# **SB 145 Testimony FINAL.01312022.pdf**

Uploaded by: Scott Silverman

Position: FWA

Steven Randol, Chair  
Aimee Winegar, CMCA, LSM, PCAM, Vice Chair  
Vicki Caine, Secretary

Marie Fowler, PCAM, Treasurer  
Charlene Morazzani Hood, CMCA, AMS, PCAM, MS,  
Asst. Treasurer  
Ruth O. Katz, Esq., Asst. Secretary

Julie Dymowski, Esq., Member  
Kathleen M. Elmore, Esq., Member  
Steven Landsman, PCAM, Member  
Judyann Lee, Esq., Member  
Chris Majerle, PCAM, Member  
Buck Mann, CMCA, Member  
Robin C. Manougian, CIRMS, Member

Peter Philbin, Esq., Member  
Susan Rapaport, Esq., Member  
Brenda Rieber, CMCA, AMS, Member  
Susan Saltsman, CMCA AMS, Member  
Scott J. Silverman, Esq., Member  
John Taylor, Member  
Tricia A. Walsh, CISR, Member

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

**Maryland Legislative Action Committee**  
**Post Office Box 6636**  
**Annapolis, Maryland 21401**

**Page 2, Senate Bill 145**  
**Community Associations Institute**

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.

**Page 3, Senate Bill 145**  
**Community Associations Institute**

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](mailto:lisa.jones@mdlobbyist.com), or Steven Randol, Chair of the MD-LAC, 410-279-8054, or by e-mail at [srandol@pineorchard.com](mailto:srandol@pineorchard.com), or Scott Silverman, Member, of the MD-LAC, at 410-707-6363, or by e-mail at [ssilverman@schildlaw.com](mailto:ssilverman@schildlaw.com).

Sincerely,  
*Scott J. Silverman*

Scott J. Silverman  
Member, CAI MD-LAC

*Steven Randol*

Steven Randol  
Chair, CAI MD-LAC

## **sb 145 Letter of Concern 2022.pdf**

Uploaded by: Karen Straughn

Position: INFO

**BRIAN E. FROSH**  
*Attorney General*

**ELIZABETH F. HARRIS**  
*Chief Deputy Attorney General*

**CAROLYN QUATTROCKI**  
*Deputy Attorney General*



**WILLIAM D. GRUHN**  
*Chief*  
Consumer Protection Division

Writer's Fax No.

**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**  
**CONSUMER PROTECTION DIVISION**

Writer's Direct Dial No.

410-576-7942  
[kstraughn@oag.state.md.us](mailto:kstraughn@oag.state.md.us)  
Fax: 410-576-7040

February 2, 2022

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

From: Karen S. Straughn  
Consumer Protection Division

Re: Senate Bill 145 – Cooperative Housing Corporations – Property Insurance Deductibles –  
Member Responsibility (LETTER OF CONCERN)

The Consumer Protection Division of the Office of the Attorney General has concerns regarding Senate Bill 145 introduced by Senator Benjamin F. Kramer. This bill would insert a prohibition against amending the maximum amount of the deductible for which a cooperative member may be responsible to more than \$10,000. regardless of negligence. Although the Division does not oppose limiting the deductible to ensure that even higher deductible amounts are not used, it is concerned that affordable insurance coverage would not be available to member owners in the event of a loss and therefore, unit owners may have difficulty meeting this large deductible amount.

Under the Maryland Condominium Act, a similar law was previously passed to increase the amount of the deductible for which a unit owner would be responsible if the loss originated in their unit from \$5,000. to \$10,000. This Division originally opposed that bill due to the concern that insurance coverage may not be available to unit owners for this increased coverage and may be prohibitively expensive. However, after being assured by the insurance industry that coverage was widely available at a reasonable rate, this Division withdrew its opposition.

Coverage for cooperatives is different than coverage for condominiums, however, due to the shared interest in the property between the member owner and the association. At this time, it is not clear that deductible coverage is widely available to member owners at a reasonable rate and therefore this Division has concerns about the passage of this bill.

Under the bill, when a loss originates in a unit, such as when a bathtub overflows leaking through the floor to the unit below, the first unit owner would be responsible for the property insurance deductible up to \$10,000., which may be difficult for many unit owners to afford. It is not clear whether every unit owner would have the ability to purchase coverage for this exposure and many would be faced with paying that large expense out of their pocket. Some may not even realize they have the ability to purchase coverage for this potential expense, even though the cooperative association is required to inform unit owners in writing of their responsibility for the deductible.

For these reasons, the Consumer Protection Division respectfully requests that the Judicial Proceedings Committee take the Division's concerns into consideration with respect to Senate Bill 145.

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

# **SB 145 2022 MIA Letter of Information Final.pdf**

Uploaded by: Kory Boone

Position: INFO



LARRY HOGAN  
Governor

BOYD K. RUTHERFORD  
Lt. Governor



KATHLEEN A. BIRRANE  
Commissioner

GREGORY M. DERWART  
Deputy Commissioner

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202  
Direct Dial: 410-468-2471 Fax: 410-468-2020  
Email: [kathleen.birrane@maryland.gov](mailto:kathleen.birrane@maryland.gov)  
[www.insurance.maryland.gov](http://www.insurance.maryland.gov)

TESTIMONY OF  
THE  
MARYLAND INSURANCE ADMINISTRATION  
BEFORE THE  
SENATE JUDICIAL PROCEEDINGS COMMITTEE

FEBRUARY 2, 2022

**SENATE BILL 145 – COOPERATIVE HOUSING CORPORATIONS - PROPERTY INSURANCE DEDUCTIBLES -  
MEMBER RESPONSIBILITY**

**POSITION: LETTER OF INFORMATION**

Thank you for the opportunity to provide written comments regarding Senate Bill 145. SB 145 will place a \$10,000 cap on the amount of master policy deductible expense (MPDE) a cooperative housing corporation's (co-op) governing body can bill a co-op member following a covered loss that originates in the co-op member's leased unit. This would mirror the cap currently provided under the Condominium Act to condo unit-owners.

The Maryland Insurance Administration (MIA) notes that, by inserting the \$10,000 MPDE cap into the statute, a co-op member may become legally liable for MPDE up to \$10,000 when the covered loss originates in their unit. Co-op owners can protect themselves against this liability by purchasing an insurance policy that provides liability coverage. The MIA notes that, while there are insurance policies widely available in the market designed specifically for condominium unit-owners, there are no policy contracts available that we are aware of designed specifically for a co-op member. Co-op members can purchase a homeowner's policy, renter's policy or unit-owner's (condo) policy depending upon the eligibility requirements of the issuing insurer.

The passage of SB 145 will limit the exposure of an insurer that issues a policy to a co-op member to \$10,000 of MPDE when a loss covered by the master policy originates in the member's leased unit. SB 145 requires that the co-op's governing body treat MPDE above \$10,000 as a common expense of the co-op. SB 145 will put co-op members in the same position as condo unit-owners with respect to liability for MPDE.