

HOUSE BILL 31

D3

71r0416

By: **Delegates Morhaim, Cardin, Costa, Kach, and Stein**

Introduced and read first time: January 16, 2007

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Community or Homeowners' Associations – Standing to Participate in**
3 **Certain Proceedings**

4 FOR the purpose of authorizing a community or homeowners' association to institute,
5 defend, intervene, or participate in certain governmental proceedings or forms
6 of alternative dispute resolution under certain circumstances; authorizing a
7 community or homeowners' association to assert a claim in its name on behalf of
8 its members under certain circumstances; defining a certain term; expressing
9 the intent of the General Assembly; providing for the construction and
10 application of this Act; and generally relating to the standing of a community or
11 homeowners' association to participate in certain proceedings and forms of
12 alternative dispute resolution under certain circumstances.

13 BY renumbering

14 Article – Courts and Judicial Proceedings
15 Section 6–406.1
16 to be Section 6–406.2
17 Annotated Code of Maryland
18 (2006 Replacement Volume)

19 BY repealing and reenacting, without amendments,

20 Article – Courts and Judicial Proceedings
21 Section 5–406(a)(1), (7), and (9)
22 Annotated Code of Maryland
23 (2006 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Courts and Judicial Proceedings
3 Section 6–406.1
4 Annotated Code of Maryland
5 (2006 Replacement Volume)

6 BY repealing and reenacting, without amendments,
7 Article – State Government
8 Section 7–108
9 Annotated Code of Maryland
10 (2004 Replacement Volume and 2006 Supplement)

11 Preamble

12 WHEREAS, Maryland case law provides that an association does not have
13 common law standing unless it has a “property interest of its own – separate and
14 distinct from that of its individual members”. *Medical Waste Association v. Maryland*
15 *Waste Coalition*, 327 Md. 596, 612 (1992). Moreover, the Court of Appeals has held
16 that under Maryland common law, an organization cannot acquire standing to appeal
17 simply because one or more of its members has standing. *Citizens Planning & Housing*
18 *Ass’n v. County Executive*, 273 Md. 333, 345 (1974); and

19 WHEREAS, Even if a community or homeowners’ association has a specific
20 interest or property right affected by a government decision, Maryland courts
21 interpret “aggrieved” to require that its suffering of a wrong be different in character
22 and kind than that of the general public. *Medical Waste Association v. Maryland*
23 *Waste Coalition*, 327 Md. 596, 613 (1992); and

24 WHEREAS, The Maryland Court of Appeals has explicitly rejected any
25 expansion of common law standing in areas, such as land use, where the General
26 Assembly has modified standing requirements. See, e.g., *Medical Waste Association*,
27 327 Md. at 623 (“common law principles should not be changed contrary to the public
28 policy of the State set forth by the General Assembly of Maryland”); and

29 WHEREAS, In light of Maryland’s case law, if all parties, including community
30 or homeowners’ associations, are to have the same right to seek judicial review of local
31 government decisions, the General Assembly must expressly provide for those rights;
32 now, therefore,

33 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
34 MARYLAND, That Section(s) 6–406.1 of Article – Courts and Judicial Proceedings of
35 the Annotated Code of Maryland be renumbered to be Section(s) 6–406.2.

1 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
2 read as follows:

3 **Article – Courts and Judicial Proceedings**

4 5–406.

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

6 (7) “Community association” means a nonprofit association,
7 corporation, or other organization that registers with the Secretary of State under §
8 7–108 of the State Government Article and:

9 (i) 1. Is composed of at least 25% of the adult residents of a
10 local community that:

11 A. Consists of at least 40 households; and

12 B. Is defined by specific geographic boundaries in the
13 bylaws or charter of the organization;

14 2. At least annually, requires the payment of dues;

15 3. Promotes social welfare and general civic
16 improvement; and

17 4. In the case of a corporation, is in good standing;

18 (ii) 1. Is composed of at least 100 adult residents, but less
19 than 25% of the adult residents of a local community that:

20 A. Consists of at least 40 households; and

21 B. Is defined by specific geographic boundaries in the
22 bylaws or charter of the organization;

23 2. Was organized on or before January 1, 2000, and has
24 been in continuous operation since that date; and

25 3. Meets the requirements of item (i)2, 3, and 4 of this
26 paragraph; or

1 (iii) 1. Is composed of more than one of the organizations
2 described in item (i) or item (ii) of this paragraph; and

3 2. Each of those organizations meets the requirements of
4 item (i) or item (ii) of this paragraph.

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

10 **6-406.1.**

11 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
12 MEANINGS INDICATED.

13 (2) "COMMUNITY ASSOCIATION" HAS THE MEANING STATED IN §
14 5-406(A)(7) OF THIS ARTICLE.

15 (3) "HOMEOWNERS' ASSOCIATION" HAS THE MEANING STATED IN
16 § 5-406(A)(9) OF THIS ARTICLE.

17 (B) SUBJECT TO SUBSECTION (C) OF THIS SECTION, A COMMUNITY OR
18 HOMEOWNERS' ASSOCIATION, IN ITS NAME, MAY INSTITUTE, DEFEND,
19 INTERVENE, OR PARTICIPATE IN:

20 (1) A JUDICIAL, ADMINISTRATIVE, OR OTHER GOVERNMENTAL
21 PROCEEDING; OR

22 (2) AN ARBITRATION, MEDIATION, OR ANY OTHER FORM OF
23 ALTERNATIVE DISPUTE RESOLUTION.

24 (C) A COMMUNITY OR HOMEOWNERS' ASSOCIATION MAY ASSERT A
25 CLAIM IN ITS NAME ON BEHALF OF ITS MEMBERS IF:

26 (1) ONE OR MORE MEMBERS OF THE ASSOCIATION HAVE
27 STANDING TO ASSERT A CLAIM IN THEIR OWN RIGHT;

1 **(2) THE INTERESTS THAT THE ASSOCIATION SEEKS TO PROTECT**
2 **ARE GERMANE TO ITS PURPOSES; AND**

3 **(3) NEITHER THE CLAIM ASSERTED NOR THE RELIEF REQUESTED**
4 **REQUIRES THE PARTICIPATION OF THE MEMBER.**

5 **(D) THE PROVISIONS OF THIS SECTION SHALL BE LIBERALLY**
6 **CONSTRUED TO:**

7 **(1) PROVIDE A COMMUNITY OR HOMEOWNERS’ ASSOCIATION**
8 **WITH BROAD ACCESS TO THE GOVERNMENTAL PROCEEDINGS AND FORMS OF**
9 **ALTERNATIVE DISPUTE RESOLUTION COVERED UNDER SUBSECTION (B) OF THIS**
10 **SECTION; AND**

11 **(2) AUTHORIZE A COMMUNITY OR HOMEOWNERS’ ASSOCIATION**
12 **TO EXERCISE STANDING TO ASSERT A CLAIM IN ITS NAME ON BEHALF OF ITS**
13 **MEMBERS.**

14 **Article – State Government**

15 7–108.

16 (a) In this section, “affidavit” means a written statement:

17 (1) made to the best of the affiant’s knowledge, information, and belief;
18 and

19 (2) the contents of which are affirmed under the penalties of perjury.

20 (b) A nonprofit association, corporation, or other organization that has been
21 in existence for at least 5 years and promotes social welfare and general civic
22 improvement may register with the Secretary of State as a community association by
23 filing an affidavit that the organization meets the requirements of § 5–406(a)(7) of the
24 Courts Article.

25 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be
26 construed to apply only prospectively and may not be applied or interpreted to have
27 any effect on or application to any governmental proceeding or form of alternative
28 dispute resolution instituted before the effective date of this Act.

1 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2007.