

May 2009

Maryland Condominium Legislative Alert/Condominium Insurance

By: Peter S. Philbin, Esquire

As we notified our clients last May, the Court of Appeals (Maryland's highest court) issued a unanimous decision [Anderson et. al. v. Council of Unit Owners of the Gables on Tuckerman Condominium, et. al. 404 Md. 560 (2008)] which, to put it mildly, created a bit of a stir in terms of the extent of insurance coverage that many believed condominium associations were required to maintain by the Maryland Condominium Act ("Act").

In very simple terms, the Anderson decision held that the Act did not compel condominium associations to obtain property insurance covering individual "units".

For much of the past year, the community association industry has been trying to figure out how the Anderson decision would impact decisions on insurance coverage for condominiums, whether to continue the "unit" coverage that was already in place, or to curtail coverage and what to communicate to unit owners.

However, as predicted, the General Assembly took swift action to try and address questions raised by the Anderson decision and passed legislation in April and signed by the Governor May 19, 2009, amending several provisions of the Act. In summary, the legislation will have the following impacts:

- **Coverage:** Condominium associations must now insure and repair the Common Elements and Units (exclusive of *improvements and betterments*¹ installed in the units by unit owners other than the developer) damaged after a casualty. This may not be much of a change for many associations that continued (even after Anderson) to insure both common elements and units, but for those condominiums that discontinued "unit" coverage, reconsideration of such practices must be considered.
- **Deductible:** The amended Act now provides that (regardless of what the specific Association governing documents may say) a deductible...up to \$5000.00...under the

¹ Most condominium documents expressly exclude "betterments" from the scope of coverage of the association policies but some associations do provide "betterments" coverage; this statutory change appears to clearly call into question whether master "betterments" coverage is even optional or must be excluded.

master policy may be assessed against an individual owner **if** the cause of the underlying loss “**originated**” in the owners unit.

- **Disclosure:** Associations must now inform each unit owner, annually in writing, of the unit owner’s liability for the Association’s property insurance deductible and the amount of such deductible.
- **Resale:** All resale certificates prepared by the Association (after June 1st) will have to include a statement concerning the unit owner’s liability for the Association’s property insurance deductible and the amount of such deductible.

Please understand that the **effective date of these provisions is June 1, 2009** (this is a special accelerated effective date as most Maryland legislation is effective October 1st).

We would encourage our clients to do the following:

- **Contact the association’s insurance agent to: i) affirm that the Association’s coverage is consistent with the Act’s new requirements (including whether betterments and improvements by an owner are excluded); ii) determine the deductible under the master property insurance policy and consider raising to \$5,000.00 if it is currently less than \$5,000.00.**
- **Review existing rules/policies to ensure that they are consistent with the new provisions of the Act.**
- **Send a mailing to the owners (a newsletter insert is appropriate) informing the owners of their possible responsibility for the master property insurance policy and the amount of such deductible and recommending that owners contact their personal insurance agent to ensure that their individual (“HO6”) insurance policy contains coverage for payment of both the master policy deductible and any betterments and improvements to the unit made by the owner.**
- **Work on implementing some type of annual notification system to ensure that the required yearly disclosure is not overlooked. While such notice should go out sooner rather than later, something should at least go out before the anniversary of the effective date of the legislation (June 2010).**

- **Ensure that resale certificates prepared after June 1, 2009 contain a statement that unit owners may be responsible for the master property insurance policy and the amount of the deductible.**

Finally, clients of Rees Broome, PC will shortly be receiving another Client Memorandum detailing all recent changes to the Maryland laws impacting community associations but most of these other changes will take effect October 1, 2009.

Please feel free to contact any of our community association attorneys should you have any questions.