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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1329 Session of 2003

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INTRODUCED BY T. STEVENSON, THOMAS, CAPPELLI, HENNESSEY, LEWIS,  
McNAUGHTON, R. MILLER, SAYLOR, SCAVELLO, TIGUE, WATSON, WILT,  
YOUNGBLOOD AND TURZAI, MAY 5, 2003

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AS AMENDED ON SECOND CONSIDERATION, IN SENATE, NOVEMBER 18, 2004

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AN ACT

1 Amending Title 68 (Real and Personal Property) of the  
2 Pennsylvania Consolidated Statutes, amending provisions  
3 relating to planned communities.

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

6 Section 1. Section 5102(a) of Title 68 of the Pennsylvania  
7 Consolidated Statutes is amended and the section is amended by  
8 adding a subsection to read:

9 § 5102. Applicability.

10 (a) General rule.--This subpart applies to all planned  
11 communities created within this Commonwealth after the effective  
12 date of this subpart; but, if:

13 (1) such a planned community contains no more than 12  
14 units and is not subject to any rights under section 5215  
15 (relating to subdivision or conversion of units) to subdivide  
16 units or to convert into common elements or under section  
17 5211 (relating to conversion and expansion of flexible

1 planned communities) to add additional real estate, create  
2 units or limited common elements within convertible real  
3 estate or withdraw real estate, it is subject only to  
4 sections 5105 (relating to separate titles and taxation),  
5 5106 (relating to applicability of local ordinances,  
6 regulations and building codes), 5107 (relating to eminent  
7 domain) and 5218 (relating to easement to facilitate  
8 completion, conversion and expansion) unless the declaration  
9 provides that the entire subpart is applicable; or

10 (2) such a planned community, regardless of the number  
11 of units, has common elements or limited common elements  
12 which include only storm water management facilities and  
13 related devices, real estate containing signage, lighting,  
14 landscaping, gates, walls, fences or monuments or open space  
15 and is not subject to any rights under section 5215 or under  
16 section 5211, it shall be subject only to the sections listed  
17 in paragraph (1), the provisions of sections 5103 (relating  
18 to definitions), 5104 (relating to variation by agreement),  
19 5105, 5106, 5107, 5108 (relating to supplemental general  
20 principles of law applicable), 5109 (relating to construction  
21 against implicit repeal), 5110 (relating to uniformity of  
22 application and construction), 5111 (relating to  
23 severability), 5112 (relating to unconscionable agreement or  
24 term of contract), 5113 (relating to obligation of good  
25 faith) and 5114 (relating to remedies to be liberally  
26 administered) and the provisions of Chapter 53 (relating to  
27 management of planned community) and sections 5407 (relating  
28 to resales of units), 5408 (relating to escrow of deposits),  
29 5409 (relating to release of liens) and 5411 (relating to  
30 warranty against structural defects) unless the declaration

1 provides that the entire subpart is applicable. If a planned  
2 community is subject to the provisions of this paragraph, a  
3 declarant shall:

4       *(i)* include [a provision] provisions in any sales  
5 agreement for a unit of such planned community which  
6 states that an association exists or may be created to  
7 own and manage certain generally described common  
8 elements or limited common elements[. There] and that  
9 there may be imposed by the association assessments upon  
10 unit owners for expenses related to the ownership,  
11 management, administration or regulation of such elements  
12 [and that the]; and

13       *(ii)* prepare and record a declaration in the manner  
14 set forth in section 5205 (relating to contents of  
15 declaration; all planned communities) or 5206 (relating  
16 to contents of declaration for flexible planned  
17 communities) or covenants and restrictions as may be  
18 appropriate for the planned community. The declarant  
19 shall provide to the purchaser copies of the proposed or  
20 recorded declaration or covenants and restrictions, an  
21 actual or proposed budget of the planned community in  
22 accordance with the provisions of section 5402(a)(7)  
23 (relating to public offering statement; general  
24 provisions) and the actual or proposed bylaws of the  
25 association, provided that the purchaser has the right,  
26 before conveyance, to cancel the agreement within seven  
27 days of the date of receiving a copy of the proposed or  
28 recorded declaration or covenants and restrictions, the  
29 actual or proposed budget and the actual or proposed  
30 bylaws. As used in this paragraph, the term "open space"

shall include an area of land or an area of water or a combination of land and water within a planned community intended for the use or enjoyment of residents, including, but not limited to, ball fields and courts, parks, walking, hiking or biking trails, wetlands, wooded areas and walkways and driveways providing access thereto or parking intended for users of such open space. The term does not include streets, utility lines or facilities or swimming pools or clubhouses owned or leased and maintained by the association.

\* \* \*

~~(b.1) Retroactivity. Except as provided in subsections (b) and (c), sections 5108, 5113, 5202 (relating to unit boundaries), 5222 (relating to master associations), 5302(a)(8),~~

~~(B.1) RETROACTIVITY.--~~

~~(1) SECTIONS 5103, 5108, 5113, 5220(I) (RELATING TO TERMINATION OF PLANNED COMMUNITY), 5222 (RELATING TO MASTER ASSOCIATIONS), 5302(A)(8)(I), (16) and (17) (relating to power of unit owners' association), 5303 5303(A) AND (B) (relating to executive board members and officers), 5307 (relating to upkeep of planned community), 5312 (relating to insurance) and 5314 (relating to assessments for common expenses) AND 5319 (RELATING TO OTHER LIENS AFFECTING PLANNED COMMUNITY), to the extent necessary in construing any of those sections, apply to all planned communities created in this Commonwealth before the effective date of this subsection SUBPART; but those sections apply only with respect to events and circumstances occurring after the effective date of this subsection and do not invalidate specific provisions contained in existing provisions of the~~

declaration, bylaws or plats and plans of those planned  
communities.

(2) SECTION 5303(C) AND (D), TO THE EXTENT NECESSARY IN  
CONSTRUING ANY OF THOSE SUBSECTIONS, APPLY TO ALL PLANNED  
COMMUNITIES CREATED IN THIS COMMONWEALTH BEFORE THE EFFECTIVE  
DATE OF THIS SUBPART; BUT THOSE SUBSECTIONS APPLY ONLY WITH  
RESPECT TO EVENTS AND CIRCUMSTANCES OCCURRING 180 DAYS AFTER  
THE EFFECTIVE DATE OF THIS SUBSECTION AND DO NOT INVALIDATE  
SPECIFIC PROVISIONS CONTAINED IN EXISTING PROVISIONS OF THE  
DECLARATION, BYLAWS OR PLATS AND PLANS OF THOSE PLANNED  
COMMUNITIES.

\* \* \*

~~Section 2. Section 5203 of Title 68 is amended by adding a  
subsection to read:~~

~~§ 5203. Construction and validity of declaration and bylaws.~~

~~\* \* \*~~

~~(c) Interpretation and application of declaration. The  
executive board shall have the powers to interpret and apply the  
declaration and bylaws, and to resolve all conflicts or disputes  
requiring the interpretation and application of the declaration.  
As between unit owners, the decision of the board shall be  
final, and shall be enforceable at law as a decision of an  
arbitrator. The executive board and its members shall have no  
liability for exercising these powers provided they are  
exercised in good faith and in the best interest of the  
association in the manner set forth in section 5303 (relating to  
executive board members and officers).~~

~~Section 3. Sections 5218, 5219(a) and (f), 5220(a), 5221,  
5302(a)(4), (6), (8), (12) and (17) and 5303(a) of Title 68 are  
amended to read:~~

1       SECTION 2.   SECTIONS 5105(C)(2), 5210(H), 5218 AND 5219(A)       <—

2   AND (F) OF TITLE 68 ARE AMENDED TO READ:

3   § 5105.   SEPARATE TITLES AND TAXATION.       <—

4       \* \* \*

5       (C)   CERTAIN ADDITIONAL PROHIBITIONS.--

6       \* \* \*

7           (2)   EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION, AND  
8       NOTWITHSTANDING ANY FEES OR FEE SCHEDULES OR GENERAL  
9       RULEMAKING AUTHORITY THAT EXISTED PRIOR TO THE EFFECTIVE DATE  
10       OF THIS PARAGRAPH, AN ASSOCIATION SHALL NOT HAVE THE POWER TO  
11       IMPOSE ANY FEES OR FINANCIAL SECURITY RELATED TO  
12       CONSTRUCTION, ALTERATION, RENOVATION OR REPAIR OF A UNIT OR  
13       EXERCISE AN ACCESS EASEMENT UNDER SECTION 5218 (RELATING TO  
14       EASEMENT TO FACILITATE COMPLETION, CONVERSION AND EXPANSION).

15   § 5210.   PLATS AND PLANS.

16       \* \* \*

17       (H)   WHO MAY MAKE CERTIFICATIONS.--ANY CERTIFICATION OF A  
18   PLAT OR PLAN REQUIRED BY THIS SECTION [OR SECTION 5201 (RELATING  
19   TO CREATION OF PLANNED COMMUNITY)] MUST BE MADE BY AN  
20   INDEPENDENT REGISTERED SURVEYOR, ARCHITECT OR PROFESSIONAL  
21   ENGINEER.

22       \* \* \*

23   § 5218.   Easement to facilitate completion, conversion and  
24               expansion.

25       Subject to the provisions of the declaration, a declarant has  
26   an easement through the common elements as may be reasonably  
27   necessary for the purpose of discharging a declarant's  
28   obligations or exercising special declarant rights. In addition,  
29   without affecting the rights, if any, of each unit owner with  
30   respect to the use and enjoyment of the common elements, subject

1 to the provisions of the declaration, each unit owner and its  
2 agents, contractors and invitees shall have a nonexclusive  
3 access easement through the common elements as may be reasonably  
4 necessary for the purpose of construction, repair and renovation  
5 of the owner's unit. An association shall have the power during  
6 spring thaw conditions to restrict road usage by vehicles of  
7 more than ten tons gross weight, provided:

8 (1) such restrictions shall be imposed only on a week-  
9 by-week basis for an aggregate period not to exceed eight  
10 weeks during any calendar year;

11 (2) thaw conditions shall be reviewed by the association  
12 at least weekly; and

13 (3) signs shall be conspicuously posted by the  
14 association at all entrances to the planned community  
15 advising when and where such thaw restrictions are  
16 applicable.

17 An association shall not have the power to impose any fees or  
18 charges or require financial security, including, but not  
19 limited to, surety bonds, letters of credit or escrow deposits  
20 for the use of the easement rights described in this section[.

21 An association shall be entitled to recover costs and expenses  
22 incurred by the association for the repair of damage caused to  
23 common elements in the exercise of the easement rights.];

24 however, the declarant or owner who exercises the easement  
25 rights described in this section, whether directly or indirectly  
26 through an agent, servant, contractor or employee, shall have  
27 the obligation to promptly return any ~~damaged~~ portion of the <—  
28 common elements DAMAGED BY THE EXERCISE BY THE DECLARANT OR <—  
29 OWNER OR ITS AGENT, SERVANT, CONTRACTOR OR EMPLOYEE OF THE  
30 EASEMENT UNDER THIS SECTION to the appearance, condition and

1 function in which it existed prior to the exercise of the  
2 easement, or to reimburse the association for all reasonable  
3 costs, fees and expenses incurred by the association to return  
4 any ~~damaged~~ portion of the common elements WHICH WERE DAMAGED to <—  
5 the appearance, condition and function in which it existed prior  
6 to the exercise of the easement.

7 § 5219. Amendment of declaration.

8 (a) Number of votes required.--

9 ~~(1) [The] Without regard for any larger majority the~~ <—  
10 ~~declaration may specify or the absence of any amendment~~  
11 ~~provisions in the declaration, the declaration, including the~~

12 (1) THE DECLARATION, INCLUDING THE plats and plans, may <—  
13 be amended only by vote [of] OR AGREEMENT OF UNIT OWNERS OF <—  
14 UNITS TO WHICH at least:

15 (i) 67% of ~~the association~~ VOTES IN THE ASSOCIATION <—  
16 ARE ALLOCATED; or

17 ~~{(ii) a larger percentage of the association~~ <—

18 (II) A LARGER PERCENTAGE OF THE VOTES IN THE <—  
19 ASSOCIATION AS specified in the declaration; or

20 ~~{(iii)} (ii) a smaller percentage of the association~~ <—

21 (III) A SMALLER PERCENTAGE OF THE VOTES IN THE <—  
22 ASSOCIATION AS specified in the declaration if all units  
23 are restricted exclusively to nonresidential use.

24 (2) Paragraph (1) is limited by subsection (d) and  
25 section 5221 (relating to rights of secured lenders).

26 (3) Paragraph (1) shall not apply to any of the  
27 following:

28 (i) Amendments executed by a declarant under:

29 (A) section 5210(e) or (f) (relating to plats  
30 and plans);



1 (B) section 5211(a) (relating to conversion and  
2 expansion of flexible planned communities); or

3 (C) section 5212(a) (relating to withdrawal of  
4 withdrawable real estate).

5 (ii) Amendments executed by the association under:

6 (A) subsection (f);

7 (B) section 5107 (relating to eminent domain);

8 (C) section 5207(d) (relating to leasehold  
9 planned communities);

10 (D) section 5209 (relating to limited common  
11 elements); or

12 (E) section 5215 (relating to subdivision or  
13 conversion of units).

14 (iii) Amendments executed by certain unit owners  
15 under:

16 (A) section 5209(b);

17 (B) section 5214(a) (relating to relocation of  
18 boundaries between units);

19 (C) section 5215; or

20 (D) section 5220(b) (relating to termination of  
21 planned community).

22 \* \* \*

23 (f) Technical corrections.--Except as otherwise provided in  
24 the declaration, if any amendment to the declaration is  
25 necessary in the judgment of the executive board to do any of  
26 the following:

27 (1) cure an ambiguity;

28 (2) correct or supplement any provision of the  
29 declaration, including the plats and plans, that is  
30 defective, missing or inconsistent with any other provision

of the declaration or with this subpart; [or]

(3) conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or deeds of trust or units in planned community or so-called "PUD" projects, such as Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; or

(4) comply with any statute, regulation, code or ordinance which may now or hereafter be made applicable to the planned community or association, or to make a reasonable accommodation or permit a reasonable modification in favor of handicapped, as may be defined by prevailing Federal or State laws or regulations applicable to the association, unit owners, residents or employees;

then, at any time, the executive board may, at its discretion, effect an appropriate corrective amendment without the approval of the unit owners or the holders of liens on all or any part of the planned community, upon receipt of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this subsection.

~~§ 5220. Termination of planned community.~~

<—

~~(a) Number of votes required. [Except] Without regard for the provisions of any declaration purporting to establish any self-executing deadline or termination date for any planned community existing under this subpart or any planned community or "PUD" created prior to the adoption of this subpart, and except in the case of a taking of all the units by eminent domain in section 5107 (relating to eminent domain), [a] no planned community may be terminated [only] except by the written agreement of unit owners of units to which at least 80%, or such~~

~~larger percentage specified in the declaration, of the votes in  
the association are allocated. The declaration may specify a  
smaller percentage only if all of the units in the planned  
community are restricted exclusively to nonresidential uses.~~

~~\* \* \*~~

SECTION 3. SECTION 5220 OF TITLE 68 IS AMENDED BY ADDING A  
SUBSECTION TO READ:

§ 5220. TERMINATION OF PLANNED COMMUNITY.

\* \* \*

(I) INEFFECTIVENESS OF TERMINATION PROVISION.--IN THE CASE  
OF A DECLARATION THAT CONTAINS NO PROVISION EXPRESSLY PROVIDING  
FOR A MEANS OF TERMINATING THE PLANNED COMMUNITY OTHER THAN A  
PROVISION 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 PLANNED COMMUNITY WOULD  
OTHERWISE BE TERMINATED, OWNERS OF UNITS TO WHICH AT LEAST 80%  
OF THE VOTES IN THE ASSOCIATION ARE ALLOCATED VOTE 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 5221, 5302(A)(4), (6), (8), (12) AND  
(17) AND 5303(A) OF TITLE 68 ARE AMENDED TO READ:

§ 5221. 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 do any of the following:

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

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 except under section 5312 (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 action specified in the notice. Written notice to  
23       the secured lender shall be given by ~~first class mail,~~       <—  
24       CERTIFIED, REGISTERED OR FIRST-CLASS MAIL, EVIDENCED BY A UNITED       <—  
25       STATES POSTAL SERVICE CERTIFICATE OF MAILING, postage prepaid,  
26       at the address provided by the secured lender, or in the absence  
27       thereof, at the address of the secured lender endorsed on any  
28       mortgage or deed of trust of record and at the address to which  
29       the unit owner mails any periodic payment paid to the secured  
30       lender. The notice to the secured lender shall include a

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

5 § 5302. Power of unit owners' association.

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

9 \* \* \*

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

14 \* \* \*

15 (6) Regulate the use, maintenance, repair, replacement  
16 and modification of common elements; and make reasonable  
17 accommodations, or permit reasonable modifications to be made  
18 to units, the common facilities, the controlled facilities or  
19 the common elements, to accommodate people with disabilities,  
20 as defined by prevailing Federal, State or local statute,  
21 regulations, code or ordinance, unit owners, residents,  
22 tenants or employees.

23 \* \* \*

24 ~~(8) Acquire, hold, encumber and convey in its own name~~ <—  
25 ~~any right, title or interest to real or personal property,~~  
26 ~~and pledge or assign assessment income necessary to create~~  
27 ~~amortization reserves to retire debts, but common facilities~~  
28 ~~may be conveyed or subjected to a security interest only~~  
29 ~~under the provisions of section 5318 (relating to conveyance~~  
30 ~~or encumbrance of common facilities). Reserve funds held for~~

~~future major repairs and replacements of the common elements  
or controlled facilities 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 FACILITIES MAY BE CONVEYED OR  
SUBJECTED] OTHER THAN COMMON FACILITIES; AND

(II) CONVEY OR SUBJECT TO A SECURITY INTEREST COMMON  
FACILITIES ONLY UNDER THE PROVISIONS OF SECTION 5318  
(RELATING TO CONVEYANCE OR ENCUMBRANCE OF COMMON  
FACILITIES).

\* \* \*

(12) Impose reasonable charges for the preparation and  
recording of amendments to the declaration, resale  
certificates required by section 5407 (relating to resales of  
units) which shall be one charge that may be made by the  
association solely because of the resale or retransfer of any  
unit or statement of unpaid assessments. In addition, an  
association may impose a capital improvement fee, but no  
other fees, on the resale or transfer of units in accordance  
with the following:

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

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

1 (B) in the case of resale or transfer of a unit  
2 which was either created or added to the planned  
3 community in accordance with section 5211 (relating  
4 to conversion and expansion of flexible planned  
5 communities) at some time during the most recently  
6 completed fiscal year of the association but was not  
7 in existence for the entire fiscal year, the capital  
8 improvement fee shall not exceed one-half of the  
9 annual assessments for general common expenses  
10 charged to a unit comparable to such unit during the  
11 most recently completed fiscal year of the  
12 association[.]; and

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

16 (ii) Capital improvement fees allocated by an  
17 association must be maintained in a separate capital  
18 account and may be expended only for new capital  
19 improvements or replacement of existing common elements  
20 and may not be expended for operation, maintenance or  
21 other purposes.

22 (iii) No capital improvement fee shall be imposed on  
23 any gratuitous transfer of a unit between any of the  
24 following family members: spouses, parent and child,  
25 siblings, grandparent and grandchild[.]; nor on any  
26 transfer of a unit by foreclosure sale or deed in lieu of  
27 foreclosure to a secured lending institution as defined  
28 by the act of December 3, 1959 (P.L.1688, No.621), known  
29 as the Housing Finance Agency Law.

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

1 (A) acquires a unit consisting of unimproved  
2 real estate and signs and delivers to the association  
3 at the time of such person's acquisition a sworn  
4 affidavit declaring the person's intention to  
5 reconvey such unit within 18 months of its  
6 acquisition; and

7 (B) completes such reconveyance within such 18  
8 months.

9 \* \* \*

10 (17) Assign its right to future income, including the  
11 right to receive common expense assessments[, only to the  
12 extent the declaration expressly provides]. RESERVE FUNDS  
13 HELD FOR FUTURE MAJOR REPAIRS AND REPLACEMENTS OF THE COMMON  
14 ELEMENTS MAY NOT BE ASSIGNED OR PLEDGED.

15 \* \* \*

16 § 5303. Executive board members and officers.

17 (a) Powers and fiduciary status.--Except as provided in the  
18 declaration, in the bylaws, in subsection (b) or in other  
19 provisions of this subpart, the executive board may act in all  
20 instances on behalf of the association. In the performance of  
21 their duties, the officers and members of the executive board  
22 shall stand in a fiduciary relation to the association and shall  
23 perform their duties, including duties as members of any  
24 committee of the board upon which they may serve, in good faith;  
25 in a manner they reasonably believe to be in the best interests  
26 of the association; and with care, including reasonable inquiry,  
27 skill and diligence as a person of ordinary prudence would use  
28 under similar circumstances. In managing the association's  
29 reserve funds, the officers and members of the executive board  
30 shall have the power to invest the association's reserve funds



1 in investments permissible by law for the investment of trust  
2 funds and shall be governed in the management of the  
3 association's reserve funds by 20 Pa.C.S. § 7203 (relating to  
4 prudent investor rule). In performing any duties, an officer or  
5 executive board member shall be entitled to rely in good faith  
6 on information, opinions, reports or statements, including  
7 financial statements and other financial data, in each case  
8 prepared or presented by any of the following:

9 (1) One or more other officers or employees of the  
10 association whom the officer or executive board member  
11 reasonably believes to be reliable and competent in the  
12 matters presented.

13 (2) Counsel, public accountants or other persons as to  
14 matters which the officer or executive board member  
15 reasonably believes to be within the professional or expert  
16 competence of that person.

17 (3) A committee of the executive board upon which the  
18 officer or executive board member does not serve, designated  
19 in accordance with law, as to matters within its designated  
20 authority, which committee the officer or executive board  
21 member reasonably believes to merit confidence.

22 AN OFFICER OR EXECUTIVE BOARD MEMBER SHALL NOT BE CONSIDERED TO <—  
23 BE ACTING IN GOOD FAITH IF HE HAS KNOWLEDGE CONCERNING THE  
24 MATTER IN QUESTION THAT WOULD CAUSE HIS RELIANCE TO BE  
25 UNWARRANTED. OFFICERS AND MEMBERS OF THE EXECUTIVE BOARD SHALL <—  
26 HAVE NO LIABILITY FOR THE EXERCISE OF THEIR DUTIES IN ACCORDANCE  
27 WITH THE PROVISIONS OF THIS SECTION. THE EXECUTIVE BOARD AND ITS <—  
28 MEMBERS SHALL HAVE NO LIABILITY FOR EXERCISING THESE POWERS  
29 PROVIDED THEY ARE EXERCISED IN GOOD FAITH, IN THE BEST INTEREST  
30 OF THE ASSOCIATION AND WITH CARE IN THE MANNER SET FORTH IN THIS

1 SECTION.

2 \* \* \*

3 ~~Section 4. Sections 5312(a), (c), (f) and (h), 5315(b) and~~ <—  
4 ~~5407(c) of Title 68 are amended and the sections are amended by~~  
5 ~~adding subsections to read:~~

6 SECTION 5. SECTIONS 5312(A), (C), (F) AND (H) AND 5315(B)(1) <—  
7 AND (2)(I) OF TITLE 68 ARE AMENDED AND THE SECTIONS ARE AMENDED  
8 BY ADDING SUBSECTIONS TO READ:

9 § 5312. Insurance.

10 (a) Insurance to be carried by association.--Commencing not  
11 later than the time of the first conveyance of a unit to a  
12 person other than a declarant, the association shall maintain,  
13 to the extent reasonably available, all of the following:

14 (1) Property insurance on the common facilities and  
15 controlled facilities to the extent the controlled facilities  
16 can be insured separately from the unit and, if insurance for  
17 the unit is not provided by the association under subsection  
18 (b) or the declaration, insuring against all common risks of  
19 direct physical loss. The total amount of insurance after  
20 application of any deductibles shall be not less than 80% of  
21 the actual cash value of the insured property, exclusive of  
22 land, excavations, foundations and other items normally  
23 excluded from property policies.

24 (2) Comprehensive general liability insurance, including  
25 medical payments insurance, in an amount determined by the  
26 executive board but not less than any amount specified in the  
27 declaration covering all occurrences commonly insured against  
28 for death, bodily injury and property damage, arising out of  
29 or in connection with the use, ownership or maintenance of  
30 the common elements.

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

4           \* \* \*

5           (c) Other insurance carried by association.--If the  
6 insurance described in subsections (a) and (b) is not  
7 maintained, the association promptly shall cause notice of that  
8 fact to be hand delivered or sent prepaid by United States mail  
9 to all unit owners. The declaration may require the association  
10 to carry any other insurance. The association may carry any  
11 other insurance [it deems] in such reasonable amounts and with  
12 such reasonable deductibles as ~~it~~ THE EXECUTIVE BOARD may deem <—  
13 appropriate to protect the association or the unit owners.

14          \* \* \*

15          (f) Unit owner insurance.--A unit owner may insure his unit  
16 for all losses to his unit, including losses not covered by the  
17 insurance maintained by the association due to a deductible  
18 provision or otherwise. A residential unit owner shall insure  
19 the owner's unit except as insurance is provided by the  
20 association in accordance with this section or the declaration.  
21 An insurance policy issued to the association [does] shall not  
22 prevent a unit owner from obtaining insurance for the owner's  
23 own benefit, including, but not limited to, insurance to cover  
24 any deductibles or losses not covered by the association's  
25 property or comprehensive general liability insurance.

26          \* \* \*

27          (h) Disposition of insurance proceeds.--

28               (1) Any portion of the planned community for which  
29 insurance is required to be maintained by the association by  
30 this section or the declaration and which is damaged or

1 destroyed shall be repaired or replaced promptly by the  
2 association unless:

3 (i) the planned community is terminated;

4 (ii) repair or replacement would be illegal under  
5 any State or local health or safety statute or ordinance;  
6 or

7 (iii) 80% of the unit owners, including every owner  
8 of a unit or assigned limited common element which will  
9 not be rebuilt, vote not to rebuild.

10 [The] Except for the costs of repair or replacement which are  
11 not covered due to deductibles, the cost of repair or  
12 replacement [of those portions] in excess of insurance <—  
13 proceeds and reserves, which have not been identified by the  
14 executive board to fund costs of capital expenditures  
15 budgeted for the current fiscal year of the association, is a  
16 common expense.

17 (2) Any portion of the planned community for which  
18 insurance is required to be maintained by the unit owner by  
19 this section or the declaration and which is damaged or  
20 destroyed shall be repaired or replaced promptly by the unit  
21 owner unless:

22 (i) the planned community is terminated;

23 (ii) repair or replacement would be illegal under  
24 any State or local health or safety statute or ordinance;  
25 or

26 (iii) 80% of the unit owners, including every owner  
27 of a unit or assigned limited common element which will  
28 not be rebuilt, vote to not rebuild.

29 The cost of repair or replacement of these portions in excess  
30 of insurance proceeds is the unit owner's expense.

1           (3) If the entire planned community is not repaired or  
2 replaced, the following apply:

3           (i) The insurance proceeds attributable to the  
4 damaged common elements shall be used to restore the  
5 damaged area to a condition compatible with the remainder  
6 of the planned community.

7           (ii) The insurance proceeds attributable to units  
8 shall be paid to unit owners except those proceeds  
9 attributable to controlled facilities for which insurance  
10 is separately maintained by the association under this  
11 section or the declaration shall be distributed to all  
12 unit owners in proportion to their common expense  
13 liability. Proceeds attributable to limited common  
14 facilities which are not rebuilt shall be distributed  
15 equally to owners of units to which those limited common  
16 facilities were assigned.

17           (iii) The remainder of the proceeds shall be  
18 distributed to all the unit owners in proportion to their  
19 common expense liability.

20           (4) If the unit owners vote not to rebuild any unit,  
21 that unit's votes in the association and common expense  
22 liability are automatically reallocated upon the vote as if  
23 the unit had been condemned under section 5107(a) (relating  
24 to eminent domain), and the association promptly shall  
25 prepare, execute and record an amendment to the declaration  
26 reflecting the reallocations.

27           (5) Notwithstanding the provisions of this subsection,  
28 section 5220 (relating to termination of planned community)  
29 governs the distribution of insurance proceeds if the planned  
30 community is terminated.

1       \* \* \*

2       (j) Recovery of deductibles.--If any insurance policy  
3 maintained by the association contains a deductible, then that  
4 portion of any loss or claim which is not covered by insurance  
5 due to the application of a deductible, as well as any claim or  
6 loss for which the association is self-insured, shall be levied  
7 by the executive board in accordance with section 5314(c)  
8 (relating to assessments for common expenses). to the extent <—  
9 applicable, or in the absence of the application, in a pro rata  
10 manner, as a common expense assessment against all of the units  
11 benefited by the repair or replacement.

12 § 5315. Lien for assessments.

13       \* \* \*

14       (b) Priority of lien.--

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

17           (i) Liens and encumbrances recorded before the  
18 recording of the declaration.

19           ~~(ii) First mortgages or deeds of trust on the unit~~ <—

20           (II) [FIRST MORTGAGES OR] <—

21           (A) MORTGAGES AND DEEDS OF TRUST ON THE UNIT  
22           securing first mortgage holders and recorded before  
23 due date of the assessment if the assessment is not  
24 payable in installments or the due date of the unpaid  
25 installment if the assessment is payable in  
26 installments.

27           (B) JUDGMENTS OBTAINED FOR OBLIGATIONS SECURED <—  
28 BY ANY SUCH MORTGAGE OR DEED OF TRUST UNDER CLAUSE  
29 (A).

30           (iii) Liens for real estate taxes and other

governmental assessments or charges against the unit.

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

~~(i) [As] Except as to unpaid [common expense~~ <—

(I) AS TO UNPAID COMMON EXPENSE assessments made <—

under section 5314(b) (relating to assessments for common

expenses)] ~~assessments for which the association has a~~ <—

~~lien under this section~~ that come due during the six

months immediately preceding [institution of] THE DATE OF <—

a judicial sale of a unit in an action to enforce

collection of a lien against a unit {by a judicial sale, <—

only to the extent that the six months' unpaid

assessments are paid out of the proceeds of the sale}. <—

~~(ii) [As to unpaid common expense assessments made~~ <—

~~under section 5314(b) other than the six months'~~

~~assessment referred to in subparagraph (i), in a full~~

~~amount of the unpaid assessments, whether or not the~~

~~proceeds of the judicial sale are adequate to pay these~~

~~assessments.] To the extent that the proceeds of the sale~~

~~are sufficient to pay some or all of [these] the~~

~~additional unpaid assessments after satisfaction in full~~

~~of the costs of the judicial sale and the liens and~~

~~encumbrances of the types described in paragraph (1) and~~

~~the unpaid common expense assessments that come due~~

~~during the six month period described in subparagraph~~

~~(i), the assessments shall be paid before any remaining~~

~~proceeds may be paid to any other claimant, including the~~

~~prior owner of the unit.~~

\* \* \*

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

10     SECTION 6.   SECTION 5402(A)(13)(I) AND (IV) OF TITLE 68 ARE     <—  
11     AMENDED TO READ:

12     § 5402.   PUBLIC OFFERING STATEMENT; GENERAL PROVISIONS.

13     (A)   GENERAL RULE.--EXCEPT AS PROVIDED IN SUBSECTION (B), A  
14     PUBLIC OFFERING STATEMENT MUST CONTAIN OR FULLY AND ACCURATELY  
15     DISCLOSE:

16             \* \* \*

17             (13)   A STATEMENT IN AT LEAST TEN-POINT BOLDFACE TYPE,  
18     APPEARING ON THE FIRST PAGE OF THE PUBLIC OFFERING STATEMENT,  
19     AS FOLLOWS:

20             (I)   THAT, WITHIN [15 DAYS OR, IN CASE OF A SALE OF A  
21     TIME-SHARE ESTATE,] SEVEN DAYS AFTER RECEIPT OF A PUBLIC  
22     OFFERING STATEMENT OR AN AMENDMENT TO THE PUBLIC OFFERING  
23     STATEMENT THAT MATERIALLY AND ADVERSELY AFFECTS THE  
24     RIGHTS OR OBLIGATIONS OF THE PURCHASER, THE PURCHASER,  
25     BEFORE CONVEYANCE, MAY CANCEL ANY CONTRACT FOR PURCHASE  
26     OF A UNIT FROM A DECLARANT.

27             \* \* \*

28             (IV)   THAT, IF A PURCHASER RECEIVES THE PUBLIC  
29     OFFERING STATEMENT MORE THAN [15 DAYS OR, IN CASE OF A  
30     SALE OF A TIME-SHARE ESTATE,] SEVEN DAYS BEFORE SIGNING A



1 CONTRACT, THE PURCHASER CANNOT CANCEL THE CONTRACT UNLESS  
2 THERE IS AN AMENDMENT TO THE PUBLIC OFFERING STATEMENT  
3 THAT WOULD HAVE A MATERIAL AND ADVERSE EFFECT ON THE  
4 RIGHTS OR OBLIGATIONS OF THAT PURCHASER.

5 \* \* \*

6 SECTION 7. SECTION 5407(C) OF TITLE 68 IS AMENDED AND THE  
7 SECTION IS AMENDED BY ADDING A SUBSECTION TO READ:

8 § 5407. Resales of units.

9 \* \* \*

10 (c) Liability for error or inaction by association.--A  
11 purchaser is not liable for any unpaid assessment or fee greater  
12 than the amount set forth in the certificate prepared by the  
13 association. A unit owner is not liable to a purchaser for the  
14 failure or delay of the association to provide the certificate  
15 in a timely manner[, but the purchase contract is voidable by  
16 the purchaser until the certificate has been provided and for  
17 five days thereafter or until conveyance, whichever first  
18 occurs].

19 (d) Purchase contract voidable.--The purchase contract is  
20 voidable by the purchaser until the certificate has been  
21 provided and for five days thereafter or until conveyance,  
22 whichever first occurs.

23 SECTION 8. SECTION 5410(D) AND (J)(1) OF TITLE 68 ARE  
24 AMENDED TO READ:

25 § 5410. PLANNED COMMUNITIES CONTAINING CONVERSION BUILDINGS.

26 \* \* \*

27 (D) NOTICE TO VACATE.--IF A CONVERSION NOTICE SPECIFIES A  
28 DATE BY WHICH A UNIT OR PROPOSED UNIT MUST BE VACATED, THE  
29 CONVERSION NOTICE ALSO CONSTITUTES A NOTICE OF TERMINATION OF  
30 THE TENANT'S LEASE, SUBJECT TO REVOCATION IN ACCORDANCE WITH

1 SUBSECTION [(J)] (I), AND A NOTICE TO QUIT SPECIFIED BY SECTION  
2 501 OF THE ACT OF APRIL 6, 1951 (P.L.69, NO.20), KNOWN AS THE  
3 LANDLORD AND TENANT ACT OF 1951.

4 \* \* \*

5 (J) WAIVER OF PURCHASE RIGHTS.--NOTWITHSTANDING ANY  
6 PROVISIONS OF THIS SUBPART PROHIBITING WAIVER OF RIGHTS, ANY  
7 TENANT MAY WAIVE HIS RIGHT TO PURCHASE A UNIT UNDER SUBSECTION  
8 (B) IF THE WAIVER IS IN WRITING, IS ACKNOWLEDGED AND IS GIVEN IN  
9 CONSIDERATION OF:

10 (1) AN EXTENSION OF THE TERM OF THE TENANT'S TENANCY AND  
11 RIGHT OF OCCUPANCY UNDER THIS SUBPART BEYOND THE TIME PERIOD  
12 REQUIRED BY [SUBSECTION (B)] SUBSECTIONS (A) AND (F) AS  
13 APPLICABLE;

14 \* \* \*

15 Section ~~5~~ 9. This act shall take effect in 60 days.

<—