
By: **Delegates Sophocleus, Bobo, Boschert, Boteler, Bozman, Cadden, Cane,
V. Clagett, Dwyer, Fulton, Kach, Leopold, Love, McHale, Paige, Redmer,
Rosenberg, Rudolph, and Rzepkowski**

Introduced and read first time: February 5, 2003

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 agents of the community associations under certain circumstances; authorizing
5 certain community associations to register with the Secretary of State under
6 certain circumstances; providing for the application of this Act; and generally
7 relating to immunity from civil liability for certain community associations and
8 their agents.

9 BY repealing and reenacting, with amendments,
10 Article - Courts and Judicial Proceedings
11 Section 5-406
12 Annotated Code of Maryland
13 (2002 Replacement Volume)

14 BY adding to
15 Article - State Government
16 Section 7-108
17 Annotated Code of Maryland
18 (1999 Replacement Volume and 2002 Supplement)

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

21 **Article - Courts and Judicial Proceedings**

22 5-406.

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

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

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

4 (3) "Association or organization" means:

5 (i) An athletic club;

6 (ii) A charitable organization;

7 (iii) A civic league or organization;

8 (IV) A COMMUNITY ASSOCIATION;

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

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

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

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

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

20 (6) "Civic league or organization" means an organization, operated
21 exclusively for the promotion of social welfare, that is exempt from taxation under §
22 501(c)(4) of the Internal Revenue Code.

23 (7) "COMMUNITY ASSOCIATION" MEANS A NONPROFIT ASSOCIATION,
24 CORPORATION, OR OTHER ORGANIZATION THAT REGISTERS WITH THE SECRETARY
25 OF STATE UNDER § 7-108 OF THE STATE GOVERNMENT ARTICLE AND:

26 (I) 1. IS COMPOSED OF AT LEAST 25% OF THE ADULT
27 RESIDENTS OF A LOCAL COMMUNITY THAT:

28 A. CONSISTS OF AT LEAST 40 HOUSEHOLDS; AND

29 B. IS DEFINED BY SPECIFIC GEOGRAPHIC BOUNDARIES IN
30 THE BYLAWS OR CHARTER OF THE ORGANIZATION;

31 2. AT LEAST ANNUALLY, REQUIRES THE PAYMENT OF DUES;

32 3. PROMOTES SOCIAL WELFARE AND GENERAL CIVIC
33 IMPROVEMENT; AND

1 4. IN THE CASE OF A CORPORATION, IS IN GOOD STANDING;
2 OR

3 (II) 1. IS COMPOSED OF MORE THAN ONE OF THE
4 ORGANIZATIONS DESCRIBED IN ITEM (I) OF THIS PARAGRAPH; AND

5 2. EACH OF THOSE ORGANIZATIONS MEETS THE
6 REQUIREMENTS OF ITEM (I) OF THIS PARAGRAPH.

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

11 [(8)] (9) "Homeowners' association" means a nonprofit association,
12 corporation, or other organization comprised of property owners in a subdivision or
13 group of subdivisions whose purpose is to represent the mutual interests of the
14 property owners regarding the construction, protection, and maintenance of the
15 commonly owned or used property and improvements.

16 [(9)] (10) "Suit" means any civil action, except any health care
17 malpractice action, brought against an agent of an association or organization or
18 against the association or organization by virtue of the agent's act or omission in
19 providing services or performing duties on behalf of the association or organization.

20 [(10)] (11) "Volunteer" means an officer, director, trustee, or other person
21 who provides services or performs duties on behalf of an association or organization
22 without receiving compensation.

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

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

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

33 (3) The insurance has:

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

35 1. \$200,000 per individual claim, and \$500,000 per total
36 claims that arise from the same occurrence; or

1 2. \$750,000 per policy year, and \$500,000 per total claims
2 that arise from the same occurrence; and

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

5 2. If there is coinsurance, a rate of coinsurance not greater
6 than 20 percent.

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

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

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

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

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

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

28 **Article - State Government**

29 7-108.

30 (A) IN THIS SECTION, "AFFIDAVIT" MEANS A WRITTEN STATEMENT:

31 (1) MADE TO THE BEST OF THE AFFIANT'S KNOWLEDGE, INFORMATION,
32 AND BELIEF; AND

33 (2) THE CONTENTS OF WHICH ARE AFFIRMED UNDER THE PENALTIES
34 OF PERJURY.

35 (B) A NONPROFIT ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION
36 THAT HAS BEEN IN EXISTENCE FOR AT LEAST 5 YEARS AND PROMOTES SOCIAL

1 WELFARE AND GENERAL CIVIC IMPROVEMENT MAY REGISTER WITH THE
2 SECRETARY OF STATE AS A COMMUNITY ASSOCIATION BY FILING AN AFFIDAVIT
3 THAT THE ORGANIZATION MEETS THE REQUIREMENTS OF § 5-406(A)(7) OF THE
4 COURTS ARTICLE.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
6 construed to apply only prospectively and may not be applied or interpreted to have
7 any effect on or application to any cause of action arising before the effective date of
8 this Act.

9 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2003.