

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1331 Session of
2003

INTRODUCED BY T. STEVENSON, CAPPELLI, HENNESSEY, LEWIS, MARSICO,
McNAUGHTON, R. MILLER, B. SMITH, TIGUE, WATSON AND
YOUNGBLOOD, MAY 5, 2003

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MAY 5, 2003

AN ACT

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

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

6 Section 1. Section 3102(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 § 3102. Applicability of subpart.

10 * * *

11 (a.1) Retroactivity.--Except as provided in subsection (a),
12 sections 3108 (relating to supplemental general principles of
13 law), 3112 (relating to obligation of good faith), 3202
14 (relating to unit boundaries), 3219 (relating to amendment of
15 declaration), 3220 (relating to termination of condominium),
16 3302(a)(8) (relating to powers of unit owners' association),
17 3303 (relating to executive board members and officers), 3307
18 (relating to upkeep of condominium), 3312 (relating to

1 insurance) and 3314 (relating to assessments for common
2 expenses), to the extent necessary in construing any of those
3 sections, shall apply to all condominiums created in this
4 Commonwealth before the effective date of this subsection; but
5 those sections apply only with respect to events and
6 circumstances occurring after the effective date of this
7 subsection and do not invalidate existing provisions of the
8 declaration, code of regulations or declaration plan of those
9 condominiums.

10 (b) Prior statutory law.--The provisions of the act of July
11 3, 1963 (P.L.196, No.117), known as the Unit Property Act, do
12 not apply to condominiums created after the effective date of
13 this subpart and do not invalidate any amendment to the
14 declaration, code of regulations or declaration plan of any
15 condominium created before the effective date of this subpart if
16 the amendment would be permitted by this subpart. The amendment
17 must be adopted in conformity with the procedures and
18 requirements specified by those instruments and by the
19 provisions of the Unit Property Act. If the amendment grants to
20 any person any rights, powers or privileges permitted by this
21 subpart, all correlative obligations, liabilities and
22 restrictions in this subpart also apply to that person. By
23 amendment to the declaration, code of regulations and
24 declaration plan, a condominium created pursuant to the Unit
25 Property Act may be made subject to all of the provisions of
26 this subpart in lieu of the provisions of the Unit Property Act,
27 effective as of the date of recordation of such amendments and
28 without in any way terminating the condominium status of the
29 property or in any way affecting any lien or encumbrance on the
30 property, if the terms of such amended documents conform to the

1 requirements of this subpart and if such amendments have been
2 approved by [all the persons whose actions would have been
3 required to effect a removal of the property from the Unit
4 Property Act pursuant to section 601 thereof] vote or written
5 agreement of unit owners pursuant to the procedures established
6 in section 3219. No amendment of:

7 (1) the declaration, code of regulations or declaration
8 plan of a condominium created pursuant to the Unit Property
9 Act; or

10 (2) the declaration, bylaws or plats and plans of a
11 condominium created pursuant to this subpart;
12 may increase the obligations or responsibilities of a declarant
13 (as such and not as a unit owner) without the joinder of the
14 declarant in such amendment.

15 * * *

16 Section 2. Section 3203 of Title 68 is amended by adding a
17 subsection to read:

18 § 3203. Construction and validity of declaration and bylaws.

19 * * *

20 (e) Interpretation and application of declaration.--The
21 executive board shall have the powers to interpret and apply the
22 declaration and bylaws, and to resolve all conflicts or disputes
23 requiring the interpretation and application of the declaration.
24 As between unit owners, the decision of the board shall be
25 final, and shall be enforceable at law as a decision of an
26 arbitrator. The executive board and its members shall have no
27 liability for exercising these powers provided they are
28 exercised in good faith and in the best interest of the
29 association in the manner set forth in section 3303 (relating to
30 executive board members and officers).

1 Section 3. Sections 3218, 3219(a) and (f), 3220(a), 3221,
2 3302(a) and 3303(a) of Title 68 are amended to read:

3 § 3218. Easement to facilitate completion, conversion and
4 expansion.

5 Subject to the provisions of the declaration, a declarant has
6 an easement through the common elements as may be reasonably
7 necessary for the purpose of discharging a declarant's
8 obligations or exercising special declarant rights, however
9 arising. The declarant who exercises the easement rights
10 described in this section, whether directly, or indirectly
11 through an agent, servant, contractor or employee, shall have
12 the obligation to promptly return any damaged portion of the
13 common elements to the appearance, condition and function in
14 which it existed prior to the exercise of the easement, or to
15 reimburse the association for all reasonable costs, fees and
16 expenses incurred by the association to return any damaged
17 portion of the common elements to the appearance, condition and
18 function in which it existed prior to the exercise of the
19 easement.

20 § 3219. Amendment of declaration.

21 (a) Number of votes required.--Except in cases of amendments
22 that may be executed by a declarant under section 3210(e) and
23 (f) (relating to plats and plans), 3211(a) (relating to
24 conversion and expansion of flexible condominiums) or 3212(a)
25 (relating to withdrawal of withdrawable real estate); the
26 association under subsection (f) or section 3107 (relating to
27 eminent domain), 3207(d) (relating to leasehold condominiums),
28 3209(c) (relating to limited common elements) or 3215(a)
29 (relating to subdivision or conversion of units); or certain
30 unit owners under section 3209(b) (relating to limited common

1 elements), 3214(a) (relating to relocation of boundaries between
2 adjoining units), 3215(b) (relating to subdivision or conversion
3 of units) or 3220(b) (relating to termination of condominium),
4 and except as limited by subsection (d) and section 3221
5 (relating to rights of secured lenders), and except as required
6 for termination of the condominium, the declaration, including
7 the plats and plans, may be amended only by vote or agreement of
8 unit owners of units to which at least 67% of the votes in the
9 association are allocated, [or] without regard for any larger
10 majority the declaration [specifies] may specify or the absence
11 of any amendment provisions in the declaration. The declaration
12 may specify a smaller number only if all of the units are
13 restricted exclusively to nonresidential use.

14 * * *

15 (f) Corrective amendments.--Except as otherwise provided in
16 the declaration, if any amendment to the declaration is
17 necessary in the judgment of the executive board to cure any
18 ambiguity or to correct or supplement any provision of the
19 declaration, including the plats and plans, that is defective,
20 missing or inconsistent with any other provision thereof or with
21 this subpart or if an amendment is necessary in the judgment of
22 the executive board to conform to the requirements of any agency
23 or entity that has established national or regional standards
24 with respect to loans secured by mortgages or deeds of trust on
25 units in condominium projects (such as the Federal National
26 Mortgage Association and the Federal Home Loan Mortgage
27 Corporation), to comply with any statute, regulation, code or
28 ordinance which may now or hereafter be made applicable to the
29 condominium or association, or to make a reasonable
30 accommodation or permit a reasonable modification in favor of

1 handicapped, as may be defined by prevailing Federal or State
2 laws or regulations applicable to the association, unit owners,
3 residents, tenants or employees, then, at any time and from time
4 to time, the executive board may at its discretion effect an
5 appropriate corrective amendment without the approval of the
6 unit owners or the holders of any liens on all or any part of
7 the condominium, upon receipt by the executive board of an
8 opinion from independent legal counsel to the effect that the
9 proposed amendment is permitted by the terms of this subsection.

10 § 3220. Termination of condominium.

11 (a) Number of votes required.--[Except] Without regard for
12 the provisions of any declaration purporting to establish any
13 self-executing deadline or termination date for any condominium
14 existing under this subpart or the act of July 3, 1963 (P.L.196,
15 No.117), known as the Unit Property Act, except in the case of a
16 taking of all the units by eminent domain (section 3107), [a] no
17 condominium may be terminated [only by] except by the written
18 agreement of unit owners of units to which at least 80% of the
19 votes in the association are allocated, or any larger percentage
20 the declaration specifies. The declaration may specify a smaller
21 percentage only if all of the units in the condominium are
22 restricted exclusively to nonresidential uses.

23 * * *

24 § 3221. Rights of secured lenders.

25 (a) Secured lender approval.--The declaration may require
26 that all or a specified number or percentage of the mortgagees
27 or beneficiaries of deeds of trust encumbering the units approve
28 specified actions of the unit owners or the association as a
29 condition to the effectiveness of those actions but no
30 requirement for approval may operate to:

1 (1) deny or delegate control over the general
2 administrative affairs of the association by the unit owners
3 or the executive board; or

4 (2) prevent the association or the executive board from
5 commencing, intervening in or settling any litigation or
6 proceeding or receiving and distributing any insurance
7 proceeds pursuant to section 3312 (relating to insurance).

8 (b) Secured lender approval procedures.--If the declaration
9 requires mortgagees or beneficiaries of deeds of trust
10 encumbering the units to approve specified actions of the unit
11 owners or the association as a condition to the effectiveness of
12 those actions, then the executive board will provide the lender
13 with written notice of the specified action proposed to be
14 taken, together with a request for the secured lender to approve
15 or disapprove the actions specified. If the notice to the
16 secured lender, issued in accordance with the procedures set
17 forth in this subsection, states that the secured lender will be
18 deemed to have approved the actions specified in the written
19 notice if it does not respond to the request within 45 days, and
20 the secured lender does not respond in writing within 45 days,
21 then the secured lender will be deemed for all purposes to have
22 approved the actions specified in the notice. Written notice to
23 the secured lender shall be given by first-class mail, postage
24 prepaid, at the address provided by the secured lender, or in
25 the absence thereof, at the address of the secured lender
26 endorsed on any mortgage or deed of trust of record and at the
27 address to which the unit owner mails any periodic payment paid
28 to the secured lender. The notice to the secured lender shall
29 include a statement of the specified action and a copy of the
30 full text of any proposed amendment and a form prepared by the

association upon which the secured lender may indicate its approval or rejection of the specified action or amendment.

§ 3302. Powers of unit owners' association.

(a) General rule.--Subject to the provisions of the declaration, the association, even if unincorporated, may:

(1) Adopt and amend bylaws and rules and regulations.

(2) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners.

(3) Hire and terminate managing agents and other employees, agents and independent contractors.

(4) Institute, defend or intervene in litigation or administrative proceedings or engage in arbitrations or mediation in its own name on behalf of itself or two or more unit owners on matters affecting the condominium.

(5) Make contracts and incur liabilities.

(6) Regulate the use, maintenance, repair, replacement and modification of common elements; and to make reasonable accommodations or permit reasonable modifications to be made to units, the limited common elements or the common elements to accommodate handicapped, as defined by prevailing Federal, State or local statute, regulations, code or ordinance, unit owners, residents, tenants or employees.

(7) Cause additional improvements to be made as a part of the common elements.

(8) Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, and pledge or assign assessment income necessary to create amortization reserves to retire debts, but common elements may be conveyed or subjected to a security interest only

1 pursuant to the provisions of section 3318 (relating to
2 conveyance or encumbrance of common elements). Reserve funds
3 held for future major repairs and replacements of the common
4 elements may not be assigned or pledged.

5 (9) Grant easements, leases, licenses and concessions
6 through or over the common elements, but any such easement,
7 lease, license or concession:

8 (i) that is not for the benefit of all or
9 substantially all of the unit owners shall not be granted
10 without the same unit owner approval that is required for
11 an amendment to the declaration; or

12 (ii) that materially impairs any right or benefit
13 that one or more unit owners may have with respect to the
14 common elements shall not be granted without the prior
15 written approval of those unit owners.

16 (10) Impose and receive any payments, fees or charges
17 for the use, rental or operation of the common elements other
18 than limited common elements described in section 3202(2) and
19 (4) (relating to unit boundaries).

20 (11) Impose charges for late payment of assessments and,
21 after notice and an opportunity to be heard, levy reasonable
22 fines for violations of the declaration, bylaws and rules and
23 regulations of the association.

24 (12) Impose reasonable charges for the preparation and
25 recordation of amendments to the declaration, resale
26 certificates required by section 3407 (relating to resales of
27 units) or statements of unpaid assessments. In addition, the
28 association may impose a capital improvement fee, but no
29 other fees, on the resale or transfer of units in accordance
30 with the following:

1 (i) The capital improvement fee for any unit shall
2 not exceed the annual assessments for general common
3 expense charged to such unit during the most recently
4 completed fiscal year of the association; provided that:

5 (A) in the case of resale or transfer of a unit
6 consisting of unimproved real estate, the capital
7 improvement fee shall not exceed one-half of the
8 annual assessments for general common expenses
9 charged to such unit during the most recently
10 completed fiscal year of the association;

11 (B) in the case of resale or transfer of a unit
12 which was created or added to the condominium in
13 accordance with section 3211 (relating to the
14 conversion and expansion of flexible condominiums) at
15 some time during the most recently completed fiscal
16 year of the association, but was not in existence for
17 the entire fiscal year, the capital improvement fee
18 shall not exceed one-half of the annual assessments
19 for general common expenses charged to a unit
20 comparable to such unit during the most recently
21 completed fiscal year of the association; and

22 (C) capital improvement fees are not refundable
23 upon any sale, conveyance or any other transfer of
24 the title to a unit.

25 (ii) Capital improvement fees allocated by an
26 association must be maintained in a separate capital
27 account and may be expended only for new capital
28 improvements or replacement of existing common elements,
29 improvements on the common elements or controlled
30 facilities and may not be expended for operation,

1 maintenance or other purposes.

2 (iii) No capital improvement fee shall be imposed on
3 any gratuitous transfer of a unit between any of the
4 following family members; spouses, parent and child,
5 siblings, grandparent and grandchild; nor on any transfer
6 of a unit by foreclosure sale or deed in lieu of
7 foreclosure to a secured lending institution as defined
8 by the act of December 3, 1959 (P.L.1688, No.621), known
9 as the Housing Finance Agency Law.

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

11 (A) acquires a unit consisting of unimproved
12 real estate and signs and delivers to the association
13 at the time of such person's acquisition a sworn
14 affidavit declaring the person's intention to
15 reconvey such unit within 18 months of its
16 acquisition; and

17 (B) completes such reconveyance within 18
18 months.

19 (13) Provide for the indemnification of its officers and
20 executive board and maintain directors' and officers'
21 liability insurance.

22 (14) Exercise any other powers conferred by the
23 declaration or bylaws.

24 (15) Exercise all other powers that may be exercised in
25 this Commonwealth by legal entities of the same type as the
26 association.

27 (16) Exercise any other powers necessary and proper for
28 the governance and operation of the association.

29 (17) Assign its right to future income, including the
30 right to receive the payments made on account of common

1 expense assessments[, but only to the extent the declaration
2 expressly so provides].

3 (18) Assign or delegate any powers of the association
4 listed in this section to a master association subject to the
5 provisions of section 3222 (relating to master associations)
6 and accept any assignment or delegation of powers from one or
7 more condominiums or other incorporated or unincorporated
8 associations.

9 * * *

10 § 3303. Executive board members and officers.

11 (a) Powers and fiduciary status.--Except as provided in the
12 declaration, the bylaws, in subsection (b) or other provisions
13 of this subpart, the executive board may act in all instances on
14 behalf of the association. In the performance of their duties,
15 the officers and members of the executive board shall stand in a
16 fiduciary relation to the association and shall perform their
17 duties, including duties as members of any committee of the
18 board upon which they may serve, in good faith in a manner they
19 reasonably believe to be in the best interests of the
20 association and with such care, including reasonable inquiry,
21 skill and diligence, as a person of ordinary prudence would use
22 under similar circumstances. In managing the association's
23 reserve funds, the officers and members of the executive board
24 shall have the power to invest the association's reserve funds
25 in investments permissible by law for the investment of trust
26 funds and shall be governed in the management of the
27 association's reserve funds by 20 Pa.C.S. § 7203 (relating to
28 prudent investor rule). In performing his duties, an officer or
29 executive board member shall be entitled to rely in good faith
30 on information, opinions, reports or statements, including

1 financial statements and other financial data, in each case
2 prepared or presented by any of the following:

3 (1) One or more other officers or employees of the
4 association whom the officer or executive board member
5 reasonably believes to be reliable and competent in the
6 matters presented.

7 (2) Counsel, public accountants or other persons as to
8 matters which the officer or executive board member
9 reasonably believes to be within the professional or expert
10 competence of such person.

11 (3) A committee of the executive board upon which he
12 does not serve, duly designated in accordance with law, as to
13 matters within its designated authority, which committee the
14 officer or executive board member reasonably believes to
15 merit confidence.

16 An officer or executive board member shall not be considered to
17 be acting in good faith if he has knowledge concerning the
18 matter in question that would cause his reliance to be
19 unwarranted.

20 * * *

21 Section 4. Sections 3312(a), (b), (e) and (g), 3315(b) and
22 3407(c) of Title 68 are amended and the sections are amended by
23 adding subsections to read:

24 § 3312. Insurance.

25 (a) Insurance to be carried by association.--Commencing not
26 later than the time of the first conveyance of a unit to a
27 person other than a declarant, the association shall maintain,
28 to the extent reasonably available:

29 (1) Property insurance on the common elements and units
30 exclusive of improvements and betterments installed in units

1 insuring against all risks of direct physical loss commonly
2 insured against or, in the case of a conversion building,
3 against fire and extended coverage perils. The total amount
4 of insurance after application of any deductibles shall be
5 not less than 80% of the actual cash value of the insured
6 property exclusive of land, excavations, foundations and
7 other items normally excluded from property policies.

8 (2) Comprehensive general liability insurance, including
9 medical payments insurance, in an amount determined by the
10 executive board but not less than any amount specified in the
11 declaration covering all occurrences commonly insured against
12 for death, bodily injury and property damage arising out of
13 or in connection with the use, ownership or maintenance of
14 the common elements.

15 (3) Any property or comprehensive general liability
16 insurance carried by the association may contain a deductible
17 provision.

18 (b) Other insurance carried by association.--If the
19 insurance described in subsection (a) is not maintained, the
20 association promptly shall cause notice of that fact to be hand
21 delivered or sent prepaid by United States mail to all unit
22 owners. The declaration may require the association to carry any
23 other insurance and the association in any event may carry any
24 other insurance [it deems] in such reasonable amounts and with
25 such reasonable deductibles as it may deem appropriate to
26 protect the association or the unit owners.

27 * * *

28 (e) Unit owner may obtain insurance.--A unit owner may
29 insure his unit for all losses to his unit, including all losses
30 not covered by the insurance maintained by the association due

1 to a deductible provision or otherwise. An insurance policy
2 issued to the association [does] shall not prevent a unit owner
3 from obtaining insurance for his own benefit.

4 * * *

5 (g) Disposition of insurance proceeds.--

6 (1) Any portion of the condominium damaged or destroyed
7 shall be repaired or replaced promptly by the association
8 unless:

9 (i) the condominium is terminated;

10 (ii) repair or replacement would be illegal under
11 any state or local health or safety statute or ordinance;
12 or

13 (iii) eighty percent of the unit owners, including
14 every owner of a unit or assigned limited common element
15 which will not be rebuilt, vote not to rebuild.

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

18 (2) If the entire condominium is not repaired or
19 replaced:

20 (i) the insurance proceeds attributable to the
21 damaged common elements shall be used to restore the
22 damaged area to a condition compatible with the remainder
23 of the condominium;

24 (ii) the insurance proceeds attributable to units
25 and limited common elements which are not rebuilt shall
26 be distributed to the owners of those units and the
27 owners of the units to which those limited common
28 elements were assigned; and

29 (iii) the remainder of the proceeds shall be
30 distributed to all the unit owners in proportion to their

1 common element interests.

2 If the unit owners vote not to rebuild any unit, that unit's
3 entire common element interest, votes in the association and
4 common expense liability are automatically reallocated upon
5 the vote as if the unit had been condemned under section
6 3107(a) (relating to eminent domain) and the association
7 promptly shall prepare, execute and record an amendment to
8 the declaration reflecting the reallocations.

9 (3) Notwithstanding the provisions of this subsection,
10 section 3220 (relating to termination of condominium) governs
11 the distribution of insurance proceeds if the condominium is
12 terminated.

13 * * *

14 (i) Recovery of deductibles.--If any insurance policy
15 maintained by the association contains a deductible, then that
16 portion of any loss or claim which is not covered by insurance
17 due to the application of a deductible, as well as any claim or
18 loss for which the association is self-insured, shall be levied
19 by the executive board in accordance with section 3314(c)
20 (relating to assessments for common expenses) to the extent
21 applicable or, in the absence of the application of section
22 3314(c), in a prorata manner as a common expense assessment
23 against all of the units benefited by the repair or replacement.

24 § 3315. Lien for assessments.

25 * * *

26 (b) Priority of lien.--

27 (1) General rule.--A lien under this section is prior to
28 all other liens and encumbrances on a unit except:

29 (i) Liens and encumbrances recorded before the
30 recordation of the declaration.

1 (ii) Mortgages and deeds of trust on the unit
2 securing first mortgage holders and recorded before the
3 due date of the assessment, if the assessment is not
4 payable in installments, or the due date of the unpaid
5 installment, if the assessment is payable in
6 installments.

7 (iii) Liens for real estate taxes and other
8 governmental assessments or charges against the unit.

9 (2) Limited nondivestiture.--The association's lien for
10 [common expenses] assessments shall be divested by a judicial
11 sale of the unit:

12 (i) [As to unpaid common expense assessments made
13 under section 3314(b) (relating to assessments for common
14 expenses) that] Except as to unpaid assessments for which
15 the association has a lien under this section which come
16 due during the six months immediately preceding
17 [institution of] a judicial sale of a unit in an action
18 to enforce collection of a lien against a unit [by a
19 judicial sale, only to the extent that the six months
20 unpaid assessments are paid out of the proceeds of the
21 sale].

22 (ii) [As to unpaid common expense assessments made
23 under section 3314(b) other than the six months
24 assessment referred to in subparagraph (i), in the full
25 amount of these unpaid assessments, whether or not the
26 proceeds of the judicial sale are adequate to pay these
27 assessments.] To the extent the proceeds of the sale are
28 sufficient to pay some or all of [these additional] the
29 additional unpaid assessments, after satisfaction in full
30 of the costs of the judicial sale, and the liens and

1 encumbrances of the types described in paragraph (1) and
2 the unpaid common expense assessments that come due
3 during the six-month period described in subparagraph
4 (i), they shall be paid before any remaining proceeds may
5 be paid to any other claimant, including the prior owner
6 of the unit.

7 (3) Monetary exemption.--The lien is not subject to the
8 provisions of 42 Pa.C.S. § 8123 (relating to general monetary
9 exemption).

10 * * *

11 (h) Application of payments.--Unless the declaration
12 otherwise provides, any payment received by an association in
13 connection with the lien under this section shall be applied
14 first to any interest accrued by the association, then to any
15 late fee, then to any costs and reasonable attorney fees
16 incurred by the association in collection or enforcement and
17 then to the delinquent assessment. The foregoing shall be
18 applicable, notwithstanding any restrictive endorsement,
19 designation or instructions placed on or accompanying a payment.

20 § 3407. Resales of units.

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 unit owner is not liable to a purchaser for the
26 failure or delay of the association to provide the certificate
27 in a timely manner [but the purchase contract is voidable by the
28 purchaser until the certificate has been provided and for five
29 days thereafter or until conveyance, whichever first occurs].

30 (d) Purchase contract voidable.--The purchase contract is

1 voidable by the purchaser until the certificate has been
2 provided and for five days thereafter or until conveyance,
3 whichever first occurs.

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