

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1499 Session of 2017

INTRODUCED BY M. K. KELLER, O'BRIEN, CALTAGIRONE, DIGIROLAMO,
A. HARRIS, JAMES, MILLARD, ROE, ZIMMERMAN AND DAVIS,
JUNE 6, 2017

SENATOR McGARRIGLE, URBAN AFFAIRS AND HOUSING, IN SENATE, AS
AMENDED, JUNE 13, 2018

AN ACT

1 Amending Title 68 (Real and Personal Property) of the
 2 Pennsylvania Consolidated Statutes, IN CREATION, ALTERATION <--
 3 AND TERMINATION OF CONDOMINIUMS, FURTHER PROVIDING FOR
 4 CONTENTS OF DECLARATION AND ALL CONDOMINIUMS; in management
 5 of the condominium, further providing for powers of unit
 6 owners' association, for executive board members and officers
 7 and for conveyance or encumbrance of common elements; in
 8 protection of purchasers, further providing for release of
 9 liens and for warranty against structural defects; IN <--
 10 CREATION, ALTERATION AND TERMINATION OF COOPERATIVES, FURTHER
 11 PROVIDING FOR CONTENTS OF DECLARATION; in management of
 12 cooperatives, further providing for powers of association,
 13 for executive board members and officers and for conveyance
 14 or encumbrance of cooperative; in protection of cooperative
 15 interest purchasers, further providing for release of liens
 16 and for implied warranty against structural defects; in
 17 general provisions relating to planned communities, further
 18 providing for definitions; in creation, alteration and
 19 termination of planned communities, further providing for
 20 construction and validity of declaration and bylaws and for
 21 contents of declaration and all planned communities; in
 22 management of planned community, further providing for power
 23 of unit owners' association, for executive board members and
 24 officers and for conveyance or encumbrance of common
 25 facilities; and, in protection of purchasers, further
 26 providing for release of liens and for warranty against
 27 structural defects.

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

1 ~~Section 1. Sections 3302(a)(11) and 3303(e) of Title 68 of~~ <--
2 ~~the Pennsylvania Consolidated Statutes are amended to read:~~

3 SECTION 1. SECTION 3205 OF TITLE 68 OF THE PENNSYLVANIA <--
4 CONSOLIDATED STATUTES IS AMENDED BY ADDING A PARAGRAPH TO READ:
5 § 3205. CONTENTS OF DECLARATION; ALL CONDOMINIUMS.

6 THE DECLARATION FOR A CONDOMINIUM MUST CONTAIN:

7 * * *

8 (13.1) IF THE DECLARATION PROVIDES THAT THE ASSOCIATION
9 OR A UNIT OWNER IS OR SHALL BE RESPONSIBLE FOR OPERATION AND
10 MAINTENANCE OF STORM WATER MANAGEMENT FACILITIES, A STATEMENT
11 THAT UPON APPROVAL OF THE PERMITTEE'S NOTICE OF TERMINATION
12 BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OR BY AN
13 AUTHORIZED COUNTY CONSERVATION DISTRICT, IT SHALL BE DEEMED
14 THAT THE ASSOCIATION OR UNIT OWNER, AS APPLICABLE, AGREE TO
15 AND SHALL BECOME RESPONSIBLE FOR COMPLIANCE WITH THE STORM
16 WATER MANAGEMENT FACILITIES' PERMIT TERMS AND CONDITIONS,
17 INCLUDING LONG-TERM OPERATION AND MAINTENANCE OF
18 POSTCONSTRUCTION STORM WATER BEST MANAGEMENT PRACTICES IN
19 ACCORDANCE WITH APPLICABLE REQUIREMENTS. THE DECLARANT SHALL
20 REMAIN RESPONSIBLE FOR COMPLIANCE WITH OTHER OBLIGATIONS WITH
21 RESPECT TO STORM WATER MANAGEMENT FACILITIES AS MAY BE
22 REQUIRED BY THE APPROVED SUBDIVISION AND LAND DEVELOPMENT
23 PLANS, THE DECLARATION OR THIS SUBPART UNTIL SUCH TIME AS THE
24 OBLIGATIONS OF THE DECLARANT MAY CEASE.

25 * * *

26 SECTION 2. SECTIONS 3302(A)(11) AND 3303(E) OF TITLE 68 ARE
27 AMENDED TO READ:

28 § 3302. Powers of unit owners' association.

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

1 * * *

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

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

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

14 * * *

15 § 3303. Executive board members and officers.

16 * * *

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

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

27 (2) In the event that the election of the executive
28 board by the unit owners fails to take place not later than
29 the termination of a period of declarant control as provided
30 in this section, then a special meeting of the unit owners

1 may be called for such purpose by any member of the executive
2 board elected by the unit owners or, if there is no such
3 member of the executive board, the unit owners entitled to
4 cast at least 10% of the votes in the association.

5 * * *

6 Section ~~2~~ 3. Section 3318(d) of Title 68 is amended and the <--
7 section is amended by adding a subsection to read:

8 § 3318. Conveyance or encumbrance of common elements.

9 * * *

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

14 * * *

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

21 Section ~~3~~ 4. Sections 3409(b)(2), ~~AND 3411(e), 4302(a)(11)~~ <--
22 ~~and 4303(f)~~ of Title 68 are amended to read:

23 § 3409. Release of liens.

24 * * *

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

28 * * *

29 (2) All other liens, including, without limitation, real
30 estate taxes, on that real estate unless the public offering

1 statement describes certain real estate which may be conveyed
2 subject to liens in specified amounts.

3 § 3411. Warranty against structural defects.

4 * * *

5 (e) Limitation of actions.--No action to enforce the
6 warranty created by this section shall be commenced later than
7 six years after the warranty begins[.], provided, however, that
8 the limitation period affecting a right of action by the
9 association under this section is tolled until the period of <--
10 declarant control terminates. <-- SHALL BE SIX YEARS AFTER THE
11 WARRANTY BEGINS OR TWO YEARS AFTER THE UNIT OWNERS ELECT AN
12 EXECUTIVE BOARD UNDER SECTION 3303(E) (RELATING TO EXECUTIVE
13 BOARD MEMBERS AND OFFICERS), WHICHEVER IS LATER.

14 SECTION 5. SECTION 4205(A) OF TITLE 68 IS AMENDED BY ADDING
15 A PARAGRAPH TO READ:

16 § 4205. CONTENTS OF DECLARATION.

17 (A) GENERAL RULE.--THE DECLARATION FOR A COOPERATIVE MUST
18 CONTAIN:

19 * * *

20 (15) IF THE DECLARATION PROVIDES THAT THE ASSOCIATION OR
21 A UNIT OWNER IS OR SHALL BE RESPONSIBLE FOR OPERATION AND
22 MAINTENANCE OF STORM WATER MANAGEMENT FACILITIES, A STATEMENT
23 THAT UPON APPROVAL OF THE PERMITTEE'S NOTICE OF TERMINATION
24 BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OR BY AN
25 AUTHORIZED COUNTY CONSERVATION DISTRICT, IT SHALL BE DEEMED
26 THAT THE ASSOCIATION OR UNIT OWNER, AS APPLICABLE, AGREE TO
27 AND SHALL BECOME RESPONSIBLE FOR COMPLIANCE WITH THE STORM
28 WATER MANAGEMENT FACILITIES' PERMIT TERMS AND CONDITIONS,
29 INCLUDING LONG-TERM OPERATION AND MAINTENANCE OF
30 POSTCONSTRUCTION STORM WATER BEST MANAGEMENT PRACTICES IN

1 ACCORDANCE WITH APPLICABLE REQUIREMENTS. THE DECLARANT SHALL
2 REMAIN RESPONSIBLE FOR COMPLIANCE WITH OTHER OBLIGATIONS WITH
3 RESPECT TO STORM WATER MANAGEMENT FACILITIES AS MAY BE
4 REQUIRED BY THE APPROVED SUBDIVISION AND LAND DEVELOPMENT
5 PLANS, THE DECLARATION OR THIS SUBPART UNTIL SUCH TIME AS THE
6 OBLIGATIONS OF THE DECLARANT MAY CEASE.

7 * * *

8 SECTION 6. SECTIONS 4302(A)(11) AND 4303(F) OF TITLE 68 ARE
9 AMENDED TO READ:

10 § 4302. Powers of association.

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

14 * * *

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

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

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

27 * * *

28 § 4303. Executive board members and officers.

29 * * *

30 (f) Election of executive board following declarant

1 control.--

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

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

19 * * *

20 Section 4 7. Section 4312(d) of Title 68 is amended and the <--
21 section is amended by adding a subsection to read:

22 § 4312. Conveyance or encumbrance of cooperative.

23 * * *

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

29 * * *

30 (f) Subject to declaration.--A part of the cooperative which

1 is subject to the declaration prior to conveyance or encumbrance
2 shall remain subject to the provisions of the declaration
3 following the conveyance or encumbrance, unless the deed or
4 agreement to convey the cooperative or subject it to a security
5 interest specifically provides otherwise.

6 Section 5 8. Sections 4411(b) and 4414(e) of Title 68 are <--
7 amended to read:

8 § 4411. Release of liens.

9 * * *

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

16 § 4414. Implied warranty against structural defects.

17 * * *

18 (e) Limitation of action.--No action to enforce the warranty
19 created by this section shall be commenced later than six years
20 after the warranty begins[.], provided, however, that the
21 limitation period affecting a right of action by the association
22 under this section is tolled until the period of declarant <--
23 control terminates. SHALL BE SIX YEARS AFTER THE WARRANTY BEGINS <--
24 OR TWO YEARS AFTER THE UNIT OWNERS ELECT AN EXECUTIVE BOARD
25 UNDER SECTION 3303(E) (RELATING TO EXECUTIVE BOARD MEMBERS AND
26 OFFICERS), WHICHEVER IS LATER.

27 Section 6 9. The definition of "common facilities" in <--
28 section 5103 of Title 68 is amended to read:

29 § 5103. Definitions.

30 The following words and phrases when used in this subpart and

1 in the declaration and bylaws shall have the meanings given to
2 them in this section unless specifically provided otherwise or
3 unless the context clearly indicates otherwise:

4 * * *

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

11 * * *

12 Section 7 10. Section 5203 of Title 68 is amended by adding <--
13 a subsection to read:

14 § 5203. Construction and validity of declaration and bylaws.

15 * * *

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

25 ~~Section 8. Sections 5205(16) introductory paragraph, 5302(a) <--~~
26 ~~(11) and 5303(e) of Title 68 are amended to read:~~

27 SECTION 11. SECTION 5205(16) INTRODUCTORY PARAGRAPH OF TITLE <--
28 68 IS AMENDED AND THE SECTION IS AMENDED BY ADDING A PARAGRAPH
29 TO READ:

30 § 5205. Contents of declaration; all planned communities.

1 The declaration for a planned community must contain:

2 * * *

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

8 * * *

9 (16.1) IF THE DECLARATION PROVIDES THAT THE ASSOCIATION <--
10 OR A UNIT OWNER IS OR SHALL BE RESPONSIBLE FOR OPERATION AND
11 MAINTENANCE OF STORM WATER MANAGEMENT FACILITIES, A STATEMENT
12 THAT UPON APPROVAL OF THE PERMITTEE'S NOTICE OF TERMINATION
13 BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OR BY AN
14 AUTHORIZED COUNTY CONSERVATION DISTRICT, IT SHALL BE DEEMED
15 THAT THE ASSOCIATION OR UNIT OWNER, AS APPLICABLE, AGREE TO
16 AND SHALL BECOME RESPONSIBLE FOR COMPLIANCE WITH THE STORM
17 WATER MANAGEMENT FACILITIES' PERMIT TERMS AND CONDITIONS,
18 INCLUDING LONG-TERM OPERATION AND MAINTENANCE OF
19 POSTCONSTRUCTION STORM WATER BEST MANAGEMENT PRACTICES IN
20 ACCORDANCE WITH APPLICABLE REQUIREMENTS. THE DECLARANT SHALL
21 REMAIN RESPONSIBLE FOR COMPLIANCE WITH OTHER OBLIGATIONS WITH
22 RESPECT TO STORM WATER MANAGEMENT FACILITIES AS MAY BE
23 REQUIRED BY THE APPROVED SUBDIVISION AND LAND DEVELOPMENT
24 PLANS, THE DECLARATION OR THIS SUBPART UNTIL SUCH TIME AS THE
25 OBLIGATIONS OF THE DECLARANT MAY CEASE.

26 * * *

27 SECTION 12. SECTIONS 5302(A) (11) AND 5303(E) OF TITLE 68 ARE
28 AMENDED TO READ:

29 § 5302. Power of unit owners' association.

30 (a) General rule.--Except as provided in subsection (b) and

1 subject to the provisions of the declaration and the limitations
2 of this subpart, the association, even if unincorporated, may:

3 * * *

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

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

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

16 * * *

17 § 5303. Executive board members and officers.

18 * * *

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

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

29 (2) In the event that the election ~~if~~ OF the executive <--
30 board by the unit owners fails to take place not later than

1 the termination of a period of declarant control as provided
2 in this section, then a special meeting of the unit owners
3 may be called for such purpose by any member of the executive
4 board elected by the unit owners or, if there is no such
5 member of the executive board, unit owners entitled to cast
6 at least 10% of the votes in the association.

7 * * *

8 Section ~~9~~ 13. Section 5318(d) of Title 68 is amended and the <--
9 section is amended by adding a subsection to read:

10 § 5318. Conveyance or encumbrance of common facilities.

11 * * *

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

16 * * *

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

24 Section ~~10~~ 14. Sections 5409(b) (2) and 5411(e) of Title 68 <--
25 are amended to read:

26 § 5409. Release of liens.

27 * * *

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

1 * * *

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

6 § 5411. Warranty against structural defects.

7 * * *

8 (e) Limitation of actions.--No action to enforce the
9 warranty created by this section shall be commenced later than
10 six years after the warranty begins[.], provided, however, that
11 the limitation period affecting a right of action by the
12 association under this section is tolled until the period of <--
13 declarant control terminates. SHALL BE SIX YEARS AFTER THE <--
14 WARRANTY BEGINS OR TWO YEARS AFTER THE UNIT OWNERS ELECT AN
15 EXECUTIVE BOARD UNDER SECTION 3303(E) (RELATING TO EXECUTIVE
16 BOARD MEMBERS AND OFFICERS), WHICHEVER IS LATER.

17 * * *

18 SECTION 15. THIS ACT SHALL SUPERSEDE ANY INCONSISTENT <--
19 PROVISION OF ANY OTHER STATUTE, REGULATION OR ORDINANCE.

20 Section ~~11~~ 16. This act shall take effect in 60 days. <--