



CONSUMER ADVISORY

CONDOMINIUM MASTER POLICY COVERAGE AND COVERAGE FOR RESIDENTIAL DETACHED CONDOMINIUM UNITS

HB98 – Effective October 1, 2023

Frequently Asked Questions - Consumers

House Bill 98, passed during the 2023 legislative session, changes the property insurance requirements for condominiums set forth in §11-114 of the Real Property Article, Annotated Code of Maryland. See Md. Acts 2023, Ch. 186. The changes include reducing the coverage that the council of unit owners (the “council”) is required to maintain for residential detached units. It requires the owners of residential, detached units to maintain homeowners insurance on their unit. The changes were effective October 1, 2023.¹

The Maryland Insurance Administration’s (the “Administration”) FAQs are intended to provide guidance to councils and to the owners of detached units regarding how HB98 impacts their statutory obligation to maintain certain kinds of insurance coverage. To the extent that HB98 addresses additional issues, the Administration recommends that councils and unit owners confer with their trusted legal and financial advisors.

Prior to the enactment of HB 98, the council was required by statutory law to maintain insurance on the common elements, as well as for all units (other than improvements and betterments installed in units by the unit owners).

¹ <https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB0098>.

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FREQUENTLY ASKED QUESTIONS

As of October 1, 2023, the council is no longer required to maintain property insurance for residential, detached units themselves. Rather, as of that date, the council is required to maintain property insurance against risks of direct physical loss commonly insured against:

- 1) For attached or multifamily dwelling units, the common elements and non-detached units, exclusive of improvements and betterments installed in units by unit owners other than the developer; and
- 2) For detached units, only on the common elements.

In addition, effective October 1, 2023, the owner of a residential detached unit is required to carry homeowners insurance coverage on their unit. Nothing in the statute prevents the council from voluntarily providing coverage to the owner of a detached residential unit through a policy obtained by the council. In addition, nothing in the statute requires the owners of detached condominium units to include the council as an additional insured under their unit owner's policy.

The following are answers to commonly asked questions:

Q. What is a detached unit? Is there a definition?

A. While HB98 does not define what a “detached” unit generally means, the common definition of “detached” as something that is separate or unconnected would apply. Multi-family units and townhouse style units would not be considered “detached.”

Q. Does the law require the condominium association to exclude coverage under the master policy for detached units from coverage or may it choose to still include those units? If effective October 1, 2023, detached units are no longer covered under the master policy, what will happen if there is a loss?

A. It has come to the attention of the Maryland Insurance Administration that some insurance producers (agents or brokers) are advising the owners of residential, detached units that the mandated homeowners insurance must be acquired under a separate policy issued directly to the unit owner. That is not what the statute requires. The statute does not prevent the council from voluntarily providing coverage to the owner of a detached residential unit through coverage obtained by the council if permitted to do so under the terms of the documents under which the condominium operates (the “Condominium Documents”). If the council purchases a policy that provides the coverage for a detached residential unit that the detached unit owner would otherwise be required to purchase independently, the detached unit owner is not required to purchase a separate policy. The council and the detached unit owner should work with their insurance producer to assure that the coverage acquired meets the requirements of the law.

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FREQUENTLY ASKED QUESTIONS

Q. I own a detached unit. If my condominium association notifies me that my unit will no longer be covered, what type of insurance coverage should I obtain?

A. Owners should consult with their insurance company or insurance producer to choose the policy and coverage that meets their needs. For an owner-occupied detached unit, this would most likely be an HO-3 or an HO5 type of policy, and for rental properties, a landlord -type policy is most likely the best solution. Your producer will be able to advise you as to what would be the best type of policy for your situation. For additional information on these policies, you may refer to our website, www.insurance.maryland.gov.

Q. HB98 requires the master policy to cover all common elements. What is the definition of common elements? What portion of my detached unit is considered a common element?

A. The “common elements” are defined within the Condominium Documents. You should refer to those documents to ensure you know what is covered.

Q. What about outside service lines connected to detached units such as water supply lines, sewerage lines or electrical lines? Would they be considered common elements?

A. Please review the Condominium Documents. If the service lines are designated as the responsibility of the unit owners of detached units, some homeowners insurance companies do offer limited coverages for these lines. You should speak with your insurance producer or insurance company about whether your policy covers exterior service lines.

Q. Until now, the condominium association has been responsible to make repairs for all the units. How will HB98 affect the repairs needed, such as leaks, roof replacement, HVAC repairs, for example. Will the detached units now be responsible for making these types of repairs to their units?

A. HB98 only pertains to insurance coverage, not maintenance or services provided under the Condominium Documents.

Q. Our bylaws require all units to pay the same monthly fee. Will detached unit owners be required to continue to have the costs for the master policy included in their condominium fees since they are no longer covered under the master policy? If so, this could substantially increase their insurance costs. This seems unfair. Do they have any recourse?

A. HB98 does not address how insurance costs are calculated or the amount of the condominium fees owed by individual unit owners. It is obligation of the condominium association to determine how unit owner’s fees are calculated and applied, based on the Condominium Documents.

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FREQUENTLY ASKED QUESTIONS

Q. What if there is a mortgage and I am required to carry insurance on my unit?

A. If your mortgage company requires that your unit be insured, you should check with the mortgage company to determine if insurance provided voluntarily by the condominium association will be considered sufficient to protect the company's interest in the unit. If not, in consultation with a trusted insurance producer, you should consider purchasing a homeowners (HO3 or HO5) policy.

Q. If a unit owner insures their detached unit under an HO3 or an HO5 and there is a loss, I heard that the insurance company can deny coverage and payment of the claim because there is no "direct insurable interest". I do not understand what "direct insurable interest" means and I am worried that is true.

A. Insurable interest is a legal term that means that you have a legal or financial interest in property such that loss or damage to the property could cause you financial harm or liability. Unit owners own the space that comprises their unit, improvements and betterments, and their personal property and they share ownership in common elements. Some people may refer to your interest in your unit as a "direct" insurable interest (because you own it outright), whereas your ownership in common units is "indirect.". If you have purchased a homeowners policy, either an HO3 or an HO5, your insurer would generally owe payment for a loss that is covered by the policy, because you do have an insurable interest in your unit, the improvements and betterments, and your personal property.

Q. My condominium is insured under an NFIP flood policy (RCBAP) purchased by the condominium association. Am I covered or should I buy my own flood insurance?

A. Since this is Maryland legislation, it does not impact an NFIP policy. You should consult with a trusted insurance advisor when considering purchasing flood insurance.

Q. My association opted to continue my coverage under the master policy. To be safe, I also purchased an HO3 policy on my detached unit. If there is a covered loss which damages my home but there is no damage to my personal property and I did not have any additional living expenses, can my homeowners insurer file a claim against the master policy and recover my deductible?

A. Whether the homeowners insurer can seek reimbursement from the condominium association's insurer will depend on the wording in each policy. You should review the policies with your insurance producer, who can explain what is covered and what each policy is responsible to pay.

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FREQUENTLY ASKED QUESTIONS

Q. I looked at both policies, the master policy and my homeowners policy. Both mention something called an excess clause. What is that and how does that impact me if I suffer a covered loss?

A. Insurance policies often contain clauses that address how much that policy will pay when there is another policy that also provides coverage for the same loss. An “excess clause” is a common example and usually provides that the insurer’s coverage is “excess” over any other policy that covers the same loss; in other words, the insurer does not have to pay until all other sources of insurance coverage, such as a second insurance policy on the same property, are exhausted. When two policies cover the same loss and both policies contain an excess clause, the Maryland courts have required each insurer to share liability equally. However, this can be a complex question based on the exact wording of the clauses and other provisions in the policy. You should confer with a trust legal advisor or your insurance producer for guidance about responsibility for claims that are covered under both policies.

Q. My condominium association canceled coverage under the master policy for my detached unit and I had to get a homeowners policy of insurance. I noticed my new policy does not provide loss assessment coverage. How can I obtain this coverage?

A. If the loss assessment coverage is not provided as standard coverage, it should be available by endorsement from your insurance company. Reach out to your insurance producer or your insurer for assistance.

Q. I heard that there might be changes in the future to HB98. How can I learn about any changes?

A. You can track any proposed bills on the Maryland Legislature’s website at www.mgalg@maryland.gov.

For additional information regarding condominium insurance or homeowners insurance, please visit our website, www.insurance.maryland.gov. There are several brochures as well as videos covering these topics. You may also review our Homeowners Rate Comparison Guide to assist you in shopping for either an HO6 (condominium) or an HO3 (homeowners) policies. You may also reach us at 410-468-2000 or toll free 1-800-462-6116 for further assistance.

