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SB 244/96 - JPR

1997 Regular Session
7r1314
CF 7r1038

By: Senators Hoffman, Boozer, Ruben, and Hollinger

Introduced and read first time: January 10, 1997

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Community Associations - Civil Liability**

3 FOR the purpose of limiting the civil liability of certain community associations and
4 certain agents of community associations under certain circumstances; providing for
5 the application of this Act; and generally relating to immunity from liability for
6 certain associations and organizations and their agents.

7 BY repealing and reenacting, with amendments,
8 Article - Courts and Judicial Proceedings
9 Section 5-312
10 Annotated Code of Maryland
11 (1995 Replacement Volume and 1996 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article - Courts and Judicial Proceedings**

15 5-312.

16 (a) (1) In this section the following words have the meanings indicated.

17 (2) (i) "Agent of an association or organization" means a director, officer,
18 trustee, employee, or volunteer of an association or organization who provides services or
19 performs duties on behalf of the association or organization.

20 (ii) "Agent of an association or organization" does not include an
21 independent contractor who provides services or performs duties on behalf of the
22 association or organization on a contractual basis.

23 (3) "Association or organization" means:

24 (i) An athletic club;

25 (ii) A charitable organization;

26 (iii) A civic league or organization;

27 (IV) A COMMUNITY ASSOCIATION;

2

1 [(iv)] (V) A cooperative housing corporation as that term is defined
2 under § 5-6B-01 of the Corporations and Associations Article;

3 [(v)] (VI) A council of unit owners of a condominium as that term is
4 defined in § 11-101 of the Real Property Article; or

5 [(vi)] (VII) A homeowners' association.

6 (4) "Athletic club" means a club organized and operated exclusively for
7 recreational purposes, that is exempt from taxation under § 501(c)(7) of the Internal
8 Revenue Code.

9 (5) "Charitable organization" means an organization, institution,
10 association, society, or corporation that is exempt from taxation under § 501(c)(3) of the
11 Internal Revenue Code.

12 (6) "Civic league or organization" means an organization, operated
13 exclusively for the promotion of social welfare, that is exempt from taxation under §
14 501(c)(4) of the Internal Revenue Code.

15 (7) (I) "COMMUNITY ASSOCIATION" MEANS A NONPROFIT
16 ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION THAT IS:

17 1. COMPRISED OF RESIDENTS OF A CONTIGUOUS
18 COMMUNITY THAT IS DEFINED BY SPECIFIC GEOGRAPHIC BOUNDARIES; AND

19 2. OPERATED FOR THE PROMOTION OF THE WELFARE,
20 IMPROVEMENT, AND ENHANCEMENT OF THAT COMMUNITY.

21 (II) "COMMUNITY ASSOCIATION" INCLUDES A NONPROFIT
22 ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION THAT REPRESENTS THE
23 COMMON INTEREST OF MORE THAN ONE COMMUNITY ASSOCIATION.

24 [(7)] (8) "Compensation" does not include actual and necessary expenses
25 that are incurred by a volunteer in connection with the services provided or duties
26 performed by the volunteer on behalf of an association or organization, and that are
27 reimbursed to the volunteer or otherwise paid.

28 [(8)] (9) "Homeowners' association" means a nonprofit association,
29 corporation, or other organization comprised of property owners in a subdivision or group
30 of subdivisions whose purpose is to represent the mutual interests of the property owners
31 regarding the construction, protection, and maintenance of the commonly owned or used
32 property and improvements.

33 [(9)] (10) "Suit" means any civil action, except any health care malpractice
34 action, brought against an agent of an association or organization or against the
35 association or organization by virtue of the agent's act or omission in providing services or
36 performing duties on behalf of the association or organization.

37 [(10)] (11) "Volunteer" means an officer, director, trustee, or other person
38 who provides services or performs duties on behalf of an association or organization
39 without receiving compensation.

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1 (b) Except as provided in subsection (d) of this section, an agent of an association
2 or organization is not personally liable for damages in any suit if:

3 (1) The association or organization maintains insurance covering liability
4 incurred by the association or organization or its agents, or both, as a result of the acts or
5 omissions of its agents in providing services or performing duties on behalf of the
6 association or organization;

7 (2) The terms of the insurance policy under which the insurance is
8 maintained provide coverage for the act or omission which is the subject matter of the suit
9 and no meritorious basis exists for the denial of the coverage by the insurance carrier; and

10 (3) The insurance has:

11 (i) A limit of coverage of not less than:

12 1. \$200,000 per individual claim, and \$500,000 per total claims
13 that arise from the same occurrence; or

14 2. \$750,000 per policy year, and \$500,000 per total claims that
15 arise from the same occurrence; and

16 (ii) 1. If the insurance has a deductible, a deductible amount not
17 greater than \$10,000 per occurrence; or

18 2. If there is coinsurance, a rate of coinsurance not greater than
19 20 percent.

20 (c) In suits to which the provisions of subsection (b) of this section apply, the
21 plaintiff may recover damages from the association or organization only to the extent of
22 the applicable limit of insurance coverage including any amount for which the association
23 or organization is responsible as a result of any deductible or coinsurance provisions of
24 such insurance coverage.

25 (d) An agent of an association or organization shall be liable for damages in any
26 suit in which it is found that the agent acted with malice or gross negligence, to the extent
27 that the judgment for damages exceeds the limits on liability under subsection (c) of this
28 section.

29 (e) The provisions of this section do not apply to suits brought by the Attorney
30 General upon referral by the Secretary of State in which willful violations of Title 6 of the
31 Business Regulation Article are alleged and proven.

32 (f) (1) This section does not create, and may not be construed as creating, a
33 new cause of action or substantive legal right against an association or organization or an
34 agent of an association or organization.

35 (2) This section does not affect, and may not be construed as affecting, any
36 immunities from civil liability or defenses established by any other provision of the Code
37 or available at common law, to which an association or organization or an agent of an
38 association or organization may be entitled.

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1 (g) This section may be cited as the Maryland Associations, Organizations, and
2 Agents Act.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed
4 retroactively and shall be applied to and interpreted to affect any cause of action against
5 an agent of a community association arising on or after October 1, 1994.

6 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 June 1, 1997.