

Summer 2008

Community Association LawLetter

MARYLAND COURT OF APPEALS DECISION HAS MAJOR IMPACT ON MASTER INSURANCE REQUIREMENTS FOR CONDOMINIUMS

The Maryland Court of Appeals – the highest state appeals court -- issued an opinion on April 15, 2008 that significantly affects the statutory requirements for master policy property damage insurance for Maryland condominiums.

Condo Act Does Not Require Unit Coverage

In *Anderson v. Gables on Tuckerman Condominium*, the Court ruled that “the Maryland Condominium Act does not require the council of unit owners to repair or replace property of an owner in an individual condominium unit after a casualty loss”. The basis of the Court ruling is its conclusion that the Condominium Act requires the unit owner to make all repairs to the unit regardless of the cause of the damage.

The Court further concluded that “the master insurance provision was intended to cover only damage sustained to the common elements or the structure of the condominium” and the master policy is not meant to insure each owner’s property or individual unit.

The Court’s decision is contrary to the longstanding interpretation of the Act by managers, attorneys, and insurance professionals regarding master insurance coverage for units. The decision does not alter the requirement of the Act for condominiums to obtain coverage on the common elements.

Bylaw Insurance Provisions

While the Court ruled that the Act does not require a condominium association to obtain insurance coverage of units, an association’s By-laws may require the association to obtain insurance coverage on the units as well as the common elements.

The Court’s decision also may affect the insurance coverage that individual owners may need to obtain for their units.

In response to the court ruling, each Maryland condominium association should:

- Review the association bylaws to determine if the association is required to continue to provide master policy coverage for condominium units.

(Cont’d on Page 2)

MARYLAND COURT OF APPEALS
(Cont'd from Page 1)

- Review the condominium master policy insurance policy and consult with the insurance company for condominium to determine whether the current policy will continue to cover damage to individual units.
- Adopt a written policy regarding payment of the insurance deductible amount for repair of damage to units.
- Inform all unit owners regarding the status of master policy coverage for individual units and unit owner's responsibility for the cost to repair damage to the unit.
- Advise unit owners to review any individual insurance policy which the unit owner may have.

The court decision in *Anderson v. Gables on Tuckerman* can be obtained from the Thomas Schild Law Group website (schildlaw.com).

MARYLAND LEGISLATIVE UPDATE

More than two dozen bills directly affecting community associations were introduced during the 2008 legislative session of the Maryland General Assembly. Many bills sought to implement recommendations of the 2006 Maryland Task Force on Common Ownership Communities. Several new laws were enacted. Most bills were not passed.

CAI Initiatives

Two bills initiated by the Community Associations Institute (CAI) were passed by the General Assembly:

- The amount of the **condominium**

insurance deductible which can be shifted to individual unit owners by a condominium's bylaws has been increased from \$1,000.00 to \$5,000.00. This reflects the current minimum insurance deductible typically available in condominium master insurance policies (House Bill 646).

No change was made in the provisions of the Condominium Act which may require the bylaws to be amended to shift the allowable deductible amount where the cause of the damage originates in the unit.



Maryland Governor Martin O'Malley signs assessment lien legislation as Tom Schild and others look on, April 24, 2008

(Cont'd on Page 3)

MARYLAND LEGISLATIVE UPDATE

(Cont'd from Page 2)

- The **time for enforcing condominium/homeowner assessment liens** by foreclosure has been increased from 3 years to 12 years to correspond to the duration of a court judgment. This will aid collection of assessments on sale or refinance of a property since some title companies have not been requiring payment of assessment liens which could no longer be foreclosed after 3 years (House Bill 645).

Another CAI initiative regarding **payment of assessment liens after a lender foreclosure** did not pass. The bill would have required the purchaser (other than the lender) to pay up to 6 months of assessments due prior to the foreclosure sale. If the property is purchased by the lender, that amount would be paid by the person who acquires the property from the lender (House Bill 682).

Encouraged by the support of many legislators for the assessment lien bill, CAI intends to pursue this legislation in 2009.

Other Association Bills

Several bills were introduced at the initiative of the Maryland Attorney General's Consumer Protection Division. These bills would require associations to obtain **fidelity insurance** (HB 1053/SB 588); require associations to conduct a study to determine the amount needed for **replacement reserves** (HB 993/SB 291); and establish procedures for **developer to owner transition** (HB 950/SB 587). These bills did not pass but are expected to be introduced again in 2009.

In one of the busiest legislative sessions in many years, **a variety of other bills affecting community associations** were

offered regarding association books and records (HB 42), meetings (HB 486), budgets (HB 1402), assessment lien disputes (HB 1420), property insurance coverage (HB 1496), document amendments (SB 101), association restrictions on solar collection systems (HB 117), amateur radio antennas (SB 80) and manager registration (HB 992/SB 589). Except for the bills regarding solar collector restrictions and document amendments, none of these bills were enacted.



The **document amendment bill** facilitates amendments for homeowner associations established prior to 1960. The **solar bill** clarifies and expands existing prohibitions against association restrictions on installation of a solar collection system.

Foreclosure Reform

Legislation to reform the foreclosure process was enacted. The **foreclosure process** will be extended from a minimum of 15 days to 150 days by requiring additional pre-sale notice and procedures (HB 365/SB 216).

The foreclosure bill was adopted as "emergency" legislation and became effective in early April. The other new laws are effective October 1. More information on these bills can be found on the Thomas Schild Law Group website (schildlaw.com).

**FEDERAL FAIR HOUSING GUIDANCE
ISSUED ON REASONABLE
MODIFICATIONS TO COMMON AREAS**

The United States Department of Justice (DOJ) and Department of Housing and Urban Development (HUD) issued a joint statement in March 2008 regarding the reasonable modification requirements of the federal fair housing laws.

The disability provisions of the Federal Fair Housing Act (FHA) makes it unlawful for a condominium, homeowners association or housing cooperative to refuse to permit a disabled individual from making, at the individual's expense, reasonable modifications to common areas of a residential building where necessary to afford such person "full enjoyment of the premises". The DOJ/HUD joint statement includes the following guidance:

- There must be an identifiable relationship, or nexus, between the requested modification and the individual's disability.
- Reasonable modifications are not limited to the interior of a dwelling. Reasonable modifications may also be made to public and common use areas, such as widening entrances to fitness centers or

laundry rooms, or for changes to exteriors of dwelling units, such as installing a ramp at the entrance to a dwelling.

- Generally, the disabled individual is responsible for paying for the cost of structural changes made as a reasonable modification. However, if a modification is made to a common area that is normally maintained by the association, then the association is responsible for the upkeep and maintenance of the modification.

- If the association wishes a modification to be made with more costly materials than necessary, the association must pay those additional costs.

- An association cannot require that the individual obtain or pay the additional cost of liability insurance for a common area modification.

The requirement to allow reasonable modification of common areas is in addition to the requirement that associations make reasonable and necessary accommodations in association policies, rules, and services.

More information on the DOJ/HUD joint statement can be found on the Thomas Schild Law Group website (schildlaw.com).

THOMAS SCHILD LAW GROUP, LLC represents condominiums, cooperatives, and homeowner associations in Maryland and Washington, D.C. The firm advises community associations on all aspects of association operations including covenant enforcement, assessment collections, developer warranties, maintenance and management contracts, and association document interpretation. Thomas Schild Law Group also represents community associations in court litigation and administrative hearings.

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The Thomas Schild Law Group Community Association LawLetter includes general legal information and should not be relied on with respect to any specific facts and circumstances. Readers are encouraged to consult an attorney as to the current law applicable to particular situations.