

SENATE BILL 687

D3, C1

8lr1593

By: **Senator Brochin**

Introduced and read first time: February 1, 2008

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Nonprofit Associations and Homeowners Associations – Standing**

3 FOR the purpose of granting a certain nonprofit association or homeowners
4 association standing in court under certain circumstances; requiring a certain
5 nonprofit or homeowners association to allege and prove certain conditions
6 before being granted standing; establishing that standing for a certain nonprofit
7 or homeowners association vests at the conclusion of a certain individually
8 named party's case, that standing of a certain nonprofit or homeowners
9 association is limited to certain claims and relief that do not require the
10 participation of the individually named party, that a certain nonprofit or
11 homeowners association shall have appeared, with certain exceptions, at a
12 certain local governmental hearing whose decision is being appealed, and that if
13 the individually named party is found to lack standing, a certain nonprofit or
14 homeowners association may not assert standing; defining certain terms;
15 providing for the prospective application of this Act; providing for the
16 construction of this Act; and generally relating to the standing of a nonprofit
17 association or homeowners association in court.

18 BY renumbering

19 Article – Courts and Judicial Proceedings
20 Section 6–406.1
21 to be Section 6–406.2
22 Annotated Code of Maryland
23 (2006 Replacement Volume and 2007 Supplement)

24 BY adding to

25 Article – Courts and Judicial Proceedings
26 Section 6–406.1
27 Annotated Code of Maryland
28 (2006 Replacement Volume and 2007 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, without amendments,
2 Article – Corporations and Associations
3 Section 1–208
4 Annotated Code of Maryland
5 (2007 Replacement Volume)

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

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

11 **Article – Courts and Judicial Proceedings**

12 **6–406.1.**

13 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
14 MEANINGS INDICATED.

15 (2) “HOMEOWNERS ASSOCIATION” MEANS A NONPROFIT
16 ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION COMPRISED OF
17 PROPERTY OWNERS IN A SUBDIVISION OR GROUP OF SUBDIVISIONS WHOSE
18 PURPOSE IS TO REPRESENT THE MUTUAL INTERESTS OF THE PROPERTY
19 OWNERS REGARDING THE CONSTRUCTION, PROTECTION, AND MAINTENANCE OF
20 THE COMMONLY OWNED OR USED PROPERTY AND IMPROVEMENTS.

21 (3) “NONPROFIT ASSOCIATION” MEANS AN ASSOCIATION,
22 CORPORATION, OR OTHER ORGANIZATION THAT IS ELIGIBLE FOR EXEMPTION
23 UNDER § 501 (C)(3) OR (4) OF THE INTERNAL REVENUE CODE.

24 (4) “PUBLICLY AVAILABLE” INCLUDES BEING FILED WITH THE
25 DEPARTMENT OF ASSESSMENTS AND TAXATION OR AVAILABLE ON REQUEST
26 FROM THE NONPROFIT ASSOCIATION OR HOMEOWNERS ASSOCIATION OR ITS
27 RESIDENT AGENT.

28 (B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THIS
29 SECTION APPLIES TO A NONPROFIT ASSOCIATION OR HOMEOWNERS
30 ASSOCIATION THAT:

31 (I) HAS AT LEAST 25 ADULT MEMBERS WHO:

32 1. PAY DUES ON AT LEAST AN ANNUAL BASIS; AND

1 **2. ARE JOINED BY MUTUAL CONSENT TO PROMOTE A**
2 **COMMON, NONPROFIT PURPOSE;**

3 **(II) HAS A RECOGNIZED GROUP NAME;**

4 **(III) IN THE CASE OF A CORPORATION, IS IN GOOD**
5 **STANDING;**

6 **(IV) HAS A PUBLICLY AVAILABLE CHARTER, BYLAWS,**
7 **CONSTITUTION, OR OTHER GOVERNING DOCUMENT THAT DEFINES:**

8 **1. THE AREA OF INTEREST OR THE GEOGRAPHIC**
9 **BOUNDARIES OF THE NONPROFIT ASSOCIATION OR HOMEOWNERS**
10 **ASSOCIATION; AND**

11 **2. THE PROCESS BY WHICH THE NONPROFIT**
12 **ASSOCIATION OR HOMEOWNERS ASSOCIATION MAKES DECISIONS IN THE**
13 **MANAGEMENT OF ITS BUSINESS AND AFFAIRS;**

14 **(V) HAS BEEN IN EXISTENCE FOR AT LEAST 1 YEAR; AND**

15 **(VI) HAS A DESIGNATED RESIDENT AGENT WHOSE CONSENT**
16 **TO SERVE AS A RESIDENT AGENT IS FILED WITH THE STATE DEPARTMENT OF**
17 **ASSESSMENTS AND TAXATION IN ACCORDANCE WITH § 1-208 OF THE**
18 **CORPORATIONS AND ASSOCIATIONS ARTICLE.**

19 **(2) THIS SECTION MAY APPLY TO AN ORGANIZATION THAT IS**
20 **COMPOSED OF MORE THAN ONE NONPROFIT ASSOCIATION OR HOMEOWNERS**
21 **ASSOCIATION IF EACH ASSOCIATION MEETS THE REQUIREMENTS OF**
22 **PARAGRAPH (1) OF THIS SUBSECTION.**

23 **(c) (1) SUBJECT TO PARAGRAPHS (2), (3), (4), AND (5) OF THIS**
24 **SUBSECTION, A NONPROFIT ASSOCIATION OR HOMEOWNERS ASSOCIATION, IN**
25 **ITS NAME, HAS STANDING AS A PARTY IN COURT IF THE NONPROFIT**
26 **ASSOCIATION OR HOMEOWNERS ASSOCIATION ALLEGES AND SHOWS PROOF**
27 **THAT:**

28 **(I) AT LEAST ONE MEMBER OF THE NONPROFIT**
29 **ASSOCIATION OR HOMEOWNERS ASSOCIATION IS AN INDIVIDUALLY NAMED**
30 **PARTY IN THE CASE;**

31 **(II) THE INTERESTS THAT THE NONPROFIT ASSOCIATION**
32 **OR HOMEOWNERS ASSOCIATION SEEKS TO PROTECT ARE GERMANE TO ITS**
33 **PURPOSES;**

1 **(III) AT LEAST 25 ADULT MEMBERS OF THE NONPROFIT**
2 **ASSOCIATION OR HOMEOWNERS ASSOCIATION PAY DUES ON AT LEAST AN**
3 **ANNUAL BASIS; AND**

4 **(IV) THE PROCESS BY WHICH THE NONPROFIT ASSOCIATION**
5 **OR HOMEOWNERS ASSOCIATION MAKES DECISIONS IN THE MANAGEMENT OF ITS**
6 **BUSINESS AND AFFAIRS:**

7 **1. WAS ESTABLISHED IN A CHARTER, BYLAWS,**
8 **CONSTITUTION, OR OTHER GOVERNING DOCUMENT THAT IS PUBLICLY**
9 **AVAILABLE; AND**

10 **2. WAS FOLLOWED IN THE CASE.**

11 **(2) THE STANDING OF A NONPROFIT ASSOCIATION OR**
12 **HOMEOWNERS ASSOCIATION IN COURT VESTS AT THE CONCLUSION OF THE**
13 **INDIVIDUALLY NAMED PARTY'S CASE.**

14 **(3) THE STANDING OF A NONPROFIT ASSOCIATION OR**
15 **HOMEOWNERS ASSOCIATION IS LIMITED TO CLAIMS ASSERTED AND RELIEF**
16 **REQUESTED THAT DO NOT REQUIRE THE PARTICIPATION OF THE INDIVIDUALLY**
17 **NAMED MEMBER THROUGH WHICH THE NONPROFIT ASSOCIATION OR**
18 **HOMEOWNERS ASSOCIATION GAINED STANDING.**

19 **(4) IN MATTERS INVOLVING ZONING REGULATIONS OR BUILDING**
20 **PERMITS, THE NONPROFIT ASSOCIATION OR HOMEOWNERS ASSOCIATION**
21 **APPEARED AT THE HEARING, IF ANY, PRECEDING THE DECISION OR ACTION**
22 **BEING APPEALED TO THE CIRCUIT COURT, UNLESS THE ASSOCIATION'S**
23 **APPEARANCE WAS NOT PERMITTED BY THE LAWS AND REGULATIONS**
24 **GOVERNING THE HEARING.**

25 **(5) IF AN INDIVIDUALLY NAMED PARTY THROUGH WHICH A**
26 **NONPROFIT ASSOCIATION OR HOMEOWNERS ASSOCIATION GAINED STANDING IS**
27 **FOUND TO LACK STANDING TO ASSERT A CLAIM OR APPEAL, THE NONPROFIT**
28 **ASSOCIATION OR HOMEOWNERS ASSOCIATION MAY NOT ASSERT STANDING**
29 **UNDER THIS SECTION.**

30 **(D) THIS SECTION MAY NOT BE CONSTRUED TO GRANT STANDING TO A**
31 **NONPROFIT ASSOCIATION OR HOMEOWNERS ASSOCIATION TO:**

32 **(1) ASSERT A CLAIM THAT ONE OF ITS MEMBERS MAY NOT**
33 **ASSERT INDIVIDUALLY; OR**

1 (2) **ASSERT A CLAIM FOR DAMAGES.**

2 **Article – Corporations and Associations**

3 1–208.

4 (a) Notwithstanding any other provision of this title, an entity that is
5 required to have a resident agent may not designate a person as a resident agent
6 without first obtaining the person’s written consent.

7 (b) (1) An entity shall file a resident agent’s written consent with the
8 Department.

9 (2) The consent shall be effective upon acceptance by the Department.

10 (c) Subsections (a) and (b) of this section do not apply to resident agents
11 designated before October 1, 1998.

12 (d) A person designated a resident agent may resign without paying the fee
13 under § 1–203(b)(2) of this subtitle.

14 SECTION 3. 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 governmental proceeding instituted before the
17 effective date of this Act.

18 SECTION 4. AND BE IT FURTHER ENACTED, That this Act may not be
19 construed to change the existing standards for review of a zoning action of a local
20 legislative body or alter the standing rights of a nonprofit association or homeowners
21 association granted by other State or local statutes or the common law.

22 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2008.