March 25, 2025

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Senator William C. Smith, Jr., Chair
Senator Jeff Waldstreicher, Vice Chair
2 East Miller Senate Office Building
11 Bladen Street
Annapolis, MD 21401

Re: House Bill 1541
Condominiums – Mandatory Insurance Coverage
Hearing Date: March 27, 2025 – 1:00 p.m.
Position: Support with Amendments

Dear Chairman Smith, Vice-Chair Waldstreicher, 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 community associations (condominiums, homeowners' associations, and cooperatives) throughout the State of Maryland.

As you may know, two other bills were introduced this session (HB449, which is cross-filed with SB446), which, if enacted, would increase an individual condominium unit owner's responsibility for payment of a condominium association's Master Policy's property damage deductible from $10,000 to $25,000 when a loss insured by the Master Policy originates in the individual owner's unit or when the loss that originates in a unit is less than the Master Policy's property damage deductible.

HB449/SB446 were introduced to raise the deductible responsibility in direct response to changes within the insurance industry (the $10,000 property damage deductible that master policy carriers once used regularly has given way to the more frequent application of deductibles of $25,000 or higher). The instant bill, HB 1541, was intended to be dropped as a companion bill to HB449/SB446, as the unit owner's coverage mandated by this bill is intended to be the funding mechanism for payment of that deductible responsibility – payment need not be an out-of-pocket expense for any owner. Until now, any requirement that a unit owner carry the insurance that HB 1541 would mandate would have to be imposed in a condominium association's governing documents, and then usually only after those documents are amended accordingly.

This law, in our opinion, has been needed for some time. In 2011, the legislature passed HB679, which allowed condominium associations to adopt a bylaw amendment mandating unit owners to obtain HO-6 (or comparable) coverage, and to adopt such amendments with a reduced majority (51%) vote, whereas a bylaw amendment would otherwise have required the affirmative vote of two-thirds of the unit owners. The law enacted by the passage of HB679 was a nice idea, in theory, but in practice, the time, effort, and legal expense required to amend an association's governing documents have proven to be too great, and many Maryland condominium associations have not been able to take advantage of the law for that reason, leaving their owners vulnerable to liability for payment of the master policy's property damage deductible. HB1541 represents an intention to protect a unit owner from having to pay that deductible out of pocket.

Insurance brokers who specialize in the community association insurance field have seen soft markets and hard markets, but the hard market we are in right now is unprecedented. Catastrophic losses (wildfires, tornados, and hurricanes) have reshaped the insurance industry in only a few short years. The 2024 hurricane season left behind $182.7 billion in losses (the second costliest hurricane season on record), and January's California wildfires are estimated to have been a $35 billion to $45 billion-dollar (insured) event. By comparison, each year, insurance carriers, on average, pay $101 billion in losses.

To protect themselves, many insurance carriers have withdrawn from the market or become incredibly selective. The number of insurance carriers still willing to write condominium association master policies at all is beginning to dwindle. The result is not only higher premiums, but also higher deductibles. If we think of insurance as the transfer of risk from the insured to the carrier in exchange for the payment of a premium, then the imposition of a higher deductible is the carrier's way to shift some of that risk back to the insured, not only to remain able to offer coverage at all, but also to promote maintenance of the buildings – and the units – by their insureds.

Along with 20% or greater premium increases, many condominium associations are also seeing the application of higher deductibles because of building age, number of stories, and/or loss frequency and severity. In short, the $10,000 cap on unit owner responsibility is no longer keeping

pace with industry trends. In addition, when a loss originates in a unit, and a condominium association's property policy is subject to a deductible of $25,000 or higher, the unit owner in whose unit the damage originates cannot be held responsible for more than $10,000 of whatever the deductible might be under current law. In those cases, the balance of the higher deductible is absorbed as a common expense, which is then shouldered by *all of the owners*. These shared deductibles do become out of pocket expenses for members, usually through increased condominium fees or worse, special assessments. This was never the intent of the law.

Along with inflation, the escalating costs of regular repair/replacement, and the other expenses a condominium shoulders annually, funding these deductibles has become burdensome, not only for the associations' budgets, but also for the other unit owners, who must collectively subsidize the balance of the higher deductibles for losses originating in individual units.

Maryland LAC understands that losses happen, and that the purpose of a condominium's Master Policy is to ensure that the buildings and units are restored following a loss to the condition in which the developer originally conveyed them, but we also understand that if Maryland's condominium unit owners are statutorily required to carry unit owner/HO-6 coverage, those policies will be available to absorb the increased deductible responsibility authorized by HB449/SB446 when adopted. They will also provide other much-needed coverage for the unit owner at time of loss, which the condominium association's Master Policy is not obligated to include or provide. For example, a properly written condominium unit owners'/HO-6 policy can provide:

1) **Dwelling Coverage** to protect an owner's improvements, betterments, alterations, and additions (made or acquired from any previous owner), since the Association's Master Policy is obligated by statute to insure the unit only as the developer originally deeded it (original grade floor, ceiling, and wall coverings, cabinets, countertops, appliances, fixtures, and equipment — i.e., no "improvements or betterments") to the first purchaser of said unit. Dwelling coverage can also be used to cover a unit owner's deductible responsibility, as permitted by law.

2) **Personal Property/Contents Coverage** to protect a unit owner's furnishings, movable rugs, clothing, electronics, valuables, and other personal effects. This coverage form can also cover any content manipulation or storage during repairs following a loss.

3) **Personal Liability Coverage** to protect the unit owner when someone other than the unit owner (or members of the owner's immediate household) is injured inside the unit (the Association's liability coverage does not reach inside the unit). This coverage can also pay a unit owner's liability for damage to another unit owner's improvements and betterments, contents/personal property, or loss of use when the loss-originating unit owner causes damage to a neighboring unit. Personal Liability can also provide defense and indemnity coverage for other potential liability situations, such as dog bites.

4) **Loss of Use/Additional Living Expense Coverage** pays for a unit owner to live elsewhere during the period of restoration when the unit is damaged from a casualty loss and is not habitable. This is critical coverage since unit owners forced from their units following a casualty loss must still pay their mortgages and condominium fees.

5) **Loss Assessment Coverage** pays for a unit owner's proportionate share of a loss that is not fully covered by the condominium association's policies (including by some carriers, the unit owner's share of the master policy deductible, as permitted by law).

Within the HO-6 policy, the unit owner can cover their responsibility for payment of the Master Policy's deductible (up to $25,000 if the pending HB449/SB446 are enacted as proposed), either under the Dwelling Coverage limit, or under the Loss Assessment limit (depending on the HO-6 carrier), thus avoiding an out-of-pocket expense.

Given the importance of carrying an HO-6/condominium unit owners' policy, MD-LAC supports HB1541, ***but with the following amendments:***

1) We wish to qualify that Loss of Use Coverage is available when a unit owner cannot live in the unit *following a covered casualty loss* – it is important to not inadvertently create any misunderstanding by unit owners that Loss of Use coverage might be available for anything other than its intended purpose. For example, the following language in bold/brackets could be added to HB1541:

> (IV) LOSS OF USE COVERAGE IN AN AMOUNT SUFFICIENT TO PROVIDE ALTERNATE HOUSING FOR AT LEAST 12 MONTHS IF THE UNIT OWNER CANNOT LIVE IN THE UNIT **[FOLLOWING A COVERED CAUSE OF LOSS]**

2) Because the bill as written would allow condominium associations to collect evidence of HO-6 insurance from its individual unit owners, we believe it would be reasonable for those unit owners to be permitted time to respond to such requests for proof of coverage. Therefore, we respectfully ask that HB1541 be amended to include also a 30-day window within which unit owners may comply with their condominium association's request for evidence of HO-6 insurance coverage without incurring any penalty. For example, the following language in bold/brackets could be added to HB1541 to accomplish that purpose:

> (D) EACH UNIT OWNER SHALL PROVIDE **[WITHIN 30 DAYS FROM RECEIPT OF SUCH REQUEST]** EVIDENCE OF THE INSURANCE POLICY REQUIRED UNDER SUBSECTION (B) OF THIS SECTION TO THE COUNCIL OF UNIT OWNERS:

Finally, since being heard in the House Environmental and Transportation Committee, the Office of the Attorney General (OAG) requested two amendments to HB1541, both of which now appear in the most recent version of the bill. MD LAC continues to support HB1541, but we oppose the following amendments offered by the OAG:

1. **Page 2, line 2 (the verbiage in bold underlined type was requested to be stricken by the OAG):**

   (2) THIS SECTION DOES NOT APPLY TO DETACHED UNITS OF A CONDOMINIUM **COMPOSED ENTIRELY OF SIMILAR DETACHED UNITS.**

As the legislature may be aware, the detached unit bill from 2023 (HB98, sponsored by Del. Steven Arentz) caused unintended problems, which the LAC worked hard last year to correct. The original bill was dropped at the request of an eastern shore developer who wanted to be able to build for density but not be required to comply with the master policy requirements of Section 11-114. However, its applicability to detached units in developments that also include other types of units was problematic for those communities' budgets and existing bylaw language, because attached and detached units, respectively, cannot be treated equally, including with respect to insurance. Fortunately, the 2024 bill (HB1227, sponsored by Dels. Marvin Holmes and Steven Arentz), which we helped to pass, clarified that unit owners could be required to insure their units in their entirety, but only if the association is comprised entirely of other similar detached condominium units.

Our concern with the amendment made to HB1541 at the request of the OAG is that, by striking the last line in the detached unit provision, the OAG is unintentionally reintroducing the problem we worked so hard to correct during the 2024 legislative session.

Maryland does, indeed, contain condominium associations composed of both detached and attached units. The Signature Club at Greenview in New Market is among them, and members of that association were very vocal in their opposition to the 2023 law. Those members (and constituents in other similar associations) were highly motivated to see the law corrected in 2024, so that it would be applicable only to condominium associations comprised entirely of similar detached units. Were we to enact HB1541 with the amendment the OAG has requested, we can expect comparable opposition, and another year devoted to correcting a problem that does not need to be repeated. Therefore, we urge the Committee to reinstate the bolded and underlined text above, which the OAG seeks to strike.

2. **Page 2, lines 8 and 9 (the verbiage in bold underlined type was requested to be stricken in its entirety by the OAG):**
3. **<u>(I) A WAIVER OF THE UNIT OWNER'S RIGHT TO SUBROGATION AGAINST THE COUNCIL OF UNIT OWNERS AND THE COUNCIL'S INSURANCE POLICIES;</u>**

Section 11-114 of the Act contains a provision requiring any condominium master policy to prohibit subrogation by the carrier against an individual unit owner. The rationale supporting that provision is two-fold:

(1) It is fundamentally unfair to permit a master policy carrier to seek contribution or indemnity from a unit owner whose assessments, in part, pay the premium cost for the master policy coverage (the premium contribution gives the owner insurable interest in the policy); and,

(2) A lawsuit in which the master policy carrier would be required to prove negligence by the unit owner in order to obtain a judgment for contribution or indemnity is precisely the type of litigation the General Assembly thought it prudent to avoid when it amended Section 11-114 of the Act in 2009 to allocate responsibility for the master policy deductible to the unit owner or condominium in accordance with where the insured loss originates, without regard to fault or negligence.

We understand that the OAG is concerned that unit owners are sometimes advised by boards of directors or management to file claims with their HO-6 carriers to seek coverage for an entire insured loss – including one which should be covered by the master policy (or by the condominium association as self-insurer) – but that advice is misplaced and the result of a misunderstanding or ignorance of existing law. To make a new law now to account for misinterpretation of an existing law is, quite frankly, bad legislative policy.

Moreover, striking the provision in HB1541 that prohibits subrogation by an HO-6 carrier against the master policy for that reason will introduce the likelihood of litigation in which, again, a requirement that the unit owner prove negligence will be center-stage, to the detriment of the public policy objectives surrounding master policy deductible responsibility which Section 11-114 was previously amended to advance. Quite simply, the allocation of deductible responsibility in accordance with the location from which a loss originates, as opposed to the negligence of one party or the other, is a fair and reasonable way to apportion risk. The amendment to HB1541 proposed by the OAG will complicate the lives of unit owners, not to mention make condominium ownership more expensive in the long run. **Accordingly, MD LAC respectfully requests that the provision be reinstated within the bill's text.**

For the foregoing reasons, **MD-LAC requests a favorable report by this Committee, endorsing and approving the changes we have requested and striking the amendments previously offered by the OAG.** Thank you for your time and attention to this important legislation.

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 Robin Manougian, of the MD-LAC at 240-401-0855, or by e-mail at Robin.Manougian@baldwin.com, or Scott Silverman, of the MD-LAC at 410-707-6363, or by e-mail at scott@naglezaller.com.

Sincerely,

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