
By: **Delegates Carter, C. Davis, Gutierrez, and Quinter**

Introduced and read first time: February 10, 2006

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Baltimore City - Nuisance Actions - Monetary Damages and Lead Paint**

3 FOR the purpose of authorizing certain community associations in Baltimore City to
4 seek monetary damages for the abatement of a certain nuisance under certain
5 circumstances; repealing a certain provision of law that restricts a certain law
6 authorizing nuisance actions from being construed to grant standing for a civil
7 action for a condition relating to lead paint; and generally relating to nuisance
8 actions in Baltimore City.

9 BY repealing and reenacting, with amendments,
10 Article - Real Property
11 Section 14-123
12 Annotated Code of Maryland
13 (2003 Replacement Volume and 2005 Supplement)

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

16 **Article - Real Property**

17 14-123.

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

19 (2) "Community association" means a Maryland nonprofit association,
20 corporation, or other organization that:

21 (i) Is comprised of at least 25 households or 25% of the households,
22 whichever is less, of a local neighborhood consisting of 40 or more individual
23 households as defined by specific geographic boundaries in the bylaws or charter of
24 the association;

25 (ii) Requires, as a condition of membership, the voluntary payment
26 of monetary dues at least annually;

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

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

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

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

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

11 (3) "Local code violation" means a violation under the following
12 provisions of the Baltimore City Code as amended from time to time or under any
13 applicable code relating to the following provisions incorporated by Baltimore City by
14 reference:

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

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

18 (iii) The Housing Code under Article 13;

19 (iv) Public nuisance provisions under Article 19;

20 (v) Article 23;

21 (vi) The Building Code of Baltimore City, Article 32; and

22 (vii) The zoning ordinance of Baltimore City, Article 30.

23 (4) "Nuisance" means, within the boundaries of the community
24 represented by the community association, an act or condition knowingly created,
25 performed, or maintained on private property that constitutes a local code violation
26 and that:

27 (i) Significantly affects other residents of the neighborhood;

28 (ii) Diminishes the value of neighboring property; and

29 (iii) 1. Is injurious to public health, safety, or welfare of
30 neighboring residents; or

31 2. Obstructs the reasonable use of other property in the
32 neighborhood.

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

3 (c) (1) A community association may seek MONETARY DAMAGES OR
4 injunctive and other equitable relief in the circuit court for abatement of a nuisance
5 upon showing:

6 (i) The notice requirements of this subsection have been satisfied;
7 and

8 (ii) The nuisance has not been abated.

9 (2) (i) An action may not be brought under this section until 60 days
10 after the community association sends notice of the violation and of the community
11 association's intent to bring an action under this section by certified mail, return
12 receipt requested, to the appropriate code enforcement agency.

13 (ii) An action under this section may not be brought if the
14 appropriate code enforcement agency has filed an action for equitable relief from the
15 nuisance.

16 (3) (i) An action may not be brought under this section until 60 days
17 after the community association sends notice to the tenant, if any, and the owner of
18 record that a nuisance exists and that legal action may be taken if the nuisance is not
19 abated.

20 (ii) The notice shall specify:

- 21 1. The nature of the alleged nuisance;
- 22 2. The date and time of day the nuisance was first
23 discovered;
- 24 3. The location on the property where the nuisance is
25 allegedly occurring; and
- 26 4. The relief sought in the action.

27 (iii) 1. The notice shall be provided to the tenant, if any, and the
28 owner of record in the same manner as service of process in a civil in personam action
29 under the Maryland Rules.

30 2. Adequate and sufficient notice may be given to the tenant,
31 if any, and the owner of record by sending a copy of the notice by regular mail and
32 posting a copy of the notice on the property where the nuisance is allegedly occurring,
33 if notice sent by certified mail is:

- 34 A. Returned unclaimed or refused;
- 35 B. Designated by the post office to be undeliverable for any
36 other reason; or

1 C. Signed for by a person other than the addressee.

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

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

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

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

14 (5) (i) An action may not be brought against an owner of residential
15 rental property unless, prior to the giving of notice under subsection (c)(3)(i) of this
16 section, a notice of violation relating to the nuisance has first been issued by an
17 appropriate code enforcement agency.

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

23 (6) (i) If a violation notice is an essential element of the action, a copy
24 of the notice signed by an official of the appropriate code enforcement agency shall be
25 prima facie evidence of the facts contained in the notice.

26 (ii) A notice of abatement issued by the appropriate code
27 enforcement agency in regard to the violation notice shall be prima facie evidence that
28 the plaintiff is not entitled to the relief requested.

29 (7) A proceeding under this section shall:

30 (i) Take precedence on the docket;

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

32 (iii) Be expedited in every way.

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

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

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

5 (i) Challenging any zoning application or approval;

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

7 1. [A condition relating to lead paint;

8 2.] An interior physical defect of a property; or

9 [3.] 2. A vacant dwelling that is maintained in a boarded
10 condition, free from trash and debris, and secure against trespassers and weather
11 entry;

12 (iii) Involving any violation of alcoholic beverages laws under Article
13 2B of the Code; or

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

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2006.