
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 557 Session of
2013

INTRODUCED BY RAFFERTY, VULAKOVICH, VANCE, FARNESE, SOLOBAY,
ERICKSON, BAKER AND SCHWANK, FEBRUARY 22, 2013

REFERRED TO URBAN AFFAIRS AND HOUSING, FEBRUARY 22, 2013

AN ACT

1 Amending Title 68 (Real and Personal Property) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 applicability of provisions relating to planned communities,
4 for meetings and for quorums of unit owners' associations of
5 planned communities, for proxies and for association records.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Section 5102(b) of Title 68 of the Pennsylvania
9 Consolidated Statutes is amended and the section is amended by
10 adding a subsection to read:

11 § 5102. Applicability.

12 * * *

13 (b) [Retroactivity] General retroactivity.--Except as
14 provided in subsection (c), sections 5105, 5106, 5107, 5203
15 (relating to construction and validity of declaration and
16 bylaws), 5204 (relating to description of units), 5218, 5219
17 (relating to amendment of declaration), 5223 (relating to merger
18 or consolidation of planned community), 5302(a)(1) through (6)
19 and (11) through (15) (relating to power of unit owners'

1 association), 5311 (relating to tort and contract liability),
2 5315 (relating to lien for assessments), [5316 (relating to
3 association records),] 5407 (relating to resales of units) and
4 5412 (relating to effect of violations on rights of action) and
5 section 5103 (relating to definitions), to the extent necessary
6 in construing any of those sections, apply to all planned
7 communities created in this Commonwealth before the effective
8 date of this subpart; but those sections apply only with respect
9 to events and circumstances occurring after the effective date
10 of this subpart and do not invalidate specific provisions
11 contained in existing provisions of the declaration, bylaws or
12 plats and plans of those planned communities.

13 * * *

14 (b.2) Legislative finding and retroactivity of specific
15 provisions.--

16 (1) It is hereby determined and declared as a matter of
17 legislative finding that certain aspects of local governance
18 involving open meetings, open records and basic parliamentary
19 procedure relating to proxy voting and quorums are so vital
20 to the sound administration of planned communities that
21 retroactive application of these rules is within the police
22 powers of the Commonwealth.

23 (2) Notwithstanding any provision of law or any
24 declarations or bylaws to the contrary, sections 5308
25 (relating to meetings), 5309 (relating to quorums), 5310(b.1)
26 (relating to voting; proxies) and 5316 (relating to
27 association records) apply to all planned communities created
28 in this Commonwealth before the effective date of this
29 subsection except planned communities under subsections (a)
30 (1), (c) and (e).

1 * * *

2 Section 2. Section 5308 of Title 68 is amended to read:

3 § 5308. Meetings.

4 [The bylaws shall require that]

5 (a) Open meetings and notice.--Notwithstanding any
6 provisions of any declaration or bylaws to the contrary,
7 meetings of the association shall be held at least once each
8 year [and shall provide for special meetings.] and all meetings
9 of the association, executive board or any committee, commission
10 or other entity which is a subdivision of the executive board of
11 the association, except executive board meetings under
12 subsection (d), shall be open to unit owners. The bylaws shall
13 specify which of the association's officers, not less than ten
14 nor more than 60 days in advance of any meeting, except
15 executive board meetings under subsection (d) or emergency
16 meetings under subsection (e), shall cause notice to be hand
17 delivered or sent prepaid by United States mail to the mailing
18 address of each unit or to any other mailing address designated
19 in writing by the unit owner. The notice of any meeting [must]
20 shall state the time and place of the meeting and the items on
21 the agenda, including the general nature of any proposed
22 amendment to the declaration or bylaws; any budget or assessment
23 changes; and, where the declaration or bylaws require approval
24 of unit owners, any proposal to remove a director or officer.
25 All official action shall be taken at a meeting under this
26 subsection or an emergency meeting under subsection (e).

27 (b) Minutes.--Except during executive board meetings under
28 subsection (d), written minutes shall be kept of all association
29 meetings, including the time and date of the meeting, the number
30 of unit owners in attendance, the substance of all official

1 actions taken at the meeting and a record of votes on official
2 action by individual executive board members or officers. Board-
3 approved minutes of any meeting, except executive board meetings
4 under subsection (d), shall be made reasonably available for
5 examination by any unit owner and authorized agent of any unit
6 owner no later than 45 days after a meeting.

7 (c) Recording devices and unit owner participation.--

8 (1) A unit owner shall be:

9 (i) Authorized to use recording devices to record
10 the proceedings at any meeting except an executive board
11 meeting under subsection (d).

12 (ii) Provided at any meeting, except an executive
13 board meeting under subsection (d), with a reasonable
14 opportunity to comment on matters of concern,
15 deliberation or official action which are or may be under
16 consideration at that meeting.

17 (2) Nothing in this section shall be construed to
18 prevent an association from adopting bylaws governing the
19 reasonable use of recording devices.

20 (d) Executive board meetings.--

21 (1) The executive board may exclude unit owners from an
22 executive board meeting. Executive board meetings shall only
23 be convened during an open meeting under subsection (a) or
24 (e) upon an affirmative vote of a majority of the members of
25 the executive board in attendance at the open meeting. The
26 reason for holding the executive board meeting shall be
27 announced at the open meeting prior to the executive board
28 meeting. Official action on discussions held at an executive
29 board meeting shall be taken at an open meeting, and no
30 executive board meeting shall be used as a subterfuge to

1 defeat the purposes of subsection (a) or (e). An executive
2 board meeting may be held for one or more of the following
3 reasons:

4 (i) To discuss any matter involving the employment,
5 termination of employment, terms and conditions of
6 employment, evaluation of performance, promotion or
7 disciplining of any specific prospective employee or
8 current employee employed by the association, or former
9 employee, provided, however, that the individual
10 employees whose rights could be adversely affected may
11 request, in writing, that the matter or matters be
12 discussed at an open meeting.

13 (ii) To consider the purchase or lease of real
14 property up to the time an option to purchase or lease
15 such property is obtained or up to the time an agreement
16 to purchase or lease such property is obtained if the
17 agreement is obtained directly without an option.

18 (iii) To consult with the executive board's attorney
19 or other professional adviser regarding information or
20 strategy in connection with litigation or with issues on
21 which identifiable complaints are expected to be filed.

22 (iv) To review and discuss business which, if
23 conducted in public, would violate a lawful privilege or
24 lead to the disclosure of information or confidentiality
25 protected by law.

26 (2) Nothing in paragraph (1)(i) shall apply to any
27 meeting involving the appointment or selection of any person
28 to fill a vacancy on the executive board.

29 (e) Emergency meetings.--The executive board may call an
30 emergency meeting for the purpose of dealing with a real or

1 potential emergency involving a clear and present danger to life
2 or property. An emergency meeting shall be open to unit owners
3 and shall be subject to the requirements of subsections (b) and
4 (c). The bylaws shall specify which member of the association's
5 executive board shall be responsible for providing notice of any
6 emergency meeting and shall further specify the means and
7 methods of providing such notice, including, but not limited to,
8 posting notice at either the main entrance to the planned
9 community or at a central location within the planned community
10 designated for such purposes.

11 (f) Rules of order.--The bylaws shall provide for rules of
12 order to govern meetings under subsections (a) and (e). The
13 rules may be based on Robert's Rules of Order or any other
14 established set of rules of order or parliamentary procedure.

15 (g) Filing of complaints.--A unit owner may file a complaint
16 with the Bureau of Consumer Protection in the Office of Attorney
17 General if an association either:

18 (1) fails to adopt bylaws as required by this section
19 within either 120 days after the termination of any period of
20 declarant control of the association or 120 days after the
21 effective date of this subsection, whichever is later; or

22 (2) violates any provision of this section.

23 (h) Penalties.--

24 (1) Notwithstanding any provision of the declaration or
25 bylaws to the contrary, the unit owners, by a two-thirds vote
26 of all unit owners present and entitled to vote at any
27 meeting of the unit owners at which a quorum is present, may
28 impose a monetary penalty of not less than \$50 against any
29 member of an executive board, committee or commission or
30 other entity which is a subdivision of the executive board

1 who participates in a meeting with the intent and purpose of
2 violating this section.

3 (2) Official action taken at a meeting under subsection
4 (a) or (e) in violation of the requirements of this section
5 shall be null and void.

6 (i) Exemption.--An association shall be exempt from the
7 requirements of this section during any period of declarant
8 control of the association.

9 (j) Definitions.--As used in this section, the following
10 words and phrases shall have the meanings given to them in this
11 subsection:

12 "Meeting." A prearranged gathering held for the purpose of
13 deliberating association business or taking official action of:

14 (1) an association, which is attended or participated in
15 by a quorum of unit owners;

16 (2) an executive board, which is attended or
17 participated in by a quorum of the executive board; or

18 (3) a committee, commission or other entity which is a
19 subdivision of the executive board of the association which
20 is attended or participated in by a quorum of the committee,
21 commission or entity.

22 "Official action." Any of the following:

23 (1) The establishment of policy by an association.

24 (2) A decision on association business made by an
25 association.

26 (3) A vote taken by an association, executive board or a
27 committee, commission or other entity which is a subdivision
28 of the executive board of the association on a proposal,
29 resolution, rule, regulation or report.

30 Section 3. Sections 5309 and 5310 of Title 68 are amended by

1 adding subsections to read:

2 § 5309. Quorums.

3 * * *

4 (c) Committees, commissions or other entities which are
5 subdivisions of the executive board.--Unless the bylaws specify
6 a larger percentage, a quorum is deemed present throughout any
7 meeting of a committee, commission or other entity which is a
8 subdivision of the executive board if at least 50% of the
9 designated members of the committee, commission or other entity
10 which is a subdivision of the executive board are present at the
11 beginning of the meeting.

12 § 5310. Voting; proxies.

13 * * *

14 (b.1) Executive board proxies.--No vote may be cast under a
15 proxy during a vote of the executive board.

16 * * *

17 Section 4. Section 5316(a) of Title 68 is amended and the
18 section is amended by adding subsections to read:

19 § 5316. Association records.

20 (a) [Financial] Maintenance of records.--The association
21 shall keep [financial records sufficiently detailed to enable
22 the association to comply with section 5407 (relating to resales
23 of units). All financial and other records shall be made
24 reasonably available for examination by any unit owner and
25 authorized agents.] records of its operation, administration and
26 finances that are sufficiently detailed to enable the
27 association to comply with section 5407 (relating to resales of
28 units).

29 (a.1) Inspection and copying.--

30 (1) Books and records kept by or on behalf of an

1 association shall be available for examination and copying by
2 a unit owner in good standing, or the unit owner's authorized
3 agent, to protect the unit owner's interest. This right of
4 examination and copying may be exercised only during
5 reasonable business hours or at a time and location mutually
6 convenient to the association and the unit owner.

7 (2) Books and records kept by or on behalf of an
8 association may be withheld from examination and copying
9 under paragraph (1) to the extent that they concern any of
10 the following:

11 (i) Personnel records.

12 (ii) An individual's medical records.

13 (iii) Records relating to business transactions that
14 are currently in negotiation.

15 (iv) Privileged communications with legal counsel.

16 (v) Complaints against a unit owner.

17 (vi) Records of executive board meetings under
18 section 5308(d) (relating to meetings).

19 (3) The association may impose and collect a charge that
20 represents the actual costs of materials and labor prior to
21 providing copies of any books and records under this
22 subsection.

23 * * *

24 (d) Penalties.--

25 (1) The bylaws shall specify which of the association's
26 officers shall be responsible for the maintenance of records
27 under subsection (a) and the preparation of financial
28 statements under subsection (b).

29 (2) Any officer designated under paragraph (1) who fails
30 to maintain records or prepare financial statements as

1 required by this section shall be subject to a monetary
2 penalty of not less than \$50. Notwithstanding any provision
3 of the declaration or bylaws to the contrary, the unit
4 owners, by a two-thirds vote of all unit owners present and
5 entitled to vote at any meeting of the unit owners at which a
6 quorum is present, may impose the penalty provided by this
7 paragraph.

8 Section 5. This act shall take effect in 60 days.