

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1774 Session of 2015

INTRODUCED BY R. BROWN, BARRAR, COHEN, DAVIS, EMRICK, GIBBONS, A. HARRIS, HEFFLEY, MALONEY, MILLARD, O'NEILL, THOMAS, TOEPEL AND MOUL, JANUARY 5, 2016

AS REPORTED FROM COMMITTEE ON URBAN AFFAIRS, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 14, 2016

AN ACT

1 Amending Title 68 (Real and Personal Property) of the
2 Pennsylvania Consolidated Statutes, in general provisions <--
3 relating to condominiums, cooperatives and planned
4 communities, providing for complaints filed with Bureau of
5 Consumer Protection. AS FOLLOWS: <--

6 IN MANAGEMENT OF THE CONDOMINIUM, PROVIDING FOR MEDIATION
7 IN SUBSTANTIAL CONDOMINIUMS AND FOR COMPLAINTS FILED WITH
8 BUREAU OF CONSUMER PROTECTION;

9 IN PROTECTION OF PURCHASERS, FURTHER PROVIDING FOR EFFECT
10 OF VIOLATIONS ON RIGHTS OF ACTION;

11 IN MANAGEMENT OF COOPERATIVES, PROVIDING FOR MEDIATION IN
12 SUBSTANTIAL COOPERATIVES AND FOR COMPLAINTS FILED WITH BUREAU
13 OF CONSUMER PROTECTION;

14 IN MANAGEMENT OF PLANNED COMMUNITY, PROVIDING FOR
15 MEDIATION IN SUBSTANTIAL PLANNED COMMUNITIES AND FOR
16 COMPLAINTS FILED WITH BUREAU OF CONSUMER PROTECTION AND
17 FURTHER PROVIDING FOR ASSOCIATION RECORDS; AND

18 IN PROTECTION OF PURCHASERS, FURTHER PROVIDING FOR EFFECT
19 OF VIOLATIONS ON RIGHTS OF ACTION.

20 The General Assembly of the Commonwealth of Pennsylvania
21 hereby enacts as follows:

22 Section 1. Title 68 of the Pennsylvania Consolidated <--
23 Statutes is amended by adding sections to read:

24 § 3114. Complaints filed with Bureau of Consumer Protection.

1 ~~(a) General rule. The Bureau of Consumer Protection in the~~  
2 ~~Office of Attorney General shall investigate or mediate a~~  
3 ~~complaint filed with the bureau by a person who is a unit owner~~  
4 ~~against the association in which the person is a member for a~~  
5 ~~violation of any right or benefit of a unit owner as established~~  
6 ~~by this subpart or a bylaw, rule or regulation adopted by the~~  
7 ~~association.~~

8 ~~(b) Construction. Nothing in this section shall be~~  
9 ~~construed to affect or impair the right of a unit owner or~~  
10 ~~association to pursue a private cause of action or seek other~~  
11 ~~relief, as authorized by law.~~

12 ~~§ 4114. Complaints filed with Bureau of Consumer Protection.~~

13 ~~(a) General rule. The Bureau of Consumer Protection in the~~  
14 ~~Office of Attorney General shall investigate or mediate a~~  
15 ~~complaint filed with the bureau by a person who is a proprietary~~  
16 ~~lessee against the association in which the person is a member~~  
17 ~~for a violation of any right or benefit of a proprietary lessee~~  
18 ~~as established by this subpart or a bylaw, rule or regulation~~  
19 ~~adopted by the association.~~

20 ~~(b) Construction. Nothing in this section shall be~~  
21 ~~construed to affect or impair the right of a person who is a~~  
22 ~~proprietary lessee or association to pursue a private cause of~~  
23 ~~action or seek other relief, as authorized by law.~~

24 ~~§ 5115. Complaints filed with Bureau of Consumer Protection.~~

25 ~~(a) General rule. The Bureau of Consumer Protection in the~~  
26 ~~Office of Attorney General shall investigate or mediate a~~  
27 ~~complaint filed with the bureau by a person who is a unit owner~~  
28 ~~against the association in which the person is a member for a~~  
29 ~~violation of any right or benefit of a unit owner as established~~  
30 ~~by this subpart or a bylaw, rule or regulation adopted by the~~

1 association.

2 ~~(b) Construction. Nothing in this section shall be~~  
3 ~~construed to affect or impair the right of a unit owner or~~  
4 ~~association to pursue a private cause of action or seek other~~  
5 ~~relief, as authorized by law.~~

6 Section 2. This act shall take effect in 60 days.

7 SECTION 1. TITLE 68 OF THE PENNSYLVANIA CONSOLIDATED

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8 STATUTES IS AMENDED BY ADDING SECTIONS TO READ:

9 § 3321. MEDIATION IN SUBSTANTIAL CONDOMINIUMS.

10 (A) APPLICABILITY.--

11 (1) A SUBSTANTIAL CONDOMINIUM ESTABLISHED AFTER THE  
12 EFFECTIVE DATE OF THIS SECTION SHALL ADOPT BYLAWS IN  
13 COMPLIANCE WITH THIS SECTION.

14 (2) A SUBSTANTIAL CONDOMINIUM ESTABLISHED ON OR BEFORE  
15 THE EFFECTIVE DATE OF THIS SECTION THAT AMENDS THEIR BYLAWS  
16 AFTER THE EFFECTIVE DATE OF THIS SECTION SHALL AT THAT TIME  
17 ADOPT BYLAWS IN COMPLIANCE WITH THIS SECTION.

18 (B) PROCEDURES.--

19 (1) THE BYLAWS SHALL ESTABLISH PROCEDURES FOR MEDIATION  
20 OR RESOLUTION PROCEDURE FOR DISPUTES BETWEEN:

21 (I) TWO OR MORE UNIT OWNERS; OR

22 (II) A UNIT OWNER AND THE ASSOCIATION.

23 (2) MEDIATION OR DISPUTE RESOLUTION SHALL BE LIMITED TO  
24 DISPUTES WHERE ALL PARTIES AGREE TO MEDIATION.

25 (3) COSTS AND FEES ASSOCIATED WITH MEDIATION OR DISPUTE  
26 RESOLUTION, EXCLUDING ATTORNEY FEES, SHALL BE ASSESSED  
27 EQUALLY AGAINST ALL PARTIES TO A DISPUTE.

28 (C) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING  
29 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
30 SUBSECTION:

1 "SUBSTANTIAL CONDOMINIUM." A CONDOMINIUM CONSISTING OF MORE  
2 THAN 12 UNITS CREATED BEFORE, ON OR AFTER THE EFFECTIVE DATE OF  
3 THIS SECTION. THE TERM SHALL NOT INCLUDE A CONDOMINIUM IN WHICH  
4 ALL UNITS ARE RESTRICTED EXCLUSIVELY TO NONRESIDENTIAL USE.

5 § 3322. COMPLAINTS FILED WITH BUREAU OF CONSUMER PROTECTION.

6 (A) GENERAL RULE.--A UNIT OWNER MAY FILE A COMPLAINT WITH  
7 THE BUREAU OF CONSUMER PROTECTION IN THE OFFICE OF ATTORNEY  
8 GENERAL IN THE EVENT OF A VIOLATION BY THE DECLARANT OR THE  
9 ASSOCIATION OF SECTIONS 3308 (RELATING TO MEETINGS), 3309  
10 (RELATING TO QUORUMS), 3310 (RELATING TO VOTING; PROXIES) AND  
11 3316 (RELATING TO ASSOCIATION RECORDS).

12 (B) CONDITION.--IF A MEDIATION OR DISPUTE PROCEDURE IS  
13 AVAILABLE TO THE UNIT OWNER UNDER THE ASSOCIATION'S DECLARATION,  
14 BYLAWS, RULES OR REGULATIONS, A COMPLAINT MAY NOT BE FILED BY A  
15 UNIT OWNER WITH THE BUREAU OF CONSUMER PROTECTION UNTIL THE  
16 EARLIER OF:

17 (1) THE UNIT OWNER EXHAUSTING THE MEDIATION OR DISPUTE  
18 RESOLUTION PROCEDURE WITHOUT A RESOLUTION BETWEEN THE UNIT  
19 OWNER AND THE ASSOCIATION; OR

20 (2) AT LEAST 100 DAYS HAVE PASSED SINCE THE UNIT OWNER  
21 COMMENCED THE MEDIATION OR DISPUTE RESOLUTION PROCEDURE AND  
22 THE UNIT OWNER AND ASSOCIATION HAVING NOT REACHED A  
23 RESOLUTION.

24 (C) CONSTRUCTION.--NOTHING IN THIS SECTION SHALL BE  
25 CONSTRUED TO AFFECT OR IMPAIR THE RIGHT OF A UNIT OWNER,  
26 DECLARANT OR ASSOCIATION TO PURSUE A PRIVATE CAUSE OF ACTION OR  
27 SEEK OTHER RELIEF.

28 SECTION 2. SECTION 3412 OF TITLE 68 IS AMENDED TO READ:

29 § 3412. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION.

30 IF A DECLARANT OR ANY OTHER PERSON SUBJECT TO THIS SUBPART

1 VIOLATES ANY PROVISION THEREOF OR ANY PROVISION OF THE  
2 DECLARATION OR BYLAWS, ANY PERSON OR CLASS OF PERSONS ADVERSELY  
3 AFFECTED BY THE VIOLATION HAS A CLAIM FOR APPROPRIATE RELIEF.  
4 PUNITIVE DAMAGES MAY BE AWARDED IN THE CASE OF A WILLFUL  
5 VIOLATION OF THE SUBPART AND, IF APPROPRIATE, THE PREVAILING  
6 PARTY MAY BE ENTITLED TO AN AWARD OF COSTS AND REASONABLE  
7 ATTORNEY FEES.

8 SECTION 3. TITLE 68 IS AMENDED BY ADDING SECTIONS TO READ:  
9 § 4322. MEDIATION IN SUBSTANTIAL COOPERATIVES.

10 (A) APPLICABILITY.--

11 (1) A SUBSTANTIAL COOPERATIVE ESTABLISHED AFTER THE  
12 EFFECTIVE DATE OF THIS SECTION SHALL ADOPT BYLAWS IN  
13 COMPLIANCE WITH THIS SECTION.

14 (2) A SUBSTANTIAL COOPERATIVE ESTABLISHED ON OR BEFORE  
15 THE EFFECTIVE DATE OF THIS SECTION THAT AMENDS THEIR BYLAWS  
16 AFTER THE EFFECTIVE DATE OF THIS SECTION SHALL AT THAT TIME  
17 ADOPT BYLAWS IN COMPLIANCE WITH THIS SECTION.

18 (B) PROCEDURES.--

19 (1) THE BYLAWS SHALL ESTABLISH PROCEDURES FOR DISPUTE  
20 RESOLUTION OR MEDIATION OF DISPUTES BETWEEN:

21 (I) TWO OR MORE PROPRIETARY LESSEES; OR

22 (II) A PROPRIETARY LESSEE AND THE ASSOCIATION.

23 (2) MEDIATION OR DISPUTE RESOLUTION SHALL BE LIMITED TO  
24 DISPUTES WHERE ALL PARTIES AGREE TO MEDIATION.

25 (3) COSTS AND FEES ASSOCIATED WITH MEDIATION OR DISPUTE  
26 RESOLUTION, EXCLUDING ATTORNEY FEES, SHALL BE ASSESSED  
27 EQUALLY AGAINST ALL PARTIES TO A DISPUTE.

28 (C) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING  
29 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
30 SUBSECTION:

1 "SUBSTANTIAL COOPERATIVE." A COOPERATIVE CONSISTING OF MORE  
2 THAN 12 UNITS CREATED BEFORE, ON OR AFTER THE EFFECTIVE DATE OF  
3 THIS SECTION. THE TERM SHALL NOT INCLUDE A COOPERATIVE IN WHICH  
4 ALL UNITS ARE RESTRICTED EXCLUSIVELY TO NONRESIDENTIAL USE.

5 § 4323. COMPLAINTS FILED WITH BUREAU OF CONSUMER PROTECTION.

6 (A) GENERAL RULE.--A PROPRIETARY LESSEE MAY FILE A COMPLAINT  
7 WITH THE BUREAU OF CONSUMER PROTECTION IN THE OFFICE OF ATTORNEY  
8 GENERAL IN THE EVENT OF A VIOLATION BY THE DECLARANT OR THE  
9 ASSOCIATION OF SECTIONS 4308 (RELATING TO MEETINGS), 4309  
10 (RELATING TO QUORUMS), 4310 (RELATING TO VOTING; PROXIES) AND  
11 4317 (RELATING TO ASSOCIATION RECORDS).

12 (B) CONDITION.--IF A MEDIATION OR DISPUTE PROCEDURE IS  
13 AVAILABLE TO THE PROPRIETARY LESSEE UNDER THE ASSOCIATION'S  
14 DECLARATION, BYLAWS, RULES OR REGULATIONS, A COMPLAINT MAY NOT  
15 BE FILED BY A PROPRIETARY LESSEE WITH THE BUREAU OF CONSUMER  
16 PROTECTION UNTIL THE EARLIER OF:

17 (1) THE PROPRIETARY LESSEE EXHAUSTING THE MEDIATION OR  
18 DISPUTE RESOLUTION PROCEDURE WITHOUT A RESOLUTION BETWEEN THE  
19 PROPRIETARY LESSEE AND THE ASSOCIATION; OR

20 (2) AT LEAST 100 DAYS HAVE PASSED SINCE THE PROPRIETARY  
21 LESSEE COMMENCED THE MEDIATION OR DISPUTE RESOLUTION  
22 PROCEDURE AND THE PROPRIETARY LESSEE AND ASSOCIATION HAVING  
23 NOT REACHED A RESOLUTION.

24 (C) CONSTRUCTION.--NOTHING IN THIS SECTION SHALL BE  
25 CONSTRUED TO AFFECT OR IMPAIR THE RIGHT OF A PROPRIETARY LESSEE,  
26 DECLARANT OR ASSOCIATION TO PURSUE A PRIVATE CAUSE OF ACTION OR  
27 SEEK OTHER RELIEF, AS AUTHORIZED BY LAW.

28 SECTION 4. SECTION 5316(C) OF TITLE 68 IS AMENDED TO READ:

29 § 5316. ASSOCIATION RECORDS.

30 \* \* \*

1        [(C) FILING OF COMPLAINTS.--IF AN ASSOCIATION SUBJECT TO  
2 SUBSECTION (A) FAILS TO PROVIDE A COPY OF THE ANNUAL FINANCIAL  
3 STATEMENTS AND, IF APPLICABLE, THE REPORT OF AN INDEPENDENT  
4 ACCOUNTANT AS REQUIRED UNDER SUBSECTION (B) TO THE REQUESTING  
5 UNIT OWNER WITHIN 30 DAYS OF THE UNIT OWNER'S WRITTEN REQUEST OR  
6 IF THE FINANCIAL RECORDS OF THE ASSOCIATION WHICH SUBSTANTIATE  
7 AN ASSOCIATION'S FINANCIAL STATEMENTS ARE NOT MADE REASONABLY  
8 AVAILABLE BY ANY ASSOCIATION FOR EXAMINATION BY ANY UNIT OWNER  
9 AND AUTHORIZED AGENTS, THE UNIT OWNER MAY FILE A COMPLAINT WITH  
10 THE BUREAU OF CONSUMER PROTECTION IN THE OFFICE OF ATTORNEY  
11 GENERAL.]

12        SECTION 5. THE ACT IS AMENDED BY ADDING SECTIONS TO READ:  
13 § 5321. MEDIATION IN SUBSTANTIAL PLANNED COMMUNITIES.

14        (A) APPLICABILITY.--

15            (1) A SUBSTANTIAL PLANNED COMMUNITY ESTABLISHED AFTER  
16 THE EFFECTIVE DATE OF THIS SECTION SHALL ADOPT BYLAWS IN  
17 COMPLIANCE WITH THIS SECTION.

18            (2) A SUBSTANTIAL COMMUNITY ESTABLISHED ON OR BEFORE THE  
19 EFFECTIVE DATE OF THIS SECTION THAT AMENDS THEIR BYLAWS AFTER  
20 THE EFFECTIVE DATE OF THIS SECTION SHALL AT THAT TIME ADOPT  
21 BYLAWS IN COMPLIANCE WITH THIS SECTION.

22        (B) PROCEDURES.--

23            (1) THE BYLAWS SHALL ESTABLISH PROCEDURES FOR DISPUTE  
24 RESOLUTION OR MEDIATION OF DISPUTES BETWEEN:

25                    (I) TWO OR MORE UNIT OWNERS; OR

26                    (II) A UNIT OWNER AND THE ASSOCIATION.

27            (2) MEDIATION OR DISPUTE RESOLUTION SHALL BE LIMITED TO  
28 DISPUTES WHERE ALL PARTIES AGREE TO MEDIATION.

29            (3) COSTS AND FEES ASSOCIATED WITH MEDIATION OR DISPUTE  
30 RESOLUTION, EXCLUDING ATTORNEY FEES, SHALL BE ASSESSED

1 EQUALLY AGAINST ALL PARTIES TO A DISPUTE.

2 (C) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING  
3 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
4 SUBSECTION:

5 "SUBSTANTIAL PLANNED COMMUNITY." A PLANNED COMMUNITY  
6 CONSISTING OF MORE THAN 12 UNITS CREATED BEFORE, ON OR AFTER THE  
7 EFFECTIVE DATE OF THIS SECTION. THE TERM SHALL NOT INCLUDE A  
8 PLANNED COMMUNITY IN WHICH ALL UNITS ARE RESTRICTED EXCLUSIVELY  
9 TO NONRESIDENTIAL USE.

10 § 5322. COMPLAINTS FILED WITH BUREAU OF CONSUMER PROTECTION.

11 (A) GENERAL RULE.--A UNIT OWNER MAY FILE A COMPLAINT WITH  
12 THE BUREAU OF CONSUMER PROTECTION IN THE OFFICE OF THE ATTORNEY  
13 GENERAL IN THE EVENT OF A VIOLATION BY THE DECLARANT OR THE  
14 ASSOCIATION OF SECTIONS 5308 (RELATING TO MEETINGS), 5309  
15 (RELATING TO QUORUMS), 5310 (RELATING TO VOTING; PROXIES) AND  
16 5316 (RELATING TO ASSOCIATION RECORDS).

17 (B) CONDITION.--IF A MEDIATION OR DISPUTE PROCEDURE IS  
18 AVAILABLE TO THE UNIT OWNER UNDER THE ASSOCIATION'S DECLARATION,  
19 BYLAWS, RULES OR REGULATIONS, A COMPLAINT MAY NOT BE FILED BY A  
20 UNIT OWNER WITH THE BUREAU OF CONSUMER PROTECTION UNTIL THE  
21 EARLIER OF:

22 (1) THE UNIT OWNER EXHAUSTING THE MEDIATION OR DISPUTE  
23 RESOLUTION PROCEDURE WITHOUT A RESOLUTION BETWEEN THE UNIT  
24 OWNER AND THE ASSOCIATION; OR

25 (2) AT LEAST 100 DAYS HAVE PASSED SINCE THE UNIT OWNER  
26 COMMENCED THE MEDIATION OR DISPUTE RESOLUTION PROCEDURE AND  
27 THE UNIT OWNER AND ASSOCIATION HAVING NOT REACHED A  
28 RESOLUTION.

29 (C) CONSTRUCTION.--NOTHING IN THIS SECTION SHALL BE  
30 CONSTRUED TO AFFECT OR IMPAIR THE RIGHT OF A UNIT OWNER,

1 DECLARANT OR ASSOCIATION TO PURSUE A PRIVATE CAUSE OF ACTION OR  
2 SEEK OTHER RELIEF, AS AUTHORIZED BY LAW.

3 SECTION 6. SECTION 5412 OF TITLE 68 IS AMENDED TO READ:  
4 § 5412. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION.

5 IF A DECLARANT OR ANY OTHER PERSON SUBJECT TO THIS SUBPART  
6 VIOLATES ANY PROVISION OF THIS SUBPART OR ANY PROVISIONS OF THE  
7 DECLARATION OR BYLAWS, ANY PERSON OR CLASS OF PERSONS ADVERSELY  
8 AFFECTED BY THE VIOLATION HAS A CLAIM FOR APPROPRIATE RELIEF.  
9 PUNITIVE DAMAGES MAY BE AWARDED IN THE CASE OF A WILLFUL  
10 VIOLATION OF THE SUBPART AND, IF APPROPRIATE, THE PREVAILING  
11 PARTY MAY BE ENTITLED TO AN AWARD OF COSTS AND REASONABLE  
12 ATTORNEY FEES.

13 SECTION 7. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.