

WRITTEN TESTIMONY OF JAY RADOV ON SB 332 – TUESDAY FEB. 3, 2026

FAVORABLE WITH AN AMENDMENT THAT IS ATTACHED HERETO

Good afternoon, Chair Smith, Vice Chair Waldstreicher, and Members of the Committee.

My name is Jay Radov. I am a retired lawyer and insurance professional who spends a considerable amount of time, without compensation, advising both condo associations and unit owners about legal and insurance issues.

I am testifying today in SUPPORT OF SB 332 with one amendment. SB is an excellent bill, which will materially help alleviate the insurance crisis, primarily caused by water damage, that condominium associations and their unit owners are facing.

To cite just one example, over a two year span from 2022 – 2024, one condominium association in Baltimore County had two large water damage losses, each of which exceeded \$100,000. Consequently, the annual premium of that condominium association’s property insurance policy was increased from \$24,000 in 2022, to \$48,000 in 2023, and then to \$125,000 in 2024. Solely because of these insurance increases, each unit owner’s assessment was increased by \$100 per month, or \$1,200 per year.

SB 332 provides in relevant part that:

If the cause of any damage to or destruction of any portion of the condominium originates from a unit, **the owner of that unit is responsible for the council of unit owners’ property insurance deductible** not to exceed **[\$10,000] \$25,000**. (emphasis added)

The problem is that this sentence in the current law **[the unit owner is responsible for the condominium association’s deductible]** is ambiguous and can be interpreted in two different ways:

1st WAY: The unit owner is responsible for the council of unit owners’ property insurance deductible **ONLY** if the council of unit owners files a claim with its property insurance company; or

2nd WAY: The unit owner is responsible for the council of unit owners’ property insurance deductible **EVEN IF THE COUNCIL OF UNIT OWNERS DOES NOT** file a claim with its property insurance company.

Consider the following example:

What if the amount of damage that originates in a unit owner’s unit is:

- Just below or just above the amount of the council of unit owners' property insurance deductible; and
- The council of unit owners decides, for obvious economic reasons, not to file a claim for such damage with its property insurance company but assesses the unit owner for the amount of such damage up to \$25,000; and
- The unit owner then either sues the condominium association because, the unit owner argues, since the condominium association is not filing a claim, the condominium association cannot legally assess the unit owner because no property insurance deductible of the condominium association is triggered or applies at all!

Two insurance companies which provide personal condominium insurance policies to unit owners have previously raised this issue. In one of those two cases, the disagreement between the unit owner's insurer and the condominium association came very close to litigation.

The solution to this ambiguity and source of potential litigation is to add just 16 words at two places in SB 332. Attached hereto is our Favorable Amendment to SB 332 which does just that.¹

We sincerely hope that the Committee will accept our Favorable Amendment to SB 332 which would make an excellent bill even better by preventing the unintended consequence of additional litigation that might indeed occur when damage originates from a unit owner's unit and the council of unit owners decides not to file a claim with its property insurance carrier because the amount of such damage is either slightly less than, or slightly greater than, the council of unit owners' property insurance deductible.

In addition, although wisely not a part of SB 332, my colleagues and I would like to explain briefly why the solution to this crisis facing condominium associations and their unit owners is **NOT**, as some others have proposed, (A) mandating that unit owners purchase and maintain a minimum amount of coverage in personal condominium insurance policies and (B) allowing condominium associations to purchase such minimum

¹ In addition, the attached Favorable Amendment to SB 332 would delete one word "**annual**" from Section 11-114-(g)(2)(iv) because the council of unit owners should be able to make these assessments as frequently as needed and not just on an annual basis.

insurance on behalf of (and at the expense of) their unit owners who do not have such insurance.²

Such an insurance mandate (like the one in HB 469) has four flaws:

FIRST: It won't work; unit owners won't purchase and maintain the required insurance. Why? Because there is no enforcement structure proposed (or in place). One only has to look at the facts regarding mandatory auto insurance in Maryland. Even with a very strong and detailed enforcement structure in place for auto insurance in Maryland, which imposes stringent and numerous penalties for noncompliance, about 15% -17% of Maryland drivers – hundreds of thousands of Maryland citizens – remain uninsured.

SECOND: Mandating a minimum amount of personal condominium insurance for unit owners is unnecessary. No mandate was necessary or enacted in either 2008 or in 2020, when the legislature previously increased the amount for which a unit owner from whose unit the damage to any portion of a condominium originated is responsible. Rather, most condominium unit owners will voluntarily increase their current personal condominium insurance policies to comply with the new \$25,000 limit because (a) their insurance agents will notify them to do so and (b) their condominium associations will emphasize to them that all unit owners should increase their insurance coverage.

Moreover, no state in the country mandates that any condominium unit owner purchase or maintain any personal condominium insurance at all.

THIRD: Mandating a minimum amount of personal condominium insurance for unit owners will be expensive for two groups of condominium unit owners. The first group of unit owners is those with current insurance who will be required to unnecessarily increase their coverage at an annual cost we estimate at \$70. The second group of unit owners is those without current insurance who do choose to purchase and maintain the required insurance at an annual cost we estimate at \$440.

FOURTH: Mandating a minimum amount of personal condominium insurance for unit owners is likely to dramatically increase litigation – and the threat of litigation – against the Boards of Directors of condominium associations.

A condominium's Board of Directors is subject to two legal doctrines that govern its decision-making:

² The Community Associations Institute, known as CAI, supports (a) mandatory minimum personal condominium insurance coverage by unit owners and (b) allowing condominium associations to purchase such minimum insurance on behalf of (and at the expense of) their unit owners who do not have such insurance.

- a. Its Fiduciary Duty to act in the best interests of all of its unit owners; and
- b. The Business Judgment Rule which protects a Board of Directors from liability for its honest, good-faith business decisions – even if such decision ultimately turn out to be wrong or lead to bad results – assuming such decisions were informed and rational decisions.

But how can a condominium’s Board of Directors comply with both its Fiduciary Duty and with the Business Judgment Rule if the Board has no way of accessing the information its needs and/or no way of evaluating any information it might obtain regarding whether or not the condo association is likely to collect (a) the insurance premium from the unit owner for whom it might purchase an insurance policy or (b) the loss assessment charged against any unit owner without insurance?

One can easily envision, for example, a fire originating in the unit of a unit owner without insurance and that unit owner’s lawyer subsequently suing (or threatening to sue) the Board for NOT PURCHASING AND MAINTAINING insurance on behalf of that unit owner.

In order to avoid the repercussions of such difficult issues and to protect itself from actual or threatened liability, the Board will likely treat all unit owners the same and will never buy insurance on behalf of any unit owner whom it learns does not have the mandated personal condominium insurance in place.

Thank you for your consideration!

[THE FAVORABLE AMENDMENT APPEARS ON THE NEXT PAGE]

FAVORABLE AMENDMENT TO SB 332

(g) (2)

(iii) 1. If the cause of any damage to or destruction of any portion of the condominium originates from a unit, the owner of the unit where the cause of the damage or destruction originated is responsible for the council of unit owners' property insurance deductible not to exceed ~~[\$10,000]~~ **\$25,000**, whether or not the council of unit owners files a claim with its property insurance company.

2. The council of unit owners shall inform each unit owner annually in writing of:

A. The unit owner's responsibility for the council of unit owners' property insurance deductible, whether or not the council of unit owners files a claim with its property insurance company; and

B. The amount of the deductible.

3. The council of unit owners' property insurance deductible exceeding the ~~[\$10,000]~~ **\$25,000** responsibility of the unit owner is a common expense.

(iv) In the same manner as provided under § 11-110 of this title, the council of unit owners may make an ~~annual~~ assessment against the unit owner responsible under subparagraph (iii) of this paragraph.