
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1176 Session of
1991

INTRODUCED BY GLADECK, VROON, WOGAN, CLARK, BUNT, E. Z. TAYLOR,
KENNEY AND NAHILL, APRIL 17, 1991

REFERRED TO COMMITTEE ON BUSINESS AND COMMERCE, APRIL 17, 1991

AN ACT

1 Providing for rights and administrative responsibilities of
2 homeowners associations.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Homeowners
7 Association Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall
10 have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Association." A homeowners association.

13 "Board of directors." The executive body of a homeowners
14 association or a committee which is exercising the power of the
15 executive body by resolution or bylaw.

16 "Common area." The property within a development which is
17 owned, leased or required by the declaration to be maintained by
18 a homeowners association for the use of its members.

1 "Declaration." An instrument, however denominated, recorded
2 among the land records of the county or city in which the
3 development or any part thereof is located, that imposes on the
4 association either maintenance or operational responsibilities
5 for the common area and creates the authority in the association
6 to impose on lots, or on the owners or occupants of the lots or
7 on any other entity, any mandatory payment of money in
8 connection with the provision of maintenance or services or both
9 for the benefit of some or all of the lots, the owners or
10 occupants of the lots or the common area. The term includes any
11 amendment or supplement to the instruments described in this
12 paragraph. The term does not include a declaration of a
13 condominium, as defined in 68 Pa.C.S. § 3103 (relating to
14 definitions), real estate cooperative, time-share or campground.

15 "Development." The real property located in this
16 Commonwealth subject to a declaration which contains both lots,
17 at least some of which are residential or are occupied for
18 recreational purposes, and common areas. The term does not
19 include a cooperative housing corporation, condominium, as
20 defined in 68 Pa.C.S. § 3103 (relating to definitions), time-
21 share project or campground.

22 "Homeowners association." An incorporated or unincorporated
23 entity that is referred to in the declaration. The term does not
24 include an association formed pursuant to 68 Pa.C.S. Part II
25 Subpart B (relating to condominiums), a real estate cooperative,
26 real estate time-share or campground.

27 "Lot." Any of the following:

28 (1) A plot or parcel of land designed for separate
29 ownership and occupancy shown on a recorded subdivision plot
30 for a development, other than a common area.

1 (2) A unit in a condominium association or a unit in a
2 real estate cooperative if the condominium or cooperative is
3 a part of a development.

4 (3) Any other physical portion of the development
5 designated for separate ownership or occupancy.

6 Section 3. Association books and records.

7 (a) General rule.--The association shall keep detailed
8 records of its operation and administration, including income
9 received and expenses incurred. Books and records kept by or on
10 behalf of the association shall be available for examination and
11 copying by a member in good standing, or his authorized agent,
12 to protect his interest. This right of examination shall exist
13 without reference to the duration of membership and may be
14 exercised only during reasonable business hours or at a mutually
15 convenient time and location and upon five days' written notice.

16 (b) Withholding from inspection.--Books and records kept by
17 or on behalf of an association may be withheld from inspection
18 to the extent that they concern any of the following:

19 (1) Personnel records.

20 (2) An individual's medical records.

21 (3) Records relating to business transactions that are
22 currently in negotiation.

23 (4) Privileged communications with legal counsel.

24 (5) Complaints against an individual member of the
25 association.

26 (c) Charge for copies.--The association may impose and
27 collect a charge, reflecting the actual costs of materials and
28 labor, prior to providing copies of any books and records to a
29 member in good standing under this section.

30 Section 4. Disclosure statement.

1 (a) General rule.--The seller shall insert or cause to be
2 inserted in a contract for sale or resale of his lot, in bold
3 print or underlined, language to the effect that:

4 (1) The lot is located within a development which is
5 subject to this act.

6 (2) This act requires the development's homeowners
7 association to provide the seller, within 14 days of a
8 written request and payment of the appropriate fee, with a
9 disclosure packet which the seller, upon written request by
10 the purchaser, will request from the association and upon
11 receipt thereof provided to a purchaser.

12 (b) Failure to disclose.--The failure to cause the
13 disclosure required by subsection (a) to be inserted in the
14 contract for sale or resale shall be grounds for the avoidance
15 of the contract by the purchaser. Except for knowing or willful
16 misrepresentation, the purchaser's sole remedy against a seller
17 or licensed real estate broker or salesperson or attorney for
18 failure to cause the disclosure required by subsection (a) to be
19 inserted in the contract for sale or resale shall be avoidance
20 of the contract.

21 Section 5. Association disclosure packet.

22 (a) Content.--The association shall provide to the seller of
23 a lot, within 14 days of the actual receipt of a written request
24 therefor and receipt of the appropriate fee, a disclosure packet
25 which contains the following:

26 (1) The name of the association and, if incorporated,
27 the state in which the association is incorporated and the
28 name and address of its registered agent in this
29 Commonwealth.

30 (2) A copy of the current declaration and the

1 association's articles of incorporation, bylaws, rules and
2 regulations and any architectural guidelines promulgated by
3 the association.

4 (3) A copy of the association's current budget or a
5 summary thereof and a copy of its statement of income and
6 expenses or statement of its financial condition for the last
7 fiscal year for which such statement is available.

8 (4) A statement including:

9 (i) The amount of all assessments and any other
10 mandatory fees or charges currently imposed by the
11 association applicable to the lot being purchased and to
12 the right of use of common areas.

13 (ii) The status of the account.

14 (5) A statement whether there is any other entity or
15 facility to which the lot owner may be liable for fees or
16 other charges.

17 (6) A statement of any capital expenditure anticipated
18 by the association within the current year and, where
19 available, the two succeeding fiscal years.

20 (7) a statement or a summary of the status and amount of
21 any reserve or replacement fund and any portion of the fund
22 allocated by the board of directors for a specified project.

23 (8) A statement of the nature of a pending suit or
24 unpaid judgment to which the association is a party which
25 either could or would have a material impact on the
26 association or its members or which relates to the lot being
27 purchased.

28 (9) A statement setting forth insurance coverage,
29 including any fidelity bond, maintained by the association.

30 (10) A statement as to whether a notice has been given

1 to the seller that an improvement or alteration made to the
2 lot, or uses made of the lot or common area assigned thereto,
3 are in violation of the instruments referred to in paragraph
4 (2).

5 (b) Delivery.--the disclosure packet, once received by the
6 seller from the association, shall be delivered by the seller to
7 the purchaser, upon the written request of the purchaser. The
8 association shall have no obligation to deliver the disclosure
9 packet to the purchaser of the lot.

10 (c) Fee.--The association may charge a fee for the
11 preparation and issuance of the disclosure packet required by
12 this section. The fee shall reflect the actual cost of the
13 preparation of the packet, but shall not exceed \$100.

14 (d) Association bound by statements.--When a disclosure
15 packet has been issued, as required by this section, the
16 association shall, as to the purchaser, be bound by the
17 statements set forth therein as to the status of the assessment
18 account and the status of the lot with respect to a violation of
19 the instruments referred to in subsection (a)(2) as to the date
20 of the statement, unless the purchaser had actual knowledge that
21 the contents of the disclosure packet were in error.

22 Section 6. Powers of association.

23 (a) Adoption and enforcement of rules.--The board of
24 directors of the association shall have the power to establish,
25 adopt and enforce rules and regulations with respect to use of
26 the common areas and with respect to such other areas of
27 responsibility assigned to the association by the declaration,
28 except where expressly reserved by the declaration to the
29 members. Rules and regulations may be adopted by resolution and
30 shall be reasonably published or distributed throughout the

1 development. The members of the association may, by a majority
2 of the members present in person or by proxy, at a meeting
3 convened in accordance with the provisions of the association's
4 declaration and called for that purpose, repeal or amend a rule
5 or regulation adopted by the board of directors. Rules and
6 regulations may be enforced by any method normally available to
7 the owner of private property in this Commonwealth, including,
8 but not limited to, application for injunctive relief or
9 damages, during which the court may award to the association
10 court costs and reasonable attorney fees.

11 (b) Injunctive relief.--The board of directors of the
12 association shall have the power, except where expressly
13 prohibited by the declaration, to seek injunctive relief from
14 the common pleas court in the county where the association's
15 land is located against a member for a violation of the
16 declaration or rules and regulations for which the member or his
17 family members, tenants, guests or other invitees are
18 responsible. Before injunctive relief is sought, the member
19 shall be given an opportunity to be heard and to be represented
20 by counsel before the board of directors or other tribunal
21 specified in the documents. Notice of a hearing shall be hand-
22 delivered or mailed by registered or certified mail, return
23 receipt requested, to the member at the address of record with
24 the association at least 14 days prior to the hearing. The board
25 of directors may ask the court for the costs associated with
26 their action to enforce this section.

27 (c) Authority to levy special assessments.--

28 (1) In addition to all other assessments which are
29 authorized in the declaration, the board of directors of an
30 association shall have the power to levy a periodic special

1 assessment against its members if the purpose in doing so is
2 found by the board to be in the best interests of the
3 association and the proceeds of the assessment are used
4 primarily for the maintenance and upkeep, including capital
5 expenditures, of the common area. This special assessment may
6 be rescinded by majority vote of the members attending a
7 meeting of the membership convened in accordance with the
8 provisions of the association's declaration within 60 days of
9 receipt of the notice of this assessment.

10 (2) The failure of a member to pay the special
11 assessment allowed shall entitle the association to the lien
12 provided by section 8.

13 (3) The failure of a member to pay the special
14 assessment will provide the association with the right to
15 deny the member access to any or all of the common areas.
16 Notwithstanding this paragraph, direct access to the member's
17 lot over a road within the development which is a common area
18 shall not be denied the member.

19 Section 7. Compliance with declaration.

20 A lot owner and those entitled to occupy a lot shall comply
21 with all lawful provisions of this act and all provisions of the
22 declaration. A lack of compliance shall be grounds for an action
23 or suit to recover sums due, for damages or injunctive relief or
24 for any other remedy available at law or in equity, maintainable
25 by the association or by its executive organ or any managing
26 agent on behalf of the association, or, in any proper case, by
27 one or more aggrieved lot owners on their behalf or as a class
28 action. The prevailing party shall be entitled to recover
29 reasonable attorney fees and costs expended in the matter.

30 Section 8. Lien for assessments.

1 (a) General rule.--Once perfected, the association shall
2 have a lien on every lot for unpaid assessments levied against
3 that lot in accordance with the provisions of this act and all
4 lawful provisions of the declaration. The lien, once perfected,
5 shall be prior to subsequent liens and encumbrances except:

6 (1) Real estate tax liens on that lot.

7 (2) Liens and encumbrances recorded prior to the
8 recordation of the declaration.

9 (3) Sums unpaid on and owing under a mortgage or deed of
10 trust recorded prior to the perfection of this lien.

11 This subsection shall not affect the priority of mechanics' and
12 materialmen's liens.

13 (b) Perfection of lien.--The association, in order to
14 perfect the lien given by this section, shall file, before the
15 expiration of six months from the time the assessment became due
16 and payable, in the clerk's office in the county or city in
17 which the development is situated, a memorandum, verified by the
18 oath of the principal officer of the association or other
19 officer or officers as the declaration may specify, which
20 contains the following:

21 (1) The name of the development.

22 (2) A description of the lot.

23 (3) The name or names of the persons constituting owners
24 of that lot.

25 (4) The amount of unpaid assessments currently due or
26 past due relative to the lot, together with the date when
27 each fell due.

28 (5) The date of issuance of the memorandum.

29 (6) The name of the association and the name and current
30 address of the person to contact to arrange for payment or

1 release of the lien.

2 (7) A statement that the association is obtaining a lien
3 in accordance with the provisions of the Homeowners
4 Association Act.

5 It shall be the duty of the clerk in whose office the memorandum
6 is filed as provided in this section to record and index the
7 memorandum, as provided in subsection (d), in the names of the
8 persons identified therein, as well as in the name of the
9 association. The cost of recording and releasing the memorandum
10 shall be taxed against the person found liable in a judgment or
11 decree enforcing the lien.

12 (c) Notice to property owner.--Prior to filing a memorandum
13 of lien, a written notice shall be sent to the property owner by
14 certified mail, at the property owner's last known address,
15 informing the property owner that a memorandum of lien will be
16 filed in the clerk's office of the applicable city or county.
17 The notice shall be sent at least ten days before the actual
18 filing date of the memorandum of lien.

19 (d) Recording and indexing memorandums of liens.--
20 Notwithstanding any other provision of this section or any
21 provision of law requiring documents to be recorded in the
22 miscellaneous lien books or the deed books in the clerk's office
23 of any court, all memorandums of liens arising under this
24 section shall be recorded in the deed books in the clerk's
25 office. A memorandum shall be indexed in the general index to
26 deeds and the general index shall identify the lien as a lien
27 for lot assessments.

28 (e) Suit to enforce lien.--No suit to enforce a lien
29 perfected under subsection (b) shall be brought after 24 months
30 from the time when the memorandum of lien was recorded. However,

1 the filing of a petition to enforce this lien in a suit wherein
2 the petition may be properly filed shall be regarded as the
3 institution of a suit under this section. Nothing in this
4 subsection shall extend the time within which this lien may be
5 perfected.

6 (f) Payment or satisfaction.--When payment or satisfaction
7 is made of a debt secured by the lien perfected by subsection
8 (b), the lien shall be released.

9 (g) Actions at law.--Nothing in this section shall be
10 construed to prohibit actions at law to recover sums for which
11 subsection (a) creates a lien, maintainable pursuant to section
12 6.

13 Section 9. Applicability.

14 This act shall not apply to developments subject to a
15 declaration initially recorded before the effective date of this
16 act. This act shall apply to all homeowners associations in
17 existence prior to or subsequent to the effective date of this
18 act.

19 Section 10. Effective date.

20 This act shall take effect in 60 days.