

# ANDERSON

## Revisited

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In 2009, the Maryland Court of Appeals ruling in the *Anderson v. Gables on Tuckerman* changed the rules with respect to insurance for Maryland condominiums. Shortly thereafter, the Maryland General Assembly changed the rules again. If you are confused about what type of casualty insurance your condominium should retain today, you are not alone. This article will clear the air once and for all.

**After the Anderson ruling—which declared that unit owners had to pay the cost of repair to their own units after a casualty loss—it wasn't clear what insurance policies should be obtained by condominium associations.**

As of the effective date of the new legislation, the Maryland Condominium Act requires condominium associations to maintain insurance to cover property damage to both the common elements and individual units. The insurance must cover the entire structure as originally constructed by the developer but may exclude improvements and betterments subsequently installed in the units by unit owners (such as draperies, light fixtures, or wallpaper). Unit owners are responsible for the insurance deductible, up to a maximum of \$5,000, if the damage originates in their unit. Associations must notify each unit owner annually, in writing, of this responsibility and the deductible amount. Also, public offering statements required by the Act and resale disclosure packages must contain both a written notice of the unit owner's responsibility and the deductible amount.

For example, if a fire occurs in a unit causing damage to both that unit and to the commonly owned property outside of the unit, the condominium must have an insurance policy in place that in-

cludes coverage for both. The owner of the unit where the fire began, however, is responsible for the insurance deductible, up to a maximum of \$5,000.

The rules were different prior to June 2009. In the case of *Anderson v. Council of Unit Owners of the Gables on Tuckerman Condominium*, 404 Md. 560, 591, 948 A.2d 11, 30 (2008), Maryland's highest court ruled that "the Maryland Condominium Act does not require the council of owners to repair or replace property of an owner in an individual condominium unit after a casualty loss." The case concerned claims by two unit owners against their respective condominium associations for damages sustained in their units. In both instances, the damage originated in the plaintiff's unit and did not cause damage to any other unit or the common elements. The plaintiffs brought suit after their respective associations did not pay for repairs. Ruling in favor of the defendants, the Court declared that the insurance requirements imposed by Maryland law apply only to damage sustained to the common elements or the structure of the condominium. The Court found that, while the Maryland Condominium Act provided that unit owners were to be "insured parties" under an association's master policy, each owner is insured "only as to his or her collective undivided interest in the entire condominium property," and not insured as to "each owner's property or individual unit." *Id.* at 587. Thus, the Court declared that associations are not required to repair or replace property of individual unit owners after a casualty loss.

Prior to this case, condominium associations commonly obtained a master policy covering damage to the common elements and to individual units as well. After the Anderson ruling—which declared that unit owners had to pay the cost of repair to their own units after a casualty loss—it wasn't clear what insurance policies should be obtained by condominium associations. As a result of this confusion, the Maryland General Assembly overturned the Anderson Court with House Bill 287, entitled "Condominiums - Repair or Replacement or Destruction by Council of Unit Owners." The Bill was signed by the Governor into law on May 19, 2009.

As stated in the Bill, the Legislature's purpose was, among



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other things, to clarify “that the council of unit owners of a condominium is responsible for the repair or replacement of condominium units, exclusive of improvements and betterments installed in units by unit owners other than the developer, in the event of damage or destruction of the condominium” and to clarify what “property insurance [is] required to be maintained by a council of unit owners.”

The new law provides that, regardless of any negligence by a unit owner, if the cause of any damage to a condominium originates from a unit, the unit owner is obligated to pay the condominium’s deductible, up to a maximum amount of \$5,000. The new law makes the cost of the property insurance purchased by the condominium a common expense, except in the case of damage originating from a unit where the payment of the property insurance deductible is the responsibility of the unit owner where the damage originated, up to a maximum amount of \$5,000.

In summary, under the new law, Maryland condominium associations should make certain they have obtained the required master insurance policy covering property damage to both the common elements and individual units. Condominiums should also confirm that they are issuing the required annual notices to all unit owners. 📺



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