

HOUSE BILL 392

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HB 390/97 - JUD

1998 Regular Session
8r1643

By: **Delegates Love, M. Burns, Rzepkowski, Morhaim, Frank, Perry, and Clagett**

Introduced and read first time: February 2, 1998

Assigned to: Judiciary

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;
5 providing for the application of this Act; and generally relating to immunity
6 from liability for certain associations and organizations and their agents.

7 BY repealing and reenacting, with amendments,
8 Article - Courts and Judicial Proceedings
9 Section 5-406
10 Annotated Code of Maryland
11 (1995 Replacement Volume and 1997 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 5-406.

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,
18 officer, trustee, employee, or volunteer of an association or organization who provides
19 services or 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;

- 1 (iii) A civic league or organization;
- 2 (IV) A COMMUNITY ASSOCIATION;
- 3 [(iv)] (V) A cooperative housing corporation as that term is defined
4 under § 5-6B-01 of the Corporations and Associations Article;
- 5 [(v)] (VI) A council of unit owners of a condominium as that term is
6 defined in § 11-101 of the Real Property Article; or
- 7 [(vi)] (VII) A homeowners' association.

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

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

14 (6) "Civic league or organization" means an organization, operated
15 exclusively for the promotion of social welfare, that is exempt from taxation under §
16 501(c)(4) of the Internal Revenue Code.

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

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

21 2. OPERATED FOR THE PROMOTION OF THE WELFARE,
22 IMPROVEMENT, AND ENHANCEMENT OF THAT COMMUNITY.

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

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

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

35 [(9)] (10) "Suit" means any civil action, except any health care
36 malpractice action, brought against an agent of an association or organization or

1 against the association or organization by virtue of the agent's act or omission in
2 providing services or performing duties on behalf of the association or organization.

3 [(10)] (11) "Volunteer" means an officer, director, trustee, or other person
4 who provides services or performs duties on behalf of an association or organization
5 without receiving compensation.

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

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

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

16 (3) The insurance has:

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

18 1. \$200,000 per individual claim, and \$500,000 per total
19 claims that arise from the same occurrence; or

20 2. \$750,000 per policy year, and \$500,000 per total claims
21 that arise from the same occurrence; and

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

24 2. If there is coinsurance, a rate of coinsurance not greater
25 than 20 percent.

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

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

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

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

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

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

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
11 construed retroactively and shall be applied to and interpreted to affect any cause of
12 action against an agent of a community association arising on or after October 1,
13 1994.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 June 1, 1998.