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New Insurance Requirements for Condominiums

Raymond Daniel Burke
410-347-7392
rdburke@ober.com

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New Insurance Requirements for Condominiums

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The law governing condominium insurance requirements, which changed in 2008 as a result of a court decision, has changed again as result of amendments to the Maryland Condominium Act effective June 1, 2009. During the last legislative session, the Maryland General Assembly took action on the issue in direct response to a 2008 Court of Appeals decision concerning the allocation of responsibilities for property damage between a condominium council and the individual unit owners. The new law establishes that the condominium master insurance policy must cover all of the building elements, *including* the units, except for improvements installed in the unit by the owners after construction. However, where the damage originates in a unit, that unit owner is responsible for any insurance deductible under the council's policy, up to a maximum of \$5,000.

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Section 11-114 of the Maryland Condominium Act has long imposed a specific duty on a council of unit owners to maintain "[p]roperty insurance on the common elements and units, exclusive of improvements and betterments installed in the units by unit owners," along with general liability insurance. In response to this requirement, it was common practice for councils of unit owners to obtain insurance coverage for all elements of the condominium as originally constructed by the developer, including the units, with individual unit owners insuring improvements to the unit not provided by the developer, along with insuring personal property in the unit.

Section 11-114 also provided that any deductible applicable under the property insurance policy was a common expense of the condominium, regardless of whether the cause of the damage originated in the common elements or an individual unit. However, it authorized that the condominium's bylaws could provide for a unit owner to be responsible for the deductible, if the cause of the damage originated in their unit, but only up to a maximum, initially of \$1,000, and then increased to \$5,000 by a 2008 amendment.

Then along came the Court of Appeals decision in *Anderson v. Council of Unit Owners of the Gables in Tuckerman Condominium*, 404 Md. 560 (2008). The Court granted *certiorari* to consider two consolidated cases, one arising at The Gables on Tuckerman Condominium in Rockville, and the other at the Bridgeport Condominium in Laurel. In the Rockville case, a leaking water

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heater within a unit had caused damage to the unit, without damage to any other unit or common elements. In the Laurel case, a kitchen grease fire caused the sprinkler system to activate, damaging the unit, but, again, causing no damage to other units or the structure. In both cases, the unit owners sued the condominium council to recover the costs of repair.

Interpreting Section 11-114, the Court of Appeals noted that Section 11-108.1 of the Condominium Act provides that, unless otherwise specified in 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." It ruled that the council's insurance requirements under Section 11-114 applied "only to damage sustained to the common elements or the structure of the condominium." Specifically, it found that, while Section 11-114 provided that each unit owner was an insured person under the council's policy, each owner is "insured under the master policy only as to his or her collective undivided interest in the entire condominium property," and it is "not meant to insure each owner's property or individual unit."

Accordingly, the Court held that the council of unit owners was not required to repair or replace property of an individual owner after any casualty loss. The significant impact of the decision was that Section 11-114 applied only to "damaged property owned by the owners collectively," and the council was not responsible for insuring or repairing any portion of an individual unit, regardless of the origin of the cause of the property damage; that is, regardless of whether the cause originated in the common elements or the unit. Damage to an individual unit would then become the sole responsibility of that unit owner in all circumstances, and they would be compelled to obtain their own insurance to protect against loss.

This turned what had been customary practice on its head, and prompted the legislature to intervene. The new law amends Section 108.1 to make it specifically subject to the provisions of Section 11-114. It then amends Section 11-114 to make clear that the council of unit owners is required to maintain insurance "**[f]or property and casualty losses to the common elements and the units, exclusive of improvements and betterments installed in the units by the unit owners other than the developer.**" The new law also imposes the deductible requirement on any individual owner in whose unit the damage originates, regardless of whether the bylaws so provide, up to a maximum of \$5,000. Otherwise, the deductible remains a common expense.

The result is that condominium master policies must cover property damage to all of the condominium structure, including both the common elements and units as originally constructed and finished by the developer, with the unit owners providing individual insurance for their improvements and personal contents. If damage originates in the unit, the owner is responsible for the insurance deductible up to a maximum of \$5,000. The new law also requires that condominiums annually notify each unit owner of the deductible responsibility and the amount of the deductible, and further requires that public offering statements notify potential buyers of the unit owner's responsibility for the insurance deductible.

It should be remembered, however, that, because the council is responsible for maintenance and condition of the common elements, where a common element defect, such as a water leak, is the source of damage to an individual unit and property, the council is responsible for the consequential damages to the unit and its contents.

Construction Complete on New Condo Law Blog

Ober|Kaler has launched **MarylandCondoLaw.com**, a blog addressing the needs and concerns of condominium and homeowner associations and their members. Authored by **Raymond Daniel** Burke, a principal in the firm's Construction Group and one of the region's top construction and real estate development lawyers, MarylandCondoLaw.com seeks to educate readers about their rights and responsibilities, including what to know about warranties, how to prove claims and what to do in the absence of insurance.

"My hope is that this blog will shine a light on condo-related issues, while providing owners with an understanding of the law and connect them and their associations with the help and resources they need."

Visit **MarylandCondoLaw.com** or send an email to Ray Burke at **rdburke@ober.com** to learn more.

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