

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1662 Session of
2001

INTRODUCED BY T. STEVENSON, LEWIS, PIPPY, McNAUGHTON, MARSICO,
YOUNGBLOOD, WATSON, WALKO, TIGUE, CALTAGIRONE, B. SMITH,
BIRMELIN, PETRONE AND SCAVELLO, MAY 23, 2001

AS REPORTED FROM COMMITTEE ON URBAN AFFAIRS, HOUSE OF
REPRESENTATIVES, AS AMENDED, NOVEMBER 20, 2002

AN ACT

1 Amending Title 68 (Real and Personal Property) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 real estate cooperatives.

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

6 Section 1. Section 4102(b) of Title 68 of the Pennsylvania
7 Consolidated Statutes is amended AND THE SECTION IS AMENDED BY <—
8 ADDING A SUBSECTION to read:

9 § 4102. Applicability of subpart.

10 * * *

11 (b) Existing cooperatives.--Except as provided in subsection

12 (c), sections 4106, 4107, ~~4108 (relating to supplemental general~~ <—

13 ~~principles of law applicable), 4112 (relating to obligation of~~

14 ~~good faith), 4202 (relating to unit boundaries), 4203 (relating~~

15 to construction and validity of declaration and bylaws), ~~4204~~ <—

16 ~~(relating to description of units), 4216 (relating to amendment~~

17 ~~of declaration), 4217 (relating to termination of cooperative~~

1 ~~ownership)~~, 4219 (relating to master associations), 4220
2 (relating to merger or consolidation of cooperatives),
3 4302(a)(1) through (6), ~~(8), (9)~~ and (11) through (17) (relating <—
4 to powers of association), ~~4303 (relating to executive board~~ <—
5 ~~members and officers), 4307 (relating to upkeep of cooperative),~~
6 4311 (relating to tort and contract liability), ~~4313 (relating~~ <—
7 ~~to insurance), 4314 (relating to assessments for common~~
8 ~~expenses)~~, 4315 (relating to lien for assessments), 4317
9 (relating to association records), 4319 (relating to termination
10 of cooperative interest), 4409 (relating to resales of
11 cooperative interests) and 4415 (relating to effect of
12 violations on rights of action), and section 4103 (relating to
13 definitions) to the extent necessary in construing any of those
14 sections, apply to all cooperatives created in this Commonwealth
15 before the effective date of this subpart, but those sections
16 apply only with respect to events and circumstances occurring
17 after the effective date of this subpart and do not invalidate
18 existing provisions of the cooperative documents of those
19 cooperatives. By compliance with the requirements of section
20 4201 (relating to creation of cooperative ownership), a
21 cooperative created in this Commonwealth before the effective
22 date of this subpart may be made subject to all of the
23 provisions of this subpart, effective as of the date of
24 recordation of the document or documents specified in section
25 4201, without in any way terminating the cooperative status of
26 the property or in any way affecting any lien or encumbrance on
27 the property, if the terms of such document or documents have
28 been approved by all the persons whose actions would have been
29 required to effect the termination of the cooperative pursuant
30 to [its governing documents in effect at the time such approval

1 is given] section 4217 (RELATING TO TERMINATION OF COOPERATIVE <—
2 OWNERSHIP), provided, however, that such action shall not
3 increase the obligations or responsibilities of a declarant, as
4 such and not as a proprietary lessee, without the joinder of the
5 declarant in the document or documents required by section 4201.

6 (B.1) RETROACTIVITY.--EXCEPT AS PROVIDED IN SUBSECTIONS (B) <—
7 AND (C), SECTIONS 4108 (RELATING TO SUPPLEMENTAL GENERAL
8 PRINCIPLES OF LAW APPLICABLE), 4112 (RELATING TO OBLIGATION OF
9 GOOD FAITH), 4202 (RELATING TO UNIT BOUNDARIES), 4204 (RELATING
10 TO DESCRIPTION OF UNITS), 4216 (RELATING TO AMENDMENT OF
11 DECLARATION), 4217 (RELATING TO TERMINATION OF COOPERATIVE
12 OWNERSHIP), 4302(A)(8) AND (9) (RELATING TO POWERS OF
13 ASSOCIATION), 4303 (RELATING TO EXECUTIVE BOARD MEMBERS AND
14 OFFICERS), 4307 (RELATING TO UPKEEP OF COOPERATIVE), 4313
15 (RELATING TO INSURANCE) AND 4314 (RELATING TO ASSESSMENTS FOR
16 COMMON EXPENSES), TO THE EXTENT NECESSARY IN CONSTRUING ANY OF
17 THOSE SECTIONS, APPLY TO ALL COOPERATIVES CREATED IN THIS
18 COMMONWEALTH BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION; BUT
19 THOSE SECTIONS APPLY ONLY WITH RESPECT TO EVENTS AND
20 CIRCUMSTANCES OCCURRING AFTER THE EFFECTIVE DATE OF THIS
21 SUBSECTION AND DO NOT INVALIDATE EXISTING PROVISIONS OF THE
22 COOPERATIVE DOCUMENTS OF THOSE COOPERATIVES.

23 * * *

24 Section 2. Section 4203 of Title 68 is amended by adding a
25 subsection to read:

26 § 4203. Construction and validity of declaration and bylaws.

27 * * *

28 (e) Interpretation and application of declaration.--The
29 executive board shall have the powers to interpret and apply the
30 declaration and bylaws and to resolve all conflicts or disputes

1 requiring the interpretation and application of the declaration.
2 As between unit owners, the decision of the board shall be final
3 and shall be enforceable at law as a decision of an arbitrator.
4 The executive board and its members shall have no liability for
5 exercising these powers, provided they are exercised in good
6 faith and in the best interest of the association in the manner
7 set forth in section 4303 (relating to executive board members
8 and officers).

9 Section 3. Sections 4216(a) and (f), 4217(a), 4218,
10 4302(a)(4), (6), (8), (12) and (14), and 4303(a) of Title 68 are
11 amended to read:

12 § 4216. Amendment of declaration.

13 (a) Number of votes required.--Except in cases of amendments
14 that may be executed by a declarant under section 4209 (relating
15 to exercise of development rights), the association under
16 section 4107 (relating to eminent domain), 4206(c) (relating to
17 leasehold cooperatives), 4208(c) (relating to limited common
18 elements), 4211(a) (relating to relocation of boundaries between
19 adjoining units) or 4212 (relating to subdivision of units), the
20 executive board of the association under subsection (f) or
21 certain proprietary lessees under section 4208(b), 4211(a),
22 4212(b) or 4217(b) (relating to termination of cooperative
23 ownership), and except as limited by subsection (d), the
24 declaration, including the plats and plans, may be amended only
25 by vote or written agreement of proprietary lessees of
26 cooperative interests to which at least 67% of the votes in the
27 association are allocated [or any larger majority the
28 declaration specifies.], without regard for any larger majority
29 the declaration may specify or the absence of any amendment
30 provisions in the declaration. The declaration may specify a

1 smaller number only if all of the units are restricted
2 exclusively to nonresidential use.

3 * * *

4 (f) Corrective amendments.--Except as otherwise provided in
5 the declaration, if any amendment to the declaration is
6 necessary in the judgment of the executive board to cure any
7 ambiguity or to correct or supplement any provision of the
8 declaration that is defective, missing or inconsistent with any
9 other provision thereof or with this subpart or if an amendment
10 is necessary in the judgment of the executive board to conform
11 to the requirements of any agency or entity that has established
12 national or regional standards with respect to loans secured by
13 mortgages or deeds of trust on units in condominium projects
14 (such as the Federal National Mortgage Association and the
15 Federal Home Loan Mortgage Corporation), to comply with any
16 statute, regulation, code or ordinance applicable to the
17 cooperative or association, or to make a reasonable
18 accommodation or permit a reasonable modification in favor of
19 handicapped, as may be defined by prevailing Federal or State
20 laws or regulations applicable to the association, unit owners,
21 residents or employees, then, at any time and from time to time,
22 the executive board may at its discretion effect an appropriate
23 corrective amendment without the approval of the proprietary
24 lessees or the holders of any liens on all or any part of the
25 cooperative, upon receipt by the executive board of an opinion
26 from independent legal counsel to the effect that the proposed
27 amendment is permitted by the terms of this subsection.

28 § 4217. Termination of cooperative ownership.

29 (a) Number of votes required.--[Except:] Without regard for
30 the provisions of any declaration purporting to establish any

1 self-executing deadline or termination date for any cooperative
2 existing under this subpart, except:

3 (1) in the case of the taking of all of the units by
4 eminent domain (section 4107);

5 (2) in the case of foreclosure of a security interest
6 against the entire cooperative which has priority over the
7 declaration or which is subordinate to a declaration that
8 expressly provides that the holder of the security interest
9 has the right to terminate the cooperative when the
10 foreclosure of the security interest has been consummated; or

11 (3) in the case of the expiration or termination of a
12 lease which has priority over the declaration (unless a
13 contrary intent is expressly stated in the lease);

14 no cooperative ownership may be terminated [only at a meeting of
15 the association and] except by the vote, in person or by proxy,
16 or by the written agreement of proprietary lessees of
17 cooperative interests to which at least 80% of the votes in the
18 association are allocated or any larger percentage the
19 declaration specifies. The declaration may specify a smaller
20 percentage only if all of the units in the cooperative are
21 restricted exclusively to nonresidential uses.

22 * * *

23 § 4218. Rights of secured lenders and secured creditors.

24 (a) Secured lender approval.--The declaration may provide
25 that all or a specified number or percentage of secured
26 creditors of the association or lenders holding security
27 interests encumbering the cooperative interests approve
28 specified actions of the proprietary lessees of the association
29 as a condition to the effectiveness of those actions, and the
30 declaration may provide for procedures that will enable such

lenders to have their approval rights recognized by the executive board, but no requirement for approval may operate to:

(1) Deny or delegate control over the general administrative affairs of the association by the proprietary lessees or the executive board.

(2) Prevent the association or the executive board from commencing, intervening in or settling any litigation or proceeding.

(3) Receive and distribute any insurance proceeds except pursuant to section 4313 (relating to insurance).

(b) Secured lender approval procedures.--If the declaration requires mortgagees or beneficiaries of deeds of trust encumbering the units to approve specified actions of the proprietary lessees or the association as a condition to the effectiveness of those actions, then the executive board shall provide the lender with written notice of the specified action proposed to be taken, together with a request for the secured lender to approve or disapprove the actions specified. If the notice to the secured lender states that the secured lender will be deemed to have approved the actions specified in the written notice if it does not respond to the request within 30 days, and the secured lender does not respond in writing within 30 days, then the secured lender will be deemed for all purposes to have approved the action specified in the notice. Written notice to the secured lender must be given by first-class mail, postage prepaid, at the address provided by the secured lender, or in the absence thereof, at the address of the secured lender endorsed on any mortgage or deed of trust of record or the address to which the unit owner mails any periodic payment paid to the secured lender; the notice to the secured lender must

1 include a statement of the specified action, a copy of the full
2 text of any proposed amendment and a form prepared by the
3 association upon which the secured lender may indicate its
4 approval or rejection of the specified action or amendment.

5 § 4302. Powers of association.

6 (a) General rule.--Except as provided in subsection (b) and
7 subject to the provisions of the declaration, the association
8 may:

9 * * *

10 (4) Institute, defend or intervene in litigation or
11 administrative proceedings, or engage in arbitrations or
12 mediations, in its own name on behalf of itself or two or
13 more proprietary lessees on matters affecting the
14 cooperative.

15 * * *

16 (6) Regulate the use, maintenance, repair, replacement
17 and modification of common elements[.] and make reasonable
18 accommodation, or permit reasonable modifications to be made
19 to units or the common elements, to accommodate handicapped
20 as defined by prevailing Federal, State or local statute,
21 regulation, code or ordinance, proprietary lessees,
22 residents, tenants or employees.

23 * * *

24 (8) Acquire, hold, encumber and convey in its own name
25 any right, title or interest to real or personal property,
26 and pledge or assign assessment income necessary to create
27 amortization reserves to retire debts, but part of the
28 cooperative may be conveyed or all or part of the cooperative
29 may be subjected to a security interest only pursuant to
30 section 4312 (relating to conveyance or encumbrance of

1 cooperative). Reserve funds held for future major repairs and
2 replacements of the common elements may not be assigned or
3 pledged.

4 * * *

5 (12) Impose reasonable charges for the preparation and
6 recordation of amendments to the declaration, resale
7 certificates required by section 4409 (relating to resales of
8 cooperative interests) or statements of unpaid assessments.
9 In addition, an association may impose a capital improvement
10 fee on the resale or transfer the leasehold interest in units
11 in accordance with the following:

12 (i) The capital improvement fee for any unit may not
13 exceed the annual assessments for general common expense
14 charged to such unit during the most recently completed
15 fiscal year of the association, provided that:

16 (A) in the case of resale or transfer of the
17 leasehold interest in a unit consisting of unimproved
18 real estate, the capital improvement fee may not
19 exceed one-half of the annual assessments for general
20 common expenses charged to such unit during the most
21 recently completed fiscal year of the association;

22 (B) in the case of resale or transfer of the
23 leasehold interest in a unit which was created or
24 added to the cooperative in accordance with section
25 4209 (relating to exercise of development rights) at
26 some time during the most recently completed fiscal
27 year of the association but was not in existence for
28 the entire fiscal year, the capital improvement fee
29 may not exceed one-half of the annual assessments for
30 general common expenses charged to a unit comparable

1 to such unit during the most recently completed
2 fiscal year of the association; and

3 (C) capital improvement fees are not refundable
4 upon any sale, conveyance or other transfer of the
5 proprietary lease to a unit.

6 (ii) Capital improvement fees allocated by an
7 association must be maintained in a separate capital
8 account, may be expended only for new capital
9 improvements or replacement of existing common elements
10 and improvements on the common elements and may not be
11 expended for operation, maintenance or other purposes.

12 (iii) No capital improvement fee may be imposed on
13 any gratuitous transfer of a proprietary interest in a
14 unit between any of the following family members:
15 spouses, parent and child, siblings, grandparent and
16 grandchild.

17 (iv) No fees may be imposed upon any person who:

18 (A) acquires a proprietary interest in a unit
19 consisting of unimproved real estate and signs and
20 delivers to the association at the time of such
21 person's acquisition a sworn affidavit declaring the
22 person's intention to reconvey such unit within 18
23 months of its acquisition; and

24 (B) completes such reconveyance within 18
25 months.

26 * * *

27 (14) Assign its right to future income, including the
28 right to receive the payments made on account of common
29 expense assessments[, but only to the extent the declaration
30 expressly so provides].

1 * * *

2 § 4303. Executive board members and officers.

3 (a) Fiduciary status and exercise of duties.--Except as
4 provided in the declaration, the bylaws in subsection (b) or in
5 other provisions of this subpart, the executive board may act in
6 all instances on behalf of the association. In the performance
7 of their duties, the officers and members of the executive board
8 shall stand in a fiduciary relation to the association and shall
9 perform their duties, including duties as members of any
10 committee of the board upon which they may serve, in good faith,
11 in a manner they reasonably believe to be in the best interests
12 of the association and with such care, including reasonable
13 inquiry, skill and diligence, as a person of ordinary prudence
14 would use under similar circumstances. In managing the
15 association's reserve funds, the officers and members of the
16 executive board shall have the power to invest the association's
17 reserve funds in investments permissible by law for the
18 investment of trust funds and shall be governed in the
19 management of the association's reserve funds by the Prudent <—
20 Investor Rule 20 PA.C.S. § 7203 (RELATING TO PRUDENT INVESTOR <—
21 RULE). In performing his duties, an officer or executive board
22 member shall be entitled to rely in good faith on information,
23 opinions, reports or statements, including financial statements
24 and other financial data, in each case prepared or presented by
25 any of the following:

26 (1) One or more other officers or employees of the
27 association whom the officer or executive board member
28 reasonably believes to be reliable and competent in the
29 matters presented.

30 (2) Counsel, public accountants or other persons as to

1 matters which the officer or executive board member
2 reasonably believes to be within the professional or expert
3 competence of such person.

4 (3) A committee of the executive board upon which he
5 does not serve, duly designated in accordance with law, as to
6 matters within its designated authority, which committee the
7 officer or executive board member reasonably believes to
8 merit confidence.

9 An officer or executive board member shall not be considered to
10 be acting in good faith if he has knowledge concerning the
11 matter in question that would cause his reliance to be
12 unwarranted.

13 * * *

14 Section 4. Sections 4313(a), (b), (e) and (g), and <—
15 ~~4315(b)(2)~~, 4315(B)(2) AND 4409(C) of Title 68 are amended and <—
16 the sections are amended by adding subsections to read:

17 § 4313. Insurance.

18 (a) Insurance to be carried by association.--Commencing not
19 later than the time of the first conveyance of a cooperative
20 interest to a person other than a declarant, the association
21 shall maintain, to the extent reasonably available:

22 (1) Property insurance on the common elements and units
23 insuring against all risks of direct physical loss commonly
24 insured against or, in the case of a conversion building,
25 against fire and extended coverage perils. The total amount
26 of insurance after application of any deductibles shall be
27 not less than 80% of the actual cash value of the insured
28 property at the time the insurance is purchased and at each
29 renewal date, exclusive of land, excavations, foundations and
30 other items normally excluded from property policies.

1 (2) Liability insurance, including medical payments
2 insurance, in an amount determined by the executive board but
3 not less than any amount specified in the declaration,
4 covering all occurrences commonly insured against for death,
5 bodily injury and property damage arising out of or in
6 connection with the use, ownership or maintenance of the
7 common elements and units.

8 (3) Any property or comprehensive general liability
9 insurance carried by the association may contain a deductible
10 provision.

11 (b) Other insurance carried by association.--If the
12 insurance described in subsection (a) is not reasonably
13 available, the association promptly shall cause notice of that
14 fact to be hand delivered or sent prepaid by the United States
15 mail to all proprietary lessees. The declaration may require the
16 association to carry any other insurance, and the association in
17 any event may carry any other insurance [it deems] in such
18 reasonable amounts and with such reasonable deductibles as it
19 may deem appropriate to protect the association or the
20 proprietary lessees.

21 * * *

22 (e) Unit owner may obtain insurance.--A proprietary lessee
23 may insure the lessee's unit for all losses to his unit,
24 including losses not covered by the insurance maintained by the
25 association, due to a deductible provision or otherwise. An
26 insurance policy issued to the association [does] shall not
27 prevent a proprietary lessee from obtaining insurance for his
28 own benefit[.], including insurance to cover any deductibles or
29 losses not covered by the association's property or
30 comprehensive general liability insurance.

1 * * *

2 (g) Disposition of insurance proceeds.--

3 (1) Any portion of the cooperative for which insurance
4 is required under this section which is damaged or destroyed
5 shall be repaired or replaced promptly by the association
6 unless:

7 (i) the cooperative is terminated;

8 (ii) repair or replacement would be illegal under
9 any State or local health or safety statute or ordinance;
10 or

11 (iii) 80% of the proprietary lessees, including
12 every proprietary lessee of a unit or assigned limited
13 common element which will not be rebuilt, vote not to
14 rebuild.

15 [The cost of repair or replacement in excess of insurance
16 proceeds and reserves is a common expense.]

17 (2) If the entire cooperative is not repaired or
18 replaced:

19 (i) the insurance proceeds attributed to the damaged
20 common elements must be used to restore the damaged area
21 to a condition compatible with the remainder of the
22 cooperative; and

23 (ii) except to the extent that other persons will be
24 distributees and except as is otherwise provided in
25 section 4321(i) (relating to limited equity
26 cooperatives):

27 (A) the insurance proceeds attributable to units
28 and limited common elements which are not rebuilt
29 must be distributed to the proprietary lessees of
30 those units and the proprietary lessees of the units

1 to which those limited common elements were located
2 or to lienholders, as their interests may appear; and

3 (B) the remainder of the proceeds must be
4 distributed to all the proprietary lessees or
5 lienholders, as their interests may appear, in
6 proportion to the common expense liabilities of all
7 the cooperative interests.

8 If the proprietary lessees vote not to rebuild any unit, the
9 allocated interests of the cooperative interest of which that
10 unit is a part are automatically reallocated upon the vote as
11 if the unit had been condemned under section 4107(a)
12 (relating to eminent domain), and the association promptly
13 shall prepare, execute and record an amendment to the
14 declaration reflecting the reallocations.

15 (3) Notwithstanding the provisions of this subsection,
16 section 4217 (relating to termination of cooperative
17 ownership) governs the distribution of insurance proceeds if
18 the cooperative is terminated.

19 * * *

20 (i) Recovery of deductibles.--If an insurance policy
21 maintained by the association contains a deductible, then that
22 portion of any loss or claim which is not covered by insurance
23 due to the application of a deductible, as well as any claim or
24 loss for which the association is self-insured, shall be levied
25 by the executive board in accordance with section 4314(c)
26 (relating to assessments for common expenses) to the extent
27 applicable or, in the absence of the application of section
28 4314(c), as a common expense assessment against all of the
29 units.

30 § 4315. Lien for assessments.

* * *

(b) Priority of lien.--

* * *

(2) The association's lien for [common expenses] <—
ASSESSMENTS shall be divested by a judicial sale in <—
~~foreclosure of the first mortgage~~ of the cooperative
interest:

(i) [As to unpaid common expense assessments made
under section 4314(b)] Except as to unpaid assessments
for which the association has a lien under this section
that come due during the six months immediately preceding
[institution of] a judicial sale of a cooperative
interest in an action to enforce collection of a lien
against a cooperative interest [by a judicial sale, only
to the extent that the six months unpaid assessments are
paid out of the proceeds of the sale].

~~(ii) As to unpaid [common expense] assessments [made~~ <—
~~under section 4314(b)] for which the association has a~~
~~lien under this section other than the six months~~

(II) [AS TO UNPAID COMMON EXPENSE ASSESSMENTS MADE <—
UNDER SECTION 4314(B) OTHER THAN THE SIX MONTHS
assessment referred to in subparagraph (i), in the full
amount of these unpaid assessments, whether or not the <—
proceeds of the judicial sale are adequate to pay these
~~assessments~~. ASSESSMENTS.] To the extent the proceeds of <—
the sale are sufficient to pay some or all of [these] the
additional unpaid assessments, after satisfaction in full
of the costs of the judicial sale, and the liens and
encumbrances of the types described in paragraph (1) and
the unpaid common expense assessments that come due

1 during the six-month period described in subparagraph
2 (i), they shall be paid before any remaining proceeds may
3 be paid to any other claimant, including the prior owner
4 of the cooperative interest.

5 * * *

6 (i) Application of payments.--

7 (1) Unless the declaration otherwise provides, any
8 payment received by an association in connection with the
9 lien under this section shall be applied:

10 (i) First to any interest accrued by the
11 association.

12 (ii) Second to any late fee.

13 (iii) Third to any costs and reasonable attorney
14 fees incurred by the association in collection or
15 enforcement.

16 (iv) Last to the delinquent assessment.

17 (2) Paragraph (1) shall apply notwithstanding any
18 restrictive endorsement, designation or instructions placed
19 on or accompanying a payment.

20 § 4409. REALES OF COOPERATIVE INTERESTS.

<—

21 * * *

22 (C) LIABILITY FOR ERROR OR INACTION BY ASSOCIATION.--A
23 PURCHASER IS NOT LIABLE FOR ANY UNPAID ASSESSMENT OR FEE GREATER
24 THAN THE AMOUNT SET FORTH IN THE CERTIFICATE PREPARED BY THE
25 ASSOCIATION. A PROPRIETARY LESSEE IS NOT LIABLE TO A PURCHASER
26 FOR THE FAILURE OR DELAY OF THE ASSOCIATION TO PROVIDE THE
27 CERTIFICATE IN A TIMELY MANNER[, BUT THE PURCHASE CONTRACT IS
28 VOIDABLE BY THE PURCHASER UNTIL THE CERTIFICATE HAS BEEN
29 PROVIDED AND FOR FIVE DAYS THEREAFTER OR UNTIL CONVEYANCE,
30 WHICHEVER FIRST OCCURS].

1 (D) PURCHASE CONTRACT VOIDABLE.--THE PURCHASE CONTRACT IS
2 VOIDABLE BY THE PURCHASER UNTIL THE CERTIFICATE HAS BEEN
3 PROVIDED AND FOR FIVE DAYS THEREAFTER OR UNTIL CONVEYANCE,
4 WHICHEVER FIRST OCCURS.

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