

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 201

(Senator Kelley, *et al.*)

Judicial Proceedings

Environmental Matters

Real Property - Condominiums - Repair or Replacement of Damage or
Destruction by Council of Unit Owners

This bill clarifies that a condominium's council of unit owners' responsibility to repair or replace the common elements extends to condominium units, exclusive of improvements or betterments installed in the units by unit owners other than the developer, in the event of damage or destruction to the condominium – notwithstanding inconsistent provisions in the council of unit owners' bylaws. The condominium's council of unit owners must also maintain property insurance on the common elements and units, exclusive of improvements and betterments installed in the units by unit owners other than the developer.

The bill further requires a unit owner to pay the deductible of the condominium's master insurance policy, up to the statutory limit of \$5,000, if the cause of the damage originated from the owner's unit. Notice of a unit owner's responsibility for the property insurance deductible must be (1) included in a condominium sales contract (both the initial public offering statement and any resale contract); and (2) given annually in writing by the condominium's council of unit owners to each unit owner.

The bill takes effect June 1, 2009.

Fiscal Summary

State Effect: If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: The bill does not directly affect local finances or resources.

Small Business Effect: None.

Analysis

Current Law/Background: In prior years, the Maryland Condominium Act had been interpreted to require the condominium's council of unit owners to maintain a master insurance policy that protects both the common elements and individual condominium units from damage or destruction. However, betterments and improvements made to the original condominium unit by a homeowner – such as draperies, light fixtures, or wallpaper – were excluded under the condominium's master insurance policy. Typically, a homeowner maintains a separate insurance policy, known as an HO-6 policy, to cover improvements or betterments made to the original condominium unit.

In 2004, a homeowner suffered severe water damage to her two-story townhome at The Gables on Tuckerman Condominium in Montgomery County (Gables), totaling more than \$6,300. In a second, unrelated case in 2003, a grease fire caused more than \$12,000 worth of damage to the walls and cabinetry of a townhome in the Bridgeport Condominium in Prince George's County (Bridgeport).

The councils of unit owners of Gables and Bridgeport carried master insurance policies on each property, and the individual homeowners of the damaged units maintained separate HO-6 insurance policies. Each homeowner requested that the council of unit owners repair, or provide proceeds to repair, the damage to their units. Both councils of unit owners declined to repair the damage to the homeowners' units; after the homeowners paid their HO-6 insurance deductibles, the homeowners' HO-6 insurers paid for the repairs. The homeowners and their HO-6 insurers sued their respective condominium associations to recover the cost of the repairs. The courts ruled against the homeowners in both cases and, on appeal, the cases were consolidated by the Court of Appeals as *Anderson v. Council of Unit Owners of The Gables on Tuckerman Condominium*, 404 Md. 560 (2008).

In the consolidated appeal, the Court of Appeals affirmed the lower courts' rulings and held that the Maryland Condominium Act does not require a condominium association to repair or replace property of an owner in an individual condominium unit after a casualty loss.

In its interpretation of the Maryland Condominium Act, the court determined that a council of unit owners' master insurance policy is meant not to insure each owner's property or individual unit, but to protect the common interest of all owners as co-owners of the entire condominium.

The court noted that the Maryland Condominium Act states that the council of owners is required to maintain insurance on the entire condominium property including “the common elements and units, exclusive of improvements and betterments installed in units by unit owners.” However, the court asserts that another provision of the law specifies that the council of owners is responsible for repairing or replacing “any portion of the condominium damaged or destroyed.” (emphasis added by the court). The court examined the regulatory scheme of the Maryland Condominium Act and its legislative history to determine the meaning of the word “unit.”

The court determined that the Maryland Condominium Act does not require a condominium’s council of unit owners to repair or replace a homeowner’s damaged property in an individual condominium unit after a casualty loss; instead, a master insurance policy only covers damage sustained to the condominium’s common elements or structure. The court cited another provision of the Act, which addresses the responsibility for maintenance, repair, and replacement:

“Except to the extent otherwise provided by the declaration or bylaws, the council of unit owners is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of his unit.”

The homeowners argued that the above provision is inapplicable because it pertains to the repair and replacement of a unit in the course of ordinary maintenance, whereas the Maryland Condominium Act specifically stipulates the council of unit owners’ obligation in the event of a casualty loss. The court disagreed, stating that State law “recognizes the hybrid character of condominium ownership by differentiating between the common elements and the individual units, with the owner being responsible for damage to her or his ‘airspace’.”

The bill is intended to clarify the statutory language to once again require a condominium’s council of unit owners to repair or replace condominium units, exclusive of improvements or betterments installed by unit owners other than developers, in the event of a casualty loss causing damage or destruction to the condominium.

Additional Information

Prior Introductions: None.

Cross File: None designated; however, HB 287 is identical.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Maryland Insurance Administration, Secretary of State, *Washington Post*, Department of Legislative Services

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