

SENATE BILL 403

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HB 553/22 – ENT

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CF HB 98

By: **Senator Hershey**

Introduced and read first time: February 1, 2023

Assigned to: Judicial Proceedings

Committee Report: Favorable

Senate action: Adopted

Read second time: March 11, 2023

CHAPTER _____

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 and the unit to which the use of each is restricted initially.

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

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

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

11 A. Roofs;

12 B. Foundations;

13 C. External and supporting walls;

14 D. Mechanical, electrical, and plumbing systems; and

15 E. Other structural elements.

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

22 11–114.

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

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

32 **(I) FOR ATTACHED OR MULTIFAMILY DWELLING UNITS, ON THE**
33 **COMMON ELEMENTS AND UNITS, EXCLUSIVE OF IMPROVEMENTS AND**

1 **BETTERMENTS INSTALLED IN UNITS BY UNIT OWNERS OTHER THAN THE**
2 **DEVELOPER; AND**

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

4 (2) Comprehensive general liability insurance, including medical
5 payments insurance, in an amount determined by the council of unit owners, but not less
6 than any amount specified in the declaration or bylaws, covering occurrences commonly
7 insured against for death, bodily injury, and property damage arising out of or in connection
8 with the use, ownership, or maintenance of the common elements.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (i) The condominium is terminated;

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

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

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

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

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

31 (iii) 1. If the cause of any damage to or destruction of any portion
32 of the condominium originates from a unit, the owner of the unit where the cause of the
33 damage or destruction originated is responsible for the council of unit owners' property
34 insurance deductible not to exceed \$10,000.

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

3 A. The unit owner's responsibility for the council of unit
4 owners' property insurance deductible; and

5 B. The amount of the deductible.

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

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

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

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

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

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

21 (4) **(I)** If the unit owners vote not to rebuild any unit, that unit's entire
22 common element interest, votes in the council of unit owners, and common expense liability
23 are automatically reallocated upon the vote as if the unit had been condemned under §
24 11–112 of this title, and the council of unit owners promptly shall prepare, execute, and
25 record an amendment to the declaration reflecting the reallocations.

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

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

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

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