

HOUSE BILL 1196

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1998 Regular Session
8r2578
CF SB 474

By: **Delegates Dypski, Curran, Krysiak, and Hammen**
Introduced and read first time: February 13, 1998
Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Baltimore City - Nuisance Abatement and Local Code Enforcement -**
3 **Community Associations**

4 FOR the purpose of altering certain definitions under certain provisions of law
5 relating to standing of certain community associations in Baltimore City to seek
6 judicial relief for abatement of certain nuisances; altering certain notice
7 requirements; altering certain requirements for standing to commence an
8 action; altering the construction of certain provisions of law; making certain
9 stylistic changes; and generally relating to abatement of certain nuisances in
10 Baltimore City.

11 BY repealing and reenacting, with amendments,
12 Article - Real Property
13 Section 14-123
14 Annotated Code of Maryland
15 (1996 Replacement Volume and 1997 Supplement)

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

18 **Article - Real Property**

19 14-123.

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

21 (2) "Community association" means [a Maryland nonprofit association,
22 corporation, or other organization that]:

23 (i) [Is comprised of at least 25% of adult residents of a local
24 community consisting of 40 or more individual households as defined by specific
25 geographic boundaries in the bylaws or charter of the association;] A MARYLAND
26 NONPROFIT CORPORATION THAT IS:

27 1. COMPRISED OF RESIDENTS OF A COMMUNITY WITHIN
28 WHICH A NUISANCE IS LOCATED;

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1 2. OPERATED EXCLUSIVELY FOR THE PROMOTION OF
2 SOCIAL WELFARE AND GENERAL NEIGHBORHOOD IMPROVEMENT AND
3 ENHANCEMENT; AND

4 3. EXEMPT FROM TAXATION UNDER § 501(C)(3) OR (4) OF THE
5 INTERNAL REVENUE CODE; OR

6 (II) A NONPROFIT ASSOCIATION, CORPORATION, OR OTHER
7 ORGANIZATION THAT IS:

8 1. COMPRISED OF RESIDENTS OF A CONTIGUOUS
9 COMMUNITY THAT IS DEFINED BY SPECIFIC GEOGRAPHIC BOUNDARIES, WITHIN
10 WHICH A NUISANCE IS LOCATED;

11 2. OPERATED FOR THE PROMOTION OF THE WELFARE,
12 IMPROVEMENT, AND ENHANCEMENT OF THAT COMMUNITY; AND

13 3. INCLUDED IN BALTIMORE CITY'S COMMUNITY
14 ASSOCIATION DIRECTORY, AS PUBLISHED BY THE BALTIMORE CITY DEPARTMENT OF
15 PLANNING, FOR A PERIOD OF AT LEAST 2 YEARS PRIOR TO BRINGING AN ACTION
16 UNDER THIS SECTION.

17 [(ii) Requires, as a condition of membership, the voluntary payment
18 of monetary dues at least annually;

19 (iii) Is operated primarily for the promotion of social welfare and
20 general neighborhood improvement and enhancement;

21 (iv) Has been in existence for at least 2 years when it files suit
22 under this section;

23 (v) 1. Is exempt from taxation under § 501(c)(3) or (4) of the
24 Internal Revenue Code; or

25 2. Has been included for a period of at least 2 years prior to
26 bringing an action under this section in Baltimore City's Community Association
27 Directory published by the Baltimore City Department of Planning; and

28 (vi) In the case of a Maryland corporation, is in good standing.]

29 (3) "Local code violation" means a violation under the following
30 provisions of the Baltimore City Code as amended from time to time or under any
31 applicable code relating to the following provisions incorporated by Baltimore City by
32 reference:

33 (i) The Fire Prevention Code under Article 9;

34 (ii) Animal control, nuisance and disease prevention, and noise
35 control subheadings of Article 11 (Health);

36 (iii) The Housing Code under Article 13;

- 1 (iv) Public nuisance provisions under Article 19;
- 2 (v) Article 23;
- 3 (vi) The Building Code of Baltimore City, Article 32; and
- 4 (vii) The zoning ordinance of Baltimore City, Article 30.

5 (4) "Nuisance" means, within the boundaries of the community
6 represented by the community association, an act or condition [knowingly] created,
7 performed, or maintained on private property that constitutes a local code violation
8 and that:

- 9 (i) Significantly affects [other] residents of the neighborhood;
- 10 (ii) [Diminishes the value of neighboring property; and
- 11 (iii)] 1. Is injurious to public health, safety, or welfare of
12 neighboring residents; or
- 13 2. Obstructs the reasonable use of other property in the
14 [neighborhood] COMMUNITY.

15 (b) This section only applies to a nuisance located within the boundaries of
16 Baltimore City.

17 (c) (1) A community association may seek injunctive and other equitable
18 relief in the circuit court for abatement of a nuisance upon showing:

- 19 (i) The notice requirements of this subsection have been satisfied;
20 and
- 21 (ii) The nuisance has not been abated.

22 (2) (i) An action may not be brought under this section [based on a
23 nuisance] until 60 days after the community association gives notice of the violation
24 and of the community association's intent to bring an action under this section by
25 certified mail, return receipt requested, to the applicable local enforcement agency.

26 (ii) An action under this section may not be brought if the
27 applicable code enforcement agency has filed an action for equitable relief from the
28 nuisance.

29 (3) (i) An action may not be brought under this section until 60 days
30 after the tenant, if any, and owner of record receive notice BY CERTIFIED MAIL,
31 RETURN RECEIPT REQUESTED, from the community association that a nuisance
32 exists and that legal action may be taken if the nuisance is not abated.

- 33 (ii) The notice shall specify:
- 34 1. The nature of the alleged nuisance;

1 2. [The date and time of day the nuisance was first
2 discovered;

3 3.] The location on the property where the nuisance is
4 allegedly occurring; and

5 [4.] 3. The relief sought [in the action].

6 (iii) [The notice shall be provided to the tenant, if any, and the
7 owner of record in the same manner as service of process in a civil in personam action
8 under the Maryland Rules.

9 (iv)] In filing a suit under this section, an officer of the community
10 association shall certify to the court:

11 1. What steps the community association has taken to satisfy
12 the notice requirements under this subsection; and

13 2. That each condition precedent to the filing of an action
14 under this section has been met.

15 (4) Relief may not be provided under this section unless the community
16 association files with the court a bond in an amount determined by the court and with
17 a surety approved by the court, conditioned to answer to the adverse party for any
18 costs the party may sustain as a result of the suit, including reasonable attorney fees,
19 if the court finds that the action was filed in bad faith or without substantial
20 justification.

21 (5) [(i)] An action may not be brought against an owner of residential
22 rental property [unless, prior to the giving of notice under subsection (c)(3)(i) of this
23 section,] **BASED UPON A VIOLATION OF THE HOUSING OR BUILDING CODE, UNLESS a**
24 notice of violation relating to the nuisance has first been issued by an appropriate
25 code enforcement agency.

26 [(ii) In the case of a nuisance based on a housing or building code
27 violation, other than a recurrent sanitation violation, relief may not be granted under
28 this section unless a violation notice relating to the nuisance has been issued by the
29 Department of Housing and Community Development and remains outstanding after
30 a period of 75 days.]

31 (6) (i) If a violation notice is an essential element of the action, a copy
32 of the notice signed by an official of the [Department of Housing and Community
33 Development] **APPROPRIATE CODE ENFORCEMENT AGENCY** shall be prima facie
34 evidence of the facts contained in the notice.

35 (ii) A notice of abatement issued by the [Department of Housing
36 and Community Development] **APPROPRIATE CODE ENFORCEMENT AGENCY** in
37 regard to the violation notice shall be prima facie evidence that the plaintiff is not
38 entitled to the relief requested.

1 (7) A proceeding under this section shall:

2 (i) Take precedence on the docket;

3 (ii) Be heard at the earliest practicable date; and

4 (iii) Be expedited in every way.

5 (d) A political subdivision of the State or any agency of a political subdivision
6 may not be subject to any action brought under this section or an action resulting
7 from an action brought under this section against a private property owner.

8 (e) (1) Subject to paragraph (2) of this subsection, this section may not be
9 construed as to abrogate any equitable or legal right or remedy otherwise available
10 under the law to abate a nuisance.

11 (2) This section may not be construed as to grant standing for an action:

12 (i) Challenging any zoning application or approval;

13 (ii) In which the alleged nuisance consists of:

14 1. A condition relating to lead paint;

15 2. An interior physical defect of a property, EXCEPT FOR
16 SITUATIONS THAT PRESENT A THREAT TO NEIGHBORING PROPERTIES; OR

17 3. A vacant dwelling that is maintained in a boarded
18 condition, free from trash and debris, and secure against trespassers and weather
19 entry;

20 (iii) Involving any violation of alcoholic beverages laws under Article
21 2B of the Code; or

22 (iv) Involving any matter in which a certificate, license, permit, or
23 registration is required or allowed under the Environment Article.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 1998.