

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1774 Session of 2015

INTRODUCED BY R. BROWN, BARRAR, COHEN, DAVIS, EMRICK, GIBBONS, A. HARRIS, HEFFLEY, MALONEY, MILLARD, O'NEILL, THOMAS, TOEPEL, MOUL AND KORTZ, JANUARY 5, 2016

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 21, 2016

AN ACT

1 Amending Title 68 (Real and Personal Property) of the
2 Pennsylvania Consolidated Statutes, as follows:
3 in management of the condominium, providing for mediation
4 OR ALTERNATIVE DISPUTE RESOLUTION in ~~substantial~~ condominiums <--
5 and for complaints filed with Bureau of Consumer Protection;
6 in protection of purchasers, further providing for effect
7 of violations on rights of action;
8 in management of cooperatives, providing for mediation OR <--
9 ALTERNATIVE DISPUTE RESOLUTION in ~~substantial~~ cooperatives <--
10 and for complaints filed with Bureau of Consumer Protection;
11 in management of planned community, providing for
12 mediation OR ALTERNATIVE DISPUTE RESOLUTION in ~~substantial~~ <--
13 planned communities and for complaints filed with Bureau of
14 Consumer Protection and further providing for association <--
15 records; and
16 in protection of purchasers, further providing for effect
17 of violations on rights of action.

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

20 Section 1. Title 68 of the Pennsylvania Consolidated
21 Statutes is amended by adding sections to read:

22 § 3321. Mediation OR ALTERNATIVE DISPUTE RESOLUTION in <--
23 substantial condominiums. <--

1 (a) Applicability.--

2 (1) A substantial condominium established after the <--
3 effective date of this section shall adopt bylaws in
4 compliance with this section.

5 ~~(2) A substantial condominium established on or before~~ <--
6 ~~the effective date of this section that amends their bylaws~~
7 ~~after the effective date of this section shall at that time~~
8 ~~adopt bylaws in compliance with this section.~~

9 (2) A CONDOMINIUM ESTABLISHED ON OR BEFORE THE EFFECTIVE <--
10 DATE OF THIS SECTION MAY ADOPT BYLAWS IN COMPLIANCE WITH THE
11 PROVISIONS OF THIS SECTION.

12 (b) Procedures.--

13 (1) The bylaws shall establish procedures for mediation
14 or ALTERNATIVE DISPUTE resolution procedure for disputes <--
15 between:

16 (i) two or more unit owners; or

17 (ii) a unit owner and the association.

18 (2) Mediation or ALTERNATIVE dispute resolution shall be <--
19 limited to disputes where all parties agree to mediation OR <--
20 ALTERNATIVE DISPUTE RESOLUTION.

21 (3) Costs and fees associated with mediation or
22 ALTERNATIVE dispute resolution, excluding attorney fees, <--
23 shall be assessed equally against all parties to a dispute.

24 ~~(c) Definitions. As used in this section, the following~~ <--
25 ~~words and phrases shall have the meanings given to them in this~~
26 ~~subsection:~~

27 ~~"Substantial condominium." A condominium consisting of more~~
28 ~~than 12 units created before, on or after the effective date of~~
29 ~~this section. The term shall not include a condominium in which~~
30 ~~all units are restricted exclusively to nonresidential use.~~

1 (C) CONSTRUCTION.--NOTHING IN THIS SECTION SHALL BE <--
2 CONSTRUED TO AFFECT OR IMPAIR THE RIGHT OF A UNIT OWNER,
3 DECLARANT OR ASSOCIATION TO PURSUE A PRIVATE CAUSE OF ACTION OR
4 SEEK OTHER RELIEF.

5 § 3322. Complaints filed with Bureau of Consumer Protection.

6 (a) General rule.--A unit owner IN GOOD STANDING may file a <--
7 complaint with the Bureau of Consumer Protection in the Office
8 of Attorney General in the event of a violation by the declarant
9 or the association of sections 3308 (relating to meetings), 3309
10 (relating to quorums), 3310 (relating to voting; proxies) and
11 3316 (relating to association records).

12 (b) Condition.--If a mediation or ALTERNATIVE dispute <--
13 RESOLUTION procedure is available to the unit owner under the <--
14 association's declaration, bylaws, rules or regulations, a
15 complaint may not be filed by a unit owner with the Bureau of
16 Consumer Protection until the earlier of:

17 (1) the unit owner exhausting the mediation or
18 ALTERNATIVE dispute resolution procedure without a resolution <--
19 between the unit owner and the association; or

20 (2) at least 100 days have passed since the unit owner
21 commenced the mediation or ALTERNATIVE dispute resolution <--
22 procedure and the unit owner and association having not
23 reached a resolution.

24 (C) IMMEDIATE FILING.--A COMPLAINT MAY BE FILED BY A UNIT <--
25 OWNER WITH THE BUREAU OF CONSUMER PROTECTION IMMEDIATELY, IF:

26 (1) A MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION
27 PROCEDURE IS NOT AVAILABLE TO THE UNIT OWNER UNDER THE
28 ASSOCIATION'S DECLARATION, BYLAWS, RULES OR REGULATIONS; OR

29 (2) THE ASSOCIATION REFUSES MEDIATION OR ALTERNATIVE
30 DISPUTE RESOLUTION UNDER SECTION 3321(B)(2) (RELATING TO

1 MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION IN CONDOMINIUMS).

2 ~~(e)~~ (D) Construction.--Nothing in this section shall be <--
3 construed to affect or impair the right of a unit owner,
4 declarant or association to pursue a private cause of action or
5 seek other relief.

6 (E) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING <--
7 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
8 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

9 "UNIT OWNER IN GOOD STANDING." A UNIT OWNER WHO IS CURRENT
10 IN PAYMENT OF ASSESSMENTS AND FINES, UNLESS THE ASSESSMENT OR
11 FINES ARE DIRECTLY RELATED TO THE COMPLAINT BEING FILED WITH THE
12 BUREAU OF CONSUMER PROTECTION REGARDING SECTIONS 3308 (RELATING
13 TO MEETINGS), 3309 (RELATING TO QUORUMS), 3310 (RELATING TO
14 VOTING; PROXIES) AND 3316 (RELATING TO ASSOCIATION RECORDS).

15 Section 2. Section 3412 of Title 68 is amended to read:

16 § 3412. Effect of violations on rights of action.

17 If a declarant or any other person subject to this subpart
18 violates any provision thereof or any provision of the
19 declaration or bylaws, any person or class of persons adversely
20 affected by the violation has a claim for appropriate relief.

21 Punitive damages may be awarded in the case of a willful
22 violation of the subpart and, if appropriate, the prevailing
23 party may be entitled to an award of costs and reasonable
24 attorney fees.

25 Section 3. Title 68 is amended by adding sections to read:

26 § 4322. Mediation OR ALTERNATIVE DISPUTE RESOLUTION in <--
27 ~~substantial~~ cooperatives. <--

28 (a) Applicability.--

29 (1) A ~~substantial~~ cooperative established after the <--
30 effective date of this section shall adopt bylaws in

1 compliance with this section.

2 ~~(2) A substantial cooperative established on or before~~ <--
3 ~~the effective date of this section that amends their bylaws~~
4 ~~after the effective date of this section shall at that time~~
5 ~~adopt bylaws in compliance with this section.~~

6 (2) A COOPERATIVE ESTABLISHED ON OR BEFORE THE EFFECTIVE <--
7 DATE OF THIS SECTION MAY ADOPT BYLAWS IN COMPLIANCE WITH THE
8 PROVISIONS OF THIS SECTION.

9 (b) Procedures.--

10 (1) The bylaws shall establish procedures for
11 ALTERNATIVE dispute resolution or mediation of disputes <--
12 between:

13 (i) two or more proprietary lessees; or

14 (ii) a proprietary lessee and the association.

15 (2) Mediation or ALTERNATIVE dispute resolution shall be <--
16 limited to disputes where all parties agree to mediation OR <--
17 ALTERNATIVE DISPUTE RESOLUTION.

18 (3) Costs and fees associated with mediation or
19 ALTERNATIVE dispute resolution, excluding attorney fees, <--
20 shall be assessed equally against all parties to a dispute.

21 ~~(c) Definitions. As used in this section, the following~~ <--
22 ~~words and phrases shall have the meanings given to them in this~~
23 ~~subsection:~~

24 ~~"Substantial cooperative." A cooperative consisting of more~~
25 ~~than 12 units created before, on or after the effective date of~~
26 ~~this section. The term shall not include a cooperative in which~~
27 ~~all units are restricted exclusively to nonresidential use.~~

28 (C) CONSTRUCTION.--NOTHING IN THIS SECTION SHALL BE <--
29 CONSTRUED TO AFFECT OR IMPAIR THE RIGHT OF A PROPRIETARY LESSEE,
30 DECLARANT OR ASSOCIATION TO PURSUE A PRIVATE CAUSE OF ACTION OR

1 SEEK OTHER RELIEF.

2 § 4323. Complaints filed with Bureau of Consumer Protection.

3 (a) General rule.--A proprietary lessee IN GOOD STANDING may <--
4 file a complaint with the Bureau of Consumer Protection in the
5 Office of Attorney General in the event of a violation by the
6 declarant or the association of sections 4308 (relating to
7 meetings), 4309 (relating to quorums), 4310 (relating to voting;
8 proxies) and 4317 (relating to association records).

9 (b) Condition.--If a mediation or ALTERNATIVE dispute <--
10 RESOLUTION procedure is available to the proprietary lessee <--
11 under the association's declaration, bylaws, rules or
12 regulations, a complaint may not be filed by a proprietary
13 lessee with the Bureau of Consumer Protection until the earlier
14 of:

15 (1) the proprietary lessee exhausting the mediation or
16 ALTERNATIVE dispute resolution procedure without a resolution <--
17 between the proprietary lessee and the association; or

18 (2) at least 100 days have passed since the proprietary
19 lessee commenced the mediation or ALTERNATIVE dispute <--
20 resolution procedure and the proprietary lessee and
21 association having not reached a resolution.

22 (C) IMMEDIATE FILING.--A COMPLAINT MAY BE FILED BY A <--
23 PROPRIETARY LESSEE WITH THE BUREAU OF CONSUMER PROTECTION
24 IMMEDIATELY, IF:

25 (I) A MEDIATION OR ALTERNATIVE DISPUTE PROCEDURE IS NOT
26 AVAILABLE TO THE PROPRIETARY LESSEE UNDER THE ASSOCIATION'S
27 DECLARATION, BYLAWS, RULES OR REGULATIONS; OR

28 (II) THE ASSOCIATION REFUSES MEDIATION OR ALTERNATIVE
29 DISPUTE RESOLUTION UNDER SECTION 4322 (B) (2) (RELATING TO
30 MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION IN COOPERATIVES).

1 ~~(e) (D) Construction.--Nothing in this section shall be~~ <--
2 ~~construed to affect or impair the right of a proprietary lessee,~~
3 ~~declarant or association to pursue a private cause of action or~~
4 ~~seek other relief, as authorized by law.~~

5 ~~Section 4. Section 5316(c) of Title 68 is amended to read:~~ <--
6 ~~§ 5316. Association records.~~

7 * * *

8 ~~{(c) Filing of complaints. If an association subject to~~
9 ~~subsection (a) fails to provide a copy of the annual financial~~
10 ~~statements and, if applicable, the report of an independent~~
11 ~~accountant as required under subsection (b) to the requesting~~
12 ~~unit owner within 30 days of the unit owner's written request or~~
13 ~~if the financial records of the association which substantiate~~
14 ~~an association's financial statements are not made reasonably~~
15 ~~available by any association for examination by any unit owner~~
16 ~~and authorized agents, the unit owner may file a complaint with~~
17 ~~the Bureau of Consumer Protection in the Office of Attorney~~
18 ~~General.}~~

19 ~~(E) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING~~ <--
20 ~~WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS~~
21 ~~SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:~~

22 ~~"PROPRIETARY LESSEE IN GOOD STANDING." A PROPRIETARY LESSEE~~
23 ~~WHO IS CURRENT IN PAYMENT OF ASSESSMENTS AND FINES, UNLESS THE~~
24 ~~ASSESSMENT OR FINES ARE DIRECTLY RELATED TO THE COMPLAINT BEING~~
25 ~~FILED WITH THE BUREAU OF CONSUMER PROTECTION REGARDING SECTIONS~~
26 ~~4308 (RELATING TO MEETINGS), 4309 (RELATING TO QUORUMS), 4310~~
27 ~~(RELATING TO VOTING; PROXIES) AND 4317 (RELATING TO ASSOCIATION~~
28 ~~RECORDS).~~

29 ~~Section 5 4. The act is amended by adding sections to read:~~ <--
30 ~~§ 5321. Mediation OR ALTERNATIVE DISPUTE RESOLUTION in~~ <--

1 substantial planned communities. <--

2 (a) Applicability.--

3 (1) A substantial planned community established after <--
4 the effective date of this section shall adopt bylaws in
5 compliance with this section.

6 ~~(2) A substantial community established on or before the~~ <--
7 ~~effective date of this section that amends their bylaws after~~
8 ~~the effective date of this section shall at that time adopt~~
9 ~~bylaws in compliance with this section.~~

10 (2) A PLANNED COMMUNITY ESTABLISHED ON OR BEFORE THE <--
11 EFFECTIVE DATE OF THIS SECTION MAY ADOPT BYLAWS IN COMPLIANCE
12 WITH THE PROVISIONS OF THIS SECTION.

13 (b) Procedures.--

14 (1) The bylaws shall establish procedures for
15 ALTERNATIVE dispute resolution or mediation of disputes <--
16 between:

17 (i) two or more unit owners; or

18 (ii) a unit owner and the association.

19 (2) Mediation or ALTERNATIVE dispute resolution shall be <--
20 limited to disputes where all parties agree to mediation OR <--
21 ALTERNATIVE DISPUTE RESOLUTION.

22 (3) Costs and fees associated with mediation or
23 ALTERNATIVE dispute resolution, excluding attorney fees, <--
24 shall be assessed equally against all parties to a dispute.

25 ~~(c) Definitions. As used in this section, the following~~ <--
26 ~~words and phrases shall have the meanings given to them in this~~
27 ~~subsection:~~

28 ~~"Substantial planned community." A planned community~~
29 ~~consisting of more than 12 units created before, on or after the~~
30 ~~effective date of this section. The term shall not include a~~

1 ~~planned community in which all units are restricted exclusively~~
2 ~~to nonresidential use.~~

3 (C) CONSTRUCTION.--NOTHING IN THIS SECTION SHALL BE <--
4 CONSTRUED TO AFFECT OR IMPAIR THE RIGHT OF A UNIT OWNER,
5 DECLARANT OR ASSOCIATION TO PURSUE A PRIVATE CAUSE OF ACTION OR
6 SEEK OTHER RELIEF.

7 § 5322. Complaints filed with Bureau of Consumer Protection.

8 (a) General rule.--A unit owner IN GOOD STANDING may file a <--
9 complaint with the Bureau of Consumer Protection in the Office
10 of the Attorney General in the event of a violation by the
11 declarant or the association of sections 5308 (relating to
12 meetings), 5309 (relating to quorums), AND 5310 (relating to <--
13 voting; proxies) and 5316 (relating to association records). <--

14 (b) Condition.--If a mediation or ALTERNATIVE dispute <--
15 RESOLUTION procedure is available to the unit owner under the <--
16 association's declaration, bylaws, rules or regulations, a
17 complaint may not be filed by a unit owner with the Bureau of
18 Consumer Protection until the earlier of:

19 (1) the unit owner exhausting the mediation or
20 ALTERNATIVE dispute resolution procedure without a resolution <--
21 between the unit owner and the association; or

22 (2) at least 100 days have passed since the unit owner
23 commenced the mediation or ALTERNATIVE dispute resolution <--
24 procedure and the unit owner and association having not
25 reached a resolution.

26 (C) IMMEDIATE FILING.--A COMPLAINT MAY BE FILED BY A UNIT <--
27 OWNER WITH THE BUREAU OF CONSUMER PROTECTION IMMEDIATELY, IF:

28 (1) A MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION
29 PROCEDURE IS NOT AVAILABLE TO THE UNIT OWNER UNDER THE
30 ASSOCIATION'S DECLARATION, BYLAWS, RULES OR REGULATIONS; OR

1 (2) THE ASSOCIATION REFUSES MEDIATION OR ALTERNATIVE
2 DISPUTE RESOLUTION UNDER SECTION 5321(B)(2) (RELATING TO
3 MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION IN PLANNED
4 COMMUNITIES).

5 ~~(e)~~ (D) Construction.--Nothing in this section shall be <--
6 construed to affect or impair the right of a unit owner,
7 declarant or association to pursue a private cause of action or
8 seek other relief, as authorized by law.

9 (E) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING <--
10 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
11 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

12 "UNIT OWNER IN GOOD STANDING." A UNIT OWNER WHO IS CURRENT
13 IN PAYMENT OF ASSESSMENTS AND FINES, UNLESS THE ASSESSMENT OR
14 FINES ARE DIRECTLY RELATED TO THE COMPLAINT BEING FILED WITH THE
15 BUREAU OF CONSUMER PROTECTION REGARDING SECTIONS 5308 (RELATING
16 TO MEETINGS), 5309 (RELATING TO QUORUMS), 5310 (RELATING TO
17 VOTING; PROXIES) AND 5316 (RELATING TO ASSOCIATION RECORDS).

18 Section ~~6~~ 5. Section 5412 of Title 68 is amended to read: <--
19 § 5412. Effect of violations on rights of action.

20 If a declarant or any other person subject to this subpart
21 violates any provision of this subpart or any provisions of the
22 declaration or bylaws, any person or class of persons adversely
23 affected by the violation has a claim for appropriate relief.
24 Punitive damages may be awarded in the case of a willful
25 violation of the subpart and, if appropriate, the prevailing
26 party may be entitled to an award of costs and reasonable
27 attorney fees.

28 Section ~~7~~ 6. This act shall take effect in 60 days. <--