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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 322**      Session of  
2007

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INTRODUCED BY RAFFERTY, STOUT AND REGOLA, MARCH 12, 2007

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REFERRED TO URBAN AFFAIRS AND HOUSING, MARCH 12, 2007

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AN ACT

1 Amending Title 68 (Real and Personal Property) of the  
2 Pennsylvania Consolidated Statutes, further providing for  
3 applicability of provisions relating to planned communities,  
4 for meetings and for quorums of unit owners' associations of  
5 planned communities, for proxies and for association records.

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

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

11 § 5102. Applicability.

12 \* \* \*

13 (b) [Retroactivity] General retroactivity.--Except as  
14 provided in subsection (c), sections 5105, 5106, 5107, 5203  
15 (relating to construction and validity of declaration and  
16 bylaws), 5204 (relating to description of units), 5218, 5219  
17 (relating to amendment of declaration), 5223 (relating to merger  
18 or consolidation of planned community), 5302(a)(1) through (6)  
19 and (11) through (15) (relating to power of unit owners'

1 association), 5311 (relating to tort and contract liability),  
2 5315 (relating to lien for assessments), [5316 (relating to  
3 association records),] 5407 (relating to resales of units) and  
4 5412 (relating to effect of violations on rights of action) and  
5 section 5103 (relating to definitions), to the extent necessary  
6 in construing any of those sections, apply to all planned  
7 communities created in this Commonwealth before the effective  
8 date of this subpart; but those sections apply only with respect  
9 to events and circumstances occurring after the effective date  
10 of this subpart and do not invalidate specific provisions  
11 contained in existing provisions of the declaration, bylaws or  
12 plats and plans of those planned communities.

13 \* \* \*

14 (b.2) Legislative finding and retroactivity of specific  
15 provisions.--

16 (1) It is hereby determined and declared as a matter of  
17 legislative finding that certain aspects of local governance  
18 involving open meetings, open records and basic parliamentary  
19 procedure relating to proxy voting and quorums are so vital  
20 to the sound administration of planned communities that  
21 retroactive application of these rules is within the police  
22 powers of the Commonwealth.

23 (2) Notwithstanding any provision of law or any  
24 declarations or bylaws to the contrary, sections 5308  
25 (relating to meetings), 5309 (relating to quorums), 5310(b.1)  
26 (relating to voting; proxies) and 5316 (relating to  
27 association records) apply to all planned communities created  
28 in this Commonwealth before the effective date of this  
29 subsection except planned communities under subsections  
30 (a)(1), (c) and (e).

1 \* \* \*

2 Section 2. Section 5308 of Title 68 is amended to read:

3 § 5308. Meetings.

4 [The bylaws shall require that]

5 (a) Open meetings and notice.--Notwithstanding any  
6 provisions of any declaration or bylaws to the contrary,  
7 meetings of the association shall be held at least once each  
8 year [and shall provide for special meetings.] and all meetings  
9 of the association, executive board or any committee, commission  
10 or other entity which is a subdivision of the executive board of  
11 the association, except executive board meetings under  
12 subsection (d), shall be open to unit owners. The bylaws shall  
13 specify which of the association's officers, not less than ten  
14 nor more than 60 days in advance of any meeting, except  
15 executive board meetings under subsection (d) or emergency  
16 meetings under subsection (e), shall cause notice to be hand  
17 delivered or sent prepaid by United States mail to the mailing  
18 address of each unit or to any other mailing address designated  
19 in writing by the unit owner. The notice of any meeting [must]  
20 shall state the time and place of the meeting and the items on  
21 the agenda, including the general nature of any proposed  
22 amendment to the declaration or bylaws; any budget or assessment  
23 changes; and, where the declaration or bylaws require approval  
24 of unit owners, any proposal to remove a director or officer.  
25 All official action shall be taken at a meeting under this  
26 subsection or an emergency meeting under subsection (e).

27 (b) Minutes.--Except during executive board meetings under  
28 subsection (d), written minutes shall be kept of all association  
29 meetings, including the time and date of the meeting, the number  
30 of unit owners in attendance, the substance of all official

1 actions taken at the meeting and a record of votes on official  
2 action by individual executive board members or officers. Board-  
3 approved minutes of any meeting, except executive board meetings  
4 under subsection (d), shall be made reasonably available for  
5 examination by any unit owner and authorized agent of any unit  
6 owner no later than 45 days after a meeting.

7 (c) Recording devices and unit owner participation.--

8 (1) A unit owner shall be:

9 (i) Authorized to use recording devices to record  
10 the proceedings at any meeting except an executive board  
11 meeting under subsection (d).

12 (ii) Provided at any meeting, except an executive  
13 board meeting under subsection (d), with a reasonable  
14 opportunity to comment on matters of concern,  
15 deliberation or official action which are or may be under  
16 consideration at that meeting.

17 (2) Nothing in this section shall be construed to  
18 prevent an association from adopting bylaws governing the  
19 reasonable use of recording devices.

20 (d) Executive board meetings.--

21 (1) The executive board may exclude unit owners from an  
22 executive board meeting. Executive board meetings shall only  
23 be convened during an open meeting under subsection (a) or  
24 (e) upon an affirmative vote of a majority of the members of  
25 the executive board in attendance at the open meeting. The  
26 reason for holding the executive board meeting shall be  
27 announced at the open meeting prior to the executive board  
28 meeting. Official action on discussions held at an executive  
29 board meeting shall be taken at an open meeting, and no  
30 executive board meeting shall be used as a subterfuge to

1 defeat the purposes of subsection (a) or (e). An executive  
2 board meeting may be held for one or more of the following  
3 reasons:

4 (i) To discuss any matter involving the employment,  
5 termination of employment, terms and conditions of  
6 employment, evaluation of performance, promotion or  
7 disciplining of any specific prospective employee or  
8 current employee employed by the association, or former  
9 employee, provided, however, that the individual  
10 employees whose rights could be adversely affected may  
11 request, in writing, that the matter or matters be  
12 discussed at an open meeting.

13 (ii) To consider the purchase or lease of real  
14 property up to the time an option to purchase or lease  
15 such property is obtained or up to the time an agreement  
16 to purchase or lease such property is obtained if the  
17 agreement is obtained directly without an option.

18 (iii) To consult with the executive board's attorney  
19 or other professional adviser regarding information or  
20 strategy in connection with litigation or with issues on  
21 which identifiable complaints are expected to be filed.

22 (iv) To review and discuss business which, if  
23 conducted in public, would violate a lawful privilege or  
24 lead to the disclosure of information or confidentiality  
25 protected by law.

26 (2) Nothing in paragraph (1)(i) shall apply to any  
27 meeting involving the appointment or selection of any person  
28 to fill a vacancy on the executive board.

29 (e) Emergency meetings.--The executive board may call an  
30 emergency meeting for the purpose of dealing with a real or

1 potential emergency involving a clear and present danger to life  
2 or property. An emergency meeting shall be open to unit owners  
3 and shall be subject to the requirements of subsections (b) and  
4 (c). The bylaws shall specify which member of the association's  
5 executive board shall be responsible for providing notice of any  
6 emergency meeting and shall further specify the means and  
7 methods of providing such notice, including, but not limited to,  
8 posting notice at either the main entrance to the planned  
9 community or at a central location within the planned community  
10 designated for such purposes.

11 (f) Rules of order.--The bylaws shall provide for rules of  
12 order to govern meetings under subsections (a) and (e). The  
13 rules may be based on Robert's Rules of Order or any other  
14 established set of rules of order or parliamentary procedure.

15 (g) Filing of complaints.--A unit owner may file a complaint  
16 with the Bureau of Consumer Protection in the Office of Attorney  
17 General if an association either:

18 (1) fails to adopt bylaws as required by this section  
19 within either 120 days after the termination of any period of  
20 declarant control of the association or 120 days after the  
21 effective date of this subsection, whichever is later; or

22 (2) violates any provision of this section.

23 (h) Penalties.--

24 (1) Notwithstanding any provision of the declaration or  
25 bylaws to the contrary, the unit owners, by a two-thirds vote  
26 of all unit owners present and entitled to vote at any  
27 meeting of the unit owners at which a quorum is present, may  
28 impose a monetary penalty of not less than \$50 against any  
29 member of an executive board, committee or commission or  
30 other entity which is a subdivision of the executive board

1 who participates in a meeting with the intent and purpose of  
2 violating this section.

3 (2) Official action taken at a meeting under subsection  
4 (a) or (e) in violation of the requirements of this section  
5 shall be null and void.

6 (i) Exemption.--An association shall be exempt from the  
7 requirements of this section during any period of declarant  
8 control of the association.

9 (j) Definitions.--As used in this section, the following  
10 words and phrases shall have the meanings given to them in this  
11 subsection:

12 "Meeting." A prearranged gathering held for the purpose of  
13 deliberating association business or taking official action of:

14 (1) an association, which is attended or participated in  
15 by a quorum of unit owners;

16 (2) an executive board, which is attended or  
17 participated in by a quorum of the executive board; or

18 (3) a committee, commission or other entity which is a  
19 subdivision of the executive board of the association which  
20 is attended or participated in by a quorum of the committee,  
21 commission or entity.

22 "Official action." Any of the following:

23 (1) The establishment of policy by an association.

24 (2) A decision on association business made by an  
25 association.

26 (3) A vote taken by an association, executive board or a  
27 committee, commission or other entity which is a subdivision  
28 of the executive board of the association on a proposal,  
29 resolution, rule, regulation or report.

30 Section 3. Sections 5309 and 5310 of Title 68 are amended by

1 adding subsections to read:

2 § 5309. Quorums.

3 \* \* \*

4 (c) Committees, commissions or other entities which are  
5 subdivisions of the executive board.--Unless the bylaws specify  
6 a larger percentage, a quorum is deemed present throughout any  
7 meeting of a committee, commission or other entity which is a  
8 subdivision of the executive board if at least 50% of the  
9 designated members of the committee, commission or other entity  
10 which is a subdivision of the executive board are present at the  
11 beginning of the meeting.

12 § 5310. Voting; proxies.

13 \* \* \*

14 (b.1) Executive board proxies.--No vote may be cast pursuant  
15 to a proxy during a vote of the executive board.

16 \* \* \*

17 Section 4. Section 5316(a) of Title 68 is amended and the  
18 section is amended by adding subsections to read:

19 § 5316. Association records.

20 (a) [Financial] Maintenance of records.--The association  
21 shall keep [financial records sufficiently detailed to enable  
22 the association to comply with section 5407 (relating to resales  
23 of units). All financial and other records shall be made  
24 reasonably available for examination by any unit owner and  
25 authorized agents.] records of its operation, administration and  
26 finances that are sufficiently detailed to enable the  
27 association to comply with section 5407 (relating to resales of  
28 units).

29 (a.1) Inspection and copying.--

30 (1) Books and records kept by or on behalf of an



1 association shall be available for examination and copying by  
2 a unit owner in good standing, or the unit owner's authorized  
3 agent, to protect the unit owner's interest. This right of  
4 examination and copying may be exercised only during  
5 reasonable business hours or at a time and location mutually  
6 convenient to the association and the unit owner.

7 (2) Books and records kept by or on behalf of an  
8 association may be withheld from examination and copying  
9 under paragraph (1) to the extent they concern any of the  
10 following:

11 (i) Personnel records.

12 (ii) An individual's medical records.

13 (iii) Records relating to business transactions that  
14 are currently in negotiation.

15 (iv) Privileged communications with legal counsel.

16 (v) Complaints against a unit owner.

17 (vi) Records of executive board meetings under  
18 section 5308(d) (relating to meetings).

19 (3) The association may impose and collect a charge that  
20 represents the actual costs of materials and labor prior to  
21 providing copies of any books and records under this  
22 subsection.

23 \* \* \*

24 (d) Penalties.--

25 (1) The bylaws shall specify which of the association's  
26 officers shall be responsible for the maintenance of records  
27 under subsection (a) and the preparation of financial  
28 statements under subsection (b).

29 (2) Any officer designated pursuant to paragraph (1) who  
30 fails to maintain records or prepare financial statements as

1 required by this section shall be subject to a monetary  
2 penalty of not less than \$50. Notwithstanding any provision  
3 of the declaration or bylaws to the contrary, the unit  
4 owners, by a two-thirds votes of all unit owners present and  
5 entitled to vote at any meeting of the unit owners at which a  
6 quorum is present, may impose the penalty provided by this  
7 paragraph.

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