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

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Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 4, 2003

CHAPTER _____

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:

1 **Article - Courts and Judicial Proceedings**

2 5-406.

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

4 (2) (i) "Agent of an association or organization" means a director,
5 officer, trustee, employee, or volunteer of an association or organization who provides
6 services or performs duties on behalf of the association or organization.7 (ii) "Agent of an association or organization" does not include an
8 independent contractor who provides services or performs duties on behalf of the
9 association or organization on a contractual basis.

10 (3) "Association or organization" means:

11 (i) An athletic club;

12 (ii) A charitable organization;

13 (iii) A civic league or organization;

14 (IV) A COMMUNITY ASSOCIATION;

15 [(iv)] (V) A cooperative housing corporation as that term is defined
16 under § 5-6B-01 of the Corporations and Associations Article;17 [(v)] (VI) A council of unit owners of a condominium as that term is
18 defined in § 11-101 of the Real Property Article; or

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

20 (4) "Athletic club" means a club organized and operated exclusively for
21 recreational purposes, that is exempt from taxation under § 501(c)(7) of the Internal
22 Revenue Code.23 (5) "Charitable organization" means an organization, institution,
24 association, society, or corporation that is exempt from taxation under § 501(c)(3) of
25 the Internal Revenue Code.26 (6) "Civic league or organization" means an organization, operated
27 exclusively for the promotion of social welfare, that is exempt from taxation under §
28 501(c)(4) of the Internal Revenue Code.29 (7) "COMMUNITY ASSOCIATION" MEANS A NONPROFIT ASSOCIATION,
30 CORPORATION, OR OTHER ORGANIZATION THAT REGISTERS WITH THE SECRETARY
31 OF STATE UNDER § 7-108 OF THE STATE GOVERNMENT ARTICLE AND:32 (I) 1. IS COMPOSED OF AT LEAST 25% OF THE ADULT
33 RESIDENTS OF A LOCAL COMMUNITY THAT:

- 1 A. CONSISTS OF AT LEAST 40 HOUSEHOLDS; AND
- 2 B. IS DEFINED BY SPECIFIC GEOGRAPHIC BOUNDARIES IN
- 3 THE BYLAWS OR CHARTER OF THE ORGANIZATION;
- 4 2. AT LEAST ANNUALLY, REQUIRES THE PAYMENT OF DUES;
- 5 3. PROMOTES SOCIAL WELFARE AND GENERAL CIVIC
- 6 IMPROVEMENT; AND
- 7 4. IN THE CASE OF A CORPORATION, IS IN GOOD STANDING;
- 8 OR

9 (II) 1. IS COMPOSED OF MORE THAN ONE OF THE

10 ORGANIZATIONS DESCRIBED IN ITEM (I) OF THIS PARAGRAPH; AND

11 2. EACH OF THOSE ORGANIZATIONS MEETS THE

12 REQUIREMENTS OF ITEM (I) OF THIS PARAGRAPH.

13 [(7)] (8) "Compensation" does not include actual and necessary expenses

14 that are incurred by a volunteer in connection with the services provided or duties

15 performed by the volunteer on behalf of an association or organization, and that are

16 reimbursed to the volunteer or otherwise paid.

17 [(8)] (9) "Homeowners' association" means a nonprofit association,

18 corporation, or other organization comprised of property owners in a subdivision or

19 group of subdivisions whose purpose is to represent the mutual interests of the

20 property owners regarding the construction, protection, and maintenance of the

21 commonly owned or used property and improvements.

22 [(9)] (10) "Suit" means any civil action, except any health care

23 malpractice action, brought against an agent of an association or organization or

24 against the association or organization by virtue of the agent's act or omission in

25 providing services or performing duties on behalf of the association or organization.

26 [(10)] (11) "Volunteer" means an officer, director, trustee, or other person

27 who provides services or performs duties on behalf of an association or organization

28 without receiving compensation.

29 (b) Except as provided in subsection (d) of this section, an agent of an

30 association or organization is not personally liable for damages in any suit if:

31 (1) The association or organization maintains insurance covering

32 liability incurred by the association or organization or its agents, or both, as a result

33 of the acts or omissions of its agents in providing services or performing duties on

34 behalf of the association or organization;

35 (2) The terms of the insurance policy under which the insurance is

36 maintained provide coverage for the act or omission which is the subject matter of the

1 suit and no meritorious basis exists for the denial of the coverage by the insurance
2 carrier; and

3 (3) The insurance has:

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

5 1. \$200,000 per individual claim, and \$500,000 per total
6 claims that arise from the same occurrence; or

7 2. \$750,000 per policy year, and \$500,000 per total claims
8 that arise from the same occurrence; and

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

11 2. If there is coinsurance, a rate of coinsurance not greater
12 than 20 percent.

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

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

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

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

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

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

1

Article - State Government

2 7-108.

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

4 (1) MADE TO THE BEST OF THE AFFIANT'S KNOWLEDGE, INFORMATION,
5 AND BELIEF; AND6 (2) THE CONTENTS OF WHICH ARE AFFIRMED UNDER THE PENALTIES
7 OF PERJURY.8 (B) A NONPROFIT ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION
9 THAT HAS BEEN IN EXISTENCE FOR AT LEAST 5 YEARS AND PROMOTES SOCIAL
10 WELFARE AND GENERAL CIVIC IMPROVEMENT MAY REGISTER WITH THE
11 SECRETARY OF STATE AS A COMMUNITY ASSOCIATION BY FILING AN AFFIDAVIT
12 THAT THE ORGANIZATION MEETS THE REQUIREMENTS OF § 5-406(A)(7) OF THE
13 COURTS ARTICLE.14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
15 construed to apply only prospectively and may not be applied or interpreted to have
16 any effect on or application to any cause of action arising before the effective date of
17 this Act.18 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2003.