

SENATE BILL 403

N1, C4
HB 553/22 – ENT

3lr0582
CF HB 98

By: **Senator Hershey**

Introduced and read first time: February 1, 2023

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Condominiums – Declarations and Mandatory Insurance Coverage – Alterations**

3 FOR the purpose of exempting certain condominium units from a requirement to include
4 certain information in a declaration; altering the types of elements and units for
5 which a council of unit owners is required to maintain certain property insurance
6 and altering certain requirements for the property insurance policy; and generally
7 relating to mandatory insurance coverage for condominiums.

8 BY repealing and reenacting, with amendments,

9 Article – Real Property

10 Section 11–103(a)(4) and 11–114

11 Annotated Code of Maryland

12 (2015 Replacement Volume and 2022 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
14 That the Laws of Maryland read as follows:

15 **Article – Real Property**

16 11–103.

17 (a) The declaration shall express at least the following particulars:

18 (4) (i) A general description of the common elements together with a
19 designation of those portions of the common elements that are limited common elements
20 and the unit to which the use of each is restricted initially.

21 (ii) 1. A. This subparagraph applies to any condominium for
22 which a declaration, bylaws, and plat are recorded in the land records of the county where
23 the property is located on or after October 1, 2010.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



B. This subparagraph does not apply to **A DETACHED CONDOMINIUM UNIT OR** a condominium that is occupied and used solely for nonresidential purposes.

2. The description of the common elements shall include the following improvements to the extent that the improvements are shared by or serve more than one unit or serve any portion of the common elements:

A. Roofs;

B. Foundations;

C. External and supporting walls;

D. Mechanical, electrical, and plumbing systems; and

E. Other structural elements.

3. With the exception of corrective amendments necessary to comply with subsubparagraph 2 of this subparagraph, the description and designation of the common elements required under subsubparagraph 2 of this subparagraph may not be amended until after the date on which the unit owners, other than the developer and its affiliates, first elect a controlling majority of the members of the board of directors for the council of unit owners.

11–114.

(a) Commencing not later than the time of the first conveyance of a unit to a person other than the developer, the council of unit owners shall maintain, to the extent reasonably available:

(1) Property insurance [on the common elements and units, exclusive of improvements and betterments installed in units by unit owners other than the developer, insuring against those risks of direct physical loss commonly insured against,] in amounts determined by the council of unit owners, but not less than any amounts specified in the declaration or bylaws, **AGAINST RISKS OF DIRECT PHYSICAL LOSS COMMONLY INSURED AGAINST:**

(I) FOR ATTACHED OR MULTIFAMILY DWELLING UNITS, ON THE COMMON ELEMENTS AND UNITS, EXCLUSIVE OF IMPROVEMENTS AND BETTERMENTS INSTALLED IN UNITS BY UNIT OWNERS OTHER THAN THE DEVELOPER; AND

(II) FOR DETACHED UNITS, ON THE COMMON ELEMENTS; and

(2) Comprehensive general liability insurance, including medical

1 payments insurance, in an amount determined by the council of unit owners, but not less
2 than any amount specified in the declaration or bylaws, covering occurrences commonly
3 insured against for death, bodily injury, and property damage arising out of or in connection
4 with the use, ownership, or maintenance of the common elements.

5 (b) The council of unit owners shall give notice to all unit owners of the
6 termination of any insurance policy within 10 days of termination. The declaration or
7 bylaws may require the council of unit owners to carry any other insurance, and the council
8 of unit owners in any event may carry any other insurance it deems appropriate to protect
9 the council of unit owners or the unit owners.

10 (c) Insurance policies carried pursuant to subsection (a) of this section shall
11 provide that:

12 (1) For property and casualty losses to the common elements and the units,
13 exclusive of improvements and betterments installed in the units by unit owners other than
14 the developer, **OR FOR DETACHED UNITS, PROPERTY AND CASUALTY LOSSES TO THE**
15 **COMMON ELEMENTS**, each unit owner is an insured person under the policy with respect
16 to liability arising out of his ownership of an undivided interest in the common elements or
17 membership in the council of unit owners;

18 (2) The insurer waives its right to subrogation under the policy against any
19 unit owner of the condominium or members of his household;

20 (3) An act or omission by any unit owner, unless acting within the scope of
21 his authority on behalf of the council of unit owners, does not void the policy and is not a
22 condition to recovery under the policy; and

23 (4) If, at the time of a loss under the policy, there is other insurance in the
24 name of a unit owner covering the same property covered by the policy, the policy is primary
25 insurance not contributing with the other insurance.

26 (d) **(1)** Any loss **FOR ATTACHED OR MULTIFAMILY DWELLING UNITS**
27 covered by the property policy under subsection (a)(1) of this section shall be adjusted with
28 the council of unit owners, but the insurance proceeds for that loss shall be payable to any
29 insurance trustee designated for that purpose, or otherwise to the council of unit owners,
30 and not to any mortgagee.

31 **(2)** The insurance trustee or the council of unit owners shall hold any
32 insurance proceeds in trust for unit owners and lien holders as their interests may appear.

33 **(3)** Subject to the provisions of subsection (g) of this section, the proceeds
34 shall be disbursed first for the repair or restoration of the damaged common elements and
35 units, and unit owners and lien holders are not entitled to receive payment of any portion
36 of the proceeds unless there is a surplus of proceeds after the common elements and units
37 have been completely repaired or restored, or the condominium is terminated.

(e) An insurance policy issued to the council of unit owners does not prevent a unit owner from obtaining insurance for his own benefit.

(f) (1) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the council of unit owners and, upon request, to any unit owner, mortgagee, or beneficiary under a deed of trust.

(2) An insurer may cancel an insurance policy issued under this section in accordance with § 27-603 of the Insurance Article.

(g) (1) **[Any] SUBJECT TO THE APPLICABLE COVERAGE SPECIFIED UNDER SUBSECTION (A) OF THIS SECTION,** ANY portion of the common elements and the units, exclusive of improvements and betterments installed in the units by unit owners other than the developer, damaged or destroyed shall be repaired or replaced promptly by the council of unit owners unless:

(i) The condominium is terminated;

(ii) Repair or replacement would be illegal under any State or local health or safety statute or ordinance; or

(iii) 80 percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild.

(2) (i) 1. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense.

2. A property insurance deductible is not a cost of repair or replacement in excess of insurance proceeds.

(ii) If the cause of any damage to or destruction of any portion of the condominium originates from the common elements or an event outside of the condominium units and common elements, the council of unit owners' property insurance deductible is a common expense.

(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.

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; and

B. The amount of the deductible.

1 3. The council of unit owners' property insurance deductible
2 amount exceeding the \$10,000 responsibility of the unit owner is a common expense.

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

6 (3) If the damaged or destroyed portion of the condominium is not repaired
7 or replaced:

8 (i) The insurance proceeds attributable to the damaged common
9 elements shall be used to restore the damaged area to a condition compatible with the
10 remainder of the condominium;

11 (ii) The insurance proceeds attributable to units and limited
12 common elements which are not rebuilt shall be distributed to the owners of those units
13 and the owners of the units to which those limited common elements were assigned; and

14 (iii) The remainder of the proceeds shall be distributed to all the unit
15 owners in proportion to their percentage interest in the common elements.

16 (4) **(I)** If the unit owners vote not to rebuild any unit, that unit's entire
17 common element interest, votes in the council of unit owners, and common expense liability
18 are automatically reallocated upon the vote as if the unit had been condemned under §
19 11–112 of this title, and the council of unit owners promptly shall prepare, execute, and
20 record an amendment to the declaration reflecting the reallocations.

21 **(II)** Notwithstanding the provisions of this subsection, § 11–123 of
22 this title governs the distribution of insurance proceeds if the condominium is terminated.

23 (h) The council of unit owners shall maintain and make available for inspection a
24 copy of all insurance policies maintained by the council of unit owners.

25 (i) The provisions of this section do not apply to a condominium all of whose units
26 are intended for nonresidential use.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2023.