

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, YOUNGBLOOD
AND TURZAI, MAY 5, 2003

SENATOR DENT, URBAN AFFAIRS AND HOUSING, IN SENATE, AS AMENDED,
JUNE 9, 2004

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)~~ 3102 of Title 68 of the <—
7 Pennsylvania Consolidated Statutes ~~is amended and the section is~~ <—
8 amended by adding a subsection to read:

9 § 3102. Applicability of subpart.

10 * * *

11 ~~(a.1) Retroactivity. Except as provided in subsection (a),~~ <—
12 ~~sections~~

13 ~~(A.1) RETROACTIVITY.--~~ <—

14 ~~(1) SECTIONS 3103 (RELATING TO DEFINITIONS), 3108~~
15 ~~(relating to supplemental general principles of law), 3112~~
16 ~~(relating to obligation of good faith), 3202 (relating to~~ <—
17 ~~unit boundaries), 3219 (relating to amendment of~~

declaration), ~~3220~~ 3220(I) (relating to termination of
condominium), ~~3302(a)(8)~~ 3302(A)(8)(I), (16) AND (17)
(relating to powers of unit owners' association), ~~3303~~
3303(A) AND (B) (relating to executive board members and
officers), 3307 (relating to upkeep of condominium), ~~3312~~
(relating to insurance) and 3314 (relating to assessments for
common expenses) AND 3319 (RELATING TO OTHER LIENS AFFECTING
THE CONDOMINIUM), to the extent necessary in construing any
of those sections, shall apply to all condominiums created in
this Commonwealth before the effective date of this
subsection; but those sections apply only with respect to
events and circumstances occurring after the effective date
of this subsection and do not invalidate existing provisions
of the declaration, code of regulations, BYLAWS or
declaration plan of those condominiums.

~~(b) Prior statutory law. The provisions of the act of July~~
~~3, 1963 (P.L.196, No.117), known as the Unit Property Act, do~~
~~not apply to condominiums created after the effective date of~~
~~this subpart and do not invalidate any amendment to the~~
~~declaration, code of regulations or declaration plan of any~~
~~condominium created before the effective date of this subpart if~~
~~the amendment would be permitted by this subpart. The amendment~~
~~must be adopted in conformity with the procedures and~~
~~requirements specified by those instruments and by the~~
~~provisions of the Unit Property Act. If the amendment grants to~~
~~any person any rights, powers or privileges permitted by this~~
~~subpart, all correlative obligations, liabilities and~~
~~restrictions in this subpart also apply to that person. By~~
~~amendment to the declaration, code of regulations and~~
~~declaration plan, a condominium created pursuant to the Unit~~

1 ~~Property Act may be made subject to all of the provisions of~~
2 ~~this subpart in lieu of the provisions of the Unit Property Act,~~
3 ~~effective as of the date of recordation of such amendments and~~
4 ~~without in any way terminating the condominium status of the~~
5 ~~property or in any way affecting any lien or encumbrance on the~~
6 ~~property, if the terms of such amended documents conform to the~~
7 ~~requirements of this subpart and if such amendments have been~~
8 ~~approved by [all the persons whose actions would have been~~
9 ~~required to effect a removal of the property from the Unit~~
10 ~~Property Act pursuant to section 601 thereof] vote or written~~
11 ~~agreement of unit owners pursuant to the procedures established~~
12 ~~in section 3219. No amendment of:~~

13 ~~(1) the declaration, code of regulations or declaration~~
14 ~~plan of a condominium created pursuant to the Unit Property~~
15 ~~Act; or~~

16 ~~(2) the declaration, bylaws or plats and plans of a~~
17 ~~condominium created pursuant to this subpart;~~
18 ~~may increase the obligations or responsibilities of a declarant~~
19 ~~(as such and not as a unit owner) without the joinder of the~~
20 ~~declarant in such amendment.~~

21 ~~* * *~~

22 ~~Section 2. Section 3203 of Title 68 is amended by adding a~~
23 ~~subsection to read:~~

24 ~~§ 3203. Construction and validity of declaration and bylaws.~~

25 ~~* * *~~

26 ~~(c) Interpretation and application of declaration. The~~
27 ~~executive board shall have the powers to interpret and apply the~~
28 ~~declaration and bylaws, and to resolve all conflicts or disputes~~
29 ~~requiring the interpretation and application of the declaration.~~
30 ~~As between unit owners, the decision of the board shall be~~

1 ~~final, and shall be enforceable at law as a decision of an~~
2 ~~arbitrator. The executive board and its members shall have no~~
3 ~~liability for exercising these powers provided they are~~
4 ~~exercised in good faith and in the best interest of the~~
5 ~~association in the manner set forth in section 3303 (relating to~~
6 ~~executive board members and officers).~~

7 Section 3. ~~Sections 3218, 3219(a) and (f), 3220(a), 3221,~~
8 ~~3302(a) and 3303(a) of Title 68 are amended to read:~~

9 (2) SECTION 3303(C) AND (D), TO THE EXTENT NECESSARY IN <—
10 CONSTRUING ANY OF THOSE SUBSECTIONS, APPLIES TO ALL
11 CONDOMINIUMS CREATED IN THIS COMMONWEALTH BEFORE THE
12 EFFECTIVE DATE OF THIS SUBPART; BUT THOSE SUBSECTIONS APPLY
13 ONLY WITH RESPECT TO EVENTS AND CIRCUMSTANCES OCCURRING 180
14 DAYS AFTER THE EFFECTIVE DATE OF THIS SUBSECTION AND DO NOT
15 INVALIDATE EXISTING PROVISIONS OF THE DECLARATION, CODE OF
16 REGULATIONS OR DECLARATION PLAN OF THOSE CONDOMINIUMS.

17 SECTION 2. SECTIONS 3210(H), 3218 AND 3219(A) AND (F) OF
18 TITLE 68 ARE AMENDED TO READ:

19 § 3210. PLATS AND PLANS.

20 * * *

21 (H) WHO MAY MAKE CERTIFICATIONS.--ANY CERTIFICATION OF A
22 PLAT OR PLAN REQUIRED BY THIS SECTION [OR SECTION 3201(B)
23 (RELATING TO CREATION OF CONDOMINIUM)] MUST BE MADE BY AN
24 INDEPENDENT REGISTERED SURVEYOR, ARCHITECT OR PROFESSIONAL
25 ENGINEER.

26 § 3218. Easement to facilitate completion, conversion and
27 expansion.

28 ~~Subject to the provisions of the declaration, a declarant has~~ <—

29 (1) SUBJECT TO THE PROVISIONS OF THE DECLARATION, A <—

30 DECLARANT HAS an easement through the common elements as may

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

14 (2) WITHOUT AFFECTING THE RIGHTS, IF ANY, OF EACH UNIT <—
15 OWNER WITH RESPECT TO THE USE AND ENJOYMENT OF THE COMMON
16 ELEMENTS, SUBJECT TO THE PROVISIONS OF THE DECLARATION, EACH
17 UNIT OWNER AND ITS AGENTS, CONTRACTORS AND INVITEES SHALL
18 HAVE A NONEXCLUSIVE ACCESS EASEMENT THROUGH THE COMMON
19 ELEMENTS AS MAY BE REASONABLY NECESSARY FOR THE PURPOSE OF
20 CONSTRUCTION, REPAIR AND RENOVATION OF THE OWNER'S UNIT. AN
21 ASSOCIATION SHALL HAVE THE POWER DURING SPRING THAW
22 CONDITIONS TO RESTRICT USAGE BY VEHICLES OF MORE THAN TEN
23 TONS GROSS WEIGHT IF:

24 (I) THE RESTRICTIONS ARE IMPOSED ONLY ON A WEEK-BY-
25 WEEK BASIS FOR AN AGGREGATE PERIOD NOT TO EXCEED EIGHT
26 WEEKS DURING ANY CALENDAR YEAR;

27 (II) THE THAW CONDITIONS ARE REVIEWED BY THE
28 ASSOCIATION AT LEAST WEEKLY; AND

29 (III) SIGNS ARE CONSPICUOUSLY POSTED BY THE
30 ASSOCIATION AT ALL ENTRANCES TO THE PLANNED COMMUNITY

1 ADVISING WHEN AND WHERE THE THAW RESTRICTIONS ARE
2 APPLICABLE.

3 (3) AN ASSOCIATION SHALL NOT HAVE THE POWER TO IMPOSE
4 ANY FEES OR CHARGES OR REQUIRED FINANCIAL SECURITY, INCLUDING
5 SURETY BONDS, LETTERS OF CREDIT OR ESCROW DEPOSITS FOR THE
6 USE OF THE EASEMENT RIGHTS UNDER THIS SECTION EXCEPT FOR THE
7 REPAIR OF DAMAGE CAUSED TO COMMON ELEMENTS IN THE EXERCISE OF
8 THE EASEMENT RIGHTS.

9 (4) THE DECLARANT OR OWNER WHO EXERCISES THE EASEMENT
10 RIGHTS UNDER THIS SECTION, WHETHER DIRECTLY OR INDIRECTLY
11 THROUGH AN AGENT, SERVANT, CONTRACTOR OR EMPLOYEE, SHALL HAVE
12 THE OBLIGATION TO PROMPTLY RETURN ANY PORTION OF THE COMMON
13 ELEMENTS DAMAGED BY THE EXERCISE BY THE DECLARANT OR OWNER OR
14 ITS AGENT, SERVANT, CONTRACTOR OR EMPLOYEE OF THE EASEMENT
15 UNDER THIS SECTION TO THE APPEARANCE, CONDITION AND FUNCTION
16 IN WHICH IT EXISTED PRIOR TO THE EXERCISE OF THE EASEMENT, OR
17 TO REIMBURSE THE ASSOCIATION FOR ALL REASONABLE COSTS, FEES
18 AND EXPENSES INCURRED BY THE ASSOCIATION TO RETURN ANY
19 PORTION OF THE COMMON ELEMENTS SO DAMAGED TO THE APPEARANCE,
20 CONDITION AND FUNCTION IN WHICH IT EXISTED PRIOR TO THE
21 EXERCISE OF THE EASEMENT.

22 § 3219. Amendment of declaration.

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

1 (relating to subdivision or conversion of units); or certain
2 unit owners under section 3209(b) (relating to limited common
3 elements), 3214(a) (relating to relocation of boundaries between
4 adjoining units), 3215(b) (relating to subdivision or conversion
5 of units) or 3220(b) (relating to termination of condominium),
6 and except as limited by subsection (d) and section 3221
7 (relating to rights of secured lenders), and except as required <—
8 for termination of the condominium the declaration, including
9 the plats and plans, may be amended only by vote or agreement of
10 unit owners of units to which at least 67% of the votes in the
11 association are allocated, ~~for~~ without regard for any larger <—
12 majority the declaration ~~specifies~~ may specify or the absence <—
13 of any amendment provisions in the declaration. The declaration
14 may specify a smaller number only if all of the units are
15 restricted exclusively to nonresidential use.

16 * * *

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

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

12 SECTION 3. SECTION 3220 OF TITLE 68 IS AMENDED BY ADDING A <—
13 SUBSECTION TO READ:

14 § 3220. Termination of condominium.

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

27 * * *

28 * * *

29 (I) INEFFECTIVENESS OF TERMINATION PROVISION.--IN THE CASE
30 OF A DECLARATION THAT CONTAINS NO PROVISION EXPRESSLY PROVIDING

FOR A MEANS OF TERMINATING THE CONDOMINIUM OTHER THAN A
PROVISION PROVIDING FOR A SELF-EXECUTING TERMINATION UPON A
SPECIFIC DATE OR UPON THE EXPIRATION OF A SPECIFIC TIME PERIOD,
SUCH TERMINATION PROVISION SHALL BE DEEMED INEFFECTIVE IF NO
EARLIER THAN FIVE YEARS BEFORE THE DATE THE CONDOMINIUM WOULD
OTHERWISE BE TERMINATED WHICH AT LEAST 80% OF THE VOTES IN THE
CONDOMINIUM ARE ALLOCATED VOTES THAT THE SELF-EXECUTING
TERMINATION PROVISION SHALL BE ANNULLED IN WHICH EVENT THE SELF-
EXECUTING TERMINATION PROVISION SHALL HAVE NO FORCE OR EFFECT.

SECTION 4. SECTIONS 3221, 3302(A) AND 3303(A) OF TITLE 68
ARE AMENDED TO READ:

§ 3221. Rights of secured lenders.

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

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

(2) prevent the association or the executive board from
commencing, intervening in or settling any litigation or
proceeding or receiving and distributing any insurance
proceeds pursuant to section 3312 (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 unit
owners or the association as a condition to the effectiveness of
those actions, then the executive board will provide the lender

1 with written notice of the specified action proposed to be
2 taken, together with a request for the secured lender to approve
3 or disapprove the actions specified. If the notice to the
4 secured lender, issued in accordance with the procedures set
5 forth in this subsection, states that the secured lender will be
6 deemed to have approved the actions specified in the written
7 notice if it does not respond to the request within 45 days, and
8 the secured lender does not respond in writing within 45 days,
9 then the secured lender will be deemed for all purposes to have
10 approved the actions specified in the notice. Written notice to
11 the secured lender shall be given by ~~first class mail,~~ <—
12 CERTIFIED, REGISTERED OR FIRST-CLASS MAIL, AS EVIDENCED BY <—
13 UNITED STATES POSTAL SERVICE CERTIFICATE OF MAILING, postage
14 prepaid, at the address provided by the secured lender, or in
15 the absence thereof, at the address of the secured lender
16 endorsed on any mortgage or deed of trust of record and at the
17 address to which the unit owner mails any periodic payment paid
18 to the secured lender. The notice to the secured lender shall
19 include a statement of the specified action and a copy of the
20 full text of any proposed amendment and a form prepared by the
21 association upon which the secured lender may indicate its
22 approval or rejection of the specified action or amendment.

23 § 3302. Powers of unit owners' association.

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

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

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

30 (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 pursuant to the provisions of section 3318 (relating to conveyance or encumbrance of common elements). Reserve funds held for future major repairs and replacements of the common elements may not be assigned or pledged.~~ <—

(8) (I) ACQUIRE, HOLD, ENCUMBER AND CONVEY IN ITS OWN NAME ANY RIGHT, TITLE, OR INTEREST TO REAL OR PERSONAL PROPERTY[, BUT COMMON ELEMENTS MAY BE CONVEYED OR SUBJECTED] OTHER THAN COMMON ELEMENTS; AND <—

(II) CONVEY OR SUBJECT TO A SECURITY INTEREST COMMON ELEMENTS ONLY PURSUANT TO THE PROVISIONS OF SECTION 3318

1 (RELATING TO CONVEYANCE OR ENCUMBRANCE OF COMMON
2 ELEMENTS).

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

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

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

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

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

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

29 (i) The capital improvement fee for any unit shall
30 not exceed the annual assessments for general common

1 expense charged to such unit during the most recently
2 completed fiscal year of the association; provided that:

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

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

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

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

30 (iii) No capital improvement fee shall be imposed on

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

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

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

15 (B) completes such reconveyance within 18
16 months.

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

20 (14) Exercise any other powers conferred by the
21 declaration or bylaws.

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

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

27 (17) 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]. RESERVE FUNDS HELD FOR FUTURE MAJOR

<—

1 REPAIRS AND REPLACEMENTS OF THE COMMON ELEMENTS MAY NOT BE
2 ASSIGNED OR PLEDGED.

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. OFFICERS AND MEMBERS OF THE EXECUTIVE BOARD SHALL <—
20 HAVE NO LIABILITY FOR THE EXERCISE OF THEIR DUTIES IN ACCORDANCE
21 WITH THIS SECTION.

22 * * *

23 Section 4 5. Sections 3312(a), (b), (e) and (g), 3315(b) and <—
24 3407(c) of Title 68 are amended and the sections are amended by
25 adding subsections to read:

26 § 3312. Insurance.

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

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

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

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

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

29 * * *

30 (e) Unit owner may obtain insurance.--A unit owner may

1 insure his unit for all losses to his unit, including all losses
2 not covered by the insurance maintained by the association due
3 to a deductible provision or otherwise. An insurance policy
4 issued to the association [does] shall not prevent a unit owner
5 from obtaining insurance for his own benefit.

6 * * *

7 (g) Disposition of insurance proceeds.--

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

11 (i) the condominium is terminated;

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

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

18 [The] EXCEPT FOR THE COSTS OF REPAIR OR REPLACEMENT WHICH ARE <—
19 NOT COVERED DUE TO DEDUCTIBLES, THE cost of repair or
20 replacement in excess of insurance proceeds and reserves
21 WHICH HAVE NOT BEEN IDENTIFIED BY THE EXECUTIVE BOARD TO FUND <—
22 COSTS OF CAPITAL EXPENDITURES FOR THE CURRENT FISCAL YEAR OF
23 THE ASSOCIATION is a common expense.† <—

24 (2) If the entire condominium is not repaired or
25 replaced:

26 (i) the insurance proceeds attributable to the
27 damaged common elements shall be used to restore the
28 damaged area to a condition compatible with the remainder
29 of the condominium;

30 (ii) the insurance proceeds attributable to units

1 and limited common elements which are not rebuilt shall
2 be distributed to the owners of those units and the
3 owners of the units to which those limited common
4 elements were assigned; and

5 (iii) the remainder of the proceeds shall be
6 distributed to all the unit owners in proportion to their
7 common element interests.

8 If the unit owners vote not to rebuild any unit, that unit's
9 entire common element interest, votes in the association and
10 common expense liability are automatically reallocated upon
11 the vote as if the unit had been condemned under section
12 3107(a) (relating to eminent domain) and the association
13 promptly shall prepare, execute and record an amendment to
14 the declaration reflecting the reallocations.

15 (3) Notwithstanding the provisions of this subsection,
16 section 3220 (relating to termination of condominium) governs
17 the distribution of insurance proceeds if the condominium is
18 terminated.

19 * * *

20 (i) Recovery of deductibles.--If any 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 3314(c)
26 (relating to assessments for common expenses) to the extent <—
27 applicable or, in the absence of the application of section
28 3314(c), in a prorata manner as a common expense assessment
29 against all of the units benefited by the repair or replacement.
30 (RELATING TO ASSESSMENTS FOR COMMON EXPENSES). <—

1 § 3315. Lien for assessments.

2 * * *

3 (b) Priority of lien.--

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

6 (i) Liens and encumbrances recorded before the
7 recordation of the declaration.

8 ~~(ii)~~ (II) (A) Mortgages and deeds of trust on the <—
9 unit securing first mortgage holders and recorded before
10 the due date of the assessment, if the assessment is not
11 payable in installments, or the due date of the unpaid
12 installment, if the assessment is payable in
13 installments.

14 (B) JUDGMENTS OBTAINED FOR OBLIGATIONS SECURED <—
15 BY MORTGAGES OR DEEDS OF TRUST UNDER CLAUSE (A).

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

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

21 (i) ~~{As to unpaid common expense assessments made~~ <—
22 under section 3314(b) (relating to assessments for common
23 expenses) that} ~~Except as to unpaid assessments for which~~ <—
24 ~~the association has a lien under this section which~~ come
25 due during the six months immediately preceding
26 [institution of] THE DATE OF a judicial sale of a unit in <—
27 an action to enforce collection of a lien against a unit
28 [by a judicial sale, only to the extent that the six
29 months unpaid assessments are paid out of the proceeds of
30 the sale].

(ii) ~~As to unpaid common expense assessments made~~
under section 3314(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.} To the extent the proceeds of the sale are
sufficient to pay some or all of ~~these additional~~ ~~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
during the six-month period described in subparagraph
(i), they shall be paid before any remaining proceeds may
be paid to any other claimant, including the prior owner
of the unit.

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

* * *

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

§ 3407. Resales of units.

* * *

1 (c) Liability for error or inaction by association.--A
2 purchaser is not liable for any unpaid assessment or fee greater
3 than the amount set forth in the certificate prepared by the
4 association. A unit owner is not liable to a purchaser for the
5 failure or delay of the association to provide the certificate
6 in a timely manner [but the purchase contract is voidable by the
7 purchaser until the certificate has been provided and for five
8 days thereafter or until conveyance, whichever first occurs].

9 (d) Purchase contract voidable.--The purchase contract is
10 voidable by the purchaser until the certificate has been
11 provided and for five days thereafter or until conveyance,
12 whichever first occurs.

13 SECTION 6. SECTION 3410(D) AND (J)(1) OF TITLE 68 ARE
14 AMENDED TO READ:

15 § 3410. CONDOMINIUMS CONTAINING CONVERSION BUILDINGS.

16 * * *

17 (D) NOTICE TO VACATE.--IF A CONVERSION NOTICE SPECIFIES A
18 DATE BY WHICH A UNIT OR PROPOSED UNIT MUST BE VACATED, THE
19 CONVERSION NOTICE ALSO CONSTITUTES A NOTICE OF TERMINATION OF
20 THE TENANT'S LEASE, SUBJECT TO REVOCATION IN ACCORDANCE WITH
21 SUBSECTION [(J)] (I), AND A NOTICE TO QUIT SPECIFIED BY SECTION
22 501 OF THE ACT OF APRIL 6, 1951 (P.L.69, NO.20), KNOWN AS THE
23 LANDLORD AND TENANT ACT OF 1951.

24 * * *

25 (J) WAIVER OF PURCHASE RIGHTS.--NOTWITHSTANDING ANY
26 PROVISIONS OF THIS SUBPART PROHIBITING WAIVER OF RIGHTS, ANY
27 TENANT MAY WAIVE HIS RIGHT TO PURCHASE A UNIT PURSUANT TO
28 SUBSECTION (B) IF THE WAIVER IS IN WRITING, IS ACKNOWLEDGED AND
29 IS GIVEN IN CONSIDERATION OF:

30 (1) AN EXTENSION OF THE TERM OF THE TENANT'S TENANCY AND

1 RIGHT OF OCCUPANCY UNDER THIS SUBPART BEYOND THE TIME PERIOD
2 REQUIRED BY [SUBSECTION (B)] SUBSECTION (A) OR (F) AS
3 APPLICABLE;

4 * * *

5 Section ~~5~~ 7. This act shall take effect in 60 days.

<—