

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**  
**No. 1557** Session of  
1993

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INTRODUCED BY GLADECK, FLICK, E. Z. TAYLOR, REBER, WOGAN,  
KENNEY, TRELLO AND CLARK, MAY 10, 1993

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REFERRED TO COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT,  
MAY 10, 1993

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AN ACT

1 Providing for rights and administrative responsibilities of  
2 homeowners associations.

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

5 Section 1. Short title.

6 This act shall be known and may be cited as the Homeowners  
7 Association Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall  
10 have the meanings given to them in this section unless the  
11 context clearly indicates otherwise:

12 "Association." A homeowners association.

13 "Board of directors." The executive body of a homeowners  
14 association or a committee which is exercising the power of the  
15 executive body by resolution or bylaw.

16 "Common area." The property within a development which is  
17 owned, leased or required by the declaration to be maintained by

1 a homeowners association for the use of its members.

2 "Declaration." An instrument, however denominated, recorded  
3 among the land records of the county or city in which the  
4 development or any part of the development is located, that  
5 imposes on the association either maintenance or operational  
6 responsibilities for the common area and creates the authority  
7 in the association to impose on lots, or on the owners or  
8 occupants of the lots or on any other entity, any mandatory  
9 payment of money in connection with the provision of maintenance  
10 or services or both for the benefit of some or all of the lots,  
11 the owners or occupants of the lots or the common area. The term  
12 includes any amendment or supplement to the instruments  
13 described in this paragraph. The term does not include a  
14 declaration of a condominium, as defined in 68 Pa.C.S. § 3103  
15 (relating to definitions), real estate cooperative, time-share  
16 or campground.

17 "Development." The real property located in this  
18 Commonwealth subject to a declaration which contains both lots,  
19 at least some of which are residential or are occupied for  
20 recreational purposes, and common areas. The term does not  
21 include a cooperative housing corporation, condominium, as  
22 defined in 68 Pa.C.S. § 3103 (relating to definitions), time-  
23 share project or campground.

24 "Homeowners association." An incorporated or unincorporated  
25 entity that is referred to in the declaration. The term does not  
26 include an association formed pursuant to 68 Pa.C.S. Part II  
27 Subpart B (relating to condominiums), a real estate cooperative,  
28 real estate time-share or campground.

29 "Lot." Any of the following:

30 (1) A plot or parcel of land designed for separate

ownership and occupancy shown on a recorded subdivision plot for a development, other than a common area.

(2) A unit in a condominium association or a unit in a real estate cooperative if the condominium or cooperative is a part of a development.

(3) Any other physical portion of the development designated for separate ownership or occupancy.

### Section 3. Association books and records.

(a) General rule.--The association shall keep detailed records of its operation and administration, including income received and expenses incurred. Books and records kept by or on behalf of the association shall be available for examination and copying by a member in good standing, or the member's authorized agent, to protect the member's interest. This right of examination shall exist without reference to the duration of membership and may be exercised only during reasonable business hours or at a mutually convenient time and location and upon five days' written notice.

(b) Withholding from inspection.--Books and records kept by or on behalf of an association may be withheld from inspection to the extent that they concern any of the following:

(1) Personnel records.

(2) An individual's medical records.

(3) Records relating to business transactions that are currently in negotiation.

(4) Privileged communications with legal counsel.

(5) Complaints against an individual member of the association.

(c) Charge for copies.--The association may impose and collect a charge, reflecting the actual costs of materials and

1 labor, prior to providing copies of any books and records to a  
2 member in good standing under this section.

3 Section 4. Disclosure statement.

4 (a) General rule.--The seller shall insert or cause to be  
5 inserted in a contract for sale or resale of a lot, in bold  
6 print or underlined, language to the effect that:

7 (1) The lot is located within a development which is  
8 subject to this act.

9 (2) This act requires the development's homeowners  
10 association to provide the seller, within 14 days of a  
11 written request and payment of the appropriate fee, with a  
12 disclosure packet which the seller, upon written request by  
13 the purchaser, will request from the association and upon  
14 receipt will provide to a purchaser.

15 (b) Failure to disclose.--The failure to cause the  
16 disclosure required by subsection (a) to be inserted in the  
17 contract for sale or resale shall be grounds for the avoidance  
18 of the contract by the purchaser. Except for knowing or willful  
19 misrepresentation, the purchaser's sole remedy against a seller  
20 or licensed real estate broker or salesperson or attorney for  
21 failure to cause the disclosure required by subsection (a) to be  
22 inserted in the contract for sale or resale shall be avoidance  
23 of the contract.

24 Section 5. Association disclosure packet.

25 (a) Content.--The association shall provide to the seller of  
26 a lot, within 14 days of the actual receipt of a written request  
27 and receipt of the appropriate fee, a disclosure packet which  
28 contains the following:

29 (1) The name of the association and, if incorporated,  
30 the state in which the association is incorporated and the

1 name and address of its registered agent in this  
2 Commonwealth.

3 (2) A copy of the current declaration and the  
4 association's articles of incorporation, bylaws, rules and  
5 regulations and any architectural guidelines promulgated by  
6 the association.

7 (3) A copy of the association's current budget or a  
8 summary of it and a copy of its statement of income and  
9 expenses or statement of its financial condition for the last  
10 fiscal year for which the statement is available.

11 (4) A statement including:

12 (i) The amount of all assessments and any other  
13 mandatory fees or charges currently imposed by the  
14 association applicable to the lot being purchased and to  
15 the right of use of common areas.

16 (ii) The status of the account.

17 (5) A statement whether there is any other entity or  
18 facility to which the lot owner may be liable for fees or  
19 other charges.

20 (6) A statement of any capital expenditure anticipated  
21 by the association within the current year and, where  
22 available, the two succeeding fiscal years.

23 (7) A statement or a summary of the status and amount of  
24 any reserve or replacement fund and any portion of the fund  
25 allocated by the board of directors for a specified project.

26 (8) A statement of the nature of a pending suit or  
27 unpaid judgment to which the association is a party which  
28 either could or would have a material impact on the  
29 association or its members or which relates to the lot being  
30 purchased.

1           (9) A statement setting forth insurance coverage,  
2       including any fidelity bond, maintained by the association.

3           (10) A statement as to whether a notice has been given  
4       to the seller that an improvement or alteration made to the  
5       lot, or uses made of the lot or common area assigned to the  
6       lot, are in violation of the instruments referred to in  
7       paragraph (2).

8       (b) Delivery.--The disclosure packet, once received by the  
9       seller from the association, shall be delivered by the seller to  
10      the purchaser, upon the written request of the purchaser. The  
11      association shall have no obligation to deliver the disclosure  
12      packet to the purchaser of the lot.

13      (c) Fee.--The association may charge a fee for the  
14      preparation and issuance of the disclosure packet required by  
15      this section. The fee shall reflect the actual cost of the  
16      preparation of the packet, but shall not exceed \$100.

17      (d) Association bound by statements.--When a disclosure  
18      packet has been issued, as required by this section, the  
19      association shall, as to the purchaser, be bound by the  
20      statements set forth in the disclosure packet as to the status  
21      of the assessment account and the status of the lot with respect  
22      to a violation of the instruments referred to in subsection  
23      (a)(2) as to the date of the statement, unless the purchaser had  
24      actual knowledge that the contents of the disclosure packet were  
25      in error.

26      Section 6. Powers of association.

27      (a) Adoption and enforcement of rules.--The board of  
28      directors of the association shall have the power to establish,  
29      adopt and enforce rules and regulations with respect to use of  
30      the common areas and with respect to any other areas of

1 responsibility assigned to the association by the declaration,  
2 except where expressly reserved by the declaration to the  
3 members. Rules and regulations may be adopted by resolution and  
4 shall be reasonably published or distributed throughout the  
5 development. The members of the association may, by a majority  
6 of the members present in person or by proxy, at a meeting  
7 convened in accordance with the provisions of the association's  
8 declaration and called for that purpose, repeal or amend a rule  
9 or regulation adopted by the board of directors. Rules and  
10 regulations may be enforced by any method normally available to  
11 the owner of private property in this Commonwealth, including,  
12 but not limited to, application for injunctive relief or damages  
13 and the court may award to the association court costs and  
14 reasonable attorney fees.

15 (b) Injunctive relief.--The board of directors of the  
16 association shall have the power, except where expressly  
17 prohibited by the declaration, to seek injunctive relief from  
18 the common pleas court in the county where the association's  
19 land is located against a member for a violation of the  
20 declaration or rules and regulations for which the member or the  
21 member's family members, tenants, guests or other invitees are  
22 responsible. Before injunctive relief is sought, the member  
23 shall be given an opportunity to be heard and to be represented  
24 by counsel before the board of directors or other tribunal  
25 specified in the documents. Notice of a hearing shall be hand-  
26 delivered or mailed by registered or certified mail, return  
27 receipt requested, to the member at the address of record with  
28 the association at least 14 days prior to the hearing. The board  
29 of directors may ask the court for the costs associated with its  
30 action to enforce this section.

1 (c) Authority to levy special assessments.--

2 (1) In addition to all other assessments which are  
3 authorized in the declaration, the board of directors of an  
4 association shall have the power to levy a periodic special  
5 assessment against its members if the purpose in doing so is  
6 found by the board to be in the best interests of the  
7 association and the proceeds of the assessment are used  
8 primarily for the maintenance and upkeep, including capital  
9 expenditures, of the common area. This special assessment may  
10 be rescinded by majority vote of the members attending a  
11 meeting of the membership convened in accordance with the  
12 provisions of the association's declaration within 60 days of  
13 receipt of the notice of this assessment.

14 (2) The failure of a member to pay the special  
15 assessment allowed shall entitle the association to the lien  
16 provided by section 8.

17 (3) The failure of a member to pay the special  
18 assessment will provide the association with the right to  
19 deny the member access to any or all of the common areas.  
20 Notwithstanding this paragraph, direct access to the member's  
21 lot over a road within the development which is a common area  
22 shall not be denied the member.

23 Section 7. Compliance with declaration.

24 A lot owner and those entitled to occupy a lot shall comply  
25 with all lawful provisions of this act and all provisions of the  
26 declaration. A lack of compliance shall be grounds for an action  
27 or suit to recover sums due, for damages or injunctive relief or  
28 for any other remedy available at law or in equity, maintainable  
29 by the association or by its board of directors or any managing  
30 agent on behalf of the association, or, in any proper case, by

1 one or more aggrieved lot owners on their own behalf or as a  
2 class action. The prevailing party shall be entitled to recover  
3 reasonable attorney fees and costs expended in the matter.

4 Section 8. Lien for assessments.

5 (a) General rule.--Once perfected, the association shall  
6 have a lien on every lot for unpaid assessments levied against  
7 that lot in accordance with the provisions of this act and all  
8 lawful provisions of the declaration. The lien, once perfected,  
9 shall be prior to subsequent liens and encumbrances except:

10 (1) Real estate tax liens on that lot.

11 (2) Liens and encumbrances recorded prior to the  
12 recordation of the declaration.

13 (3) Sums unpaid on and owing under a mortgage or deed of  
14 trust recorded prior to the perfection of this lien.

15 This subsection shall not affect the priority of mechanics' and  
16 materialmen's liens.

17 (b) Perfection of lien.--The association, in order to  
18 perfect the lien given by this section, shall file, before the  
19 expiration of six months from the time the assessment became due  
20 and payable, in the clerk's office in the county or city in  
21 which the development is situated, a memorandum of lien,  
22 verified by the oath of the principal officer of the association  
23 or other officer or officers as the declaration may specify,  
24 which contains the following:

25 (1) The name of the development.

26 (2) A description of the lot.

27 (3) The name or names of the persons constituting owners  
28 of that lot.

29 (4) The amount of unpaid assessments currently due or  
30 past due relative to the lot, together with the date when

1 each fell due.

2 (5) The date of issuance of the memorandum.

3 (6) The name of the association and the name and current  
4 address of the person to contact to arrange for payment or  
5 release of the lien.

6 (7) A statement that the association is obtaining a lien  
7 in accordance with the provisions of the Homeowners  
8 Association Act.

9 It shall be the duty of the clerk in whose office the memorandum  
10 of lien is filed as provided in this section to record and index  
11 the memorandum of lien, as provided in subsection (d), in the  
12 names of the persons identified in the memorandum, as well as in  
13 the name of the association. The cost of recording and releasing  
14 the memorandum of lien shall be taxed against the person found  
15 liable in a judgment or decree enforcing the lien.

16 (c) Notice to property owner.--Prior to filing a memorandum  
17 of lien, a written notice shall be sent to the property owner by  
18 certified mail, at the property owner's last known address,  
19 informing the property owner that a memorandum of lien will be  
20 filed in the clerk's office of the applicable city or county.  
21 The notice shall be sent at least ten days before the actual  
22 filing date of the memorandum of lien.

23 (d) Recording and indexing memorandums of liens.--  
24 Notwithstanding any other provision of this section or any  
25 provision of law requiring documents to be recorded in the  
26 miscellaneous lien books or the deed books in the clerk's office  
27 of any court, all memorandums of liens arising under this  
28 section shall be recorded in the deed books in the clerk's  
29 office. A memorandum shall be indexed in the general index to  
30 deeds and the general index shall identify the lien as a lien

1 for lot assessments.

2 (e) Suit to enforce lien.--No suit to enforce a lien  
3 perfected under subsection (b) shall be brought after 24 months  
4 from the time when the memorandum of lien was recorded. However,  
5 the filing of a petition to enforce the lien in a suit wherein  
6 the petition may be properly filed shall be regarded as the  
7 institution of a suit under this section. Nothing in this  
8 subsection shall extend the time within which this lien may be  
9 perfected.

10 (f) Payment or satisfaction.--When payment or satisfaction  
11 is made of a debt secured by the lien perfected under subsection  
12 (b), the lien shall be released.

13 (g) Actions at law.--Nothing in this section shall be  
14 construed to prohibit actions at law to recover sums for which  
15 subsection (a) creates a lien, maintainable pursuant to section  
16 6.

17 Section 9. Applicability.

18 This act shall not apply to developments subject to a  
19 declaration initially recorded before the effective date of this  
20 act. This act shall apply to all homeowners associations in  
21 existence prior to or subsequent to the effective date of this  
22 act.

23 Section 10. Effective date.

24 This act shall take effect in 60 days.