

REAL AND PERSONAL PROPERTY (68 PA.C.S.) - OMNIBUS AMENDMENTS
Act of Oct. 19, 2018, P.L. 551, No. 84 Cl. 68
Session of 2018
No. 2018-84

HB 1499

AN ACT

Amending Title 68 (Real and Personal Property) of the Pennsylvania Consolidated Statutes, in creation, alteration and termination of condominiums, further providing for contents of declaration and all condominiums; in management of the condominium, further providing for powers of unit owners' association, for executive board members and officers and for conveyance or encumbrance of common elements; in protection of purchasers, further providing for release of liens and for warranty against structural defects; in creation, alteration and termination of cooperatives, further providing for contents of declaration; in management of cooperatives, further providing for powers of association, for executive board members and officers and for conveyance or encumbrance of cooperative; in protection of cooperative interest purchasers, further providing for release of liens and for implied warranty against structural defects; in general provisions relating to planned communities, further providing for definitions; in creation, alteration and termination of planned communities, further providing for construction and validity of declaration and bylaws and for contents of declaration and all planned communities; in management of planned community, further providing for power of unit owners' association, for executive board members and officers and for conveyance or encumbrance of common facilities; and, in protection of purchasers, further providing for release of liens and for warranty against structural defects.

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

Section 1. Section 3205 of Title 68 of the Pennsylvania Consolidated Statutes is amended by adding a paragraph to read: § 3205. Contents of declaration; all condominiums.

The declaration for a condominium must contain:

* * *

(13.1) If the declaration provides that the association or a unit owner is or shall be responsible for operation and maintenance of storm water management facilities, a statement that upon approval of the permittee's notice of termination by the Department of Environmental Protection or by an authorized county conservation district, it shall be deemed that the association or unit owner, as applicable, agree to and shall become responsible for compliance with the storm water management facilities' permit terms and conditions, including long-term operation and maintenance of postconstruction storm water best management practices in accordance with applicable requirements. The declarant shall remain responsible for compliance with other obligations with respect to storm water management facilities as may be required by the approved subdivision and land development plans, the declaration or this subpart until such time as the obligations of the declarant may cease.

* * *

Section 2. Sections 3302(a)(11) and 3303(e) of Title 68 are amended to read:

§ 3302. Powers of unit owners' association.

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

* * *

(11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard[, levy]:

(i) **Levy** reasonable fines for violations of the declaration, bylaws and rules and regulations of the association.

(ii) **For any period during which assessments are delinquent or violations of the declaration, bylaws and rules and regulations remain uncured, suspend unit owners' rights, including, without limitation, the right to vote, the right to serve on the board or committees and the right of access to common elements, recreational facilities or amenities.**

* * *

§ 3303. Executive board members and officers.

* * *

(e) Election of members and officers following declarant control.--

(1) Not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members at least a majority of whom must be unit owners, except that the executive board may consist of two members, both of whom must be unit owners, if the condominium consists of two units. The executive board shall elect the officers. The persons elected shall take office upon election.

(2) **In the event that the election of the executive board by the unit owners fails to take place not later than the termination of a period of declarant control as provided in this section, then a special meeting of the unit owners may be called for such purpose by any member of the executive board elected by the unit owners or, if there is no such member of the executive board, the unit owners entitled to cast at least 10% of the votes in the association.**

* * *

Section 3. Section 3318(d) of Title 68 is amended and the section is amended by adding a subsection to read:

§ 3318. Conveyance or encumbrance of common elements.

* * *

(d) Other conveyances or encumbrances void.--Any purported conveyance, encumbrance, judicial sale, **tax sale** or other voluntary **or involuntary** transfer of common elements, unless made pursuant to this section, is void.

* * *

(h) **Subject to declaration.--An interest in common elements that is subject to the declaration prior to conveyance or encumbrance shall remain subject to the declaration following the conveyance or encumbrance, unless the deed or agreement to convey the common elements or subject them to a security interest specifically provides otherwise.**

Section 4. Sections 3409(b)(2) and 3411(e) of Title 68 are amended to read:

§ 3409. Release of liens.

* * *

(b) Other liens.--Before conveying real estate to the association, the declarant shall have the real estate released from:

* * *

(2) All other liens, **including, without limitation, real estate taxes**, on that real estate unless the public offering statement describes certain real estate which may be conveyed subject to liens in specified amounts.
§ 3411. Warranty against structural defects.

* * *

(e) Limitation of actions.--No action to enforce the warranty created by this section shall be commenced later than six years after the warranty begins[.], **provided, however, that the limitation period affecting a right of action by the association under this section shall be six years after the warranty begins or two years after the unit owners elect an executive board under section 3303(e) (relating to executive board members and officers), whichever is later.**

Section 5. Section 4205(a) of Title 68 is amended by adding a paragraph to read:

§ 4205. Contents of declaration.

(a) General rule.--The declaration for a cooperative must contain:

* * *

(15) If the declaration provides that the association or a unit owner is or shall be responsible for operation and maintenance of storm water management facilities, a statement that upon approval of the permittee's notice of termination by the Department of Environmental Protection or by an authorized county conservation district, it shall be deemed that the association or unit owner, as applicable, agree to and shall become responsible for compliance with the storm water management facilities' permit terms and conditions, including long-term operation and maintenance of postconstruction storm water best management practices in accordance with applicable requirements. The declarant shall remain responsible for compliance with other obligations with respect to storm water management facilities as may be required by the approved subdivision and land development plans, the declaration or this subpart until such time as the obligations of the declarant may cease.

* * *

Section 6. Sections 4302(a)(11) and 4303(f) of Title 68 are amended to read:

§ 4302. Powers of association.

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

* * *

(11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard[, levy]:

(i) **Levy** reasonable fines for violations of the declaration, bylaws and rules and regulations of the association.

(ii) **For any period during which assessments are delinquent or violations of the declaration, bylaws and rules and regulations remain uncured, suspend unit owners' rights, including, without limitation, the right to vote, the right to serve on the board or committees and the right of access to common elements, recreational facilities or amenities.**

* * *

§ 4303. Executive board members and officers.

* * *

(f) Election of executive board following declarant control.--

(1) Not later than the termination of any period of declarant control, the proprietary lessees shall elect an executive board of at least three members, at least a majority of whom must be proprietary lessees. Unless the declarant has retained such right during the declarant control period, the executive board shall elect the officers. The executive board members and officers shall take office upon election.

(2) In the event that the election of the executive board by the proprietary lessees fails to take place not later than the termination of a period of declarant control as provided in this section, then a special meeting of the proprietary lessees may be called for such purpose by any member of the executive board elected by the proprietary lessees or, if there is no such member of the executive board, the proprietary lessees entitled to cast at least 10% of the votes in the association.

* * *

Section 7. Section 4312(d) of Title 68 is amended and the section is amended by adding a subsection to read:

§ 4312. Conveyance or encumbrance of cooperative.

* * *

(d) Unauthorized conveyance or encumbrance void.--Any purported conveyance, encumbrance, **judicial sale, tax sale** or other voluntary **or involuntary** transfer of the cooperative, unless made pursuant to this section or section 4217(c) (relating to termination of cooperative ownership), is void.

* * *

(f) Subject to declaration.--A part of the cooperative which is subject to the declaration prior to conveyance or encumbrance shall remain subject to the provisions of the declaration following the conveyance or encumbrance, unless the deed or agreement to convey the cooperative or subject it to a security interest specifically provides otherwise.

Section 8. Sections 4411(b) and 4414(e) of Title 68 are amended to read:

§ 4411. Release of liens.

* * *

(b) Conveyance to association.--Before conveying real estate to the association, the declarant shall have that real estate released from liens, **including, without limitation, real estate taxes**, on that real estate unless the public offering statement discloses the amount of the real estate encumbered by and the effect of a default under a lien not being released.

§ 4414. Implied warranty against structural defects.

* * *

(e) Limitation of action.--No action to enforce the warranty created by this section shall be commenced later than six years after the warranty begins[.], **provided, however, that the limitation period affecting a right of action by the association under this section shall be six years after the warranty begins or two years after the unit owners elect an executive board under section 4303(f) (relating to executive board members and officers), whichever is later.**

Section 9. The definition of "common facilities" in section 5103 of Title 68 is amended to read:

§ 5103. Definitions.

The following words and phrases when used in this subpart and in the declaration and bylaws shall have the meanings given to them in this section unless specifically provided otherwise or unless the context clearly indicates otherwise:

* * *

"Common facilities." Any real estate within a planned community which is owned by the association [or], leased to the association[.] **or designated as common facilities, common area or open space or other similar term intended to identify a parcel in the declaration or the plats and plans recorded or referenced in the declaration.** The term does not include a unit.

* * *

Section 10. Section 5203 of Title 68 is amended by adding a subsection to read:

§ 5203. Construction and validity of declaration and bylaws.

* * *

(e) **Effect of noncompliance.--If the declarant preserved the rights identified in section 5205(13), (14), (15) or (16) (relating to contents of declaration; all planned communities) in the declaration or any of those provisions are otherwise applicable, the declarant's failure to include in the declaration any of the provisions or statements as required under each of those provisions shall not affect the enforceability of the provisions or statements as if they were included in the declaration.**

Section 11. Section 5205(16) introductory paragraph of Title 68 is amended and the section is amended by adding a paragraph to read:

§ 5205. Contents of declaration; all planned communities.

The declaration for a planned community must contain:

* * *

(16) If a declarant **designates or** wishes to retain the right to designate **in the declaration** as a common facility any portion of a planned community or any improvement or facility then existing or contemplated for a planned community, then all of the following:

* * *

(16.1) **If the declaration provides that the association or a unit owner is or shall be responsible for operation and maintenance of storm water management facilities, a statement that upon approval of the permittee's notice of termination by the Department of Environmental Protection or by an authorized county conservation district, it shall be deemed that the association or unit owner, as applicable, agree to and shall become responsible for compliance with the storm water management facilities' permit terms and conditions, including long-term operation and maintenance of postconstruction storm water best management practices in accordance with applicable requirements. The declarant shall remain responsible for compliance with other obligations with respect to storm water management facilities as may be required by the approved subdivision and land development plans, the declaration or this subpart until such time as the obligations of the declarant may cease.**

* * *

Section 12. Sections 5302(a)(11) and 5303(e) of Title 68 are amended to read:

§ 5302. Power of unit owners' association.

(a) General rule.--Except as provided in subsection (b) and subject to the provisions of the declaration and the limitations of this subpart, the association, even if unincorporated, may:

* * *

(11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard[, levy]:

(i) **Levy** reasonable fines for violations of the declaration, bylaws and rules and regulations of the association.

(ii) **For any period during which assessments are delinquent or violations of the declaration, bylaws and rules and regulations remain uncured, suspend unit owners' rights, including, without limitation, the right to vote, the right to serve on the board or committees and the right of access to common elements, recreational facilities or amenities.**

* * *

§ 5303. Executive board members and officers.

* * *

(e) Election of members and officers following declarant control.--

(1) Not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members, at least a majority of whom shall be unit owners, provided that the executive board may consist of two members, both of whom shall be unit owners, if the planned community consists of two units. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

(2) **In the event that the election of the executive board by the unit owners fails to take place not later than the termination of a period of declarant control as provided in this section, then a special meeting of the unit owners may be called for such purpose by any member of the executive board elected by the unit owners or, if there is no such member of the executive board, unit owners entitled to cast at least 10% of the votes in the association.**

* * *

Section 13. Section 5318(d) of Title 68 is amended and the section is amended by adding a subsection to read:

§ 5318. Conveyance or encumbrance of common facilities.

* * *

(d) Other conveyances or encumbrances void.--Any purported conveyance, encumbrance, judicial sale, **tax sale** or other voluntary **or involuntary** transfer of common facilities, unless made pursuant to this section, is void.

* * *

(h) **Subject to declaration.--An interest in common facilities that is subject to the declaration prior to conveyance or encumbrance shall remain subject to the provisions of the declaration following the conveyance or encumbrance, unless the deed or agreement to convey the common facilities or subject them to a security interest specifically provides otherwise.**

Section 14. Sections 5409(b) (2) and 5411(e) of Title 68 are amended to read:

§ 5409. Release of liens.

* * *

(b) Other liens.--Before conveying real estate to the association, the declarant shall have the real estate released from:

* * *

(2) **All other liens, including, without limitation, real estate taxes,** on that real estate unless the public offering statement describes certain real estate which may be conveyed subject to liens in specified amounts.

§ 5411. Warranty against structural defects.

* * *

(e) Limitation of actions.--No action to enforce the warranty created by this section shall be commenced later than six years after the warranty begins[.], **provided, however, that the limitation period affecting a right of action by the association under this section shall be six years after the warranty begins or two years after the unit owners elect an executive board under section 5303(e) (relating to executive board members and officers), whichever is later.**

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Section 15. This act shall supersede any inconsistent provision of any other statute, regulation or ordinance.

Section 16. This act shall take effect in 60 days.

APPROVED--The 19th day of October, A.D. 2018.

TOM WOLF