

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

Senate Bill 65

(Senator Brochin, *et al.*)

Judicial Proceedings

Community or Homeowners' Associations - Standing to Participate in Certain Proceedings

This bill authorizes a community association or a homeowners' association, in its own name, to institute, defend, intervene, or participate in: (1) a judicial, administrative, or other governmental proceeding; or (2) any form of alternative dispute resolution (ADR). Under the bill, a community or homeowners' association may only assert a claim in its name on behalf of its members if: (1) at least one of the association members has standing to assert a claim; (2) the interests that the association seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires the member's participation. The bill's provisions must be liberally construed.

The bill applies prospectively, and it does not affect any governmental proceeding or form of ADR instituted before the bill's October 1, 2007 effective date.

Fiscal Summary

State Effect: The number of community associations and homeowners associations in the State is unknown. Since the number of appeals that might be brought because of the bill cannot be accurately estimated, any effect on the workload of the Judiciary cannot be reliably estimated at this time.

Local Effect: Since the number of appeals that might be brought because of the bill cannot be accurately estimated, any increase in workload or costs attributable to the defending appeals cannot be reliably estimated, but could be significant in a particular county. Likewise, the bill's effect on local planning and zoning cannot be reliably predicted.

Small Business Effect: Potential minimal.

Analysis

Current Law: Generally, a party to a civil action must be authorized to participate in the action, either by statute or by having common law “standing.” Standing means that a party has a sufficient stake in a controversy to be able to obtain judicial resolution of that controversy. The question is whether the plaintiff is the proper party to the case and not about the merits of the case. The Court of Appeals has held that an association lacks standing to sue where it has no property interest of its own, distinct from that of its individual members. *Citizens Planning & Housing Ass’n. v. County Executive*, 273 Md. 333 (1974). In *Medical Waste Ass’n. v. Maryland Waste Coalition*, 327 Md. 596 (1992), the Court of Appeals stated that if an individual or organization is seeking to redress a public wrong, the individual or organization has no standing unless the wrong suffered is different in character and kind from that suffered by the general public.

By statute, a community association may bring an action to abate a nuisance based on the existence of specified controlled dangerous substances if the nuisance is located within the association’s boundaries. In Baltimore City, a community association may bring an action to abate a nuisance based on the existence of specified code violations. The definitions of “community association” differ slightly under these provisions.

Background: ADR is generally an alternative means to settling disputes in lieu of filing a civil action. It may include mediation, in which parties work to negotiate a remedy, frequently with the assistance of a trained mediator, or arbitration, in which parties present their sides of the case to a third party, who chooses the remedy. By practice, parties in ADR proceedings have standing to be parties in a civil action.

Additional Information

Prior Introductions: None.

Cross File: HB 31 (Delegate Morhaim, *et al.*) – Judiciary.

Information Source(s): Maryland Department of Planning, Maryland Department of the Environment, Office of the Attorney General, Judiciary (Administrative Office of the Courts), Maryland Association of Counties, Montgomery County, Charles County, Somerset County, Department of Legislative Services

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Analysis by: T. Ryan Wilson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510