

MARYLAND LEGISLATIVE ACTION OVERTURNS STATE HIGH COURT DECISION ON REQUIRED CONDOMINIUM MASTER POLICY COVERAGE

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The Maryland General Assembly has acted to overturn the *Anderson v Gables on Tuckerman case*, 404 Md. 560, 948 A.2d 11 (2008).

The *Anderson* Court held that the Maryland Condominium Act does not require a council of unit owners to maintain master policy insurance coverage on units. The Maryland Legislature acted quickly to overturn this decision. Signed by the Governor May 19, 2009, HB [287](#) is effective June 1, 2009.

The enrolled legislation provides that the intent of the General Assembly was to:

- a) Overturn the *Anderson v Gables on Tuckerman* case; and
- b) Place an affirmative duty on the condominium to:
 - 1) repair damage to the condominium that originates in a unit; and
 - 2) purchase insurance that reflects that duty; and
- c) Make the cost of the property insurance purchased by the condominium a common expense, except in the case of damage originating from a unit, the payment of the property insurance deductible up to the maximum provided in the Act shall be the responsibility of the owner of the unit where the damage originated

Maryland Condominium master policy property insurance law, Section 11-114 of the Maryland Condominium Act (Title 11 Md. Real Prop. Code Ann.) ("the Act"), as of June 1, 2009 will provide:

- Not later than the time the first unit is conveyed to a person other than the developer, condominiums must obtain and maintain to the extent reasonably available, property insurance on the common elements and units, exclusive of improvements and betterments installed in the 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 but not less than the amounts specified in the documents.
- Master policies shall be the primary insurance and shall provide that for property and casualty losses to the common element and the units, exclusive of improvements and

betterments installed in the units by unit owners other than the developer, each unit owner is an insured person under the policy and the insurer waives its right to subrogation against any unit owner or members of the unit owner's household. An act or omission by any unit owner, unless acting within the scope of his authority on behalf of the council, does not void the policy and is not a condition to recover. Losses shall be adjusted with the council of unit owners and payments shall be made to the council or its insurance trustee. Unit owners may obtain insurance for their own benefit.

- 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 \$5,000.
- The council of unit owners shall inform each unit owner annually in writing of: 1) the unit owner's responsibility for the condominium's property insurance deductible; and 2) the amount of the deductible.
- Public offering statements required by Section 11-126 of the Act shall contain a written notice of the unit owner's responsibility for the condominium's property insurance deductible and the amount of the deductible.
- Disclosure packages and resale disclosure packages provided pursuant to Section 11-135 of the Act shall contain a written notice of the unit owner's responsibility for the condominium's property insurance deductible and the amount of the deductible.

Section 11-108.1 of the Act was also amended to clarify that the maintenance, repair and replacement of units and common elements is subject to the insurance provisions of the Act.




Photo courtesy of Governor O'Malley's office

Front row of the picture from left to right: Lt. Gov. Brown, Senate President Miller, Governor O'Malley, and Speaker of the House of Delegates Busch.

In the back row (in a royal blue blouse directly behind the Governor) is Phyllis Marsh, a Maryland LAC member. Also in the back row: Delegate Niemann, Delegate Clagett, Senator Kelly, and Delegate McConkey.

CAI Staff Note: Ms. Elmore has been involved in this issue for the past several years. For additional background, please go to CAI's ***Heads-Up***:

 [Maryland Court Decision Will Impact Condominiums & Their Insurance Coverage](#) (4/08) In a decision that could have far-reaching repercussions for Maryland condominiums and their insurance coverage, this Court of Appeals holding will become effective after the Court issues its mandate (expected sometime after May 15, 2008). [Members read more...](#)