

# HOUSE . . . . . No. 3412

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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An Act relative to the maintenance of private roads, beaches and amenities in municipalities..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1: Chapter 84 of the General Laws shall be amended in section 12 by deleting  
2 the words, “private way or bridge” in the first line and replacing them with the words, “private  
3 way, bridge or other common amenity”.

4           SECTION 2: Said section shall be further amended by adding at the end of said section  
5 12 the following language;

6           The term “proprietor” as used in this chapter shall mean “owner”.

7           The term “rightful occupant” as used in this chapter shall mean any person with a lawful  
8 right to use the private road, bridge or other private amenity by grant or implication.

9           The term, “other common amenity” shall mean private parks, buildings, recreational  
10 facilities, beaches and the like.

11          SECTION 3: Said section shall be further amended by adding after section 12, the  
12 following new section:

13           Section 12A: Notwithstanding any general or special law to the contrary, an obligation  
14 imposed by a recorded document or otherwise for property owners or occupants to be  
15 responsible for or to contribute, financially or otherwise, to the maintenance of roads, bridges,  
16 beaches or other common amenities within a private subdivision shall be deemed to be a  
17 servitude and not a condition or restriction.

18           A servitude is created when real property is conveyed intending to create a servitude, or if  
19 the requirements of a servitude by necessity are met. The creation of a private road, bridge, other  
20 structure, or common areas such as parks and beaches requiring maintenance within a private  
21 development shall be deemed to create a servitude for the maintenance of the private road,  
22 bridge, structure, or common areas. Such servitudes and servitudes by necessity shall continue  
23 as long as the need for maintenance continues or as long as the road, bridge, structure or amenity  
24 remains private.

25           SECTION 4: Chapter 84 shall be further amended by adding after section 12A, the  
26 following new section:

27           Section 12B: a. Notwithstanding any law or special law to the contrary, the obligation of  
28 any person or entity, whose property abuts any private road or roads and bridges, and who has  
29 the right to access private roads, bridges, related beaches or other common areas, or whose  
30 property does not abut such private roads, bridges, beaches and other common areas but who has  
31 the use of such private roads, bridges, beaches, or other common areas by grant or implication, to  
32 maintain or contribute to the maintenance of such roads, bridges, beaches or other common areas  
33 shall continue as long as the privilege, right to use or benefit continues and as long as the road or  
34 roads, bridges and common areas remain private regardless of whether any recorded covenants,

conditions and restrictions affecting such subdivision, roads, bridges, beaches or other common areas have expired.

The terms road, bridges and common areas shall include any and all appurtenances to such roads, bridges and common areas including but not limited to roadway rights of way, drainage, abutments, slopes, ramps and approaches.

b. The manner and mechanism for contribution, collection and maintenance shall be as stated in such any recorded document relating thereto notwithstanding the fact that any conditions or restrictions imposed by said document have expired by the language of the document or by operation of law unless such manner and mechanism is amended by majority vote of owners and occupants having such rights and obligations. Votes to amend the provisions for collection of funds, increase or decrease in assessments and maintenance of roads, bridges, beaches and other common areas shall be in the manner stated in the recorded document. If there is no provision in such document for increasing or decreasing amounts to be paid, the proprietors and rightful occupants may call such a meeting pursuant to sections 12, 13 and 14 of this chapter to determine those issues.

c. If no document has been recorded describing the manner and mechanism for determining such maintenance and contributions, proprietors and rightful occupants subject to a servitude shall have the power to create an association of property owners. Such an association may be created by a majority of the property owners. If there is no majority, willing to voluntarily create an association, an association may be created using the provisions of sections 12, 13 and 14 of this chapter. Once an association has been created, all owners and rightful occupants subject to the servitude shall automatically become association members. The

57 association shall establish and follow a formal process, described below, to determine by-laws,  
58 maintenance fees and other obligations.

59         The association shall have a board of directors consisting of three, five, or seven  
60 members. The directors shall be owners subject to a servitude, and shall be elected by majority  
61 vote of the proprietors and rightful occupants subject to the servitude. The directors shall serve  
62 a term to be determined by a meeting of proprietors and rightful occupants. The directors shall  
63 hold a general meeting at least once per year, wherein proprietors and rightful occupants  
64 belonging to the association may be heard. The directors shall reach decisions on by-laws of the  
65 association, maintenance, maintenance fees and other powers through a majority vote and such  
66 determinations shall be approved or disapproved by a majority of proprietors and rightful  
67 occupants at a meeting called for that purpose. Directors may call additional meetings as they  
68 deem necessary or at the request of proprietors and rightful occupants. Notice of all meeting shall  
69 be mailed to all proprietors and rightful occupants at least fourteen days before the meeting. If  
70 the directors fail or refuse to call a meeting when required or when petitioned to do so by three or  
71 more proprietors and rightful occupants, proprietors and rightful occupants may call such  
72 meeting pursuant to section 12 of this chapter. Once an association has been created, any  
73 meeting of the proprietors and rightful occupants shall be governed by the by-laws and rules  
74 established by the association.

75         An association shall have the power to do anything reasonably necessary to manage the  
76 roadways, bridges or other common property and administer the servitude. Such powers shall  
77 include the power to raise funds necessary to carry out the functions of the association, and the  
78 power to enforce rules and regulations. In addition to seeking court enforcement, the association  
79 may adopt reasonable rules and procedures to encourage compliance and deter violations,

including the imposition of fines, penalties, late fees, and the withdrawal of privileges to use common recreational and social facilities. The association shall have the power to make substantial alterations, improvements, and additions to the common property. Funds may be raised by levying assessments against the individually owned property, and by charging fees for services or for the use of common property. Those fees must be reasonably related to the costs of operation. An association shall have the power to manage, acquire, and improve common property. An association shall have the power to sue and be sued. Associations shall have the duty to act fairly towards its members and allow all members to participate in decisions. Actions to collect maintenance and other fees may be taken in the District Court in the district where the property subject to the servitude lies.

SECTION 5. This act shall take effect upon its passage.