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By: **Delegates Sophocleus, Love, Rzepkowski, Cadden, and Clagett**  
Introduced and read first time: February 12, 1999  
Assigned to: Judiciary

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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 (1998 Replacement Volume)

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) "COMMUNITY ASSOCIATION" MEANS A NONPROFIT ASSOCIATION,  
18 CORPORATION, OR OTHER ORGANIZATION THAT:

19 (I) IS COMPOSED OF AT LEAST 25% OF THE ADULT RESIDENTS OF A  
20 LOCAL COMMUNITY THAT:

21 1. CONSISTS OF 40 OR MORE INDIVIDUAL HOUSEHOLDS; AND

22 2. IS DEFINED BY SPECIFIC GEOGRAPHIC BOUNDARIES IN  
23 THE CHARTER OR BYLAWS OF THE NONPROFIT ASSOCIATION, CORPORATION, OR  
24 OTHER ORGANIZATION;

25 (II) REQUIRES, AS A CONDITION OF MEMBERSHIP, THE VOLUNTARY  
26 PAYMENT OF MONETARY DUES AT LEAST ANNUALLY;

27 (III) IS OPERATED EXCLUSIVELY FOR THE PROMOTION OF SOCIAL  
28 WELFARE AND GENERAL NEIGHBORHOOD IMPROVEMENT AND ENHANCEMENT; AND

29 (IV) IN THE CASE OF A CORPORATION, IS IN GOOD STANDING.

30 [(7)] (8) "Compensation" does not include actual and necessary expenses  
31 that are incurred by a volunteer in connection with the services provided or duties  
32 performed by the volunteer on behalf of an association or organization, and that are  
33 reimbursed to the volunteer or otherwise paid.

34 [(8)] (9) "Homeowners' association" means a nonprofit association,  
35 corporation, or other organization comprised of property owners in a subdivision or

1 group of subdivisions whose purpose is to represent the mutual interests of the  
2 property owners regarding the construction, protection, and maintenance of the  
3 commonly owned or used property and improvements.

4           [(9)]   (10)    "Suit" means any civil action, except any health care  
5 malpractice action, brought against an agent of an association or organization or  
6 against the association or organization by virtue of the agent's act or omission in  
7 providing services or performing duties on behalf of the association or organization.

8           [(10)]   (11)    "Volunteer" means an officer, director, trustee, or other person  
9 who provides services or performs duties on behalf of an association or organization  
10 without receiving compensation.

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

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

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

21           (3)       The insurance has:

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

23                               1.       \$200,000 per individual claim, and \$500,000 per total  
24 claims that arise from the same occurrence; or

25                               2.       \$750,000 per policy year, and \$500,000 per total claims  
26 that arise from the same occurrence; and

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

29                               2.       If there is coinsurance, a rate of coinsurance not greater  
30 than 20 percent.

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

36       (d)       An agent of an association or organization shall be liable for damages in  
37 any suit in which it is found that the agent acted with malice or gross negligence, to

1 the extent that the judgment for damages exceeds the limits on liability under  
2 subsection (c) of this section.

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

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

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

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

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
16 construed retroactively and shall be applied to and interpreted to affect any cause of  
17 action against an agent of a community association arising on or after October 1,  
18 1994.

19 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
20 June 1, 1999.