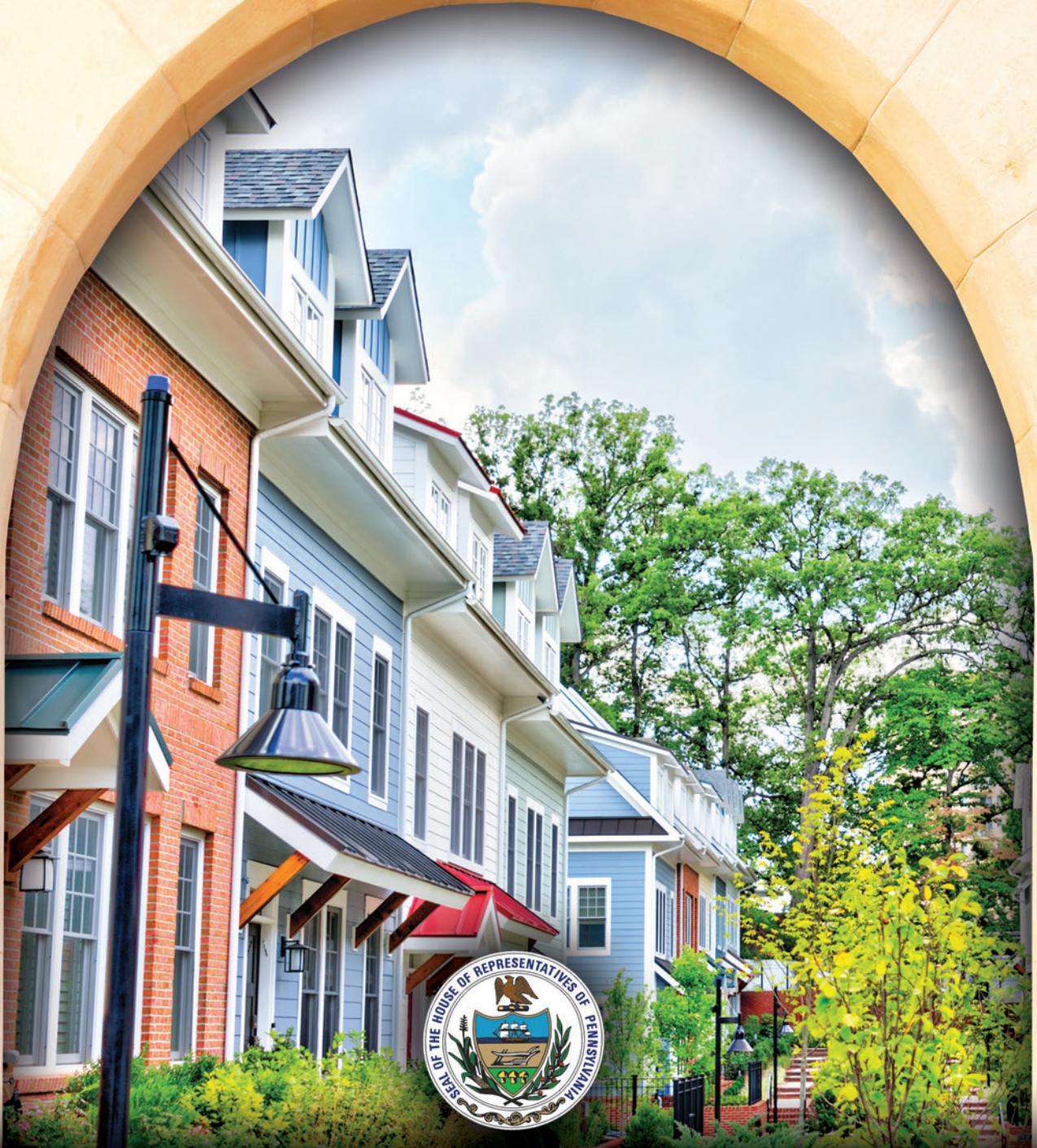


# PENNSYLVANIA UNIFORM PLANNED COMMUNITY ACT

*Frequently Asked Questions*



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Chairwoman, House Urban Affairs Committee



**Uniform Planned Community Act FAQ – Update 2022**  
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Addendum #1 – The Uniform Planned Community Act, updated through Act 34 of 2021

Addendum #2 – Specific Retroactive Provisions of the Uniform Planned Community Act

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## Uniform Planned Community Act FAQ – Update 2022<sup>1</sup>

This list of Frequently Asksed Questions is intended to assist individuals with queries concerning the Uniform Planned Community Act, 68 Pa.C.S.A. § 5101 et seq. (hereinafter Planned Community Act).

The answers below include examples from a hypothetical planned community. As a general rule, the following facts will apply to the hypothetical (Keep in mind, these facts may change to give specific examples of certain applications of the Planned Community Act). The planned community will consist entirely of a housing development known as Bellwether Estates. Bellwether Estates is only partially finished. The developer, LibertyCo., is still constructing some of the homes. It is worth noting that Bellwether Estates contains single family homes, duplexes, and a small shopping plaza just inside the entrance to the development. While the answers provide some direction concerning the application of the Planned Community Act, individuals should consult the law (see enclosed) to determine its applicability to their questions.

It is also important to remember that **individuals are strongly encouraged to seek the assistance of competent private counsel**. More often than not, answers to questions may turn on specific factual inquiry into the contents of declarations, bylaws, etc. In these instances, private local counsel may have to be employed to make those inquiries. For your convenience, a copy of the Uniform Planned Community Act is provided in this book (see Table of Contents).

### What is a Planned Community?

A planned community is defined as a community in which an individual who owns an interest in any real property (*e.g., a house, a commercial building, or a vacant lot*) is now or in the future may be required to pay fees for:

- real property taxes,
- insurance,
- maintenance,
- repair,
- improvement,
- management,
- administration, or
- regulation

of any part of the community not owned solely by that individual (*e.g., John owns a house in Bellwether Estates and is charged a yearly fee which covers maintenance for the Bellwether Estates' club and pool house, snow removal on Bellwether Estates' roads during the winter and a lawn service for the entrance grounds to Bellwether Estates*).

Several other items concerning the definition of a planned community are worth noting:

- the term “planned community” does encompass nonresidential campground communities (*e.g., campgrounds where one buys a lot and leaves the camper there for the entire year as a vacation home; however, does not actually reside full time at the campground*).
- the term “planned community” excludes individual condominium or cooperative units (*e.g., one unit within a building*) but condominiums or cooperatives may be part of a “planned community” (*i.e., the entire condominium or cooperative, including all individual units, may be part of a planned community*).
- an individual would be considered to “own” an interest in real property in a planned community if he had a lease of 20 years or more, or, he had lease renewals which he could exercise to lease the property for 20 years or more.

68 Pa.C.S.A. § 5103.

### What is a Flexible Planned Community?

A flexible planned community is any planned community which, at the option of the declarant (*e.g., the developer*), may be altered by adding or subtracting real estate in the future, converting real estate in the future or any combination of the aforementioned.

These options must be specifically reserved in the declaration for the flexible planned community and must be exercised within the later of: 10 years of its recording or 120 days after a particular section’s final plat is approved or denied (or 120 days after a final judgment on appeal.)

In a flexible planned community, real estate may be convertible if it is not part of a building containing a unit (*In other words, property which is part of a building which contains no units or is located outside a building. For example, LibertyCo., the developer of Bellwether Estates, owns several duplexes as convertible property within Bellwether Estates and presently rents one to the Franklin family and the Marshall family, each occupying ½ of the duplex. LibertyCo could decide to convert these duplexes into units of the planned community and sell them. While renting, the Franklin and Marshall families do not enjoy the same rights as their neighbors, members of the planned community*). Further, convertible real estate may be changed to additional units, limited common facilities, or limited controlled facilities (*e.g., the duplex could be sold as homes within the planned community or turned into a storage facility for the commercial members of the planned community*).

68 Pa.C.S.A. § 5103, 5206, 5211 and 5212.



## What is a Leasehold Planned Community?

A leasehold planned community is any planned community which is at least partially subject to a lease that, upon expiration, will end the planned community or at least make it smaller.

68 Pa.C.S.A. § 5103.

## What is a “unit”?

The Planned Community Act defines a unit as the “physical portion of the planned community designated for separate ownership or occupancy, the boundaries of which are described...(in the) declaration...and a portion of which may be designated by the declaration as part of the controlled facilities.” *(Examples of a unit would include John’s home in Bellwether Estates (including his lawn), one half of a duplex in Bellwether Estates, or one of the shops in the little plaza just inside the front entrance to Bellwether Estates (these shops would be commercial/nonresidential units).)*

68 Pa.C.S.A. § 5103.

## What are “common facilities” and “controlled facilities”?

- Common facilities include any real estate within a planned community that is owned by the association, leased to the association, or designated as a common facility in the declaration *(e.g., the pool or the community playground in Bellwether Estates)* but the term does not include an individual unit.
- Controlled facilities include any real estate within a planned community, whether or not part of a unit, that is not a common facility but is maintained, improved, repaired, replaced, regulated, managed, insured or controlled by the association *(e.g., John, who we discussed earlier as owning a house in Bellwether Estates, owns the lawn which surrounds his home. This lawn is, however, a controlled facility, since the homeowners’ association regulates the lawn and will not allow John to display his collection of 5,000 dancing flamingoes. John would also like to paint the front of his house bright orange, yellow and green. Unfortunately for John, the declaration for his development states that the exteriors of the homes are controlled facilities. Bellwether Estates’ regulations prohibit bright yellow, so John has to settle for orange and green.)*

68 Pa.C.S.A. §5103.

- Both common facilities and controlled facilities may be limited and, therefore, allocated, only to specific units.

68 Pa.C.S.A. § 5209.

## Does the Planned Community Act apply to my community?

The Planned Community Act generally applies to all planned communities in Pennsylvania created after Monday, February 3, 1997 (the effective date). 68 Pa.C.S.A. § 5102(a).<sup>ii</sup>

There are exceptions to every rule. In this case, quite a few, as follows:

1. If a planned community, created after the effective date,
  - has no more than 12 units (*i.e., if Bellwether Estates had only 7 single family homes in the entire community*), and
  - is not a flexible planned community subject to expansion/conversion, and
  - has no units which may be subdivided by either the declarant (developer) or the unit owner, **then either:**
    - \* the planned community is subject to the restrictions of the Planned Community Act only with regard to separate titles and taxation; applicability of local ordinances, regulations and building codes; eminent domain; and easements to facilitate completion, conversion and expansion, or
    - \* the entire Planned Community Act is applicable pursuant to the declaration.

68 Pa.C.S.A. § 5102(a)(1).

2. If the planned community was created after the effective date (regardless of the number of units) and has common facilities or controlled facilities (either limited or not) which include only:
  - storm water management facilities,
  - real estate (containing signs, lights, landscaping, gates, walls, fences or monuments),  
or
  - open space

**and** is not a flexible community subject to expansion/conversion or open to subdivision by either developers or unit owners, **then either:**

- \* the planned community is subject to the restrictions of the Planned Community Act only with regard to separate titles and taxation; applicability of local ordinances, regulations and building codes; eminent domain; easements to facilitate completion; definitions; variation by agreement; applicability of supplemental principles of general law; construction against implicit repeal; uniformity of application; severability; unconscionable agreements, obligations of good faith, liberal remedies, resales of units, escrow of deposits; release of liens, warranty against structural defects and the chapter related to management of planned communities, or,
- \* the entire Planned Community Act is applicable pursuant to the declaration.

If this option is applicable, then the Planned Community Act also specifies that sales agreements for units in these planned communities include information that an association may be created to own and manage common or controlled facilities and that it may impose fees.

Further, in this type of planned community, the Planned Community Act states that the declarant must record appropriate covenants or restrictions and that purchasers have the right (prior to actual transfer of the property) to cancel the purchase agreement within 7 days of receiving a copy of any proposed or actual declarations, covenants, budgets or bylaws. <sup>iii</sup>

It is worth noting that open space includes areas of land or water or any combination thereof intended for the use of the residents of a planned community, such as ball fields, parks, hiking or biking trails, wetlands, wooded areas and parking for users of the open space. The term would not include streets, utility lines/facilities, swimming pools or clubhouses (either owned or leased and maintained by the owners' association).

68 Pa.C.S.A. § 5102(a)(2).

3. If the planned community was created prior to the effective date, the following portions of the Planned Community Act apply with respect to events occurring on or after February 4, 1997 (However, **specific declarations, bylaws, plats or plans adopted prior to February 4, 1997 are not invalidated by the Planned Community Act's applicability**):

Provisions concerning

- definitions,
- separate titles and taxation,
- applicability of local ordinances, regulations and building codes,
- eminent domain,
- general principles of law – applicability,
- obligation of good faith,
- construction and validity of declarations/bylaws,
- description of units,
- easements to facilitate completion, conversion and expansion,
- amending a declaration,
- termination of a planned community (only certain provisions),
- master associations,
- merger/consolidation of planned communities,
- certain powers of owner's associations,
- executive board members and officers,
- upkeep of a planned community,
- tort and contract liability,
- assessments for common expenses,

- liens for assessments,
- association records,
- other liens affecting a planned community,
- unit resales, and
- violations affecting rights of action.

68 Pa.C.S.A. § 5102(b) and (b.1), see enclosed retroactive sections.

3A. If the planned community was created prior to the effective date, and contains no more than 12 units and is not a flexible planned community, it is subject to the restrictions of the Planned Community Act only with regard to:

- separate titles and taxation,
- applicability of local ordinances, regulations and building codes,
- eminent domain, and
- easements to facilitate completion, conversion and expansion, **unless**
- the declaration is amended to comply with applicable law, in which case all of the restrictions outlined in 68 Pa.C.S. § 5102(b) will apply.

68 Pa.C.S.A. § 5102(c).

4. If the planned community was created prior to the effective date, then any amendments to the bylaws, declarations, plats or plans occurring on or after February 3, 1997 must either:

- comply with the law as it existed at the time the community was created, or
- comply with the Planned Community Act (if any rights, powers or privileges are adopted in conformity with the Planned Community Act, all correlative obligations, liabilities and restrictions under the Planned Community Act are also applicable).

68 Pa.C.S.A. § 5102(d).

5. The Planned Community Act does not apply to a community in which all units are restricted to nonresidential use (e.g., a shopping center) unless the declaration provides that the Act is applicable.<sup>iv</sup>

68 Pa.C.S.A. § 5102(e).

6. The Planned Community Act applies to communities which contain both residential and nonresidential units only if:

- the declaration provides that the Act applies or

- the Act would apply to the residential units of the community if the commercial units were absent (*e.g., Bellwether Estates contains several small shops and a convenience store. The Planned Community Act applies since it would automatically be applicable if you removed the shops and convenience store.*)

68 Pa.C.S.A. § 5102(e).

7. A number of the public offering requirements of the Act apply to contracts for planned communities outside of Pennsylvania if the purchaser signs the contract within Pennsylvania and the transfer has not been exempted from the Act's requirements as a disposition pursuant to a court order.

68 Pa.C.S.A. § 5102(f).

### What is a declaration?

A declaration is defined as any instrument that actually creates a planned community, as well as any amendment to that instrument. **Although it is not a perfect analogy, you may think of a declaration as the constitution of a planned community. It is the foundational document that creates the community and establishes the general structure under which bylaws are adopted and the community is governed.**

68 Pa.C.S.A. § 5103

A declaration must contain, among other things, the name of the planned community, its location, a description of unit boundaries, a description of controlled facilities and the obligations of the association for their maintenance or regulation, an allocation to each unit of a portion of the votes in the owners' association and common expenses of the owners' association, and any other matters the developer (declarant) deems appropriate ( The actual statutory list concerning what must be included in a declaration is rather long. It is recommended that an individual review the applicable sections of the Act for more detailed information. )

68 Pa.C.S.A. § 5205.

### How can a declaration be changed?

There are a number of standards for amending a declaration. The general rule is that a declaration, including the plats and plans, can only be amended by a vote of at least:

- 67% of the allocated votes in the owners' association, or
- a larger percentage of the votes in the association if specified in the declaration or
- a smaller percentage of the votes in the association if specified in the declaration and all units are restricted to nonresidential use.

*(Keep in mind that these figures, such as 67 percent of the owners' association in the first alternative, do not correspond to the exact percentage of owners. In other words, let us assume that Bellwether Estates has 100 different units. It would seem that 67 percent of the owners association would be equal to 67 unit owners. However, if 20 of those 100 lots are twice the size of the remaining 80 lots, then the declaration could specify that those 20 lots get two votes each. This means that even though there are 100 unit owners, there are actually 120 votes. 67 percent of 120 equals about 81. So, under the first alternative above, it would take 81 affirmative votes to amend the declaration. If we carry the example a little further, let us assume that the owners of the 20 large lots all vote in the affirmative to amend the declaration. This would equal 40 yes votes. If only 41 of the other lot owners agreed (i.e., 41 votes), that would reach the required 81 votes necessary. In effect, the 20 large lot owners and 41 small lot owners could amend the declaration. Instead of 67 owners voting in the affirmative, due to the allocation of votes in the declaration, 61 could amend that declaration. See 68 Pa.C.S.A. § 5208, Allocation of votes and common expense liabilities. It is also worth noting that there can be different allocations of votes among units upon particular matters as outlined in the declaration.)*

As always, there a number of exceptions to the general rule outlined above.

- Unless permitted by some other section of the Planned Community Act for approval by a lesser number, unanimous consent among all affected unit owners is required to:
  - \* create/increase declarant (developer) rights;
  - \* alter terms regarding the transfer, lease or completion of any common facilities;
  - \* change the number of units, their boundaries, their common expense liability, their voting strength or the applicable uses for a given unit. (This change in use does not refer to whether or not a unit is to be leased.)

Additionally, no special declarant (developer) rights may be amended without the written permission of the declarant.

- The declaration may require the unit owners or association to obtain approval of a mortgage holder or other lender before commencing certain actions as long as that approval does not interfere with control of the association by unit owners, or interfere with litigation or insurance recovery.
- The general rule does not apply to certain amendments by a developer (declarant) concerning plats and plans, conversion/expansion of flexible planned communities, or withdrawal of withdrawable real estate. Apparently, these amendments may be recorded at the developer's discretion; however, these actions may be taken by the developer only if he reserved the right to do so in the declaration.
- The general rule does not apply to certain amendments by an owners' association regarding technical corrections (handled by the executive board); eminent domain or leasehold planned communities (votes reallocated automatically); or limited common or controlled facilities or subdivision/conversion of units (only unit owners actually affected by the amendment need to agree).

- The general rule does not apply to certain amendments by unit owners concerning limited common or controlled facilities or subdivision/conversion of units (only unit owners actually affected by the amendment need to agree); relocation of unit boundaries (only unit owners actually affected by the relocation need agree, subject to a 30 day period during which the executive board may determine the relocation is unreasonable); or termination of a planned community (80 percent or more of allocated votes, this number may be increased by the declaration).

Amendments must be recorded in every county in which a planned community is located, and if adopted by an owners' association may only be challenged within one year of their recording.<sup>v</sup>

Amendments made by an owners' association must be recorded by the designated officer or the president of the association. If the county maintains a uniform parcel identifier number system, then a number must be assigned to each planned community. Any subsequent amendment must also be indexed in accordance with the master parcel identifier number.

68 Pa.C.S.A. § 5219 and 5221.

### What are bylaws?

If the declaration is similar to the constitution of a planned community (see "What is a declaration" above), then bylaws are similar to the laws of the community. They are enacted under the authority of both the Uniform Planned Community Act and the declaration. While the Uniform Planned Community Act and the declaration provide the structure of the community, the bylaws fill in the details. Each community determines and maintains its own bylaws.

68 Pa.C.S.A. § 5306

### What if there is a conflict between the declaration and the community bylaws?

As long as the declaration is in compliance with the Planned Community Act, the declaration prevails.

68 Pa.C.S.A. § 5203(c).

### What are Rules and Regulations?

A planned community *may* have rules and regulations which clarify and explain in more detail the broader guidelines applicable to the community. (*The Bylaws of Bellweather Estates state that one small animal is permitted per unit. The Rules and Regulations specify that no animal weighing more than ten pounds is permitted in a unit.*) A planned community is not

required to have rules and regulations, but if they do, the bylaws or declaration will outline how they are to be adopted by the owners' association.

68 Pa.C.S.A. § 5302(a)

### What can our Owners' Association accomplish?

As a general rule, an owners' association may:

- adopt/amend the bylaws, rules and regulations concerning the planned community (*The owners' association could prohibit use of the pool (a common facility) unless a licensed lifeguard was on duty*),
- adopt/amend budgets (*determine revenues, expenditures and reserves and collect assessments from unit owners to pay for common facilities like the pool and the clubhouse at Bellwether Estates*),
- hire and fire managing agents, other employees and independent contractors (*e.g., the lifeguards at the pool and the lawn care company that mows the entrance grounds at Bellwether Estates*),
- take part in litigation, arbitration, mediation or administrative proceedings which affect the planned community on behalf of itself or two or more unit owners (*If questions about litigation and administrative proceedings arise regarding a planned community, the individual requesting information should probably be directed to contact a qualified attorney in his area*),
- make contracts and incur liabilities,
- regulate the use, maintenance, repair, replacement and modification of common facilities and controlled facilities,
- make reasonable accommodations for the disabled,
- improve the common facilities and (if allowed by the declaration) the controlled facilities,
- acquire, hold and convey any right, title or interest in real property, with certain restrictions on the sale or encumbrance of common facilities,
- grant easements, leases, licenses and concessions through or over the common facilities and (as permitted by the declaration), the controlled facilities,
- impose fees for the use, rental or operation of common facilities or controlled facilities, but not certain limited common facilities or limited controlled facilities (*Bellwether Estates allows owners to rent a room in the clubhouse for private parties. It may charge a fee for that room*),
- impose late fees (*i.e., for late assessments, such as the monthly homeowners' fee in Bellwether Estates*),
- suspend unit owners' rights to vote on matters before the association, serve on the board or committees, use common elements, amenities, or recreational facilities until assessments are paid or violations are resolved.
- impose fines for violations of the declaration, rules, regulations or bylaws. The individual subject to the fine must have an opportunity to be heard before imposition of the penalty. (*John decides to display his collection of 5,000 dancing flamingoes on his lawn, which is a*



*controlled facility, even though he knows it is against the rules and regulations of Bellwether Estates. Before imposing a fine on John for violating the rules, Bellwether Estates must give John a chance to be heard, such as allowing him to appear before the Executive Board and argue that the individual liberties inherent in our system of representative democracy demand that he be allowed to display all of his dancing flamingoes. After the Executive Board quits laughing, John may be fined. Keep in mind that this is a rather ridiculous example, and the reason for the hearing is to allow the Executive Board to consider whether the offered explanation for a given action is reasonable and therefore a fine should not be imposed.),*

- impose charges for recording amendments to the declaration,
- impose charges for any required resale certificates,
- impose certain nonrefundable capital improvement fees on the resale or transfer of a unit,
- indemnify its officers and Executive Board and maintain their liability insurance, and
- exercise any other powers necessary for the operation of the association.

As always, the general rule has exceptions. All of the aforementioned powers are subject to the limitations of the declaration and the Planned Community Act; however, the declaration may not restrict the power of the association to deal with the developer (declarant) in any manner not applicable to the power of the association when dealing with others (i.e. The developer cannot create specific limits on the power of the association which apply only to him).

A final exception requires the association to obtain prior written approval of any unit owner who would be adversely affected by proposed improvements to the common elements, easements/licenses concerning the common elements, or conveyances of interests in real property.

68 Pa.C.S.A. § 5302.

### Are associations required to have meetings?

Yes. The association bylaws must contain a requirement that the association hold a meeting at least once a year. Notice of the meeting is to be hand delivered or mailed to each unit owner at least 10, but not more than 60 days before the meeting. The notice is required to include the time and place of the meeting as well as items on the agenda. The bylaws of each association may have additional requirements for notice to unit owners or frequency of meetings.

68 Pa.C. S. A. §5308.

### Is proxy voting allowed at Owners' Association meetings?

As a preliminary matter, a proxy is defined by Webster's dictionary as a person who is authorized to act for another. In this context, a person would be authorized to cast a vote on behalf of another.

Proxy voting is permissible if a proxy has been prepared by the unit owner and includes a date. Proxies automatically end one year after the date unless a shorter term is noted in the proxy. A proxy may not be revoked unless actual notice is given to the person running the owners' association meeting. A proxy is void if it states that it is revocable without notice. If a unit is owned by multiple individuals, each owner may use a proxy to either vote or protest the vote of another owner of the same unit.

68 Pa.C.S.A. § 5310(b).

### What is the role of the board of directors?

Unless the declaration or bylaws provide otherwise, the executive board acts on behalf of the association. Its members are elected by the unit owners (and the declarant during the period of declarant control.) The board of directors proposes a budget, approves expenditures, and delivers copies of each to all unit owners. Depending upon the bylaws, the unit owners may approve or reject any budget or capital expenditure approved by the board within 30 days of approval.

68 Pa.C.S.A. §5303.

### What if I signed a contract agreeing to waive my rights under the Planned Community Act?

As a general rule, the provisions of the Planned Community Act may **not** be waived or varied by contract. While there are specific portions of the Act which may be negotiated, for the most part, a developer may not “use...(a) device to evade the limitations or prohibitions” of the Act or of the applicable declaration.

68 Pa.C.S.A. § 5104.

However, waivers of chapter 54 of the Planned Community Act, with certain exceptions, may be signed by individuals purchasing nonresidential units from a developer as well as by purchasers who are buying blocks of units from the developer for resale.

68 Pa.C.S.A. § 5401.

## What about the Developer's sales office and signs?

As discussed below, a developer's right to maintain signs, models and offices within the development is only permitted in connection with the sale or lease (or management, when discussing offices and models) of units still owned by the developer.

68 Pa.C.S.A. § 5217

The Planned Community Act discusses signs used by a developer to advertise the sale or lease of a unit. Unless restricted by the declaration, a developer may maintain those signs in units which he actually owns (*LibertyCo. may put up signs in the windows of houses which it is trying to sell in Bellwether Estates*) or on the common facilities (*the outside wall of the pool house at Bellwether Estates*) or on the controlled facilities (*the lawn of John's house at Bellwether Estates*).

68 Pa.C.S.A. § 5217(b).

Unless restricted by the declaration, the developer's offices and models used in connection with the management, sale or lease of units owned by the developer may be located or relocated in any unit or units owned by the developer, even if the declaration would normally prohibit such activity in a unit (*LibertyCo. may put a sales office in the house next door to John's, even though the declaration prohibits any commercial activity in the single family homes in Bellwether Estates*).

68 Pa.C.S.A. § 5217(c).

A developer could not maintain an office or model in the common facilities or controlled facilities of a development in connection with the management, sale or lease of units he owned unless the declaration specifically outlined the developer's right to do so and included limits on the number, size and relocation of those models and offices. (*An office on the common facilities might include a sales trailer sitting on the entrance grounds to Bellwether Estates or a small rental office in the corner of the pool house.*)

- When relocating an office or model in the common or controlled facilities, the developer could remove his personal property and fixtures from the old office. Any fixtures left in the office would become part of the common or controlled facility and any personal property left in the office would become the property of the owners' association (*If LibertyCo. relocated their sales office from the corner of the pool house at Bellwether Estates to a sales trailer on the entrance grounds and never took their photocopy machine from the pool house, the photocopy machine would become the property of the owners' association*).

- Once all units have been sold, the developer has to remove all portions of the common or controlled facilities used by him pursuant to the right to remove those portions as outlined in the declaration. Failure to promptly remove any of that property results in a loss of any right to that property.

68 Pa.C.S.A. § 5217(a).

Can the Developer travel over my property to finish building the house next door?

As limited by the declaration, a developer has an easement through common facilities or controlled facilities as may be reasonably necessary to carry out his obligations (or special rights) concerning construction, repair, etc. (*LibertyCo. needs to finish dredging the fishing lake behind John's house in Bellwether Estates. The lake is a common facility, John's yard is a controlled facility, and travel through John's yard is necessary to complete the dredging. In this case, LibertyCo. can travel through John's yard*).

During spring thaw conditions, an owners' association may prohibit travel over roads in a planned community by vehicles of more than ten tons gross weight, as long as:

- the prohibitions are established on a week-by-week basis for no more than 8 weeks a year,
- thaw conditions are reviewed weekly, and
- signs are conspicuously posted explaining the prohibition.

An association may not impose fees or security requirements on the use of easements; however, the developer shall promptly repair any damages to the common or controlled facilities or reimburse the association for costs and expenses incurred for the repair of damage to common and controlled facilities under the statutory easement. (*LibertyCo. is pouring cement footers for new houses in Bellwether Estates. The cement trucks run over one stretch of road in the planned community until the road simply breaks apart due to the heavy traffic. LibertyCo. must fix the road or pay to repair the road*).

68 Pa.C.S.A. § 5218.

I would like some work done on my home, but the owners' association says that the contractor's trucks cannot use our roads. Do I have any rights?

See the above response. A unit owner has rights similar to that of a developer. In other words, a unit owner and any contractors or business invitees may travel over common facilities or controlled facilities as reasonably necessary to construct, repair or renovate a unit. As stated above, the owners' association may impose restrictions during spring thaw periods. A unit owner or his contractor or business invitee is responsible for repairing damage to common or controlled facilities or, in the alternative, paying for their repair.

68 Pa.C.S.A. § 5218.

## Are there any restrictions in the Planned Community Act concerning alterations which I might wish to make to my home?

Unless prohibited by the declaration or some other provision of law, a unit owner may:

- make any improvements/alterations to the unit which do not impair the structural integrity or mechanical systems or lessen the support of any portion of the planned community (*e.g., There are several duplexes in Bellwether Estates. Erik owns 1/2 of a duplex, Angie owns the other 1/2. Erik decides to install a medicine cabinet/vanity in between the studs in the wall of his bathroom. This wall happens to be the wall shared with the other 1/2 of the duplex. In order to locate the vanity in the exact center of the wall, he needs to remove several pipes leading up to Angie's second floor bathroom. Erik will have to put the vanity in another place, since removing those pipes would "impair...mechanical systems" of a portion of the planned community.*)
- change the appearance of the portion of any unit that is not a controlled facility. Prior to changing the appearance of any common facility or controlled facility, the unit owner must obtain the permission of the owners' association (*Dwayne owns a house in Bellwether Estates and wants to paint his house orange. Since the exterior of Dwayne's home is a controlled facility pursuant to the declaration, he must obtain the permission of the owners' association before he paints his home.*)
- after acquiring an adjoining unit (or at least a portion of an adjoining unit), remove/alter any intervening partition or create openings in the partition (*Erik owns 1/2 of a duplex in Bellwether Estates. Angie owns the other 1/2. If Erik buys Angie's 1/2, he could put a door through the party wall which presently separates the two halves*). This would be permissible even if the partition was a common facility or controlled facility, as long as the change did not impair the structural integrity or mechanical systems or lessen the support of any part of the planned community. It is worth noting that the removal of partitions or creation of openings is not considered an alteration of unit boundaries.

68 Pa.C.S.A. § 5213.

## What is a Public Offering Statement?

A public offering statement is a document that discloses various kinds of information about a planned community. According to the Planned Community Act, public offering statements must generally contain:

- the name and address of the declarant (developer) and the planned community;
- a general description of the planned community, including completion dates;
- a description of the units;
- the total number of additional units that may be included and whether any are intended to be rented or marketed in blocks to investors;
- a description of withdrawable real estate;

- copies and a narrative description of the declaration (minus plat and plans), copies of bylaws, rules and regulations;
- copies of any contracts/leases which would be signed by purchasers and a description of other contracts subject to cancellation by the association;
- a current balance sheet and projected budget for the owners' association;
- any fees required from the purchaser at closing, including a description of the fees' calculation;
- any liens, encumbrances or defects on the title of the planned community;
- a description of any financing available from the developer;
- the terms of any warranties, including statutory warranties;
- a statement concerning the right to cancel prior to conveyance and within seven days of receipt of the public offering statement or an amendment of the public offering statement;
- a description of any adverse judgments or pending suits involving the planned community;
- a statement concerning the escrow of deposits;
- any restraints on alienation (i.e., sale or transfer) of units;
- a description of insurance provided (or intended to be provided) for the benefit of unit owners;
- any current/expected fees for use of the common facilities, limited common facilities and other facilities by unit owners;
- financial arrangements to ensure completion of projects labeled "MUST BE BUILT" on applicable plat/plans;
- unusual and material circumstances and features of the community and the units;
- information on structural components and major utility installations;
- a description of how votes are allocated, including information on cumulative or class voting;
- information on the potential for master association membership;
- information concerning government approvals and permits necessary for the planned community, specifying which have been obtained and which remain to be obtained;
- information regarding any violation of government requirements;
- information about any known hazardous wastes; and
- a statement concerning all facilities which the developer has not yet completed.

Certain small, non-flexible planned communities may omit information on withdrawable real estate, intentions to rent/market in blocks and the narrative descriptions of the declaration and cancellable contracts (they must still, however, include copies of the declaration). Also, the requirements for a public offering statement in a leasehold planned community are not nearly as comprehensive.

An additional caveat is that if an interest in the planned community is currently registered with the United States Securities and Exchange Commission (SEC), a copy of the public offering statement filed with the SEC will be sufficient to serve as a public offering statement under the Planned Community Act.

68 Pa.C.S.A. § 5402 and 5405.

Any action to enforce a warranty must begin within six years of when the warranty starts or two years from when the unit owners elect an executive board (whichever is later). If a developer wishes to disclaim any implied warranties, that information must appear in the contract for the sale of the unit as well as the public offering statement and must be in **14-point boldface type**.

68 Pa.C.S.A. § 5411(e) and (f), See material below concerning warranties.

### Does the Public Offering Statement differ for time-share communities or communities containing conversion buildings?

The short answer – Yes.

While public offering statements for both time-share communities and communities containing conversion buildings must contain the information listed above (See the answer to What is a Public Offering Statement? just prior to this question), there are additional requirements for these special types of planned communities. *(Keep in mind, time-shares are units which may be owned by a multitude of owners, each for a specific week or two a year. These are often in popular vacation spots, such as Williamsburg, Va.; Orlando, Fla.; Ocean City, N.J.; etc. Individuals will pay to own 1/52<sup>nd</sup> of a unit. This ownership might guarantee their right to occupy the house every year during the second week of July or something along those lines. Communities containing conversion buildings are communities containing buildings which, at any time prior to the conversion notice required by the Planned Community Act, contained individuals other than purchasers or persons who occupy with the consent of purchasers. Since the developer/declarant is not considered a purchaser, this is more easily explained as buildings containing tenants renting from the developer. Eventually, the building may be converted into a part of the planned community and will be sold to purchasers, with present tenants enjoying a right of first refusal concerning the purchase of the unit where they presently reside.)*

If any units in a planned community can be owned as time-shares, then the public offering statement must also contain:

- the total number of time-share estates that may be created,
- the projected expense assessments for the time-share estates and whether those assessments will vary seasonally (*i.e., in Ocean City, N.J., the expense assessments for pool cleaning fees, lifeguards, etc. might be higher for the summer months during the prime vacation period*),
- the extent to which a time-share may become subject to a tax or other lien arising out of claims against other owners (*e.g., Floyd owns 1/52<sup>nd</sup> of a unit, Lloyd owns 1/52<sup>nd</sup> of a unit. The public offering statement has to explain to Floyd the manner in which the time-share will be affected should Lloyd declare bankruptcy, etc.*), and
- other information applicable to time-shares.<sup>vi</sup>

68 Pa.C.S.A. § 5403.

If a planned community contains conversion buildings, then the public offering statement (for units intended for residential occupation) must also contain:

- information based on a report by an independent registered architect or professional engineer describing the current condition of the units and common and controlled facilities,
- a statement concerning the expected useful life of the mechanical and electrical equipment, water systems, etc.,
- a list of uncured violations of building codes or other regulations, and
- information regarding pests based on a report by an independent exterminating company.

68 Pa.C.S.A. § 5404.

An option to convert any real estate must be reserved in the declaration for the flexible planned community and may only be exercised within 10 years from the recording of the declaration or 120 days after a particular section's final plat is approved or denied (or 120 days after a final judgment on appeal.)

68 Pa.C.S.A. § 5206.

### Who is entitled to a Public Offering Statement?

In general, all purchasers are entitled to a public offering statement.

This requirement, as almost all requirements under chapter 54 of the Planned Community Act (dealing with Protection of Purchasers), can be modified or waived by agreement of a purchaser of a nonresidential unit (units intended for businesses, nonresidential campground units) or purchasers of units who intend to be in the business of buying/selling units (investors purchasing simply to resell at a profit).

A public offering statement does not need to be prepared/delivered in the following cases:

- a gratuitous transfer (*a gift*),
- a disposition pursuant to court order (*Frank is a multimillionaire with homes in several states. One of those homes is in Bellwether Estates. On a whirlwind weekend trip to Las Vegas, Frank falls in love with a showgirl named Lola and they are married. Four months later, they get divorced. As part of the settlement, the judge decrees that Lola gets the house in Bellwether Estates. There is no need for a public offering statement in this situation.*),
- a disposition by a government or governmental agency (*such as tax sales, sales of homes by the Veterans' Administration, etc.*),
- a disposition by foreclosure or by deed in lieu of foreclosure (*this would be transfer to the bank or other holder of the mortgage on the unit*),
- a disposition of a unit outside Pennsylvania pursuant to a contract executed outside Pennsylvania, or
- a transfer which qualifies as a resale.



If a unit is part of two or more planned communities, then a single, unified public offering statement may be presented (as opposed to two separate public offering statements).

68 Pa.C.S.A. § 5401.

If a developer/declarant fails to provide the required public offering statement, there are provisions for the cancellation of sales and the imposition of monetary penalties. See Does the Unit Purchaser ever have a right to cancel the purchase? below.

### Does a Unit Purchaser ever have a right to cancel the purchase?

In those cases where a public offering statement is required, the developer/declarant must provide it to the purchaser (as well as all amendments to the statement) by the date a contract for the sale is executed or at least 7 days before the actual transfer of ownership (if no contract of sale is executed beforehand). If this requirement is not met, the purchaser may cancel the contract/sale prior to the actual conveyance within 7 days of receiving the public offering statement and all amendments. *(Jim wishes to buy a home in Bellwether Estates from LibertyCo., the developer. The sales agreement is to be signed on May 12<sup>th</sup> and closing is set for June 28<sup>th</sup>. If LibertyCo. provides Jim with a copy of the public offering statement and all amendments by May 12<sup>th</sup>, then Jim has no right to cancel the sale after the sales agreement is signed. If LibertyCo. provides Jim with a copy of the public offering statement on May 14<sup>th</sup>, then Jim has until May 21<sup>st</sup> to cancel the contract. If LibertyCo. provides Jim with the public offering statement on June 26<sup>th</sup>, then Jim can cancel the contract up until closing.)*

*(If Jim and LibertyCo. do not sign a sales agreement and closing is scheduled for June 28<sup>th</sup>, then LibertyCo. must provide Jim with a copy of the public offering statement by June 21<sup>st</sup>. Jim would be entitled to cancel the sale up to the actual closing if he received the public offering statement on the 21<sup>st</sup>.)*

If the public offering statement is amended after it has been provided to a purchaser, the amendments must also be forwarded. If they materially/adversely affect the agreement, then prior to conveyance the purchaser may cancel the contract/sale within 7 days of receiving the amendment (see above examples).<sup>vii</sup>

#### Additional Monetary Penalties

In addition to the right to cancel the purchase of a unit based on the developer's failure to provide the required public offering statement, a prospective purchaser is also entitled to receive 5% of the unit sales price (up to \$2,000) or actual damages, whichever is greater. If only a minor omission or error concerning the public offering statement or an amendment was involved, and the mistake was not willful, then the purchaser is restricted to recovering actual damages. *(In this case, actual damages might include money paid to an attorney for contract review, deposits paid to a moving company, etc. As an example, Jim wishes to purchase a unit in Bellwether Estates. LibertyCo. fails to provide Jim with the appropriate public offering statement within the statutory timeline, so Jim cancels the purchase. In preparation for moving to Bellwether Estates, however, Jim gave a moving company a \$500 deposit, notified his*

*landlord that he would be moving out at the end of the month and bought a \$200 picnic table for his new lawn. Jim could probably collect for the \$500 deposit, and would also probably be entitled to some money to cover his expenses for new living arrangements; however, he probably could not recover for the cost of the picnic table, since its purchase was not necessary to occupy his new home and he still has the benefit of owning the picnic table.)* It is worth noting that apparently the monetary penalties are available even if the conveyance has occurred and cancellation of the purchase is no longer an option.

#### Method of Cancellation

A purchaser entitled to cancel a contract may do so by either:

- hand delivering notice to the developer/declarant, or
- mailing notice (prepaid U.S. mail) to the developer/declarant or to his agent for service of process. (While the Act does not require the use of certified mail, return receipt requested, it would be important to stress that a purchaser take advantage of certified, return receipt mail so there is proof of service).

Cancellation within the appropriate time frame, as discussed above, would be without penalty to the purchaser. All payments made by the purchaser prior to cancellation must be refunded. As noted above, monetary penalties may apply to the developer.

68 Pa.C.S.A. § 5406.

Almost all requirements under chapter 54 of the Planned Community Act, including the right to cancel, can be modified or waived under certain circumstances by agreement of a purchaser of a nonresidential unit (units intended for businesses, nonresidential campground units) or purchasers of units who intend to be in the business of buying/selling units (investors, purchasing simply to resell at a profit).

68 Pa.C.S.A. 5401.

See also Are there any requirements for the resale of a unit? (below), specifically for information which discusses a right to cancel for failure to timely provide a certificate.

#### Are there any requirements for the resale of a unit?

Any resale of a unit (sale by a unit owner other than the developer/declarant) is governed by the following provisions.

As a general rule, before executing a sales contract or actually conveying a unit, the unit owner has to provide a copy of the declaration (minus the plat/plans), a copy of the bylaws of the planned community, a copy of the rules and regulations if any established by the owners' association and a certificate containing the following information:

- any rights of first refusal or other limits on the sale of the unit,

- the monthly common expense assessment and any past due amounts or prepaid amounts,
- any other applicable fees (a purchaser would not be liable for any unpaid fees or assessments greater than those provided in the certificate),
- current capital expenditures by the owners' association and proposed expenditures for the next two years,
- the amount of any financial reserves of the owners' association,
- the most recent balance sheet of the association,
- the current operating budget of the association,
- information on pending suits and judgments against the association,
- information concerning insurance coverage provided for the benefit of unit owners,
- information on any possible violations of the declaration regarding the unit which is for sale or its limited common or controlled facilities,
- information on any possible violations of governmental regulations or existing hazardous conditions concerning the unit or any portion of the planned community,
- information on applicable leasehold estates,
- information on cumulative/class voting,
- information on proposals to terminate the planned community, and
- information on master associations, time-share estates, and any possible mergers or consolidations with other planned communities.

The owners' association in any planned community is responsible for providing the certificate and information outlined above to any unit owner within 10 days of his request. If any of the provided information is incorrect, the unit owner is not liable to the purchaser for such mistake. *(e.g., John is selling his home in Bellwether Estates. He obtains a certificate and all the required information for his purchaser, Jim. The certificate provided by the association fails to note that the association is in the middle of a huge lawsuit concerning 50 children who were injured by a defect in the community pool. Bellwether Estates loses the suit, and the next year's common expense assessments go up about \$5,000 a unit to pay for the increased cost of insurance for the pool. Jim cannot sue John for providing faulty information, since it was the Bellwether Estates owners' association that prepared the certificate. If Jim wants to recover, he needs to sue the association.)*

A unit owner is not liable for the owners' association's failure to provide a certificate in a timely fashion; however, the purchaser is permitted to void any purchase contract until five days after the day he receives the certificate or until the actual conveyance of the unit, whichever is first. *(e.g., Once again, John is attempting to sell his home in Bellwether Estates to Jim. John applies for a certificate, but it seems to take forever to receive the certificate. The ownership of the home is scheduled to be transferred on June 14<sup>th</sup>. Jim decides to cancel the purchase (void the purchase contract signed in April) on June 12<sup>th</sup>. Since the actual ownership has not been transferred, Jim is entitled to void the contract for John's failure to obtain a certificate unless the certificate was provided on or before June 8<sup>th</sup>.)*

68 Pa.C.S.A. § 5407.

A resale certificate does not need to be prepared/delivered in the following cases:

- a gratuitous transfer (*a gift*),
- a disposition pursuant to court order (*Frank is a multimillionaire with homes in several states. One of those homes is in Bellwether Estates. On a whirlwind weekend trip to Las Vegas, Frank falls in love with a woman named Lola and they are married. Four months later, they get divorced. As part of the settlement, the judge decrees that Lola gets the house in Bellwether Estates. There is no need for a resale certificate in this situation.*),
- a disposition by a government or governmental agency (*such as tax sales, sales of homes by the Veterans' Administration, etc.*),
- a disposition by foreclosure or by deed in lieu of foreclosure (*this would be a transfer to the bank or other holder of the mortgage on the unit*), or
- a disposition of a unit located outside Pennsylvania pursuant to a contract executed outside Pennsylvania.

Almost all requirements under chapter 54 of the Planned Community Act, including the requirement of resale certificates, can be modified or waived by agreement of a purchaser of a nonresidential unit (units intended for businesses, nonresidential campground units) or purchasers of units who intend to be in the business of buying/selling units (investors, purchasing simply to resell at a profit).

68 Pa.C.S.A. § 5401.

### What if the developer sells all the houses and leaves without putting in the community pool and basketball courts?

Pursuant to the Planned Community Act, plats/plans are part of the required declaration which must be filed with the recorder of deeds in every county in which a planned community exists.

68 Pa.C.S.A. § 5201 and § 5210(a).<sup>viii</sup>

Each plat must show the location and size of any “contemplated improvement” (i.e., an improvement not yet constructed) anywhere in the planned community. The plat must also contain either the label “MUST BE BUILT” or “NEED NOT BE BUILT” next to the contemplated improvement. Contemplated improvements within convertible real estate do not need to be shown, but if they do appear on the plat they must also be labeled as aforementioned. (*When John first purchased his unit in Bellwether Estates, the recorded plat showed the pool and clubhouse, neither of which had been built at that time. Both items were labeled “MUST BE BUILT” on the plat, so John could be sure that, at some point, the pool and clubhouse would go in. The plat also contained a proposed monorail which would run around Bellwether Estates and stop at each house to drop off milk, bread or other necessities from the shops at the entrance*

to the development. The monorail, however, was labeled “NEED NOT BE BUILT” on the plat. Needless to say, LibertyCo. has not yet broken ground for the monorail system.)

68 Pa.C.S.A. § 5210(b)(3).

The developer is required to complete all improvements which were labeled “MUST BE BUILT” on applicable plats/plans.

68 Pa.C.S.A. § 5414(a).

In fact, as a general rule, explanations of the financial arrangements for completing all “MUST BE BUILT” projects have to be included in public offering statements.

68 Pa.C.S.A. § 5402(a)(19).

See remedies under What if the Developer violates the Planned Community Act, the applicable declaration or the applicable bylaws? below.

### What if the Developer violates the Planned Community Act, the applicable declaration or the applicable bylaws?

Every contract or duty controlled by the Planned Community Act requires a good faith effort in its performance.

68 Pa.C.S.A. § 5113.

If a developer (or any other person, for that matter) subject to the Planned Community Act violates any provision of:

- the Act,
- the applicable declaration, or
- the applicable bylaws, then

any individual or group harmed by that violation may commence a lawsuit and obtain “appropriate” relief. If the harm was caused by a willful violation of the Planned Community Act, punitive damages may be awarded. It should be noted, however, that seeking this remedy will require private legal action for which an individual or group will need to have their own attorney. **It is not a matter for which representation is provided by any public or governmental agency or official.** *(If LibertyCo. had not completed the pool and clubhouse labeled “MUST BE BUILT” in the plat/plans which were in effect when John purchased his home at Bellwether Estates, John could hire a lawyer to sue LibertyCo. and require them to build the pool and clubhouse or, at the very least, require LibertyCo. to pay someone else to finish the pool and clubhouse. If it was apparent that LibertyCo. had willfully violated the requirements of the*

*Planned Community Act (which appears to be the case), John could be awarded punitive monetary damages and reasonable attorney fees as well.)*

68 Pa.C.S.A. § 5412.

See also Does a Unit Purchaser ever have a right to cancel the purchase?

### Are there any other remedies available to an owner?

In some situations, an alternative dispute resolution procedure may be available to address complaints if such is provided for under the association's declaration, bylaws, rules, or regulations.

Planned communities established after July 3, 2018 are required to have bylaws providing for alternative dispute resolution. If there is no such provision in the documents, then a unit owner may file a complaint with the Bureau of Consumer Protection in the Office of Attorney General for violations by either the declarant or the association concerning meetings, quorums, and voting or proxies. Alternatively if an alternative dispute resolution procedure exists and no resolution is reached within 100 days, a complaint may be filed with the Bureau of Consumer Protection. If criminal wrongdoings are suspected, then the local district attorney's office should be contacted. In addition, a unit owner, declarant, or association may also seek a private legal action as may be appropriate.

68 Pa.C.S.A §5321 and §5322

See also Does a Unit Purchaser ever have a right to cancel the purchase?

### Do I have a warranty?

Yes, as a general rule, however, the developer is not responsible for maintenance of a unit.

The general rule is that the developer/declarant warrants against structural defects in structures constructed, modified, altered or improved by the developer or on behalf of the developer (i.e., the developer's subcontractor), in the following manner:

- each unit and any controlled facilities which are part of that unit are warranted for two years from the date the unit is conveyed to a bona fide purchaser (*John's settlement date for his new home in Bellwether Estates was on June 2<sup>nd</sup>, 2018. John's two year warranty begins to run on that date.*), and
- all controlled and common facilities not part of a unit are warranted for two years (see below for commencement of two year period). Only the owners' association can bring an action for breach of warranty concerning these controlled and common facilities not associated with a unit (*There is a small walking bridge which leads over a stream to the community pool. Within a year of Bellwether Estates' construction, all the supports holding up the bridge fail.*

*It is up to the owners' association to commence an action for breach of warranty against LibertyCo.).*

The two year warranty period for controlled facilities which are not part of a unit and for common facilities begins to run either when the controlled or common facility is completed or when the first unit is sold to a bona fide purchaser, with the following explanation. Additional real estate (real estate that may be added to a planned community), convertible real estate and all other portions of a planned community are treated as three separate areas for warranty purposes. It is the first unit sold to a purchaser in each area that, if later than the completion of controlled or common facilities, starts to run the warranty period in that area. *(e.g., All controlled and common facilities have been completed at Bellwether Estates. The first unit sold in Bellwether Estates is conveyed on June 2<sup>nd</sup>, 2018. The first unit sold within convertible real estate at Bellwether Estates is sold on July 23<sup>rd</sup>, 2018. Therefore, the warranties on certain controlled and common facilities in the area of convertible real estate at Bellwether begin on July 23<sup>rd</sup>, whereas the similar warranties for other portions of Bellwether began in June.)*

Several other principles apply to all of the warranties explained above. An action for breach of warranty which applies to either one or more units or controlled facilities that are part of one unit may be commenced by the owners' association or the owner of the affected unit(s). If ownership of a unit transfers within the warranty period, the remainder of the warranty also transfers to the new owner.

Common facilities or controlled facilities not part of a unit which are dedicated to a municipality, municipal authority or other governmental agency are not warranted. *(LibertyCo. dedicates the sewage plant in Bellwether Estates to the Spring Garden Water and Sewer authority. No warranty attaches to the sewage plant.)*

68 Pa.C.S.A. § 5411.

If a planned community contains conversion buildings, the developer only warrants that in those conversion buildings and in common or controlled facilities outside of buildings, there are no structural defects in components installed, work done or improvements made by the developer or his subcontractors (on his behalf). He also warrants that units and common and controlled facilities in conversion buildings have been inspected for visible defects and unhealthy conditions unless he was prohibited by the tenant from inspecting a portion of the building. Finally, he warrants that all defects and visible problems which were found were subsequently repaired. Other than these warranties, the developer may offer the units or common or controlled facilities "as is". If the developer desires, he may give a more extensive warranty in writing to conversion buildings. Warranties for conversion buildings commence as per the general rule discussed above. *(Joshua purchases a unit in a conversion building at Bellwether Estates.*

*Basically, his warranty states that the developer inspected and repaired all of the problems which were found, but as to problems which were not found, no warranty exists).*

68 Pa.C.S.A. § 5411(c).

Warranty requirements, as almost all requirements under chapter 54 of the Planned Community Act, can be modified or waived by agreement of a purchaser of a nonresidential unit (units intended for businesses, nonresidential campground units) or purchasers of units who intend to be in the business of buying/selling units (investors, purchasing simply to resell at a profit), with the following caveats:

- investors could not modify or waive the warranty provisions of the Planned Community Act concerning any unit built for residential use or any common or controlled facilities (*e.g., Oneway Real Estate purchases 4 homes in Bellwether Estates to resell. A year later, they sell one of the homes to Lester. Pursuant to the Planned Community Act (general rule, developer warrants against structural defects for a two year period from purchase, 68 Pa.C.S.A. § 5411), Lester still has a one year warranty.*),
- concerning common facilities and controlled facilities in nonresidential planned communities, no modification or waiver would be effective unless all unit owners agreed (in case of limited common or controlled facilities, only affected unit owners would have to agree), and
- no modification or waiver would prevent indirect benefits from accruing to a unit owner simply because he was a member of a planned community.

68 Pa.C.S.A. § 5401, see also § 5411(d).

It is worth noting that a warranty against structural defects in a nonresidential unit can be excluded simply by a disclaimer such as “with all faults”, “as is” or other common terms (*e.g., Billy decides to open a donut shop in the small plaza just inside the entrance to Bellwether Estates. If the unit he purchases is advertised and sold “as is”, he has no warranty).*

68 Pa.C.S.A. § 5411(d)(2).

Lawsuits brought to enforce warranties in a planned community would have to be commenced within 6 years after the warranty began or two years after the unit owners elect an executive board, whichever is later.

68 Pa.C.S.A. § 5411(e).

A developer may disclaim (if allowed by other applicable laws) any implied warranties which apply to units or facilities covered by the warranty provisions of the Planned Community Act. Further, the disclaimer must be in both the contract and the public offering statement for that planned community and must appear in **14 point boldface type** (That is, by the way, 14 point boldface type. This provision could serve to allow developers to avoid implied warranties



of habitability or fitness for a particular purpose.)

68 Pa.C.S.A. § 5411(f).

### What is a structural defect?

A structural defect is defined as a defect in any structure which is a component of :

- any unit or common or controlled facility, or
- any other portion of a unit or common or controlled facility which was constructed, modified, altered or improved by the developer or on his behalf.

Further, in order to be considered a structural defect, it must either:

- reduce the stability or safety of a structure below accepted standards, or
- restrict the normal use of a structure and require repair, renovation or replacement.

*(e.g., These might include a leak in the roof of John's home in Bellwether Estates, if the water is leaking into a particular room in such quantity that the room cannot be used; a basement wall in John's house which falls in because it was not given enough time to cure before the dirt was backfilled; or a crack in the bottom of the community pool which lets a substantial amount of water leak out and dirt flow in.)*

68 Pa.C.S.A. § 5103.

### May the community make reasonable accommodations for disabled individuals?

Yes, the executive board is authorized to make corrections to the declaration in order to make reasonable accommodations or permit reasonable modifications for the disabled as provided by federal, state or local laws or regulations.

68 Pa.C.S.A. § 5219(f) and § 5302(a)(6).

### What is a capital improvement fee and when does it apply?

A fee charged by the owners' association on the resale or transfer of units. Capital improvement fees are not charged on gratuitous transfers between:

- spouses,
- parent and child,
- siblings, or
- grandparent and grandchild.

*(e.g., Dave owns a unit in Bellwether Estates. He wants a change and has decided to move from his house into a retirement community. If he sells it to his sister, Katie, a capital improvement fee DOES apply. If he GIVES the unit to her, no capital improvement fee may be charged.)*

Capital improvement fees are not charged on foreclosures or deeds in lieu of foreclosure which transfer title to the bank or other lending institution which held the mortgage on the unit.

Finally, capital improvement fees are not charged on the transfer of a unit which contains only unimproved real estate, as long as the purchaser declares his intent to resell the unit within 18 months and actually completes the sale in that time.

68 Pa.C.S.A. § 5302(a)(12), § 5302(a)(12)(iii), and § 5302(a)(12)(iv).

### Are there limits on capital improvement fees?

As a general rule, capital improvement fees may not be greater than the general common expense assessments for the previous fiscal year. *(e.g., In the previous fiscal year, John was charged a monthly common expense assessment of \$100. When John sells his house to Sue, she may be charged a capital improvement fee of up to \$1,200.)*

If a unit contains only unimproved real estate, the capital improvement fee may not exceed one-half of the general common expense assessments for the previous fiscal year. Additional limits on common expense assessments may apply to the transfer of units added to a flexible planned community during the last fiscal year.

68 Pa.C.S.A. § 5302(a)(12)(i).

### Are capital improvement fees refundable?

Capital improvement fees are **not** refundable upon any sale of a unit.

68 Pa.C.S.A. § 5302(a)(12)(i)(C).

### How are capital improvement fees to be used?

They must be held in a separate account and used solely for new capital improvements or replacement of common facilities or controlled facilities. They cannot be used for general operating purposes. *(e.g., The association cannot raid the capital improvement fee account to pay for lawn mowing services during the summer).*

68 Pa.C.S.A. § 5302(a)(12)(ii).

### How long may the developer maintain control over the owners' association?

As a general rule, the developer may maintain control, if reserved in the declaration, over the owners' association for a period of up to 5 years. This period may be up to 7 years for certain flexible planned communities.

The period of developer control of the owners' association, regardless of the time frames mentioned above, shall terminate earlier if any one of the following occurs:

- 75% of units which may be created are sold to someone other than the developer (in which case the period of developer control terminates 60 days after the sale which reached the 75% mark).
- Two years after the developer has stopped offering units for sale.
- Two years after any development right to add new units was exercised.

68 Pa.C.S.A. § 5303(c).

### When does the period of developer control begin (for the purposes of the previous question)?

The time periods in the previous question are calculated from the date the first unit is conveyed to someone other than the developer.

68 Pa.C.S.A. § 5303(c)(2).

### Do the unit owners have any representation on the executive board during the period of developer control?

Within 60 days after at least 25% of the units which may be created are sold to someone other than the developer, at least one member (and not less than 25%) of the executive board must be elected by unit owners other than the developer. Within 60 days after at least 50% of the units which may be created are sold to someone other than the developer, at least 33% of the executive board must be elected by unit owners other than the developer.

68 Pa.C.S.A. § 5303(d).

### Can the owners' association prohibit me from flying a U.S. flag?

According to the "American, Commonwealth and Military Flag Act" (Act 93 of 2006), an owners' association cannot prohibit the outdoor display of one American flag by a unit owner on his property. If displayed pursuant to this act:

- the flag may not be larger than five feet by three feet and
- must be displayed in accordance with relevant federal laws.

An owners' association could adopt rules concerning the location, size and use of flagpoles but cannot prohibit the use of wall brackets for flag display.

44 P.S. §§50.1-50.3

### Can we ask local police to patrol our planned community?

Section 6113 of Pennsylvania's Vehicle Code provides that planned communities at least 10 contiguous acres in size may ask the county or municipality, if either the county or municipality has a local law enforcement entity, to conduct patrols and enforce traffic laws in the planned community.

75 Pa.C.S. § 102 and § 6113.

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<sup>i</sup> Originally prepared by Rodney A. Corey, Chief Counsel, House Republican Legal Staff, assisted by Christine M. Goldbeck, Executive Director, House Urban Affairs Committee (2008). Updated by Charlene Bashore, Senior Counsel, House Republican Legal Staff, assisted by Christine Goldbeck, Executive Director, House Urban Affairs Committee and Ashley Sheaffer, Senior Research Analyst (2022).

<sup>ii</sup> The actual effective date fell on a Sunday (February 2), therefore, the effective date was moved to the Monday (February 3), as per 1 Pa.C.S. § 1908. 68 Pa.C.S. § 5102(a) states that the subpart applies to communities created after the effective date. See *4700 Ellsworth Associates v. Vecchia*, 437 A.2d 1074 (Pa.Cmwlth 1981) (interpreting similar provisions in the Uniform Condominium Act).

<sup>iii</sup> While it is not clear from the language, it appears that this information probably should be included in sales agreements for notification purposes.

<sup>iv</sup> It is interesting that the definition of "planned community" specifically included nonresidential campground communities, since 68 Pa.C.S.A. § 5102(e) excludes them from the coverage of the Planned Community Act absent a portion of their declaration accepting the Act's authority.

<sup>v</sup> This statute of limitations, appearing at 68 Pa.C.S.A. § 5219(b), does not appear to apply to amendments by declarants.

<sup>vi</sup> The language at 68 Pa.C.S.A. § 5403(8) does not include provisions found in § 5402(a)(13) and § 5406 (a) which also discuss the right to cancel after material amendments to the public offering statement.

<sup>vii</sup> See prior endnote for a possible conflict involving amendments to public offering statements for timeshares.

<sup>viii</sup> There are certain exceptions regarding declarations when a governmental agency is the lessor of a leasehold planned community, but these are probably not applicable to most inquiries.



## **SUBPART D**

### PLANNED COMMUNITIES

#### **Chapter**

- 51. General Provisions
- 52. Creation, Alteration and Termination of Planned Communities
- 53. Management of Planned Community
- 54. Protection of Purchasers

**Enactment.** Subpart D was added December 19, 1996, P.L.1336, No.180, effective in 45 days.

## **CHAPTER 51**

### GENERAL PROVISIONS

#### **Sec.**

- 5101. Short title of subpart.
- 5102. Applicability.
- 5103. Definitions.
- 5104. Variation by agreement.
- 5105. Separate titles and taxation.
- 5106. Applicability of local ordinances, regulations and building codes.
- 5107. Eminent domain.
- 5108. Supplemental general principles of law applicable.
- 5109. Construction against implicit repeal.
- 5110. Uniformity of application and construction.
- 5111. Severability.
- 5112. Unconscionable agreement or term of contract.
- 5113. Obligation of good faith.
- 5114. Remedies to be liberally administered.
- 5115. Businesses operated by minors.

**Enactment.** Chapter 51 was added December 19, 1996, P.L.1336, No.180, effective in 45 days.

#### **§ 5101. Short title of subpart.**

This subpart shall be known and may be cited as the Uniform Planned Community Act.

#### **§ 5102. Applicability.**

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

- (1) such a planned community contains no more than 12 units and is not subject to any rights under section 5215 (relating to subdivision or conversion of units) to

subdivide units or to convert into common elements or under section 5211 (relating to conversion and expansion of flexible planned communities) to add additional real estate, create units or limited common elements within convertible real estate or withdraw real estate, it is subject only to sections 5105 (relating to separate titles and taxation), 5106 (relating to applicability of local ordinances, regulations and building codes), 5107 (relating to eminent domain) and 5218 (relating to easement to facilitate completion, conversion and expansion) unless the declaration provides that the entire subpart is applicable; or

(2) such a planned community, regardless of the number of units, has common elements or limited common elements which include only storm water management facilities and related devices, real estate containing signage, lighting, landscaping, gates, walls, fences or monuments or open space and is not subject to any rights under section 5215 or under section 5211, it shall be subject only to the sections listed in paragraph (1), the provisions of sections 5103 (relating to definitions), 5104 (relating to variation by agreement), 5105, 5106, 5107, 5108 (relating to supplemental general principles of law applicable), 5109 (relating to construction against implicit repeal), 5110 (relating to uniformity of application and construction), 5111 (relating to severability), 5112 (relating to unconscionable agreement or term of contract), 5113 (relating to obligation of good faith) and 5114 (relating to remedies to be liberally administered) and the provisions of Chapter 53 (relating to management of planned community) and sections 5407 (relating to resales of units), 5408 (relating to escrow of deposits), 5409 (relating to release of liens) and 5411 (relating to warranty against structural defects) unless the declaration provides that the entire subpart is applicable. If a planned community is subject to the provisions of this paragraph, a declarant shall:

(i) include provisions in any sales agreement for a unit of such planned community which states that an association exists or may be created to own and manage certain generally described common elements or limited common elements and that there may be imposed by the association assessments upon unit owners for expenses related to the ownership, management, administration or regulation of such elements; and

(ii) prepare and record a declaration in the manner set forth in section 5205 (relating to contents of

declaration; all planned communities) or 5206 (relating to contents of declaration for flexible planned communities) or covenants and restrictions as may be appropriate for the planned community. The declarant shall provide to the purchaser copies of the proposed or recorded declaration or covenants and restrictions, an actual or proposed budget of the planned community in accordance with the provisions of section 5402(a)(7) (relating to public offering statement; general provisions) and the actual or proposed bylaws of the association, provided that the purchaser has the right, before conveyance, to cancel the agreement within seven days of the date of receiving a copy of the proposed or recorded declaration or covenants and restrictions, the actual or proposed budget and the actual or proposed 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) Retroactivity.**--Except as provided in subsection (c), sections 5105, 5106, 5107, 5203 (relating to construction and validity of declaration and bylaws), 5204 (relating to description of units), 5218, 5219 (relating to amendment of declaration), 5223 (relating to merger or consolidation of planned community), 5302(a)(1) through (6) and (11) through (15) (relating to power of unit owners' association), 5311 (relating to tort and contract liability), 5315 (relating to lien for assessments), 5316 (relating to association records), 5407 (relating to resales of units) and 5412 (relating to effect of violations on rights of action) and section 5103 (relating to definitions), 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 subpart; but those sections apply only with respect to events and circumstances occurring after the effective date of this subpart and do not invalidate specific provisions contained in existing provisions of the declaration, bylaws or plats and plans of those planned communities.

**(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(a) and (b) (relating to executive board members and officers), 5307 (relating to upkeep of planned community), 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 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.

**(c) Nonflexible planned communities.--**If a planned community created within this Commonwealth before the effective date of this subpart contains no more than 12 units and is not a flexible planned community, it is subject only to sections 5105, 5106, 5107 and 5218 unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of the provisions of subsection (d), in which case all the sections enumerated in subsection (b) apply to that planned community.

**(d) Amendments to declarations, bylaws, plats and plans.--**

(1) In the case of amendments to the declaration, bylaws and plats and plans of any planned community created before the effective date of this subpart:

(i) If the result accomplished by the amendment was permitted by law prior to this subpart, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or may be made under this subpart.

(ii) If the result accomplished by the amendment is permitted by this subpart and was not permitted by law

prior to this subpart, the amendment may be made under this subpart.

(2) An amendment to the declaration, bylaws or plats and plans authorized by this subsection to be made under this subpart must be adopted in conformity with applicable law and with the procedures and requirements specified by the document being amended. If any such amendment grants to any person any rights, powers or privileges permitted by this subpart, all correlative obligations, liabilities and restrictions in this subpart also apply to that person.

**(e) Nonresidential units.--**This subpart does not apply to a planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that the subpart does apply to that planned community. This subpart applies to a planned community containing both units which are restricted exclusively to nonresidential use and other units which are not so restricted only if the declaration so provides or if the real estate comprising the units which may be used for residential purposes would be a planned community in the absence of the units which may not be used for residential purposes.

**(f) Planned communities outside Commonwealth.--**This subpart does not apply to planned communities or units located outside this Commonwealth, but the public offering statement provisions under sections 5402 (relating to public offering statement; general provisions) through 5405 (relating to public offering statement; planned community securities) shall apply to all contracts for the disposition thereof signed in this Commonwealth by any purchaser unless exempt under section 5401(b)(2) (relating to applicability; waiver).

(Mar. 24, 1998, P.L.206, No.27, eff. 60 days; Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

**2004 Amendment.** Act 189 amended subsec. (a) and added subsec. (b.1).

**2004 Amendment.** Act 37 amended subsecs. (a), (b) and (f).

### **§ 5103. Definitions.**

The following words and phrases when used in this subpart and in the declaration and bylaws shall have the meanings given to them in this section unless specifically provided otherwise or unless the context clearly indicates otherwise:

**"Additional real estate."** Real estate that may be added to a planned community.

**"Affiliate of a declarant."** Any person who controls, is controlled by or is under common control with a declarant.

(1) A person "controls" a declarant if the person:

(i) is a general partner, officer, director or employer of the declarant;

(ii) directly or indirectly or acting in concert with one or more other persons or through one or more subsidiaries owns, controls, holds with power to vote or holds proxies representing more than 20% of the voting interest in the declarant;

(iii) controls in any manner the election of a majority of the directors of the declarant; or

(iv) has contributed more than 20% of the capital of the declarant.

(2) A person "is controlled by" a declarant if the declarant:

(i) is a general partner, officer, director or employer of the person;

(ii) directly or indirectly or acting in concert with one or more other persons or through one or more subsidiaries owns, controls, holds with power to vote or holds proxies representing more than 20% of the voting interest in the person;

(iii) controls in any manner the election of a majority of the directors of the person; or

(iv) has contributed more than 20% of the capital of the person.

(3) Control does not exist if the powers described in paragraphs (1) and (2) are held solely as security for an obligation and are not exercised.

**"Allocated interests."** The common expense liability and votes in the association allocated to each unit.

**"Alternative dispute resolution."** A procedure for settling a dispute by means other than litigation, such as arbitration or mediation.

**"Association" or "unit owners' association."** The unit owners association organized under section 5301 (relating to organization of unit owners' association).

**"Common elements."** Common facilities or controlled facilities.

**"Common expense liability."** The liability for common expenses allocated to each unit under section 5208 (relating to allocation of votes and common expense liabilities).

**"Common expenses."** Expenditures made by or financial liabilities of the association, together with any

allocations to reserves. The term includes general common expenses and limited common expenses.

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

**"Condominium."** Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the portions of the real estate designated for common ownership are vested in the unit owners.

**"Controlled facilities."** Any real estate within a planned community, whether or not a part of a unit, that is not a common facility but is maintained, improved, repaired, replaced, regulated, managed, insured or controlled by the association.

**"Conversion building."** A building that, at any time before the conversion notice date with respect to the planned community in which the building is located, was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

**"Conversion notice."** The notice required to be given to tenants and subtenants by the terms of section 5410(a) (relating to planned communities containing conversion buildings).

**"Conversion notice date."** The date on which the conversion notice is placed in the United States mail, in the case of mailed notices, or is delivered to the unit leased by the recipient, in the case of hand-delivered notices.

**"Convertible real estate."** A portion of a flexible planned community not within a building containing a unit, within which additional units, limited common facilities or limited controlled facilities or any combination thereof may be created.

**"Cooperative."** Real estate owned by a corporation, trust, trustee, partnership or unincorporated association, if the governing instruments of that organization provide that each of the organization's members, partners, stockholders or beneficiaries is entitled to exclusive occupancy of a designated portion of that real estate.

**"Declarant."**

(1) If a planned community has been created, the term means any of the following:

(i) Any person who has executed a declaration or an amendment to a declaration to add additional real estate. This subparagraph excludes a person holding interest in the real estate solely as security for an obligation; a person whose interest in the real estate will not be conveyed to unit owners; and, in the case of a leasehold planned community, a lessor who possesses no special declarant rights and who is not an affiliate of a declarant who possesses special declarant rights.

(ii) A person who succeeds under section 5304 (relating to transfer of special declarant rights) to any special declarant rights.

(2) If the planned community has not yet been created, the term means any person who offers to dispose of or disposes of the person's interest in a unit to be created and not previously disposed of.

(3) If a declaration is executed by a trustee of a land trust, the term means the beneficiary of the trust.

**"Declaration."** Any instrument, however denominated, that creates a planned community and any amendment to that instrument.

**"Development rights."** Any right or combination of rights reserved by a declarant in the declaration:

(1) to add real estate to a planned community;

(2) to create units, common facilities, limited common facilities, controlled facilities or limited controlled facilities within a planned community;

(3) to subdivide units to convert units into common facilities or controlled facilities; or

(4) to withdraw real estate from a planned community.

**"Disposition."** A voluntary transfer to a purchaser of any legal or equitable interest in a unit or a proposed unit. The term does not include the transfer or release of a security interest.

**"Executive board."** The body, regardless of name, designated in the declaration to act on behalf of the association.

**"Flexible planned community."** A planned community containing withdrawable or convertible real estate or a planned community to which additional real estate may be added or a combination thereof.

**"General common expenses."** All common expenses other than limited common expenses.

**"Identifying number."** A symbol or address that identifies only one unit in a planned community.

**"Installment sale contract."** An executory contract for the purchase and sale of a unit or interest in a unit under which the purchaser is obligated to make more than five installment payments to the seller after execution of the contract and before the time appointed for the conveyance of title to the unit or interest in the unit.

**"Interval estate."** A combination of:

(1) an estate for years in a unit, during the term of which title to the unit rotates among the time-share owners thereof, vesting in each of them in turn for periods established by a fixed recorded schedule, with the series thus established recurring regularly until the term expires; coupled with

(2) a vested undivided fee simple interest in the remainder in that unit, the magnitude of that interest having been established by the declaration or by the deed creating the interval estate.

**"Leasehold planned community."** A planned community in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the planned community or reduce its size.

**"Limited common element."** A limited common facility or a limited controlled facility.

**"Limited common expenses."** All expenses identified as such under section 5314(c) (relating to assessments for common expenses).

**"Limited common facility."** A portion of the common facilities allocated by or pursuant to the declaration or by the operation of section 5202(2) or (3) (relating to unit boundaries) for the exclusive use of one or more but fewer than all of the units.

**"Limited controlled facility."** A portion of the controlled facilities, other than controlled facilities which are themselves part of a unit, allocated by or pursuant to the declaration or by operation of section 5202(2) or (3) (relating to unit boundaries) for the exclusive use of one or more but fewer than all of the units.

**"Master association."** An organization described in section 5222 (relating to master associations), whether or not it is also an association described in section 5301 (relating to organization of unit owners' association).

**"Offer" or "offering."** Any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a unit other than as security for an

obligation. The term does not include an advertisement in a newspaper or other periodical of general circulation or in a broadcast medium to the general public of a planned community not located in this Commonwealth if the advertisement states that an offer or offering may be made only in compliance with the law of the jurisdiction in which the planned community is located.

**"Original lease termination date."** The date on which the lease or sublease of a residential tenant or subtenant in possession of a unit in a conversion building will expire by the terms of the lease or sublease, after taking into account any renewal or extension rights that may have been exercised prior to the conversion notice date.

**"Person."** A natural person, corporation, partnership, association, trust, other entity or any combination thereof.

**"Planned community."** Real estate with respect to which a person, by virtue of ownership of an interest in any portion of the real estate, is or may become obligated by covenant, easement or agreement imposed on the owner's interest to pay any amount for real property taxes, insurance, maintenance, repair, improvement, management, administration or regulation of any part of the real estate other than the portion or interest owned solely by the person. The term excludes a cooperative and a condominium, but a condominium or cooperative may be part of a planned community. For purposes of this definition, "ownership" includes holding a leasehold interest of more than 20 years, including renewal options, in real estate. The term includes nonresidential campground communities.

**"Purchaser."** A person other than a declarant who, by means of a disposition, acquires a legal or equitable interest in a unit, other than either a leasehold interest of less than 20 years, including renewal options, or as security for an obligation. The term includes a person who will become a unit owner in a leasehold planned community upon consummation of the disposition.

**"Real estate."** Any fee, leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. The term includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water.

**"Residential purposes."** Use for dwelling or recreational purposes, or both.

**"Residential subtenant."** An individual lawfully occupying real estate for residential purposes under a sublease.

**"Residential tenant."** An individual lawfully occupying real estate for residential purposes under a lease.

**"Special declarant rights."** Rights reserved for the benefit of a declarant to:

(1) complete improvements indicated on plats and plans filed with the declaration under section 5210 (relating to plats and plans);

(2) convert convertible real estate in a flexible planned community under section 5211 (relating to conversion and expansion of flexible planned communities);

(3) add additional real estate to a flexible planned community under section 5211;

(4) withdraw withdrawable real estate from a flexible planned community under section 5212 (relating to withdrawal of withdrawable real estate);

(5) convert a unit into two or more units, common facilities or controlled facilities or into two or more units and common facilities or controlled facilities;

(6) maintain offices, signs and models under section 5217 (relating to declarant offices, models and signs);

(7) use easements through the common facilities or controlled facilities for the purpose of making improvement within the planned community or within any convertible or additional real estate under section 5218 (relating to easement to facilitate completion, conversion and expansion);

(8) cause the planned community to be merged or consolidated with another planned community under section 5223 (relating to merger or consolidation of planned community);

(9) make the planned community part of a larger planned community or group of planned communities under sections 5222 (relating to master associations) and 5223 (relating to merger or consolidation of planned community);

(10) make the planned community subject to a master association under section 5222 (relating to master associations); or

(11) appoint or remove an officer of the association or a master association or an executive board member during any period of declarant control under section 5303 (relating to executive board members and officers).

**"Structural defects."** As used in section 5411 (relating to warranty against structural defects), the term means defects in any structure which is a component of:



(1) any unit or common element; or  
(2) any other portion of a unit or common element constructed, modified, altered or improved by or on behalf of a declarant;

any of which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of the structure and require repair, renovation, restoration or replacement.

**"Time-share estate."** An interval estate or a time-span estate.

**"Time-span estate."** A combination of:

(1) an undivided interest in a present estate in fee simple in a unit, the magnitude of that interest having been established by the declaration or by the deed conveying the time-span estate; coupled with

(2) the exclusive right to possession and occupancy of that unit during a regularly recurring period designated by the deed or by a recorded document referred to in the deed.

**"Unit."** A physical portion of the planned community designated for separate ownership or occupancy, the boundaries of which are described pursuant to section 5205(5) (relating to contents of declaration; all planned communities) and a portion of which may be designated by the declaration as part of the controlled facilities.

**"Unit owner."** A declarant or other person who owns a unit or a lessee of a unit in a leasehold planned community whose lease expires simultaneously with a lease the expiration or termination of which will remove the unit from the planned community. The term does not include a person having an interest in a unit solely as security for an obligation.

**"Unit owner in good standing."** A unit owner who is current in payment of assessments and fines, unless the assessments or fines are directly related to a complaint filed with the Bureau of Consumer Protection in the Office of Attorney General regarding section 5308 (relating to meetings), 5309 (relating to quorums), 5310 (relating to voting; proxies) or 5316 (relating to association records).

**"Withdrawable real estate."** Real estate that may be withdrawn from a flexible planned community.

(Mar. 24, 1998, P.L.206, No.37, eff. 60 days; May 4, 2018, P.L.96, No.17, eff. 60 days; Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

**2018 Amendments.** Act 17 added the defs. of "alternative dispute resolution" and "unit owner in good standing" and Act 84 amended the def. of "common facilities."

**1998 Amendment.** Act 37 amended the defs. of "special declarant rights" and "structural defects."

**Cross References.** Section 5103 is referred to in section 5102.

**§ 5104. Variation by agreement.**

Except as expressly provided in this subpart, provisions of this subpart may not be varied by agreement, and rights conferred by this subpart may not be waived. A declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this subpart or the declaration.

**Cross References.** Section 5104 is referred to in section 5102 of this title.

**§ 5105. Separate titles and taxation.**

**(a) Title.--**Except as provided in subsection (b), each unit that has been created, together with the interests, benefits and burdens created by the declaration, including, without limitation, the rights to any common facilities, constitutes a separate parcel of real estate. The conveyance or encumbrance of a unit includes the transfer of all of the rights, title and interest of the owner of that unit in the common facilities regardless of whether the instrument affecting the conveyance or encumbrance so states.

**(b) Taxation and assessment.--**If there is a unit owner other than a declarant, each unit must be separately taxed and assessed. The value of a unit shall include the value of that unit's appurtenant interest in the common facilities, excluding convertible or withdrawable real estate. The following shall apply:

(1) Except as provided in paragraph (2), no separate assessed value shall be attributed to and no separate tax shall be imposed against common facilities or controlled facilities.

(2) Convertible or withdrawable real estate shall be separately taxed and assessed until the expiration of the period during which conversion or withdrawal may occur.

**(c) Certain additional prohibitions.--**

(1) An association shall not impose any of the following fees against an owner or tenant of a unit in a planned community or against any person constructing, altering, renovating or repairing a unit in a planned community:

(i) a tapping, connection or other impact fee in excess of the actual direct cost incurred by the

association for the connection or provision of water or sewer service to a building or improvement;

(ii) any fee for the right to construct, alter, renovate or repair a building or improvement except for an inclusive fee for the actual direct costs to the association of either:

(A) architectural, aesthetic or landscaping plan reviews or inspections of units, building siting and exteriors, if those reviews or inspections are required by provisions of the declaration or association bylaws or rules and regulations and if such provisions requiring a fee to be paid for such reviews or inspections were in existence on or before December 31, 1995; or

(B) if association imposed building construction standards or building codes are permitted under section 5106 (relating to applicability of local ordinances, regulations and building codes), building construction standards or building code review; and

(iii) any impact fee for road maintenance or road construction, except that the association shall not be precluded from recovering the cost of repair of any damage that is caused to roads or other common elements in the course of construction, alteration, renovation or repair.

(2) Except as specifically provided in this section and notwithstanding any fees or fee schedules or general rulemaking authority that existed prior to the effective date of this paragraph, an association shall not have the power to impose any fees or financial security related to construction, alteration, renovation or repair of a unit or exercise an access easement under section 5218 (relating to easement to facilitate completion, conversion and expansion).

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

**2004 Amendment.** Act 189 amended subsec. (c)(2).

**Cross References.** Section 5105 is referred to in section 5102 of this title.

**§ 5106. Applicability of local ordinances, regulations and building codes.**

**(a) General rule.**--A zoning, subdivision, building code or other real estate use law, ordinance or regulation may not prohibit a planned community form of ownership or impose any requirement upon any structure in a planned community which it would not impose upon a physically identical structure under a different form of ownership.

**(b) Current law unaffected.**--Except as provided in subsection (a), no provision of this subpart invalidates or

modifies any provision of any zoning, subdivision, building code or other real estate law, ordinance or regulation.

**(c) Status.--**

(1) The creation of a planned community under section 5201 (relating to creation of planned community) out of an entire lot, parcel or tract of real estate which has previously received approval for land development or subdivision, as those terms are defined in section 107 of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, or the conveyance of units in the planned community, shall not, in and of itself, constitute a subdivision or land development for the purpose of subdivision, land development or other laws, ordinances and regulations.

(2) The use of the planned community shall comply with zoning regulations applicable to the parcel of land or tract of real estate on which the planned community is created.

(3) Any person creating a planned community out of a vacant parcel or tract of real estate which has not been subject to subdivision or land development approval shall submit a copy of the planned community declaration and planned community plan to all municipalities in which the parcel or tract of real estate is located, unless the creation of the planned community is for an estate planning purpose of conveying units to family members or an entity controlled by family members so that the conveyance would not be subject to realty transfer taxes pursuant to Article XI-C of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(4) Construction of any structure or building on any unit or common facility shall be subject to the provisions of any zoning, subdivision, land development, building code or other real estate law, ordinance or regulation.

**(d) Building code.--**An association shall be preempted by any federally, State or locally imposed building code, standard or regulation applicable to a building in a planned community from imposing any building construction standards or building codes for buildings to be constructed, renovated, altered or modified in a planned community. In the absence of a federally, State or locally imposed building code, standard or regulation applicable to a building in a planned community, an association shall not have the power to impose any building construction standards or building codes for buildings to be constructed, renovated, altered or modified in a planned community except:

(1) the BOCA National Building Code, 1996 edition (excluding Chapter 13, Energy Conservation) (the "BOCA Code"), for other than for one-family or two-family residential dwellings, together with the most recently published version of the National Fuel Gas Code (NFPA 54/ANSI Z223.1), as such may be updated periodically, for the installation of fuel gas piping systems, fuel gas utilization equipment and related accessories, and the most recently published version of the National Electric Code (NFPA 70), an ANSI accredited document, as such may be updated periodically, for the construction and subsequent inspection of electrical facilities and equipment; or

(2) with respect to one-family or two-family residential dwellings, unless the declarant or a successor declarant elects to comply with the BOCA Code, the Council of American Building Officials (CABO) One and Two Family Dwelling Code, 1992 edition (excluding Part VII-Energy Conservation and Chapter 25 of Part V-Sewers and Private or Individual Sewage Disposal Systems), together with the most recently published version of the National Fuel Gas Code (NFPA 54/ANSI Z223.1), as such may be updated periodically, for the installation of fuel gas piping systems, fuel gas utilization equipment and related accessories, and the most recently published version of the National Electric Code (NFPA 70), an ANSI accredited document, as such may be updated periodically, for the construction and subsequent inspection of electrical facilities and equipment.

The applicable building code shall constitute the maximum and the only acceptable standard governing building structures. However, nothing in this section shall preclude an association, if and to the extent authorized by the declaration or association bylaws, rules and regulations, from providing for architectural review of units, landscaping, building exteriors and aesthetics or from implementing requirements that may be imposed from time to time by underwriters of insurance actually maintained on portions of the planned community.

(July 10, 2015, P.L.167, No.37, eff. 60 days)

**2015 Amendment.** Act 37 amended subsec. (c).

**Cross References.** Section 5106 is referred to in sections 5102, 5105 of this title.

**§ 5107. Eminent domain.**

(a) **General rule.**--If a unit is acquired by eminent domain or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted

by the declaration, the award shall compensate the unit owner for the unit and, except for the value, if any, of the interest of other units in any controlled facilities that were at the time of the taking a part of the unit subject to the taking, its appurtenant interest in the planned community reflected by its allocated common expenses liability, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, the unit's allocated votes and liabilities shall automatically be reallocated to the remaining units in proportion to the respective allocated votes and liabilities of those units before the taking. The association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection shall be a common facility.

**(b) Acquisition of part of unit.**--Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award shall compensate the unit owner for the reduction in value of the unit and its appurtenant interest in the planned community, whether or not any common facilities or controlled facilities are acquired, and shall compensate the association for the value, if any, of the interest of other units in any controlled facilities that were at the time of the taking a part of the unit subject to the taking. Upon acquisition, unless the decree otherwise provides, the following shall apply:

(1) The unit's appurtenant votes in the association and common expense liability shall be reduced on the basis specified in the declaration with respect to the reallocation of votes and common expense liability in the event of eminent domain or, if the declaration does not specify a basis, as initially allocated based on the formulae stated in the declaration under section 5208 (relating to allocation of votes and common expense liabilities).

(2) The portion of the appurtenant votes and common expense liability divested from the partially acquired unit shall be automatically reallocated to that unit and the remaining units in proportion to the respective appurtenant votes and liabilities of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated votes and liabilities.

**(c) Acquisition of part of common facilities.**--If part of the common facilities is acquired by eminent domain, the portion of the award attributable to the interest of the

association in the common facilities taken shall be paid to the association. The association shall divide any portion of the award not used for any restoration or repair of the remaining common facilities among the unit owners in proportion to the common expense liability attributable to the units before the taking, but any portion of the award attributable to the acquisition of a limited common facility shall be equally divided among the owners of the units to which that limited common facility was allocated at the time of acquisition or in any manner as provided in the declaration.

**(d) Acquisition of part of controlled facilities.--**If, as part of a unit acquired by eminent domain, controlled facilities are taken which benefit other units, that portion of the award attributable to the interest of the other units in the controlled facilities taken shall be paid to the association. The association shall divide any portion of the award not used for any restoration or repair of the remaining controlled facilities equally among the unit owners whose units were benefited by the controlled facilities that have been taken.

**Cross References.** Section 5107 is referred to in sections 5102, 5207, 5208, 5219, 5220, 5312 of this title.

**§ 5108. Supplemental general principles of law applicable.**

The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this subpart, except to the extent inconsistent with this subpart.

**Cross References.** Section 5108 is referred to in section 5102 of this title.

**§ 5109. Construction against implicit repeal.**

Because this subpart is a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be implicitly repealed by subsequent legislation if that construction can reasonably be avoided.

**Cross References.** Section 5109 is referred to in section 5102 of this title.

**§ 5110. Uniformity of application and construction.**

This subpart shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this subpart among states enacting it.

**Cross References.** Section 5110 is referred to in section 5102 of this title.

**§ 5111. Severability.**

If any provision of this subpart or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subpart which can be given effect without the invalid provisions or application, and to this end the provisions of this subpart are severable.

**Cross References.** Section 5111 is referred to in section 5102 of this title.

**§ 5112. Unconscionable agreement or term of contract.**

**(a) Powers of contract.**--The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may:

- (1) refuse to enforce the contract;
- (2) enforce the remainder of the contract without the unconscionable clause; or
- (3) limit the application of any unconscionable clause in order to avoid an unconscionable result.

**(b) Parties may present evidence.**--Whenever it is claimed or appears to the court that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

- (1) the commercial setting of the negotiations;
- (2) whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmity, illiteracy or inability to understand the language of the agreement or similar factors;
- (3) the effect and purpose of the contract or clause;
- (4) if a sale, any gross disparity, at the time of contracting, between the amount charged for the real estate and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar



transaction does not of itself render the contract unconscionable.

**Cross References.** Section 5112 is referred to in section 5102 of this title.

**§ 5113. Obligation of good faith.**

Every contract or duty governed by this subpart imposes an obligation of good faith in its performance or enforcement.

**Cross References.** Section 5113 is referred to in section 5102 of this title.

**§ 5114. Remedies to be liberally administered.**

**(a) General rule.--**The remedies provided by this subpart shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special or punitive damages may not be awarded except as specifically provided in this subpart or by other rule of law.

**(b) Judicial enforcement of rights and obligations.--**Any right or obligation declared by this subpart is enforceable by judicial proceeding.

**Cross References.** Section 5114 is referred to in section 5102 of this title.

**§ 5115. Businesses operated by minors.**

**(a) Restrictions on licenses.--**Notwithstanding any other provision of law, an association or an agency of an association may not require a license for a business that is operated on an occasional basis by a minor.

**(b) Construction.--**Nothing in this section may be construed to:

(1) Prohibit an association from enacting and enforcing association rules relating to the manner in which a business may be conducted by a minor, with the exception of a requirement that the minor obtain a license prior to engaging in a business.

(2) Void provisions of bylaws or declarations adopted in accordance with law prior to the effective date of this section.

**(c) Definitions.--**As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

**"Business."** An enterprise carried on for the purpose of gain or economic profit. The term does not include an act of an employee rendering services to an employer.

**"License."** A license or permit required by an association to temporarily or permanently offer sale of goods or provision of services or otherwise operate an enterprise in the municipality in which the association is located.

**"Minor."** A person under 18 years of age.

**"Occasional basis."** A business that does not operate more than 84 days in a calendar year.

(June 30, 2021, P.L.184, No.34, eff. 60 days)

**2021 Amendment.** Act 34 added section 5115.

**CHAPTER 52**  
CREATION, ALTERATION AND TERMINATION OF  
PLANNED COMMUNITIES

**Sec.**

- 5201. Creation of planned community.
- 5202. Unit boundaries.
- 5203. Construction and validity of declaration and bylaws.
- 5204. Description of units.
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- 5220. Termination of planned community.
- 5221. Rights of secured lenders.
- 5222. Master associations.
- 5223. Merger or consolidation of planned community.

**Enactment.** Chapter 52 was added December 19, 1996, P.L.1336, No.180, effective in 45 days.

**§ 5201. Creation of planned community.**

A planned community may be created pursuant to this subpart only by recording a declaration executed in the same manner as a deed by all persons whose interests in the real estate will be conveyed to unit owners and by every lessor of a lease, the expiration or termination of which will terminate the planned community or reduce its size. If the lessor is the Commonwealth, a municipal government or any agency of either, the lessor need not execute the declaration if it has previously given written notice of its filing and agreed to be bound by the provisions of this subpart, in which case the declaration shall be executed by the lessee in possession of the subject property. The declaration must be recorded in every county in which any portion of the planned community is located, must be indexed in the same records as are notarized for the recording of a deed

and shall identify each declarant as the grantor and the name of the planned community as grantee.

**Cross References.** Section 5201 is referred to in sections 5106, 5207 of this title.

**§ 5202. Unit boundaries.**

Except as provided by the declaration:

(1) Subject to the provisions of paragraph (2), all space, fixtures and improvements within the boundaries of a unit are a part of the unit.

(2) If any fixture or improvement lies partially within and partially outside the designated boundaries of a unit, any portion of the fixture or improvement serving only that unit is a limited common element allocated solely to that unit, and any portion of the fixture or improvement serving more than one unit or any portion of the common facilities is a part of the common elements.

(3) Any fixtures or improvements designed or designated in the declaration to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

**Cross References.** Section 5202 is referred to in sections 5103, 5209, 5210, 5302 of this title.

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

(a) **Provisions severable.**--All provisions of the declaration and bylaws are severable.

(b) **Applications of rule against perpetuities.**--The rule against perpetuities may not be applied to defeat any provision of the declaration or this subpart or any instrument executed pursuant to the declaration or this subpart.

(c) **Conflict between declaration and bylaws.**--If there is a conflict between the declaration and the bylaws, the declaration shall prevail except to the extent the declaration is inconsistent with this subpart.

(d) **Effect of noncompliance on title to unit.**--Title to a unit and its appurtenant votes in the association shall not be rendered unmarketable or otherwise affected by any provision of unrecorded bylaws or by reason of an insubstantial failure of the declaration to comply with this subpart.

(e) **Effect of noncompliance.**--If the declarant preserved the rights identified in section 5205(13), (14), (15) or (16) (relating to contents of declaration; all planned communities) in the declaration or any of those provisions are otherwise applicable, the declarant's failure to include in the declaration any of the provisions or statements as required under each of those provisions shall not affect the

enforceability of the provisions or statements as if they were included in the declaration.

(Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

**2018 Amendment.** Act 84 added subsec. (e).

**Cross References.** Section 5203 is referred to in section 5102 of this title.

**§ 5204. Description of units.**

After the declaration is recorded, a description of the unit which sets forth the name of the planned community, the recording data for the declaration, the county or counties in which the planned community is located and the identifying number of the unit is a sufficient legal description of that unit and all rights, obligations and interests appurtenant to that unit which were created by the declaration or bylaws. Deeds, leases and mortgages of units shall be recorded in the same records as are maintained by the recorder for the recording of like instruments and indexed by the recorder in the same manner as like instruments are indexed.

**Cross References.** Section 5204 is referred to in section 5102 of this title.

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

The declaration for a planned community must contain:

(1) The name of the planned community, which must include the words "planned community" or be followed by the words "a planned community."

(2) The name of every county in which any part of the planned community is situated.

(3) A legally sufficient description of the real estate included in the planned community.

(4) A description or delineation of the boundaries of each unit, including the unit's identifying number.

(5) A statement of the maximum number of units that may be created by the subdivision or conversion of units owned by the declarant pursuant to section 5215 (relating to subdivision or conversion of units).

(6) A description of any controlled facilities and the obligations of the association for the maintenance, improvement, repair, replacement, regulation, management, insurance or control of the controlled facilities.

(7) A description of any limited common facilities and any limited controlled facilities as provided in section 5209 (relating to limited common elements) and limited common expenses, if any, and how they are assessed.

(8) A description of any common facilities and controlled facilities not within the boundaries of any convertible real

estate which may be allocated subsequently as limited common facilities or limited controlled facilities, with a statement that they may be so allocated and a description of the method by which the allocations are to be made.

(9) An allocation to each unit of a portion of the votes in the association and a percentage or fraction of the common expenses of the association in section 5208 (relating to allocation of votes and common expense liabilities).

(10) Any restrictions created by the declarant on use, occupancy and alienation of the units and any easement or license rights that unit owners are to have with respect to the use or enjoyment of any of the common elements and that are not contained in other documents which are recorded.

(11) The recording data for recorded easements and licenses appurtenant to or included in the planned community or to which any portion of the planned community is or may become subject.

(12) If all or any of the units are or may be owned in time-share estates, which units may be owned in time-share estates and the maximum number of time-share estates that may be created in the planned community, it being intended that time-share estates shall not be permitted except if and to the extent expressly authorized by the declaration.

(13) If the declarant wishes to retain the special declarant right to cause section 5222 (relating to master associations) to become applicable to a planned community, then:

(i) an explicit reservation of such right;

(ii) a statement of the time limit upon which the option reserved under subparagraph (i) will lapse, together with and a statement of any circumstances that will terminate the option before the expiration of the time limit. The time limit shall not exceed the later of:

(A) ten years after the recording of the declaration; or

(B) in the case of a preliminary plat calling for the installation of improvements in sections, 120 days after municipal approval or denial of each particular section's final plat which was filed prior to the deadline approved or modified by the municipal governing body pursuant to section 508(4)(v) of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, or, in the event of an appeal from the municipal approval or denial of such final plat, 120 days after a final judgment on appeal; and

(iii) the information required to be included in the declaration by the provisions of section 5222.

(14) If the declarant wishes to retain the special declarant right to merge or consolidate the planned community pursuant to section 5223 (relating to merger or consolidation of planned community), then all of the following:

(i) An explicit reservation of such right.

(ii) A statement of the time limit upon which any option reserved under subparagraph (i) will lapse, together with a statement of any circumstances that will terminate the option before the expiration of the time limit. The time limit shall not exceed the later of:

(A) ten years after the recording of the declaration; or

(B) in the case of a preliminary plat calling for the installation of improvements in sections, 120 days after municipal approval or denial of each particular section's final plat which was filed prior to the deadline approved or modified by the municipal governing body pursuant to section 508(4)(v) of the Pennsylvania Municipalities Planning Code or, in the event of an appeal from the municipal approval or denial of such final plat, 120 days after a final judgment on appeal.

(iii) A statement of the name and location of each other planned community that may be subject to such a merger or consolidation. If such other planned communities do not exist, then the declaration shall include the following:

(A) A statement of the extent to which the interest in the association, relative voting strength in the association and share of common expense liability of each unit in the planned community at the time the merger or consolidation is effectuated may be increased or decreased by actions pursuant to any option reserved under subparagraph (i), including the formulas to be used for those reallocations.

(B) Legally sufficient descriptions of each portion of real estate that is part of any other planned communities with which the planned community may merge or consolidate.

(C) If mergers or consolidations may be effectuated at different times, a statement to that effect, together with:

(I) either a statement fixing the boundaries of those planned communities and regulating the order in which they may be merged or consolidated or a statement that no assurances are made in those regards; and

(II) a statement as to whether, if any other planned communities are merged or consolidated with the planned community, all or any of such planned communities must be merged or consolidated.

(D) A statement of:

(I) the maximum number of units that may be created within the other planned communities, the boundaries of which are fixed under clause (C);

(II) how many of those units will be restricted exclusively to residential use; and

(III) the maximum number of units per acre that may be created within any such other planned communities, the boundaries of which are not fixed under clause (C).

(E) If any of the units that may be built within any of the other planned communities are not to be restricted exclusively to residential use, a statement with respect to each other planned community of the maximum percentage of the real estate areas and the maximum percentage of the floor areas of all units that may be created in the planned community that are not restricted exclusively to residential use.

(F) A statement of the extent to which any buildings and units that may be part of the other planned communities will be compatible with the other buildings and units in the planned community in terms of architectural style, quality of construction, principal materials employed in construction and size or a statement that no assurances are made in those regards.

(G) A statement that all restrictions in the declaration affecting use, occupancy and alienation of units will apply to units created within any of the other planned communities or a statement of any differentiations that may be made as to those units.

(H) General descriptions of all other improvements and limited common elements that may be made or created within the other planned communities or a statement that no assurances are made in that regard.

(I) A statement of any limitations as to the locations of any buildings or other improvements that may be made within the other planned communities or a statement that no assurances are made in that regard.

(J) A statement that any limited common elements created within any other planned communities will be of the same general types and sizes as those within the planned community, a statement of any other assurances in that regard or a statement that no assurances are made in that regard.

(K) A statement that the proportion of limited common elements to units created within the other planned communities will be approximately equal to the proportion existing within the planned community, a statement of any assurances in that regard or a statement that no assurances are made in that regard.

(L) A statement of whether and to what extent assurances made in the declaration regarding the other planned communities under clauses (C) through (K) apply if the other planned communities are not merged or consolidated with the planned community.



(iv) A summary description of the other provisions which materially change any rights, obligations or liabilities that will be included in the agreement of merger or consolidation if the right to merge or to consolidate is exercised.

(15) If a declarant wishes to retain the right to subject any portion of the planned community to an easement or license in favor of any real estate not included in the planned community or in favor of any person who is not an owner or occupant of a unit in the planned community, then an explicit reservation and description of such right and a description of the effects on the association and the unit owners of the easement or license, including, without limitation, any impact on the budget of the association.

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

(i) An explicit reservation of such right and an identification and description of the portion of the planned community, improvement or facility.

(ii) A statement of when any portion of a planned community, improvement or facility will become a common facility and that the portion will be conveyed or leased to the association by the declarant or a successor to the interest of the declarant in the portion by the later of the date of conveyance or lease by the declarant of the last unit the declarant reserves the right to include in the planned community or the date of expiration of the rights under section 5211 (relating to conversion and expansion of flexible planned communities).

(iii) A statement that the obligation of the declarant to convey or lease to the association a portion of the planned community, improvement or facility shall be binding on the declarant and any successor in interest of the declarant in the portion whether or not the successor succeeds to any special declarant right.

(iv) A statement of who will own the portion of the planned community, improvement or facility before a conveyance or lease to the association.

(v) A description of the procedure to be followed by the declarant and the association for the conveyance or lease to the association.

(vi) A statement that the portion of the planned community, improvement or facility will be conveyed or leased to the association for no consideration or, if additional consideration is to be given by the association for the conveyance, a

description of the consideration and a description of the effects on the association and each unit owner of the association providing the consideration, including the impact on the budget of the association and common expense or other liabilities of the unit owners.

(vii) A description of the effect of the conveyance or lease to the association of the portion of the planned community, improvement or facility on the expenses and budget of the association and the common expense liability of the unit owners.

(viii) A statement that no conveyance or lease to the association of any portion of the planned community, improvement or facility shall occur until the portion has been completed unless a third-party guarantee, bond, escrow, letter of credit or other mechanism assuring completion has been provided by the declarant, in addition to the declarant's own guarantee of completion, for the benefit of the association and a statement that the third-party mechanism and the declarant's own guarantee shall not expire until completion of the portion of the planned community, improvement or facility.

(ix) As to any uncompleted improvement or facility that may become a common facility:

(A) a statement of the time for completion of such improvement or facility;

(B) a statement that a declarant is required to complete such improvement or facility by the later of the date of the conveyance or lease by the declarant or the last unit the declarant reserves the right to include in the planned community or the date of the expiration of the rights under section 5211;

(C) a statement that, until the facility or improvement is completed, the declarant shall be solely responsible for real estate taxes assessed against or allocable to the improvement or facility and for all other expenses in connection with the improvement or facility; and

(D) a description of any third-party guarantee, bond, escrow, letter of credit or other mechanism that the declarant shall provide, in addition to the declarant's own guarantee of completion, to assure, for the benefit of the association, completion of the improvement or facility and a statement of the time limit, if any, of the term of such third-party guarantee, bond, escrow, letter of credit or other mechanism or, if no such mechanism is to be provided by the declarant, an explicit statement that no third-party guarantee, bond, escrow, letter of credit or other mechanism shall be provided by the declarant, and only the declarant's own guarantee shall be provided to assure completion of the improvement or facility.

(x) A statement that any portion of the planned community, an improvement or facility will be deemed to be completed upon the recording of a certificate executed by an independent registered surveyor, architect or professional engineer stating that the portion of the planned community, improvement or facility is substantially completed in accordance with the descriptions set forth in the declaration, the plats and plans and the public offering statement and so as to permit the use of such portion of the planned community, improvement or facility for its intended use.

(16.1) If the declaration provides that the association or a unit owner is or shall be responsible for operation and maintenance of storm water management facilities, a statement that upon approval of the permittee's notice of termination by the Department of Environmental Protection or by an authorized county conservation district, it shall be deemed that the association or unit owner, as applicable, agree to and shall become responsible for compliance with the storm water management facilities' permit terms and conditions, including long-term operation and maintenance of postconstruction storm water best management practices in accordance with applicable requirements. The declarant shall remain responsible for compliance with other obligations with respect to storm water management facilities as may be required by the approved subdivision and land development plans, the declaration or this subpart until such time as the obligations of the declarant may cease.

(16.2) Any fees or charges to be paid by unit owners, currently or in the future, for the use of the common elements, limited common elements and any other facilities related to the planned community.

(17) Any other matters the declarant deems appropriate. (Mar. 24, 1998, P.L.206, No.37, eff. 60 days; July 2, 2013, P.L.204, No.37, eff. imd.; Oct. 19, 2018, P.L.551, No.84, eff. 60 days; Mar. 27, 2020, P.L.35, No.11, eff. 60 days)

**2020 Amendment.** Act 11 added par. (16.2).

**2018 Amendment.** Act 84 amended par. (16) intro. par. and added par. (16.1).

**2013 Amendment.** Act 37 amended pars. (13) and (14)(ii) and carried without amendment par. (14)(i). See section 2 of Act 37 in the appendix to this title for special provisions relating to applicability.

**1998 Amendment.** Act 37 amended par. (16).

**Cross References.** Section 5205 is referred to in sections 5102, 5103, 5203, 5206, 5209, 5211, 5219, 5222, 5223, 5402, 5407, 5414 of this title.

**§ 5206. Contents of declaration for flexible planned communities.**

The declaration for a flexible planned community shall include, in addition to the matters specified in section 5205 (relating to contents of declaration; all planned communities), all of the following:

(1) An explicit reservation of any options to create units, limited common elements or both within convertible real estate or to add additional real estate to or withdraw withdrawable real estate from the planned community.

(2) A statement of the time limit upon which any option reserved under paragraph (1) will lapse, together with a statement of circumstances that will terminate the option before the expiration of the time limit. The time limit shall not exceed the later of:

(i) ten years after the recording of the declaration; or  
(ii) in the case of a preliminary plat calling for the installation of improvements in sections, 120 days after municipal approval or denial of each particular section's final plat which was filed prior to the deadline approved or modified by the municipal governing body pursuant to section 508(4)(v) of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, or, in the event of an appeal from the municipal approval or denial of such final plat, 120 days after a final judgment on appeal.

(3) A statement of any limitations on any option reserved under paragraph (1), other than limitations created by or imposed by operation of law, or a statement that there are no such limitations.

(4) A statement of the extent to which the interest in the association, relative voting strength in the association and share of common expenses liability of each unit in the planned community at the time the declaration is recorded may be increased or decreased by actions pursuant to any option reserved under paragraph (1), including the formulas to be used for those reallocations.

(5) Legally sufficient descriptions of each portion of convertible, additional and withdrawable real estate.

(6) If portions of any convertible, additional or withdrawable real estate may be converted, added or withdrawn at different times, a statement to that effect, together with:

(i) a statement fixing the boundaries of those portions and regulating the order in which they may be converted, added or withdrawn or a statement that no assurances are made in those regards; and

(ii) a statement as to whether, if any portion of convertible, additional or withdrawable real estate is

converted, added or withdrawn, all or any particular portion of that or any other real estate must be converted, added or withdrawn.

(7) A statement of:

(i) the maximum number of units that may be created within any additional or convertible real estate or within any portion of either, the boundaries of which are fixed under paragraph (6);

(ii) how many of those units will be restricted exclusively to residential use; and

(iii) the maximum number of units per specified volume of space that may be created within any portions the boundaries of which are not fixed under paragraph (6).

(8) If any of the units that may be created within any additional or convertible real estate are not to be restricted exclusively to residential use, a statement with respect to each portion of the additional and convertible real estate of the maximum percentage of the real estate areas and the maximum percentage of the areas of all units that may be created therein that are not restricted exclusively to residential use.

(9) A statement of the extent to which any buildings and units that may be erected upon each portion of the additional and convertible real estate will be compatible with the other buildings and units in the planned community in terms of architectural style, quality of construction, principal materials employed in construction and size or a statement that no assurances are made in those regards.

(10) A statement that all restrictions in the declaration affecting use, occupancy and alienation of units will apply to units created within any convertible or additional real estate or a statement of any differentiations that may be made as to those units.

(11) General descriptions of all other improvements and limited common elements that may be made or created upon or within each portion of the additional or convertible real estate or a statement that no assurances are made in that regard.

(12) A statement of any limitations as to the locations of any buildings or other improvements that may be made within convertible or additional real estate or a statement that no assurances are made in that regard.

(13) A statement that any limited common elements created within any convertible or additional real estate will be of the same general types and sizes as those within other parts of the planned community, a statement of any other assurances in that regard or a statement that no assurances are made in that regard.

(14) A statement that the proportion of limited common elements to units created within convertible or additional real estate will be approximately equal to the proportion existing within other parts of the planned community, a statement of any other assurances in that regard or a statement that no assurances are made in that regard.

(15) A statement of the extent to which any assurances made in the declaration regarding additional or withdrawable real estate under paragraphs (6) through (14) apply if any additional real estate is not added to or any withdrawable land is withdrawn from the planned community or a statement that those assurances do not apply if the real estate is not added to or withdrawn from the planned community.

(Mar. 24, 1998, P.L.206, No.37, eff. 60 days; July 2, 2013, P.L.204, No.37, eff. imd.)

**2013 Amendment.** Act 37 amended par. (2). See section 2 of Act 37 in the appendix to this title for special provisions relating to applicability.

**1998 Amendment.** Act 37 amended pars. (4) and (8).

**Cross References.** Section 5206 is referred to in sections 5102, 5211, 5212, 5219, 5402 of this title.

**§ 5207. Leasehold planned communities.**

**(a) Recording lease and contents of declaration.**--A lease the expiration or termination of which may terminate the planned community or reduce its size shall be recorded in the same county where the declaration is recorded under section 5201 (relating to creation of planned community). Every lessor of those leases shall execute the declaration, and the declaration shall state the following:

(1) The recording data for the lease.

(2) The date on which the lease is scheduled to expire.

(3) A legally sufficient description of the real estate subject to the lease.

(4) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised or a statement that they do not have those rights.

(5) Any right of the unit owners to remove any improvements after the expiration or termination of the lease or a statement that the unit owners do not have those rights.

(6) Any rights of the unit owners to renew the lease and the conditions of any renewal or a statement that the unit owners do not have those rights.

**(b) Limitations on termination of leasehold interest.**--After the declaration for a leasehold planned community is recorded, neither the lessor nor a successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of

the owner's share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.

**(c) Merger of leasehold and fee simple interests.--**

Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

**(d) Reallocation of interests if number of votes reduced.--**

If the expiration or termination of a lease decreases the number of units in a planned community, the allocated votes in the association and common expense liabilities shall be reallocated in accordance with section 5107 (relating to eminent domain) as though those units had been taken by eminent domain.

Reallocations shall be confirmed by an amendment to the declaration prepared, executed and recorded by the association.

**Cross References.** Section 5207 is referred to in sections 5219, 5402 of this title.

**§ 5208. Allocation of votes and common expense liabilities.**

**(a) General rule.--**The declaration shall allocate a fraction or percentage of the common expenses of the association and a portion of the votes in the association to each unit and state the formulas used to establish those allocations. Such formulas may take into account unusual attributes of identified units if the formulas state how the deviation from the normal rule applies to such units.

**(b) Flexible planned communities.--**If units may be added, including by conversion of convertible real estate to one or more units, to or withdrawn from the planned community, the declaration shall state the formulas to be used to reallocate the fractions, as percentages of the allocated share of the common expenses of the association and the percentages of votes in the association, among all units included in the planned community after the addition or withdrawal.

**(c) Votes.--**

(1) Each unit shall be allocated one or more votes in the association. The declaration shall specify how votes in the association shall be allocated among the units and may provide:

(i) for different allocations of votes among units on particular matters specified in the declaration; and

(ii) for class voting on specified issues affecting a particular class of units if necessary to protect the valid interests of the owners of such units and not affecting units outside of the class.

(2) Cumulative voting shall only be permitted if so provided expressly in the declaration and only for the purpose of electing members of the executive board. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this subpart. The declaration may provide that different allocations of votes shall be made to the units in particular matters specified in the declaration.

**(d) Alteration or partition of allocations.**--Except as provided in section 5107 (relating to eminent domain), 5211 (relating to conversion and expansion of flexible planned communities), 5212 (relating to withdrawal of withdrawable real estate), 5214 (relating to relocation of boundaries between units) or 5215 (relating to subdivision or conversion of units), the votes and common expense liability allocated to any unit may not be changed without the consent of all unit owners whose allocated votes and common expense liabilities are changed. The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which it is allocated is void.

**(e) Calculations for undivided interests.**--Except for minor variations due to rounding, the sum of the common expense liabilities allocated at any time to all the units must equal one if stated as a fraction or 100% if stated as percentages. If there is a discrepancy between the allocated common expense liability and the result derived from application of the formulas, the allocated common expense liability prevails.

**Cross References.** Section 5208 is referred to in sections 5103, 5107, 5205, 5311 of this title.

**§ 5209. Limited common elements.**

**(a) Allocation.**--Except for the limited common elements described in section 5202 (relating to unit boundaries), the declaration shall specify to which unit or units each limited common element is allocated, distinguishing between limited common facilities and limited controlled facilities. That allocation may not be altered without the consent of the unit owners whose units are affected.

**(b) Reallocation.**--Subject to any provisions of the declaration, a limited common element may be reallocated by a recorded assignment executed by the unit owners between or among whose units the reallocation is made or by an amendment to the declaration executed by the unit owners. The persons executing assignment or the amendment to the declaration shall provide a copy to the association.



**(c) Common elements not previously allocated.**--A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration made in accordance with section 5205(7) (relating to contents of declaration; all planned communities). The declaration may provide that the allocations shall be made by deeds or assignments executed by the declarant or the association or by amendments to the declaration.

**Cross References.** Section 5209 is referred to in sections 5205, 5210, 5211, 5219 of this title.

**§ 5210. Plats and plans.**

**(a) General rule.**--Plats and plans are a part of the declaration. Separate plats and plans are not required by this subpart if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible. The plats and plans must contain, on the first page of the plats and plans, a certification that all of the plats and plans contain all information required by this section.

**(b) Contents of plat.**--Each plat must show all of the following:

(1) The name, location and dimensions of the planned community.

(2) The location and dimensions of all existing improvements.

(3) The intended location and dimensions of any contemplated improvement to be constructed anywhere within the planned community labeled with "MUST BE BUILT" or "NEED NOT BE BUILT." Contemplated improvements within the boundaries of convertible real estate need not be shown, but, if contemplated improvements within the boundaries of convertible real estate are shown, they must be labeled "MUST BE BUILT" or "NEED NOT BE BUILT."

(4) The location and dimensions of any convertible real estate, labeled as such.

(5) The location and dimensions of any withdrawable real estate, labeled as such.

(6) The location and dimensions of any additional real estate, labeled as such.

(7) The extent of any encroachments by or upon any portion of the planned community.

(8) To the extent feasible, the location and dimensions of all easements serving or burdening any portion of the planned community.

(9) The location and dimensions of any vertical unit boundaries not shown or projected on plans recorded under subsection (c) and that unit's identifying number.

(10) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded under subsection (c) and that unit's identifying number.

(11) The location and dimensions of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate."

(12) The distance between noncontiguous parcels of real estate comprising the planned community.

(13) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and the other limited common elements described in section 5202 (relating to unit boundaries) not shown on plans referred to in subsection (c).

(14) All other matters customarily shown on land surveys.

**(c) Contents of plans.**--To the extent not shown or projected on the plats, plans of every building that contains or comprises all or part of any unit and is located or must be built within a portion of the planned community, other than within the boundaries of any convertible real estate, must show all of the following:

(1) The location and dimensions of the vertical boundaries of each unit, to the extent those boundaries lie within or coincide with the boundaries of the building in which the unit is located, and that unit's identifying number.

(2) Any horizontal unit boundaries, with reference to an established datum not shown on plats recorded under subsection (b), and that unit's identifying number.

(3) Any units that may be converted by the declarant to create additional units or common elements under section 5215 (relating to subdivision or conversion of units), identified appropriately.

(4) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and other limited common elements described in sections 5202 and 5209 (relating to limited common elements) not shown on plats recorded under subsection (b).

**(d) Horizontal boundaries of unit partly outside building.**--Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans.

**(e) Converting or adding real estate.**--Upon converting convertible real estate or adding additional real estate taking

action under section 5211 (relating to conversion and expansion of flexible planned communities), the declarant shall record new plats for that real estate conforming to the requirements of subsection (b) and new plans for any buildings on that real estate conforming to the requirements of subsection (c). If less than all of any convertible real estate is being converted, the new plats must also show the location and dimensions of any remaining portion.

**(f) Converting units.**--If a declarant converts any unit into two or more units or limited common elements or both under section 5215, the declarant shall record new plats and plans showing the location and dimensions of any new units and limited common elements thus created, as well as the location and dimension of any portion of that space not being converted.

**(g) Alternative recording.**--Instead of recording new plats and plans as required by subsections (e) and (f), the declarant may record new certifications of plats and plans previously recorded if those plats and plans show all improvements required by subsections (e) and (f).

**(h) Who may make certifications.**--Any certification of a plat or plan required by this section must be made by an independent registered surveyor, architect or professional engineer.

**(i) Land development plans.**--Final plans filed with and approved by a municipality in connection with any land development approvals may serve as plats and plans required under this section if:

(1) all of the contents required under subsections (b) and (c) are contained either in such final plans or in the declaration by specific reference to such plans;

(2) such final plans have been recorded; and

(3) a certification in accordance with subsection (a) is recorded and the certification specifies the recording information for final plans.

(Mar. 24, 1998, P.L.206, No.37, eff. 60 days; Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

**2004 Amendment.** Act 189 amended subsec. (h).

**1998 Amendment.** Act 37 added subsec. (i).

**Cross References.** Section 5210 is referred to in sections 5103, 5211, 5219, 5413, 5414 of this title.

### **§ 5211. Conversion and expansion of flexible planned communities.**

**(a) General rule.**--To convert convertible real estate or add additional real estate pursuant to an option reserved under section 5206 (relating to contents of declaration for flexible planned communities), the declarant shall prepare, execute and

record an amendment to the declaration under section 5219 (relating to amendment of declaration) and comply with section 5210 (relating to plats and plans). The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each unit formed in the convertible or additional real estate and reallocate votes in the association and common expense liabilities. The amendment must describe or delineate any limited common elements formed out of the convertible or additional real estate, showing or designating the unit to which each is allocated to the extent required by section 5209 (relating to limited common elements).

**(b) Creations within additional real estate.**--Convertible or withdrawable real estate may be created within any additional real estate added to the planned community if the amendment adding that real estate includes all matters required by section 5205 (relating to contents of declaration; all planned communities) or 5206, as the case may be, and the plat includes all matters required by section 5210. This subsection does not extend the time limit on conversion or contraction of a flexible planned community imposed by the declaration under section 5206.

**(c) Liability for expenses and right to income.**--Until conversion occurs or the period during which conversion may occur expires, whichever occurs first, the declarant alone is liable for real estate taxes assessed against convertible real estate and all other expenses in connection with that real estate. No other unit owner and no other portion of the planned community is subject to a claim for payment of those taxes or expenses. Unless the declaration provides otherwise, any income or proceeds from convertible real estate inure to the declarant.

**Cross References.** Section 5211 is referred to in sections 5102, 5103, 5205, 5208, 5210, 5219, 5302, 5316, 5414 of this title.

**§ 5212. Withdrawal of withdrawable real estate.**

**(a) General rule.**--To withdraw withdrawable real estate from a flexible planned community pursuant to an option reserved under section 5206 (relating to contents of declaration for flexible planned communities), the declarant shall prepare, execute and record an amendment to the declaration containing a legally sufficient description of the real estate being withdrawn and stating the fact of withdrawal. The amendment must reallocate votes in the association and common expense liabilities to the remaining units in the planned community in proportion to the respective votes and liabilities of those units before the withdrawal. The reallocation is effective when the amendment is recorded.

**(b) When withdrawal prohibited.**--If a portion of a planned community was described under section 5206, that portion may not be withdrawn if any person other than the declarant owns a unit situated therein. If the portion was not so described, none of it is withdrawable if any person other than the declarant owns a unit situated therein.

**(c) Liability for expenses and right to income.**--Until withdrawal occurs or the period during which withdrawal may occur expires, whichever occurs first, the declarant alone is liable for real estate taxes assessed against withdrawable real estate and all other expenses in connection with that real estate. No other unit owner and no other portion of the planned community is subject to a claim for payment of those taxes or expenses. Unless the declaration provides otherwise, any income or proceeds from withdrawable real estate inure to the declarant.

**Cross References.** Section 5212 is referred to in sections 5103, 5208, 5219, 5414 of this title.

**§ 5213. Alteration of units.**

Subject to the provisions of the declaration and other provisions of law, all of the following apply:

(1) A unit owner may make any improvements or alterations to the unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the planned community.

(2) A unit owner may not change the appearance of the common elements or any other portion of the planned community other than portions of units that are not controlled facilities without the permission of the association. However, a unit owner may change the exterior appearance of a unit except any portion of a unit which is a controlled facility without the permission of the association.

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit, a unit owner may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the planned community. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

**§ 5214. Relocation of boundaries between units.**

**(a) General rule.**--Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified

a reallocation between their units of their allocated votes in the association and common expense liability, the application must state the proposed reallocations. Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them and, upon recording, is indexed in the name of the grantor and the grantee.

**(b) Recording.**--The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers.

**Cross References.** Section 5214 is referred to in sections 5208, 5219 of this title.

**§ 5215. Subdivision or conversion of units.**

**(a) General rule.**--If the declaration expressly so permits, a unit may be subdivided into two or more units or, in the case of a unit owned by a declarant, may be subdivided into two or more units, common elements or a combination of units and common elements. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit or upon application of a declarant to convert a unit, the association shall prepare, execute and record an amendment to the declaration, including the plats and plans, subdividing or converting that unit.

**(b) Execution and contents of amendment.**--The amendment to the declaration must be executed by the owner of the unit to be subdivided, must assign an identifying number to each unit created and must reallocate the allocated votes in the association and common expense liability formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

**(c) Conversion of unit of declarant to common elements.**--In the case of a unit owned by a declarant, if a declarant converts all of a unit to common elements, the amendment to the declaration must reallocate among the unit owners votes in the association and common expense liability formerly allocated to the converted unit on a pro rata basis, inter se.

**Cross References.** Section 5215 is referred to in sections 5102, 5205, 5208, 5210, 5219, 5316 of this title.

**§ 5216. Easement for encroachments.**

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of the unit owner's willful misconduct nor

relieve a declarant or any contractor, subcontractor or materialman or any other person of liability for failure to adhere to the plats and plans.

**§ 5217. Declarant offices, models and signs.**

(a) **Common elements.**--A declarant may maintain offices and models in the common element portion of the planned community only in connection with management of or sale or rental of units owned by the declarant in the planned community if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location and relocation thereof. At such time as a declarant ceases to be a unit owner, the declarant ceases to have any rights with regard to such portions of the common elements so used unless the portions are removed promptly from the planned community in accordance with a right to remove reserved in the declaration. Upon the relocation of a model or office constituting a common element, a declarant may remove all personal property and fixtures therefrom. Any fixtures not so removed shall be deemed common elements, and any personal property not so removed shall be deemed the property of the association.

(b) **Signs.**--Subject to any limitation in the declaration, a declarant may maintain signs in the declarant's units and on the common elements advertising units in the planned community owned by the declarant for sale or lease.

(c) **Units.**--A declarant shall have the right to locate, relocate and maintain offices and models used only in connection with management of or sale or rental of units owned by the declarant in the planned community in the declarant's unit or units in the planned community notwithstanding the fact that the declaration would otherwise preclude use of units for such purpose, but subject to all other provisions in the declaration, including, without limitation, modification or elimination of the declarant's rights under this subsection by specific reference thereto.

**Cross References.** Section 5217 is referred to in sections 5103, 5304, 5414 of this title.

**§ 5218. Easement to facilitate completion, conversion and expansion.**

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights. In addition, without affecting the rights, if any, of each unit owner with respect to the use and enjoyment of the common elements, subject to the provisions of the declaration, each unit owner and its agents, contractors and invitees shall have a nonexclusive

access easement through the common elements as may be reasonably necessary for the purpose of construction, repair and renovation of the owner's unit. An association shall have the power during spring thaw conditions to restrict road usage by vehicles of more than ten tons gross weight, provided:

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

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

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

An association shall not have the power to impose any fees or charges or require financial security, including, but not limited to, surety bonds, letters of credit or escrow deposits for the use of the easement rights described in this section; however, the declarant or owner who exercises the easement rights described in this section, whether directly or indirectly through an agent, servant, contractor or employee, shall have the obligation to promptly return any portion of the common elements damaged by the exercise by the declarant or owner or its agent, servant, contractor or employee of the easement under this section to the appearance, condition and function in which it existed prior to the exercise of the easement or to reimburse the association for all reasonable costs, fees and expenses incurred by the association to return any portion of the common elements which were damaged to the appearance, condition and function in which it existed prior to the exercise of the easement.

(Mar. 24, 1998, P.L.206, No.37, eff. 60 days; Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

**Cross References.** Section 5218 is referred to in sections 5102, 5103, 5105, 5301, 5414 of this title.

**§ 5219. Amendment of declaration.**

**(a) Number of votes required.--**

(1) The declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least:

(i) 67% of votes in the association are allocated; or

(ii) a larger percentage of the votes in the association as specified in the declaration; or

(iii) a smaller percentage of the votes in the association as specified in the declaration if all units are restricted exclusively to nonresidential use.



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

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

(i) Amendments executed by a declarant under:

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

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

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

(ii) Amendments executed by the association under:

(A) subsection (f);

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

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

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

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

(iii) Amendments executed by certain unit owners under:

(A) section 5209(b);

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

(C) section 5215; or

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

(iv) Amendments executed by a declarant which conform the maximum time limit for exercising declarant options to the time limit authorized by sections 5205(13) and (14) (relating to contents of declaration; all planned communities) and 5206(2) (relating to contents of declaration for flexible planned communities).

**(b) Limitation of action to challenge amendment.**--No action to challenge the validity of an amendment adopted by the association under this section may be brought more than one year after the amendment is recorded.

**(c) Recording amendment.**--The following shall apply:

(1) Every amendment to the declaration must be recorded in every county in which any portion of the planned community is located in the same records as are maintained for the recording of deeds of real property and shall be indexed in the name of the planned community in both the grantor and grantee index. An amendment is effective only upon recording.

(2) Except for counties which do not maintain a uniform parcel identifier number system of indexing, all counties shall assign a master parcel number to each planned community, and every amendment to the declaration shall be indexed against the master parcel. If required by the county, an amendment may be indexed against a parcel assigned to each unit within the

planned community, but no fees shall be charged to each unit unless the indexing against each parcel is requested by the declarant or association.

(3) The provisions of this subsection shall control over any conflicting provisions in any other statute, regulation or ordinance.

**(d) When unanimous consent or declarant joinder required.--**

(1) Except to the extent expressly permitted or required by other provisions of this subpart, without unanimous consent of all unit owners affected, no amendment may create or increase special declarant rights, alter the terms or provisions governing the completion or conveyance or lease of common facilities or increase the number of units or change the boundaries of any unit, the common expense liability or voting strength in the association allocated to a unit or the uses to which any unit is restricted. In addition, no declaration provisions pursuant to which any special declarant rights have been reserved to a declarant shall be amended without the express written joinder of the declarant in such amendment.

(2) As used in this subsection, the term "uses to which any unit is restricted" shall not include leasing of units.

**(e) Officer authorized to execute amendment.--**Amendments to the declaration required by this subpart to be recorded by the association shall be prepared, executed, recorded and certified by an officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

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

(1) cure an ambiguity;

(2) correct or supplement any provision of the declaration, including the plats and plans, that is defective, missing or inconsistent with any other provision of the declaration or with this subpart;

(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, tenants 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 legal counsel who is independent from the declarant to the effect that the proposed amendment is permitted by the terms of this subsection.

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days; July 2, 2013, P.L.204, No.37, eff. imd.; Apr. 20, 2016, P.L.156, No.21, eff. 60 days; Nov. 4, 2016, P.L.1214, No.162, eff. 60 days; Mar. 27, 2020, P.L.35, No.11, eff. 60 days)

**2020 Amendment.** Act 11 amended subsec. (f).

**2016 Amendments.** Act 21 amended subsec. (d) and Act 162 amended subsec. (c).

**2013 Amendment.** Act 37 amended subsec. (a)(3). See section 2 of Act 37 in the appendix to this title for special provisions relating to applicability.

**2004 Amendment.** Act 189 amended subsecs. (a) and (f).

**Cross References.** Section 5219 is referred to in sections 5102, 5211, 5303 of this title.

**§ 5220. Termination of planned community.**

**(a) Number of votes required.--**Except in the case of a taking of all the units by eminent domain in section 5107 (relating to eminent domain), a planned community may be terminated only by 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.

**(b) Execution and recording agreement and ratifications.--**An agreement to terminate must be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of unit owners who are owners of record as of the date preceding the date of recording of the termination agreement. The termination agreement must specify the date it was first executed or ratified by a unit owner. The termination agreement shall become void unless it is recorded on or before the earlier of the expiration of one year from the date it was first executed and ratified by a unit owner or such date as shall be specified in the termination agreement. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the planned community is located in the same records as are maintained for

the recording of deeds of real property and shall be indexed in the name of the planned community in both the grantor and grantee index. A termination agreement is effective only upon recording.

**(c) Sale of real estate.**--The association, on behalf of the unit owners, may contract for the sale of real estate in the planned community. The contract is not binding until approved under subsections (a) and (b). If any real estate in the planned community is to be sold by the association following termination, title to that real estate upon termination vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to unit owners and lienholders as their interests may appear in proportion to the respective interests of unit owners as provided in subsection (f). Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the owner's unit. During the period of that occupancy, each unit owner and the owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this subpart or the declaration.

**(d) Nonsale upon termination.**--If the real estate constituting the planned community is not to be sold following termination, title to the common facilities and, in a planned community containing only units having horizontal boundaries described in the declaration, title to all the real estate in the planned community vest in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (f), and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the owner's unit.

**(e) Proceeds of sale.**--Following termination of the planned community, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units which were recorded, filed of public record or otherwise perfected before termination may enforce those liens in the same manner as any lienholder.

All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

**(f) Respective interests of unit owners.**--The respective interests of unit owners referred to in subsections (c), (d) and (e) are as follows:

(1) Except as provided in paragraph (2), the respective interests of unit owners are the fair market values of their units and limited common elements immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which 25% of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit by the total fair market values of all the units and common elements.

(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common expense liabilities immediately before the termination.

**(g) Effect of foreclosure or enforcement of lien.**--Except as provided in subsection (h), foreclosure or enforcement of a lien or encumbrance against the entire planned community does not of itself terminate the planned community. Foreclosure or enforcement of a lien or encumbrance against a portion of the planned community does not of itself withdraw that portion from the planned community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the planned community, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the planned community.

**(h) Exclusion from planned community upon foreclosure.**--If a lien or encumbrance against a portion of the real estate comprising the planned community has priority over the declaration and if the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the 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.

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

**2004 Amendment.** Act 189 added subsec. (i).

**Cross References.** Section 5220 is referred to in sections 5102, 5219, 5303, 5312 of this title.

**§ 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) Deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board.

(2) Prevent the association or the executive board from commencing, intervening in or settling any litigation or proceeding or receiving and distributing any insurance proceeds except under section 5312 (relating to insurance).

**(b) Secured lender approval procedures.--**If the declaration requires mortgagees or beneficiaries of deeds of trust encumbering the units to approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, then the executive board will provide the lender with written notice of the specified action proposed to be taken, together with a request for the secured lender to approve or disapprove the actions specified. If the notice to the secured lender, issued in accordance with the procedures set forth in this subsection, states that the secured lender will be deemed to have approved the actions specified in the written notice if it does not respond to the request within 45 days and the secured lender does not respond in writing within 45 days, then the secured lender will be deemed for all purposes to have approved the action specified in the notice. Written notice to the secured lender shall be given by certified, registered or first-class mail, evidenced by a United States Postal Service certificate of mailing, postage prepaid, at the address provided by the secured lender or, in the absence thereof, at the address of the secured lender endorsed on any mortgage or deed of trust

of record and at the address to which the unit owner mails any periodic payment paid to the secured lender. The notice to the secured lender shall include a statement of the specified action, a copy of the full text of any proposed amendment and a form prepared by the association upon which the secured lender may indicate its approval or rejection of the specified action or amendment.

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

**Cross References.** Section 5221 is referred to in section 5219 of this title.

**§ 5222. Master associations.**

**(a) Applicability of section.**--If the declaration for a planned community provides that any of the powers described in section 5302 (relating to power of unit owners' association) with respect to the planned community are to be exercised by or may be delegated to a profit or nonprofit corporation or unincorporated association (a "master association") which exercises those or other powers on behalf of one or more other planned communities or other incorporated or unincorporated associations, then, except as modified by this section, all provisions of this subpart applicable to unit owners' associations shall apply to any such master association insofar as its actions affect the planned community.

**(b) Powers.**--Unless a master association is acting in the capacity of an association described in section 5301 (relating to organization of unit owners' association) with respect to a planned community which is part of the master association, it may exercise with respect to the planned community only such powers set forth in section 5302 and only to the extent expressly permitted in the declaration which provides for the delegation of powers from its planned community association to the master association and accepted by the master association, as indicated in the provisions of the declaration or other organizational documents of the master association.

**(c) Liability of executive board members and officers.**--If the declaration of a planned community provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation. The officers and members of the governing board of the master association are subject to liability to the planned community association whose powers are delegated to the master association and the unit owners of the planned community on the same basis as officers and executive board members of the planned community immediately before such delegation of powers.

**(d) Rights and responsibilities of persons electing governing body.--**The rights and responsibilities of unit owners with respect to the unit owners' association set forth in sections 5302, 5303 (relating to executive board members and officers), 5309 (relating to quorums), 5310 (relating to voting; proxies) and 5320 (relating to declarant delivery of items to association) apply in the conduct of the affairs of a master association with respect to the exercise of powers elected pursuant to a planned community declaration to the master association, but apply only to those persons who elect the governing body of a master association, whether or not those persons are otherwise unit owners within the meaning of this subpart.

**(e) Election of master association governing body.--**Notwithstanding the provisions of section 5303(e) with respect to the election of the executive board by all unit owners after the period of declarant control ends and even if a master association is also an association described in section 5301, the instrument creating the master association and the declaration of each planned community of the organizational documents of other associations, the powers of which are assigned pursuant to the declaration or organizational documents or delegated to the master association, shall provide that the governing body of the master association must be elected after the period of declarant control in any of the following ways:

(1) All unit owners of all planned communities and other properties subject to the master association elect all members of the governing body of the master association.

(2) All members of the governing bodies of the planned community associations and other property owners' associations subject to the master association elect all members of the master association governing body.

(3) All unit owners of each planned community and other property owners' association subject to the master association elect specified members of the master association governing body.

(4) All members of the governing bodies of the planned communities and other property associations subject to the master association elect specified members of the master association governing body.

**(f) Delegation of responsibility and authority.--**The provisions of this section shall apply to a planned community upon any of the following:

(1) A date specified in the declaration or any amendment thereto from and after which this section shall apply to the planned community.



(2) An event or action that the declaration or any amendment thereto states shall cause this section to become applicable and the association causes to be recorded an instrument duly executed by the president of the association stating that:

(i) the event or action has occurred and the date of such occurrence, thereby causing this section to become applicable to the planned community; and

(ii) a copy of such instrument has been sent to all unit owners.

(3) The declarant executes and records an instrument stating that this section shall thereafter apply to the planned community and that a copy of such instrument has been sent to the executive board and all unit owners. This paragraph shall be applicable only if the declarant shall have expressly reserved in the declaration, under section 5205(13) (relating to contents of declaration; all planned communities), the special declarant right to make this section applicable to the planned community and only if the instrument exercising such right has been recorded during the time period allowed for the exercise of such right.

**(g) Delegation of all powers.**--If all of the powers of a planned community association are delegated to a master association and accepted by the master association under subsection (b), then the governing body of the master association may act in all respects as the executive board of the planned community, and no separate executive board need be elected or exist.

**Cross References.** Section 5222 is referred to in sections 5102, 5103, 5205, 5302 of this title.

**§ 5223. Merger or consolidation of planned community.**

**(a) General rule.**--Any two or more planned communities by agreement of the unit owners as provided in subsection (b) may be merged or consolidated into a single planned community. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant planned community is, for all purposes, the legal successor of all of the preexisting planned communities, and the operations and activities of all associations of the preexisting planned communities shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all preexisting associations. The resultant planned community shall, in addition, be subject in all respects to the provisions and requirements of this subpart regardless of whether or not any of the preexisting planned communities have been established under this subpart.

**(b) Requirements of agreement.**--The merger or consolidation of two or more planned communities under subsection (a) must be evidenced by a recorded agreement duly executed by the president of the association of each of the preexisting planned communities following approval by owners of units to which are allocated the percentage of votes in each planned community required to terminate such planned community. Any such agreement must be recorded in every county in which a portion of the planned community is located and is not effective until so recorded.

**(c) Reallocations.**--

(1) Every merger or consolidation agreement must provide for the reallocation of the common expense liability, including both general and limited common expenses, and portion of the votes in the resulting association among the units of the resulting planned community in one of the following manners:

(i) by stating the reallocations or the formulas upon which they are based; or

(ii) by stating the common expense liability, including both general and limited common expenses, and portion of the votes in the resulting association which are allocated to all of the units comprising each of the preexisting planned communities, and providing that the common expense liability, including both general and limited common expenses, and portion of the votes in the association for the resulting planned community shall be the same as was allocated to each unit formerly comprising a part of the preexisting planned community by the declaration of the preexisting planned community.

**(d) Action by declarant.**--Notwithstanding the provisions of subsections (a) and (b), if a declarant shall have expressly retained the special declarant right to merge or consolidate a planned community under section 5205(14) (relating to contents of declaration; all planned communities) and if the declarant shall have exercised such right within the time period allowed for such exercise by giving written notice to that effect to all unit owners accompanied by a copy of the agreement evidencing such merger or consolidation, then such agreement may be executed by the declarant rather than by the president of the association of that planned community and without the necessity for approval or consent by unit owners or their mortgagees, provided that the agreement is recorded within the time period allowed for the exercise of this special declarant right.

**Cross References.** Section 5223 is referred to in sections 5102, 5103, 5205 of this title.

**CHAPTER 53**  
MANAGEMENT OF PLANNED COMMUNITY

**Sec.**

- 5301. Organization of unit owners' association.
- 5302. Power of unit owners' association.
- 5303. Executive board members and officers.
- 5304. Transfer of special declarant rights.
- 5305. Termination of contracts and leases of declarant.
- 5306. Bylaws.
- 5307. Upkeep of planned community.
- 5308. Meetings.
- 5309. Quorums.
- 5310. Voting; proxies.
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- 5312. Insurance.
- 5313. Surplus funds.
- 5314. Assessments for common expenses.
- 5315. Lien for assessments.
- 5316. Association records.
- 5317. Association as trustee.
- 5318. Conveyance or encumbrance of common facilities.
- 5319. Other liens affecting planned community.
- 5320. Declarant delivery of items to association.
- 5321. Alternative dispute resolution in planned communities.
- 5322. Complaints filed with Bureau of Consumer Protection.

**Enactment.** Chapter 53 was added December 19, 1996, P.L.1336, No.180, effective in 45 days.

**Cross References.** Chapter 53 is referred to in section 5102 of this title.

**§ 5301. Organization of unit owners' association.**

A unit owners' association shall be organized no later than the date the first unit in the planned community is conveyed to a person other than a successor declarant. The membership of the association at all times shall consist exclusively of all the unit owners or, following termination of the planned community, of all former unit owners entitled to distributions of proceeds under section 5218 (relating to easement to facilitate completion, conversion and expansion) or their heirs, successors or assigns. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association.

**Cross References.** Section 5301 is referred to in sections 5103, 5222 of this title.

**§ 5302. Power of unit owners' association.**

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

(1) Adopt and amend bylaws and rules and regulations.

(2) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners.

(3) Hire and terminate managing agents and other employees, agents and independent contractors.

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

(5) Make contracts and incur liabilities.

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

(7) Cause additional improvements to be made as a part of the common facilities and, only to the extent permitted by the declaration, the controlled facilities.

(8) (i) acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property 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).

(9) Grant easements, leases, licenses and concessions through or over the common facilities and, only to the extent permitted by the declaration, the controlled facilities.

(10) Impose and receive payments, fees or charges for the use, except as limited by other provisions of this subpart, rental or operation of the common elements other than the limited common elements described in section 5202(2) and (3) (relating to unit boundaries).

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

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

(ii) For any period during which assessments are delinquent or violations of the declaration, bylaws and rules and regulations remain uncured, suspend unit owners' rights,

including, without limitation, the right to vote, the right to serve on the board or committees and the right of access to common elements, recreational facilities or amenities.

(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;

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

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

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

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

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

(A) acquires a unit consisting of unimproved real estate and signs and delivers to the association at the time of such

person's acquisition a sworn affidavit declaring the person's intention to reconvey such unit within 18 months of its acquisition; and

(B) completes such reconveyance within such 18 months.

(13) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance.

(14) Exercise any other powers conferred by this subpart, the declaration or bylaws.

(15) Exercise all other powers that may be exercised in this Commonwealth by legal entities of the same type as the association.

(16) Exercise any other powers necessary and proper for the governance and operation of the association.

(17) Assign its right to future income, including the right to receive common expense assessments. Reserve funds held for future major repairs and replacements of the common elements may not be assigned or pledged.

(18) Assign or delegate any powers of the association listed in this section to a master association subject to the provisions of section 5222 (relating to master associations) and accept an assignment or delegation of powers from one or more planned communities or other incorporated or unincorporated associations.

**(b) Restrictions on limitations in declaration.--**

Notwithstanding subsection (a), the declaration may not impose limitations on the power of the association to deal with declarants which are more restrictive than the limitations imposed on the power of the association to deal with other persons. Any exercise of a power under subsection (a) (7), (8) or (9) which would materially impair quiet enjoyment of a unit shall require the prior written approval of the owner of that unit.

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days; Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

**2018 Amendment.** Act 84 amended subsec. (a) (11).

**2004 Amendment.** Act 189 amended subsec. (a) (4), (6), (8), (12) and (17).

**Cross References.** Section 5302 is referred to in sections 5102, 5222, 5315 of this title.

**§ 5303. Executive board members and officers.**

**(a) Powers and fiduciary status.--**Except as provided in the declaration, in the bylaws, in subsection (b) or in other provisions of this subpart, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board

shall stand in a fiduciary relation to the association and shall perform their duties, including duties as members of any committee of the board upon which they may serve, in good faith; in a manner they reasonably believe to be in the best interests of the association; and with care, including reasonable inquiry, skill and diligence as a person of ordinary prudence would use under similar circumstances. In managing the association's reserve funds, the officers and members of the executive board shall have the power to invest the association's reserve funds in investments permissible by law for the investment of trust funds and shall be governed in the management of the association's reserve funds by 20 Pa.C.S. § 7203 (relating to prudent investor rule). In performing any duties, an officer or executive board member shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

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

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

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

An officer or executive board member shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause his reliance to be unwarranted. The executive board and its members shall have no liability for exercising these powers provided they are exercised in good faith, in the best interest of the association and with care in the manner set forth in this section.

**(b) Limitation on authority.**--The executive board may not act on behalf of the association to amend the declaration under section 5219 (relating to amendment of declaration), to terminate the planned community under section 5220 (relating to termination of planned community) or to elect members of the executive board or determine the qualifications, powers and duties or terms of office of executive board members under subsection (e), but the executive board may fill vacancies in its membership for the unexpired portion of any term. The executive board shall deliver to all unit owners copies of each

budget approved by the executive board and notice of any capital expenditure approved by the executive board promptly after such approval. In addition to other rights conferred by the declaration, bylaws or this subpart, the unit owners, by majority or any larger vote specified in the declaration, may reject any budget or capital expenditure approved by the executive board within 30 days after approval.

**(c) Status during period of declarant control.--**

(1) Subject to subsection (d), the declaration may provide for a period of declarant control of the association during which a declarant or persons designated by the declarant may appoint and remove the officers and members of the executive board.

(2) Any period of declarant control extends from the date of the first conveyance of a unit to a person other than a declarant for a period of not more than:

(i) seven years in the case of a flexible planned community containing convertible real estate or to which additional real estate may be added; and

(ii) five years in the case of any other planned community.

(3) Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of:

(i) sixty days after conveyance of 75% of the units which may be created to unit owners other than a declarant;

(ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business; or

(iii) two years after any development right to add new units was last exercised.

(4) A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period. In that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

**(d) Election of members during transfer of declarant control.--**Not later than 60 days after conveyance of 25% of the units which may be created to unit owners other than a declarant, at least one member and not less than 25% of the members of the executive board shall be elected by unit owners other than the declarant. Not later than 60 days after conveyance of 50% of the units which may be created to unit owners other than a declarant, not less than 33% of the members of the executive board shall be elected by unit owners other than the declarant.



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

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

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

**(f) Removal of members.--**Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days; Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

**2018 Amendment.** Act 84 amended subsec. (e).

**2004 Amendment.** Act 189 amended subsec. (a).

**Cross References.** Section 5303 is referred to in sections 5102, 5103, 5222, 5304, 5305, 5311, 5320, 5411 of this title.

**§ 5304. Transfer of special declarant rights.**

**(a) Execution and recording instrument of transfer.--**No special declarant right created or reserved under this subpart may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the planned community is located in the same records as are maintained for the recording of deeds of real property and shall be indexed in the name of the planned community in both the grantor and grantee indices. The instrument is not effective unless executed by the transferee.

**(b) Liability of declarant following transfer.--**Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed on a declarant by this subpart.

Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

(2) If a successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with any successor for any obligations or liabilities of the successor relating to the planned community.

(3) If a transferor retains any special declarant rights but transfers one or more other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this subpart or by the declaration relating to the retained special declarant rights and arising after the transfer.

(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor and to whom the special declarant right has not previously been assigned.

**(c) Rights of purchaser in foreclosure, etc., proceedings.--** Unless otherwise provided in a mortgage instrument or deed of trust, in case of mortgage foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust or sale under 11 U.S.C. (relating to bankruptcy) or under receivership proceedings of any units owned by a declarant or real estate in a planned community subject to development rights, a person acquiring title to all the real estate being foreclosed or sold, but only upon his request, succeeds to all special declarant rights related to that real estate held by that declarant or only to any rights reserved in the declaration under section 5217 (relating to declarant offices, models and signs) and held by that declarant to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

**(d) Rights of declarant following foreclosure, etc.--** Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust or sale under 11 U.S.C. or under receivership or similar proceedings of all units and other real estate in a planned community owned by a declarant:

(1) the declarant ceases to have any special declarant rights; and

(2) the period of declarant control under section 5303(d) (relating to executive board members and officers) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

**(e) Liabilities and obligations of successors.**--The liabilities and obligations of persons who succeed to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this subpart or by the declaration.

(2) A successor to any special declarant right, other than a successor described in paragraph (3) or (4), who is not an affiliate of a declarant is subject to all obligations and liabilities imposed by this subpart or the declaration on any of the following:

(i) A declarant insofar as the obligation or liability relates to the exercise or nonexercise of special declarant rights.

(ii) The successor's transferor, other than any of the following:

(A) Misrepresentations by any previous declarant except to the extent knowingly continued or permitted to continue without correcting such misrepresentations.

(B) Warranty obligations on improvements made by any previous declarant or made before the planned community was created.

(C) Breach of any fiduciary obligation by any previous declarant or such declarant's appointees to the executive board.

(D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(3) A successor to only a right reserved in the declaration to maintain models, sales offices and signs under section 5217, if the successor is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant except the obligation to provide a public offering statement and any liability arising as a result thereof.

(4) A successor to all special declarant rights held by his transferor who is not an affiliate of that transferor declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units or an instrument conveying solely special declarant rights under subsection (c) may declare his intention to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to control the executive board

in accordance with the provisions of section 5303(d) for the duration of any period of declarant control; and any attempted exercise of those rights is void. As long as a successor declarant may not exercise special declarant rights under this paragraph, the successor is not subject to any liability or obligation as a declarant other than liability for his acts and omissions under section 5303(d).

**(f) Limitation on liability of successor.**--Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant other than claims and obligations arising under this subpart or the declaration.

**Cross References.** Section 5304 is referred to in section 5103 of this title.

**§ 5305. Termination of contracts and leases of declarant.**

**(a) General rule.**--If entered into before the executive board elected by the unit owners under section 5303(e) (relating to executive board members and officers) takes office, any of the following may be terminated without penalty by the association at any time after the executive board elected by the unit owners under section 5303(e) takes office upon not less than 90 days' notice to the other party:

(1) Any management contract, employment contract or lease of recreational or parking areas or facilities.

(2) Any other contract or lease to which a declarant or an affiliate of a declarant is a party.

(3) Any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing.

**(b) Exception.**--This section does not apply to any lease the termination of which would terminate the planned community or reduce its size unless the real estate subject to that lease was included in the planned community for the purpose of avoiding the right of the association to terminate a lease under this section.

**Cross References.** Section 5305 is referred to in section 5402 of this title.

**§ 5306. Bylaws.**

**(a) Mandatory provisions.**--The bylaws of the association shall provide for all of the following:

(1) The number of members of the executive board and the titles of the officers of the association.

(2) Election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify.

(3) The qualifications, powers and duties, terms of office and manner of electing and removing executive board members and officers and filling vacancies.

(4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent.

(5) Which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the association.

(6) The method of amending the bylaws.

**(b) Other provisions.**--Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

**(c) Corrective amendments.**--Except as otherwise provided in the bylaws or code of regulations, if any amendment to the bylaws or code of regulations is necessary in the judgment of the executive board to cure any ambiguity or to correct or supplement any provision of the bylaws or code of regulations that is defective, missing or inconsistent with any other provision thereof, with the declaration or with this subpart or if an amendment is necessary in the judgment of the executive board to 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 on units in planned communities or so-called "PUD projects," cooperative projects (such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation), to 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, tenants or employees, then, at any time and from time to time, the executive board may at its discretion effect an appropriate corrective amendment without the approval of the unit owners or the holders of any liens on all or any part of the planned community or association, upon receipt by the executive board of an opinion from legal counsel who is independent from the declarant to the effect that the proposed amendment is permitted by the terms of this subsection.

(Mar. 27, 2020, P.L.35, No.11, eff. 60 days)

**2020 Amendment.** Act 11 added subsec. (c).

**§ 5307. Upkeep of planned community.**

**(a) General rule.**--Except to the extent provided by the declaration, subsection (b) or section 5312 (relating to insurance), the association is responsible for maintenance,

repair and replacement of the common elements, and each unit owner is responsible for maintenance, repair and replacement of his unit. Each unit owner shall afford to the association and the other unit owners and to their agents or employees access through the unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage or the association if it is responsible is liable for the prompt repair of the damage.

**(b) Nonresidential planned communities.**--If any unit in a planned community all of whose units are restricted to nonresidential use is damaged and the exterior appearance of the unit is thereby affected, the person responsible for the exterior of the unit shall cause the unit to be repaired or rebuilt to the extent necessary to restore its exterior appearance. If that person fails within a reasonable period of time to effect the repairs or rebuilding, the association may purchase the unit at its fair market value to be determined by an independent appraiser selected by the association.

**Cross References.** Section 5307 is referred to in section 5102 of this title.

**§ 5308. Meetings.**

The bylaws shall require that meetings of the association be held at least once each year and shall provide for special meetings. The bylaws shall specify which of the association's officers, not less than ten nor more than 60 days in advance of any meeting, shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws; any budget or assessment changes; and, where the declaration or bylaws require approval of unit owners, any proposal to remove a director or officer.

**Cross References.** Section 5308 is referred to in sections 5103, 5310, 5322 of this title.

**§ 5309. Quorums.**

**(a) Association.**--Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast 20% of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting. The bylaws may require a larger percentage or a smaller percentage not less than 10%.

**(b) Executive board.**--Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast 50% of the votes on the board are present at the beginning of the meeting.

**Cross References.** Section 5309 is referred to in sections 5103, 5222, 5322 of this title.

**§ 5310. Voting; proxies.**

**(a) Unit owner other than natural person.**--If the owner of a unit is a corporation, joint venture, partnership or unincorporated association, the natural person who shall be entitled to cast the vote for that unit shall be the person named in a certificate executed by that entity pursuant to its governing documents. If the owner of a unit is a trust, the trustee or trustees shall be deemed to be the owner for voting purposes. If the ownership of a unit is in more than one person, the natural person who shall be entitled to cast the vote of the unit shall be the person named in a certificate executed by all of the owners of the unit and filed with the secretary of the association or, in the absence of that named person from the meeting or in the event of failure to execute and file such a certificate, the person owning such unit who is present. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with their unanimous agreement unless the declaration expressly provides otherwise. There shall be deemed to be unanimous agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit. Such a certificate shall be valid until revoked by a subsequent certificate similarly executed. Except where execution by owners of a unit in the same manner as a deed is required in this subpart and subject to the provisions of the declaration and bylaws, wherever the approval or disapproval of a unit owner is required by this subpart, the declaration or the bylaws, the approval or disapproval shall be made only by the person who would be entitled to cast the vote of the unit at any meeting of the association.

**(b) Proxies.**--Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given under this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to

be revocable without notice. A proxy terminates one year after its date unless it specifies a shorter term.

**(c) Voting by lessees.**--If the declaration requires that votes on specified matters affecting the planned community be cast by lessees rather than unit owners of leased units, all of the following apply:

(1) The provisions of subsections (a) and (b) apply to lessees as if they were unit owners.

(2) Unit owners who have leased their units to other persons may not cast votes on those specified matters.

(3) Lessees are entitled to notice of meetings, access to records and other rights respecting those matters as if they were unit owners.

Unit owners shall also be given notice, in the manner provided in section 5308 (relating to meetings), of all meetings at which lessees may be entitled to vote.

**(d) Units owned by association.**--No votes allocated to a unit owned by the association may be cast.

**Cross References.** Section 5310 is referred to in sections 5103, 5222, 5322 of this title.

**§ 5311. Tort and contract liability.**

**(a) General rule.**--

(1) An action in tort alleging a wrong done by a declarant or his agent or employee in connection with a portion of any convertible or withdrawable real estate or other portion of the planned community which the declarant has the responsibility to maintain may not be brought against the association or against a unit owner other than a declarant.

(2) Except as otherwise provided by paragraph (1):

(i) An action in tort alleging a wrong done by the association or by an agent or employee of the association, or on behalf of the association, must be brought against the association.

(ii) A unit owner shall not be subject to suit or, except as otherwise provided by subsection (b), be otherwise directly or indirectly held accountable for the acts of the association or its agents or employees on behalf of the association.

(3) If the tort or breach of contract occurred during any period of declarant control under section 5303(c) (relating to executive board members and officers), the declarant is liable to the association for all unreimbursed losses suffered by the association as a result of that tort or breach of contract, including costs and reasonable attorney fees. If a claim for a tort or breach of contract is made after the period of declarant control, the association shall have no right against the



declarant under this paragraph unless the association shall have given the declarant all of the following:

(i) Notice of the existence of the claim promptly after the date on which a member of the executive board who is not a designee of the declarant learns of the existence of the claim.

(ii) An opportunity to defend against the claim on behalf of the association but at the declarant's expense.

(4) A unit owner is not precluded from bringing an action contemplated by this subsection because he is a unit owner or a member or officer of the association.

Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates.

**(b) Lien of judgment.**--Except as otherwise provided in this subpart, a judgment for money against the association if and when entered of record against the name of the association in the office of the clerk of the court of common pleas of the county where the planned community is located shall also constitute a lien against each unit for a pro rata share of the amount of that judgment, including interest thereon, based on the common expense liability allocated to that unit under section 5208 (relating to allocation of votes and common expense liabilities). No other property of a unit owner is subject to the claims of creditors of the association.

**(c) Indexing judgment.**--A judgment against the association must be indexed in the name of the planned community.

**(d) Applicability of section.**--The provisions of this section shall apply to all associations without regard to whether the association is organized as a corporation or as an unincorporated association.

**Cross References.** Section 5311 is referred to in section 5102 of this title.

**§ 5312. Insurance.**

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

(1) Property insurance on the common facilities and controlled facilities to the extent the controlled facilities can be insured separately from the unit and, if insurance for the unit is not provided by the association under subsection (b) or the declaration, insuring against all common risks of direct physical loss. The total amount of insurance after application of any deductibles shall be not less than 80% of the actual cash value of the insured property, exclusive of land, excavations,

foundations and other items normally excluded from property policies.

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

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

**(b) Units having horizontal boundaries.--**In the case of a building containing units having horizontal boundaries described in the declaration, that insurance described in subsection (a)(1), to the extent reasonably available, shall include the units but need not include improvements and betterments installed by unit owners.

**(c) Other insurance carried by association.--**If the insurance described in subsections (a) and (b) is not maintained, the association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance. The association may carry any other insurance in such reasonable amounts and with such reasonable deductibles as the executive board may deem appropriate to protect the association or the unit owners.

**(d) Policy terms.--**Insurance policies carried under subsections (a) and (b) shall provide all of the following:

(1) Each unit owner is an insured person under the policy with respect to liability arising out of his membership in the association.

(2) The insurer waives its right to subrogation under the policy against any unit owner or member of the owner's household.

(3) No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy.

(4) If at the time of a loss under the policy there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy is primary insurance not contributing with the other insurance.

**(e) Proceeds from property insurance.--**Any loss covered by the property policy under subsections (a)(1) and (b) shall be adjusted with the association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated

for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (h), the proceeds shall be disbursed first for the repair or restoration of the damaged common elements and units, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the common elements and units have been completely repaired or restored or the planned community is terminated.

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

**(g) Evidence and cancellation of insurance.**--An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon request, to any unit owner, mortgagee or beneficiary under a deed of trust. The insurance may not be canceled until 30 days after notice of the proposed cancellation has been mailed to the association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued.

**(h) Disposition of insurance proceeds.**--

(1) Any portion of the planned community for which insurance is required to be maintained by the association by this section or the declaration and which is damaged or destroyed shall be repaired or replaced promptly by the association unless:

- (i) the planned community is terminated;
- (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance; or
- (iii) 80% of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild.

Except for the costs of repair or replacement which are not covered due to deductibles, the cost of repair or replacement in excess of insurance proceeds and reserves, which have not been

identified by the executive board to fund costs of capital expenditures budgeted for the current fiscal year of the association, is a common expense.

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

- (i) the planned community is terminated;
- (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance; or
- (iii) 80% of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote to not rebuild.

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

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

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

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

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

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

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

**(i) Nonresidential planned communities.--**The provisions of this section may be varied or waived in the case of a planned community all of whose units are restricted to nonresidential use.

**(j) Recovery of deductibles.**--If any insurance policy maintained by the association contains a deductible, then that portion of any loss or claim which is not covered by insurance due to the application of a deductible, as well as any claim or loss for which the association is self-insured, shall be levied by the executive board in accordance with section 5314(c) (relating to assessments for common expenses).  
(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

**2004 Amendment.** Act 189 amended subsecs. (a), (c), (f) and (h) and added subsec. (j).

**Cross References.** Section 5312 is referred to in sections 5221, 5307, 5402 of this title.

**§ 5313. Surplus funds.**

Any amounts accumulated from assessments for limited common expenses and income from the operation of limited common elements to which those limited common expenses pertain in excess of the amount required for actual limited common expenses and reserves for future limited common expenses shall be credited to each unit assessed for a share of those limited common expenses in proportion to the share of those limited common expenses so assessed. These credits shall be applied, unless the declaration provides otherwise, to the next monthly assessments of limited common expenses against that unit under the current fiscal year's budget and thereafter until exhausted. Any amounts accumulated from assessments for general common expenses and income from the operation of the common elements, other than limited common elements with regard to which limited common expenses are assessed, in excess of the amount required for actual general common expenses and reserves for future general common expenses shall be credited to each unit in accordance with that unit's interests in common elements. These credits shall be applied, unless the declaration provides otherwise, to the next monthly assessments of general common expenses against the unit under the current fiscal year's budget and thereafter until exhausted.

**Cross References.** Section 5313 is referred to in sections 5315, 5407 of this title.

**§ 5314. Assessments for common expenses.**

**(a) General rule.**--Until the association makes a common expense assessment, the declarant shall pay all the expenses of the planned community. After any assessment has been made by the association, assessments shall be made at least annually, based on a budget adopted at least annually by the association. The budgets of the association shall segregate limited common

expenses from general common expenses if and to the extent appropriate.

**(b) Allocation and interest.**--Except for assessments under subsection (c), all common expenses shall be assessed against all the units in accordance with the common expense liability allocated to each unit in the case of general common expenses and in accordance with subsection (c) in the case of special allocation of expenses. Any past due assessment or installment thereof shall bear interest at the rate established by the association at not more than 15% per year.

**(c) Special allocations of expenses.**--Except as provided by the declaration:

(1) Any common expense associated with the maintenance, repair or replacement of a limited common element shall be assessed in equal shares against the units to which that limited common element was assigned at the time the expense was incurred.

(2) Any common expense benefiting fewer than all of the units shall be assessed exclusively against the units benefited.

(3) The costs of insurance shall be assessed in proportion to risk, and the costs of utilities that are separately metered to each unit shall be assessed in proportion to usage.

(4) If a common expense is caused by the negligence or misconduct of any unit owner, the association may assess that expense exclusively against his unit.

**(d) Reallocation.**--If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

**Cross References.** Section 5314 is referred to in sections 5102, 5103, 5312, 5315 of this title.

**§ 5315. Lien for assessments.**

**(a) General rule.**--The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in a like manner as a mortgage on real estate. A judicial or other sale of the unit in execution of a common element lien or any other lien shall not affect the lien of a mortgage on the unit, except the mortgage for which the sale is being held, if the mortgage is prior to all other liens upon the same property except those liens identified in 42 Pa.C.S. § 8152(a) (relating to judicial sale as affecting lien of mortgage) and liens for planned community assessments created under this section. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged under section 5302(a)(10), (11) and (12)

(relating to power of unit owners' association) and reasonable costs and expenses of the association, including legal fees, incurred in connection with collection of any sums due to the association by the unit owner or enforcement of the provisions of the declaration, bylaws, rules or regulations against the unit owner are enforceable as assessments under this section. If an assessment is payable in installments and one or more installments are not paid when due, the entire outstanding balance of the assessment becomes effective as a lien from the due date of the delinquent installment.

**(b) Priority of lien.--**

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

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

(ii) (A) Mortgages and deeds of trust on the unit securing first mortgage holders and recorded before due date of the assessment if the assessment is not payable in installments or the due date of the unpaid installment if the assessment is payable in installments.

(B) Judgments obtained for obligations secured by any such mortgage or deed of trust under clause (A).

(iii) Liens for real estate taxes and other governmental assessments or charges against the unit.

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

(i) As to unpaid common expense assessments made under section 5314(b) (relating to assessments for common expenses) that come due during the six months immediately preceding 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 additional 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.

**(3) Monetary exemption.**--The lien is not subject to the provisions of 42 Pa.C.S. § 8123 (relating to general monetary exemption).

**(c) Liens having equal priority.**--If the association and one or more associations, condominium associations or cooperative associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

**(d) Notice and perfection of lien.**--Subject to the provisions of subsection (b), recording of the declaration constitutes record notice and perfection of the lien.

**(e) Limitation of actions.**--A lien for unpaid assessments is extinguished unless proceedings to enforce the lien or actions or suits to recover sums for which subsection (a) establishes a lien are instituted within four years after the assessments become payable.

**(f) Other remedies preserved.**--Nothing in this section shall be construed to prohibit actions or suits to recover sums for which subsection (a) creates a lien or to prohibit an association from taking a deed in lieu of foreclosure.

**(g) Costs and attorney fees.**--A judgment or decree in any action or suit brought under this section shall include costs and reasonable attorney fees for the prevailing party.

**(h) Statement of unpaid assessments.**--The association shall furnish to a unit owner upon written request a recordable statement setting forth the amount of unpaid assessments currently levied against his unit and any credits of surplus in favor of his unit under section 5313 (relating to surplus funds). The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board and every unit owner.

**(i) Application of payments.**--Unless the declaration provides otherwise, any payment received by an association in connection with the lien under this section shall be applied first to any interest accrued by the association, then to any late fee, then to any costs and reasonable attorney fees incurred by the association in collection or enforcement and then to the delinquent assessment. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instructions placed on or accompanying a payment. (Nov. 30, 2004, P.L.1486, No.189, eff. 60 days; Apr. 20, 2016, P.L.156, No.21, eff. 60 days)

**2016 Amendment.** Act 21 amended subsec. (e).

**2004 Amendment.** Act 189 amended subsec. (b)(1) and (2)(i) and added subsec. (i).

**Cross References.** Section 5315 is referred to in section 5102 of this title.



**§ 5316. Association records.**

**(a) Financial records.**--The association shall keep financial records sufficiently detailed to enable the association to comply with section 5407 (relating to resales of units). All financial and other records shall be made reasonably available for examination by any unit owner and authorized agents.

**(b) Annual financial statements.**--Within 180 days after the close of its fiscal year, the association in any planned community having more than 12 units or subject to any rights under section 5215 (relating to subdivision or conversion of units) or 5211 (relating to conversion and expansion of flexible planned communities) shall prepare annual financial statements consisting of at least a balance sheet and a statement of revenues and expenses for the association. The cost of preparing the financial statements shall be a common expense. Each unit owner shall be entitled to receive from the association, within 30 days after submitting a written request to the association, a copy of the annual financial statements and, if such financial statements are audited, reviewed or compiled by an independent certified public accountant or independent public accountant, a copy of the independent accountant's report on the financial statements. The association may charge a fee not to exceed the cost of producing copies of records other than the financial statement.

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

**Cross References.** Section 5316 is referred to in sections 5103, 5102, 5322 of this title.

**§ 5317. Association as trustee.**

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person without actual knowledge that the association is exceeding or improperly exercising its powers is fully protected in dealing with the

association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

**§ 5318. Conveyance or encumbrance of common facilities.**

**(a) General rule.**--Portions of the common facilities may be conveyed or subjected to a security interest by the association if the persons entitled to cast at least 80% of the votes in the association, including 80% of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies agree to that action; but the owners of units to which any limited common facility is allocated must agree in order to convey that limited common facility or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

**(b) Required agreement.**--An agreement to convey common facilities or subject them to a security interest shall be evidenced by the execution of an agreement or ratifications of the agreement, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications shall be recorded in every county in which a portion of the planned community is situated and is effective only upon recording.

**(c) Association powers.**--The association on behalf of the unit owners may contract to convey common facilities or subject them to a security interest, but the contract is not enforceable against the association until approved under subsections (a) and (b). Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

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

**(e) Right of access and support.**--A conveyance or encumbrance of common facilities pursuant to this section does not deprive any unit of its right of access and support.

**(f) Preexisting encumbrances.**--Unless the declaration otherwise provides, a conveyance or encumbrance of common facilities pursuant to this section does not affect the priority or validity of preexisting encumbrances.

**(g) Limitation.**--Common facilities which may be conveyed or encumbered pursuant to this section shall not include any land, buildings or other facilities:

- (1) containing or comprising one or more units; or

(2) necessary for the use or operation of one or more units.

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

(Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

**2018 Amendment.** Act 84 amended subsec. (d) and added subsec. (h).

**Cross References.** Section 5318 is referred to in sections 5302, 5319 of this title.

**§ 5319. Other liens affecting planned community.**

**(a) General rule.**--Except as provided in subsection (b), a judgment for money against the association, if and when the judgment has been perfected as a lien on real property, is not a lien on the common facilities but is a lien in favor of the judgment lienholder against all of the units in the planned community at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

**(b) Security interest in common facilities.**--If the association has granted a security interest in the common facilities to a creditor of the association under section 5318 (relating to conveyance or encumbrance of common facilities), the holder of that security interest shall exercise its right against the common facilities before its judgment lien on any unit may be enforced.

**(c) Release upon payment of unit owner's share.**--Whether perfected before or after the creation of the planned community, if a lien other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the planned community, becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his unit; and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment shall be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

**(d) Indexing of judgments.**--A judgment against the association shall be indexed in the name of the planned community and the association and, when so indexed, is notice of the lien against the units.

**Cross References.** Section 5319 is referred to in section 5102 of this title.

**§ 5320. Declarant delivery of items to association.**

Except as set forth in paragraph (9), not later than 60 days after the required termination of the period of declarant control under section 5303(c) (relating to executive board members and officers) or the declarant's earlier voluntary termination of control, the declarant shall deliver to the association all property of the unit owners and of the association held by or controlled by the declarant, including, without limitation, all of the following items, if applicable, as to each planned community or other owners' association operated by the association:

(1) The original or a certified copy or a photocopy of the recorded declaration and all amendments thereto. If a photocopy is delivered, the photocopy shall reflect the recording information and shall be accompanied by an affidavit executed by the declarant certifying the photocopy to be a true, correct and complete copy of the actual recorded declaration and all amendments thereto.

(2) The association articles of incorporation, if incorporated, with evidence of filing with the Department of State.

(3) A copy of the bylaws.

(4) A complete set of all executive board minutes and resolutions and all other books and records of the association.

(5) A complete copy of all rules and regulations that may have been adopted.

(6) Copies of all Federal, State and local tax returns filed by or on behalf of the association and copies of any tax-exempt elections made by or on behalf of the association.

(7) Copies of all past and current budgets of the association.

(8) Resignations of officers and members of the executive board who are required to resign because the declarant is required to relinquish or has relinquished control of the association.

(9) Not later than 90 days after the required termination of the period of declarant control under section 5303(c) or the declarant's earlier voluntary termination of control, a complete audit of the finances of the association for the time period between the last audit of the association's financial books and

records and the date of termination of the period of declarant control, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, the costs of which audit are to be borne equally by the declarant and the association. If the planned community consists of not more than 12 units, a warranty from the declarant to the association that the books and records of the association completely and accurately reflect all activities of the association from its inception through the date of termination of the period of declarant control may be substituted for the audit referred to in this paragraph.

(10) All association funds or control thereof.

(11) All tangible personal property and inventories thereof:

(i) that may have been represented or should have been represented by the declarant in any public offering statement, sales materials or other writings to be part of the common elements; or

(ii) that are otherwise property of the association.

(12) A copy of the plans or drawings and specifications, if any, utilized in the construction, rehabilitation, renovation or remodeling of any buildings and improvements within the planned community and in the construction and installation of any mechanical components and equipment serving the buildings and improvements and property if and to the extent the construction, rehabilitation, renovation, remodeling or installation was performed by or on behalf of the declarant and substantially completed during the period commencing three years prior to the date of the first public offering statement regarding the planned community. If no public offering statement is required for any unit in the planned community, the three-year period shall commence on the date of the recording of the planned community declaration or amendment thereto with respect to such improvements and shall end on the date by which compliance with this section is required. If such construction, rehabilitation, renovation, remodeling or installation was substantially completed within the three-year period but not by or on behalf of the declarant, the obligation of the declarant under this paragraph shall be to provide all such plans, drawings and specifications in the possession of the declarant and to use reasonable efforts to obtain and provide any such plans, drawings or specifications not within the possession of the declarant. If such construction, rehabilitation, renovation, remodeling or installation was substantially completed more than three years prior to the commencement of the three-year period described in this paragraph, the obligations of the declarant under this paragraph shall be to provide all such plans,

drawings and specifications in the possession of the declarant. To the extent previously made available to the declarant, the declarant in all cases shall deliver to the association owners operating, care and maintenance manuals and other information regarding mechanical components and equipment serving any buildings and improvements in the planned community. A declarant's delivery of plans, drawings or specifications under this paragraph shall not constitute a representation or warranty of the accuracy or completeness of the plans, drawings or specifications and shall not expand or otherwise affect the declarant's warranties created under section 5411 (relating to warranty against structural defects).

(13) All insurance policies insuring the association then in force.

(14) Copies of any certificates or statements of occupancy which may have been issued with respect to the improvements comprising the planned community, if and to the extent available.

(15) Any other permits issued by governmental bodies applicable to the planned community property which are then currently in force, notices of violations of governmental requirements then outstanding and incurred and all reports of investigations for the presence of hazardous conditions as defined in section 5402(a)(27) (relating to public offering statement; general provisions).

(16) Any written warranties then in force and effect from contractors, subcontractors, suppliers or manufacturers who have performed work with respect to the planned community property or have supplied equipment or services to the planned community property.

(17) A roster of unit owners and mortgagees and their respective addresses and telephone numbers, if known, as shown on the declarant's records.

(18) Employment contracts in which the association is or is to be one of the contracting parties.

(19) Service and other contracts and leases in which the association is or is to be one of the contracting parties and service contracts in which the association has directly or indirectly an obligation or a responsibility to pay some or all of the fees or charges of the person or persons performing such services.

**Cross References.** Section 5320 is referred to in section 5222 of this title.

**§ 5321. Alternative dispute resolution in planned communities.**

**(a) Applicability.--**

(1) A planned community established after the effective date of this section shall adopt bylaws in compliance with this section.

(2) A planned community established on or before the effective date of this section may adopt bylaws in compliance with the provisions of this section.

**(b) Procedures.--**

(1) The bylaws shall establish procedures for an alternative dispute resolution for disputes between:

- (i) two or more unit owners; or
- (ii) a unit owner and the association.

(2) Alternative dispute resolution shall be limited to disputes where all parties agree to alternative dispute resolution.

(3) Costs and fees associated with alternative dispute resolution, excluding attorney fees, shall be assessed equally against all parties to a dispute.

**(c) Construction.--**Nothing in this section shall be construed to affect or impair the right of a unit owner, declarant or association to pursue a private cause of action or seek other relief.

(May 4, 2018, P.L.96, No.17, eff. 60 days)

**2018 Amendment.** Act 17 added section 5321.

**Cross References.** Section 5321 is referred to in section 5322 of this title.

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

**(a) General rule.--**A unit owner in good standing may file a complaint with the Bureau of Consumer Protection in the Office of the Attorney General in the event of a violation by the declarant or the association of sections 5308 (relating to meetings), 5309 (relating to quorums) and 5310 (relating to voting; proxies).

**(b) Condition.--**If an alternative dispute resolution procedure is available to the unit owner under the association's declaration, bylaws, rules or regulations, a complaint may not be filed by a unit owner with the Bureau of Consumer Protection until the earlier of:

(1) the unit owner exhausting the alternative dispute resolution procedure without a resolution between the unit owner and the association; or

(2) at least 100 days have passed since the unit owner commenced the alternative dispute resolution procedure and the unit owner and association having not reached a resolution.

**(c) Immediate filing.--**A complaint may be filed by a unit owner with the Bureau of Consumer Protection immediately if:

(1) an alternative dispute resolution procedure is not available to the unit owner under the association's declaration, bylaws, rules or regulations; or

(2) the association refuses alternative dispute resolution under section 5321(b)(2) (relating to alternative dispute resolution in planned communities).

**(d) Construction.**--Nothing in this section shall be construed to affect or impair the right of a unit owner, declarant or association to pursue a private cause of action or seek other relief, as authorized by law.

(May 4, 2018, P.L.96, No.17, eff. 60 days)

**2018 Amendment.** Act 17 added section 5322.



**CHAPTER 54**  
PROTECTION OF PURCHASERS

**Sec.**

- 5401. Applicability; waiver.
- 5402. Public offering statement; general provisions.
- 5403. Public offering statement; time-share estates.
- 5404. Public offering statement; planned communities containing conversion buildings.
- 5405. Public offering statement; planned community securities.
- 5406. Purchaser's right to cancel.
- 5407. Resales of units.
- 5408. Escrow of deposits.
- 5409. Release of liens.
- 5410. Planned communities containing conversion buildings.
- 5411. Warranty against structural defects.
- 5412. Effect of violations on rights of action.
- 5413. Labeling of promotional material.
- 5414. Declarant's obligation to complete and restore.

**Enactment.** Chapter 54 was added December 19, 1996, P.L.1336, No.180, effective in 45 days.

**§ 5401. Applicability; waiver.**

**(a) General rule.**--This chapter applies to all units subject to this subpart, except as provided in subsection (b) and section 5411 (relating to warranty against structural defects) or as modified or waived by agreement of the purchaser of any unit which is intended for nonresidential use at the time of sale of such unit by the declarant or by agreement of purchasers of units in a planned community who are or intend to be in the business of buying and selling planned community units, provided that:

(1) a purchaser of a unit intended for residential use at the time of sale by the declarant may not modify or waive the provisions of section 5411 with regard to such unit and the common elements;

(2) with regard to any limited common element appurtenant only to nonresidential units, the unit owners of all such units have agreed to such modification or waiver and, with regard to any common elements other than limited common elements in a planned community in which all units are restricted to nonresidential use, all unit owners have agreed to such modification or waiver; and

(3) no modification or waiver shall prevent any unit owner from indirectly benefiting from any provision in this chapter by

reason of such unit owner being a unit owner in the planned community and a member of the association.

**(b) Public offering statements.**--A public offering statement need not be prepared or delivered in the case of:

- (1) a gratuitous transfer of a unit;
- (2) a disposition pursuant to court order;
- (3) a disposition by a government or governmental agency;
- (4) a disposition by foreclosure or deed in lieu of foreclosure;
- (5) a disposition of a unit situated wholly outside this Commonwealth pursuant to a contract executed wholly outside this Commonwealth; or
- (6) a transfer to which section 5407 (relating to resales of units) applies.

**(c) Resale certificates.**--A resale certificate as described in section 5407 need not be prepared or delivered in the cases described in subsection (b)(1) through (5).

**(d) Unified public offering statement.**--If a unit is part of two or more planned communities or is part of a planned community and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this Commonwealth, a single public offering statement conforming to the requirements of sections 5402 (relating to public offering statement; general provisions), 5403 (relating to public offering statement; time-share estates) and 5404 (relating to public offering statement; planned communities containing conversion buildings), as those requirements relate to any real estate regimes in which the unit is located and to any other requirements imposed under the laws of this Commonwealth, may be prepared and delivered in lieu of providing two or more public offering statements.

**Cross References.** Section 5401 is referred to in sections 5102, 5406 of this title.

**§ 5402. Public offering statement; general provisions.**

**(a) General rule.**--Except as provided in subsection (b), a public offering statement must contain or fully and accurately disclose:

- (1) The name and principal address of the declarant and of the planned community.
- (2) A general description of the planned community, including, without limitation, the types, number and declarant's schedule of commencement and completion of construction of all buildings, units and amenities.
- (3) A narrative description of the type and character of units offered, including a statement of the degree of completion

to be provided or undertaken by the declarant of such units and the common elements necessary for use and enjoyment of such units upon the conveyance by the declarant of units offered.

(4) The total number of additional units that may be included in the planned community and the proportion of units the declarant intends to rent or market in blocks of units to investors.

(5) A brief narrative description of any options reserved by a declarant to withdraw withdrawable real estate under section 5206(1) (relating to contents of declaration for flexible planned communities) and the expected effect that withdrawal would have on the remaining portion of the planned community.

(6) Copies and a brief narrative description of the significant features of the declaration, other than the plats and plans, and the bylaws, rules and regulations, agreement of sale, copies of any contracts and leases to be signed by the purchasers prior to or at closing and a brief narrative description of any other contracts or leases or agreements of a material nature to the planned community that will or may be subject to cancellation by the association under section 5305 (relating to termination of contracts and leases of declarant).

(7) Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first conveyance to a purchaser and thereafter the current budget of the association, a statement of who prepared the budget and a statement of the budget's material assumptions, including those concerning occupancy and inflation factors. The budget must include, without limitation:

(i) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement.

(ii) A statement containing a description of any provisions made in the budget for reserves for anticipated material capital expenditures or any other reserves or, if no provision is made for reserves, a statement to that effect.

(iii) The projected common expense assessment by category of expenditures for the association.

(iv) The projected monthly common expense assessment for each type of unit.

(8) Any of the following:

(i) Services not reflected in the budget that the declarant provides or expenses that the declarant pays and that the declarant expects may become at any subsequent time a common expense of the association.

(ii) Personal property not owned by the association but provided by the declarant and being used or to be used in the operation and enjoyment of the common elements which is or will be required in connection with the operation and enjoyment of the common elements after such personal property is no longer provided by the declarant and the projected common expense assessment for the association and for each type of unit attributable to each of those services or expenses and purchase or rental of such personal property.

(9) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee.

(10) A description of any liens, defects or encumbrances on or affecting the title to the planned community.

(11) A description of any financing for purchasers offered or arranged by the declarant.

(12) The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages.

(13) A statement in at least ten-point boldface type, appearing on the first page of the public offering statement, as follows:

(i) That, within seven days after receipt of a public offering statement or an amendment to the public offering statement that materially and adversely affects the rights or obligations of the purchaser, the purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant.

(ii) That, if a declarant fails to provide a public offering statement and any amendments to a purchaser before conveying a unit, the purchaser may recover from the declarant damages as provided in section 5406(c) (relating to purchaser's right to cancel).

(iii) A description of damages under section 5406(c).

(iv) That, if a purchaser receives the public offering statement more than seven days before signing a contract, the purchaser cannot cancel the contract unless there is an amendment to the public offering statement that would have a material and adverse effect on the rights or obligations of that purchaser.

(14) A statement of any judgments against the association, the status of any pending suits to which the association is a party and the status of any pending suits material to the planned community of which a declarant has actual knowledge.

(15) A statement that any deposit made in connection with the purchase of a unit will be held in an escrow account in accordance with the provisions of section 5408 (relating to

escrow of deposits) and will be returned to the purchaser if the purchaser cancels the contract pursuant to section 5406.

(16) Any restraints on alienation of any portion of the planned community.

(17) A description of all insurance coverage provided or intended to be provided, if such insurance is not then in effect, for the benefit of unit owners, including the types and extent of coverage and the extent to which such coverage includes or excludes improvements or betterments made to units, in accordance with section 5312 (relating to insurance).

(18) Any fees or charges to be paid by unit owners, currently or in the future, for the use of the common elements, limited common elements and other facilities related to the planned community.

(19) The extent to which financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" under section 5414 (relating to declarant's obligation to complete and restore).

(20) All unusual and material circumstances, features and characteristics of the planned community and the units.

(21) In the case of a leasehold planned community, at least the following information:

(i) The name and address of each lessor and his assignee, if any.

(ii) Any relationship between the declarant and any lessor or assignee.

(iii) A description of the leased property.

(iv) The rent and any provision in the lease for increases in the rent and any other charges or payments required to be paid by the lessee under the lease.

(v) Whether the lessee has any right to terminate the lease.

(vi) The information contained in the declaration as required by section 5207(a) (relating to leasehold planned communities).

(vii) The following notice in boldface type:

"Purchasers should be aware that this is a leasehold planned community, and the purchaser's interest therein may be less valuable than a fee interest, may depreciate over time and may be of questionable marketability."

(22) A statement containing a declaration as to the present condition of all structural components and major utility installations in the subject property, including the dates of construction, installation and major repairs, if known or ascertainable, and the expected useful life of each item, together with the estimated cost in current dollars of replacing each of the same.

(23) A description of how votes are allocated among the units and a statement as to whether cumulative or class voting is permitted and, if so, under what circumstances. The statement shall also explain the operation of cumulative or class voting.

(24) A description of any circumstances under which the association is to become a master association or part of a master association.

(25) A statement of all governmental approvals and permits required for the use and occupancy of the planned community, indicating the name and expiration date of each such approval or permit that has been obtained and, as to any approvals or permits that have not been obtained, a statement indicating when each such approval or permit is expected to be obtained and the person responsible for the expense of obtaining each such approval or permit.

(26) A statement as to whether there are any outstanding and uncured notices of violations of governmental requirements and, if there are any such notices of violations, a description of the alleged violation and a statement indicating when each violation is expected to be cured and the person who shall bear the expense of curing such violation.

(27) A statement as to whether the declarant has knowledge of any one or more of the following:

(i) Hazardous conditions, including contamination, affecting the planned community site by hazardous substances, hazardous wastes or the like or the existence of underground storage tanks for petroleum products or other hazardous substances.

(ii) Any investigation conducted to determine the presence of hazardous conditions on or affecting the planned community site.

(iii) Any finding or action recommended to be taken in the report of any such investigation or by any governmental body, agency or authority, in order to correct any hazardous conditions and any action taken pursuant to those recommendations. If the declarant has no knowledge of such matters, the declarant shall make a statement to that effect. The declarant shall also set forth the address and phone number of the regional offices of the Department of Environmental Resources and the United States Environmental Protection Agency where information concerning environmental conditions affecting the planned community site may be obtained.

(28) A summary and description of all the provisions of the declaration for the planned community to comply with section 5205(16) (relating to contents of declaration; all planned communities).

(29) A statement identifying all facilities and amenities in the planned community which the declarant shall be obligated to complete and with respect thereto:

(i) The time within which each identified facility or amenity shall be completed.

(ii) Whether there is a source of funding to complete the facilities and amenities or any security for the completion, and a description of any such funding source and security.

(iii) Who will own the facilities and amenities to be completed by the declarant.

(iv) The responsibilities of unit owners and the association, respectively, for the maintenance, repair, improvement, administration and regulation of the facilities and amenities.

**(b) Exceptions.**--If a planned community composed of not more than 12 units is not a flexible planned community and no power is received to a declarant to make the planned community part of a larger planned community, a group of planned communities or other real estate, a public offering statement may, but need not, include the information otherwise required by subsection (a) (4) and (5) and the narrative descriptions of documents required by subsection (a) (6).

**(c) Amendment for material change in information.**--A declarant shall promptly amend the public offering statement to report any material change in the information required by this section.

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days; Mar. 27, 2020, P.L.35, No.11, eff. 60 days)

**2020 Amendment.** Act 11 amended subsec. (a) (18).

**2004 Amendment.** Act 189 amended subsec. (a) (13) (i) and (iv).

**Cross References.** Section 5402 is referred to in sections 5102, 5320, 5401, 5403, 5404, 5407, 5410, 5414 of this title.

**§ 5403. Public offering statement; time-share estates.**

If the declarant provides that ownership or occupancy of any units are or may be owned in time-shares, the public offering statement shall contain or disclose in addition to the information required by section 5402 (relating to public offering statement; general provisions):

(1) The total number of units in which time-share estates may be created.

(2) The total number of time-share estates that may be created in the planned community.

(3) The projected common expense assessment for each time-share estate and whether those assessments may vary seasonally.

(4) A statement of any services, not reflected in the budget, which the declarant provides or expenses which he pays

and which the declarant expects may become at any subsequent time a common expense of the association and the projected common expense assessment attributable to each of those services or expenses for each time-share estate.

(5) The extent to which the time-share owners of a unit are jointly and severally liable for the payment of real estate taxes and all assessments and other charges levied against that unit.

(6) The extent to which a suit for partition may be maintained against a unit owned in time-share estates.

(7) The extent to which a time-share estate may become subject to a tax or other lien arising out of claims against other time-share owners of the same unit.

(8) A statement in at least ten-point boldface type, appearing on the first page of the public offering statement, that:

(i) Within seven days after receipt of a public offering statement, a purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant.

(ii) If a declarant fails to provide a public offering statement to a purchaser before conveying a unit, the purchaser may recover from the declarant damages as provided in section 5406(c) (relating to purchaser's right to cancel) and a description of such damages.

(iii) If a purchaser receives the public offering statement more than seven days before signing a contract, the purchaser cannot cancel the contract.

**Cross References.** Section 5403 is referred to in sections 5102, 5401 of this title.

**§ 5404. Public offering statement; planned communities containing conversion buildings.**

**(a) General rule.**--The public offering statement of a planned community containing a conversion building must contain, in addition to the information required by section 5402 (relating to public offering statement; general provisions):

(1) A statement by the declarant, based on a report prepared by an independent registered architect or professional engineer:

(i) Describing the age and present condition and, if known or reasonably ascertainable, the dates of construction, installation and major repairs of all structural components and mechanical and electrical installations, including, but not limited to, roofs, plumbing, heating, air conditioning, elevators, storm water systems and sewage treatment systems material to the use and enjoyment of the planned community.



(ii) Describing the results of the inspection of the units and common elements required pursuant to section 5411(c) (relating to warranty against structural defects) for visible conditions that adversely affect the health or safety of residential occupants. The statement should also state the extent to which the report by the architect or professional engineer is based upon a visual inspection of the units as well as the common elements.

(2) A statement by the declarant of the expected useful life of each item reported on in paragraph (1), including the current replacement costs of such item.

(3) A list of any outstanding notices of uncured violations of building codes or other municipal regulations, together with the estimated cost of curing those violations.

(4) A statement by the declarant, based on a report prepared by an independent licensed exterminating company, describing the presence at the planned community of any visible pest conditions dangerous to health and safety, such as the presence of insects and rodents dangerous to health or safety, and outlining actions taken or to be taken to eliminate the existence of pest conditions dangerous to health or safety.

**(b) Applicability of section.--**This section applies only to units that may be occupied for residential use.

**Cross References.** Section 5404 is referred to in sections 5102, 5401, 5411 of this title.

**§ 5405. Public offering statement; planned community securities.**

If an interest in a planned community is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement in this subpart if the declarant delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a planned community is not in and of itself a security under the provisions of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972. The offer and sale of planned community units in accordance with the requirements of this chapter shall not also be subject to the registration requirements of section 201 or 301 of the Pennsylvania Securities Act of 1972 or the promotional real estate sales requirements of the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act.

**Cross References.** Section 5405 is referred to in section 5102 of this title.

**§ 5406. Purchaser's right to cancel.**

**(a) General rule.**--In cases where delivery of a public offering statement is required under section 5401 (relating to applicability; waiver), a declarant shall provide a purchaser of a unit with a copy of the public offering statement and all amendments thereto not later than the date the purchaser executes the contract of sale for such unit or, if no contract of sale is executed, not later than seven days before conveyance of such unit. Unless a purchaser is given the public offering statement, including all the currently effective amendments thereof, within the time period referred to in the preceding sentence, the purchaser, before conveyance, may cancel the contract within seven days, after first receiving the public offering statement and all currently effective amendments. If a public offering statement is amended after the public offering statement has been received by a purchaser of a unit, the amendment shall be provided to the purchaser promptly after it becomes effective. If the amendment materially and adversely affects the rights or obligations or both of the purchaser, then the purchaser, before conveyance, may cancel the contract of sale within seven days after receiving the amendment.

**(b) Method and effect of cancellation.**--If a purchaser elects to cancel a contract pursuant to subsection (a), the purchaser may do so by hand-delivering notice thereof to the declarant or by mailing notice thereof by prepaid United States mail to the declarant or to the declarant's agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

**(c) Penalty for noncompliance by declarant.**--If a declarant fails to provide a purchaser to whom a unit is conveyed with a public offering statement and all amendments thereto as required by subsection (a), the purchaser, in addition to any other relief, is entitled to receive from the declarant an amount equal to 5% of the sales price of the unit up to a maximum of \$2,000 or actual damages, whichever is the greater amount. A minor omission or error in the public offering statement or an amendment thereto that is not willful shall entitle the purchaser to recover only actual damages, if any.

(Mar. 24, 1998, P.L.206, No.37, eff. 60 days)

**1998 Amendment.** Act 37 amended subsec. (a).

**Cross References.** Section 5406 is referred to in sections 5402, 5403 of this title.

**§ 5407. Resales of units.**

**(a) Information supplied by unit owner.**--In the event of a resale of a unit by a unit owner other than a declarant, the unit owner shall furnish to a purchaser before execution of any contract for sale of a unit or otherwise before conveyance a

copy of the declaration other than the plats and plans, the bylaws, the rules or regulations of the association and a certificate containing:

(1) A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit.

(2) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner and any surplus fund credits to be applied with regard to the unit pursuant to section 5313 (relating to surplus funds).

(3) A statement of any other fees payable by unit owners.

(4) A statement of any capital expenditures proposed by the association for the current and two next succeeding fiscal years.

(5) A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified project.

(6) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association.

(7) The current operating budget of the association.

(8) A statement of any judgments against the association and the status of any pending suits to which the association is a party.

(9) A statement describing any insurance coverage provided for the benefit of unit owners.

(10) A statement as to whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned thereto violate any provision of the declaration.

(11) A statement as to whether the executive board has knowledge of any violations of applicable governmental requirements or knowledge of the existence of any hazardous conditions pursuant to section 5402(a)(27) (relating to public offering statement; general provisions) with respect to the unit, the limited common elements assigned to the unit or any other portion of the planned community.

(12) A statement of the remaining term of any leasehold estate affecting the planned community and the provisions governing any extension or renewal thereof.

(13) A statement as to whether the declaration provides for cumulative voting or class voting.

(14) A statement as to whether an agreement to terminate the planned community has been submitted to the unit owners for approval and remains outstanding.

(15) A statement of whether the planned community is a master association or is part of a master association or could become a master association or part of a master association.

(16) A statement describing which units, if any, may be owned in time-share estates and the maximum number of time-share estates that may be created in the planned community.

(17) A statement of whether the declarant retains the special declarant right to cause a merger or consolidation of the planned community and, if so, the information describing such right which was supplied by the declaration pursuant to section 5205(13) (relating to contents of declaration; all planned communities), if any.

**(b) Information supplied by association.**--The association, within ten days after a request by a unit owner, shall furnish a certificate containing the information and copies of documents necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to subsection (a) is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

**(c) Liability for error or inaction by association.**--A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner.

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

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

**2004 Amendment.** Act 189 amended subsec. (c) and added subsec. (d).

**Cross References.** Section 5407 is referred to in sections 5102, 5302, 5316, 5401 of this title.

**§ 5408. Escrow of deposits.**

**(a) General rule.**--Any deposit (which shall not include any installment payment under an installment sales contract nor a payment specifically stated in a sales contract to be in payment of or on account of extras, changes or custom work) made in connection with the purchase or reservation of a unit from a declarant shall be placed in escrow and held in this Commonwealth by a licensed real estate broker, an attorney admitted to practice in this Commonwealth, a financial institution or a licensed title insurance company in an account or in the form of a certificate of deposit designated solely for

that purpose with a financial institution whose accounts are insured by a governmental agency or instrumentality until:

(1) delivered to the declarant at closing or, in the case of the sale of a unit pursuant to an installment sales contract, upon the expiration of 30 days from the date of occupancy of the unit;

(2) delivered to the declarant because of purchaser's default under a contract to purchase the unit; or

(3) refunded to the purchaser.

**(b) Use of bond or letter of credit.**--In lieu of escrowing deposits in accordance with subsection (a), a declarant may:

(1) obtain and maintain a corporate surety bond issued by a surety authorized to do business in this Commonwealth, and in which the declarant has no direct or indirect ownership interest, in the form and in the amount set forth in subsection (d); or

(2) obtain and maintain an irrevocable letter of credit issued by a financial institution whose accounts are insured by a governmental agency or instrumentality, and in which the declarant has no direct or indirect ownership interest, in the form and in the amount set forth in subsection (d).

**(c) Timing.**--A corporate surety bond or irrevocable letter of credit obtained pursuant to subsection (b) shall be maintained until all deposits received by the declarant have been deposited in escrow or properly credited or refunded to a purchaser under the conditions enumerated in subsection (a).

**(d) Form and amount of bond or letter of credit.**--

(1) A bond obtained pursuant to subsection (b)(1) shall be payable to the Commonwealth for use and benefit of every person protected by the provisions of this section. The declarant shall deposit the bond with the Attorney General. The bond shall be a blanket bond in the minimum amount of \$1,000,000, in a form acceptable to the Attorney General.

(2) A letter of credit obtained pursuant to subsection (b)(2) shall be payable to the Commonwealth for the use and benefit of every person protected by the provisions of this section. The declarant shall deposit the letter of credit with the Attorney General. The letter of credit shall be a blanket letter of credit, in a form acceptable to the Attorney General, in the minimum amount of \$1,000,000.

**(e) Adjustment of bond amount.**--The Attorney General may annually adjust the amount of the required bond, based upon the cumulative change in the Consumer Price Index for All Urban Consumers for the Pennsylvania, New Jersey, Delaware and Maryland area, using 2004 as the base year. An adjustment shall be effective 60 days after publication in the Pennsylvania Bulletin of notice of the adjustment.

(Jan. 6, 2006, P.L.13, No.3, eff. 60 days)

**Cross References.** Section 5408 is referred to in sections 5102, 5402 of this title.

**§ 5409. Release of liens.**

(a) **General rule.**--Before conveying a unit, other than by deed in lieu of foreclosure, to a purchaser other than a declarant, a declarant shall record or furnish to the purchaser releases of all liens affecting that unit and its rights with respect to any common elements which the purchaser does not expressly agree to take subject to or assume or shall provide a surety bond or substitute collateral for or insurance against the liens adequate in nature and amount. This subsection does not apply to any convertible or withdrawable real estate in which no unit has been conveyed.

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

(1) All liens the foreclosure of which would deprive unit owners of any right of access to or easements of support of their units.

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

(Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

**2018 Amendment.** Act 84 amended subsec. (b)(2).

**Cross References.** Section 5409 is referred to in section 5102 of this title.

**§ 5410. Planned communities containing conversion buildings.**

(a) **Notice of conversion.**--The declarant of every planned community containing one or more conversion buildings shall give each of the residential tenants and residential subtenants, if any, lawfully in possession of a unit or units in a conversion building or buildings a conversion notice no later than one year before the declarant requires the residential tenant and residential subtenant to vacate. The conversion notice must set forth generally the rights of residential tenants and residential subtenants under this section and shall be hand delivered to the unit or mailed by prepaid United States certified or registered mail, return receipt requested, to the residential tenant and residential subtenant at the address of the unit and not more than one other mailing address provided by the residential tenant. Every notice shall be accompanied by a public offering statement concerning the proposed sale of planned community units within such building or buildings.

Except as provided in subsection (f), no residential tenant or residential subtenant in a conversion building may be required by the declarant to vacate the unit earlier than one year after the conversion notice date except by reason of nonpayment of rent, waste or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy, including those terms that apply to a period occurring in whole or in part after the conversion notice date, may not be altered but may be enforced during that period. Failure of a declarant to give notice to a residential tenant or residential subtenant entitled to such notice under this subsection is a defense to an action for possession against such residential tenant or residential subtenant.

**(b) Offer to tenant to purchase unit.--**For six months after the conversion notice date, the declarant shall offer to convey each unit or proposed unit occupied for residential use in a conversion building to the tenant who leases that unit. If the tenant fails to purchase his unit during that six-month period, the declarant may not offer to dispose of an interest in that unit during the following six months at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection shall not apply to any rental unit:

- (1) which, immediately prior to the conversion notice date, was restricted or devoted exclusively to nonresidential use; or
- (2) the boundaries of which, after the creation of the planned community, will not substantially conform to the boundaries of such unit on the conversion notice date.

**(c) Effect of wrongful conveyance.--**If a declarant, in violation of subsection (b), conveys a unit to a purchaser for value who has no knowledge of the violation, recording of the deed conveying the unit extinguishes any right a tenant may have under subsection (b) to purchase that unit if the deed states that the seller has complied with subsection (b) but does not affect the right of a tenant to recover damages from the declarant for a violation of subsection (b).

**(d) Notice to vacate.--**If a conversion notice specifies a date by which a unit or proposed unit must be vacated, the conversion notice also constitutes a notice of termination of the tenant's lease, subject to revocation in accordance with subsection (i), and a notice to quit specified by section 501 of the act of April 6, 1951 (P.L.69, No.20), known as The Landlord and Tenant Act of 1951.

**(e) Improper lease termination prohibited.--**

- (1) Nothing in this section permits termination of a lease by a declarant in violation of its terms.
- (2) Nothing in this section or in any lease shall prohibit a residential tenant, after receiving notice under subsection

(a), from terminating any lease without any liability for such termination provided such tenant gives the building owner 90 days' written notice of the intent to terminate the lease.

(3) The declarant or owner of any proposed conversion planned community shall not engage in any activity of any nature which would coerce the tenant into terminating any lease, including, but not limited to, harassing tenants or withholding normal services or repairs.

**(f) Units leased to senior citizens and disabled persons.--**

(1) For the purpose of this subsection, an eligible tenant or subtenant shall be a natural person who, on the conversion notice date, lawfully occupies a unit in a conversion building as a principal residence and is 62 years of age or older or is disabled and has occupied the unit for at least two years. For purposes of this subsection, a person shall be deemed to be disabled if on the conversion notice date he is totally and permanently unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impediment, including, but not limited to, blindness.

(2) Within 60 days after the conversion notice date, any tenant or subtenant in possession of a unit who believes that he is an eligible tenant or subtenant shall so notify the declarant and shall provide the declarant with proof of his eligibility. Any eligible tenant or subtenant who has established his eligibility as aforesaid shall be entitled to remain in possession of his unit for two years following the conversion notice date, notwithstanding any prior termination date in his lease, except by reason of nonpayment of rent, waste or conduct that disturbs other occupants' peaceful enjoyment of the planned community, and the terms of the tenancy, including terms that apply to a time period after the conversion notice date, may not be altered but may be enforced during the time period between the original lease termination date and the expiration of this two-year period except as is otherwise provided in paragraph (3).

(3) The monthly rental payable by the tenant during the time period commencing upon the later to occur of the original lease termination date or the first anniversary of the conversion notice date and ending upon the expiration of the two-year period described in paragraph (2) shall be the same monthly rental as was payable for the month immediately preceding the original lease termination date, except that, at the landlord's option, such monthly rental may be increased by the lesser of 5% of such monthly rental or the same percentage increase as the percentage increase, if any, in the Consumer Price Index as calculated and published by the United States Department of Labor for the six-month time period commencing on



the first day of the first full calendar month after the conversion notice date.

(4) Failure of a declarant to comply with the provisions of this subsection is a defense to an action for possession.

**(g) Tenant meetings; open to the public.--**With respect to any conversion building containing one or more units then occupied for residential use, at least 30 days before the conversion notice date, the declarant shall hold a tenant meeting open to the public in the municipality where the proposed conversion building is located at a place and time convenient to the persons who may be directly affected by the conversion. At least ten days' notice of the time and place of the meeting shall be given to residential tenants and subtenants in lawful possession of their units, in the same manner as is required for the giving of the conversion notice, and to the general public by a notice in a newspaper of general circulation in the municipality in which the planned community is located, except that no notice to the general public need be given with respect to conversion buildings as to which the provisions of section 5402(b) (relating to public offering statement; general provisions) are applicable. At such meeting, representatives of the declarant shall briefly describe the following and may, but shall not be required to, discuss other matters:

(1) The rights and obligations of tenants and subtenants under this section.

(2) Improvements, if any, then planned to be made to the planned community by the declarant.

(3) The anticipated approximate range of initial unit sales prices. Specific unit sales prices need not, however, be provided.

(4) The anticipated approximate range of estimated monthly common expenses for various types of units; however, specific per unit estimates need not be provided.

**(h) Community development grants.--**If Federal funds under the Community Economic Development Act of 1981 (Public Law 97-35, 42 U.S.C. § 9801 et seq.) have been used to finance the rehabilitation of multifamily rental housing, with the intent that such housing subsequent to the rehabilitation is to be used for residential rental purposes, such housing shall not be converted to a planned community for a period of ten years from the date the rehabilitation is completed.

**(i) Revocation.--**A declarant may subsequently revoke a conversion notice if the declarant has expressly reserved the right of revocation in the conversion notice and if the notice of revocation:

(1) Is given prior to the conveyance of any unit in the planned community occurring after the conversion notice date

other than a unit or units conveyed to a successor declarant or as a result of foreclosure of a mortgage on the unit or a deed in lieu thereof.

(2) Is given in the same manner as is required for the giving of the conversion notice.

(3) Is given to all persons who were entitled to receive the conversion notice and who continue to be in lawful occupancy at the time such notice of revocation is given. The giving of a notice of revocation revokes all rights granted under this section but does not revoke the rights granted to residential tenants under subsection (a) or (f), and such rights shall be deemed to have been incorporated in each residential tenant's lease.

**(j) Waiver of purchase rights.**--Notwithstanding any provisions of this subpart prohibiting waiver of rights, any tenant may waive his right to purchase a unit under subsection (b) if the waiver is in writing, is acknowledged and is given in consideration of:

(1) an extension of the term of the tenant's tenancy and right of occupancy under this subpart beyond the time period required by subsections (a) and (f) as applicable;

(2) the tenant entering into an agreement to purchase another unit in the planned community; or

(3) all occupants of the unit making alternative living arrangements.

**(k) Alteration of terms of tenancy.**--Notwithstanding any provisions of subsection (a) or (f), the terms of the tenancy of a tenant or subtenant may be altered with the express written consent of that tenant or subtenant, and such altered terms shall then be the terms of tenancy referred to in this section.

**(l) Application of section.**--The provisions of this section shall apply only with respect to conversion buildings in which one or more residential tenants or residential subtenants are in lawful occupancy on the conversion notice date, and the only tenants who are entitled to exercise the rights granted under this section are residential tenants or residential subtenants:

(1) who are in lawful occupancy of conversion building on the date the declarant gives the conversion notice; or

(2) who commence their tenancy after the notice of conversion is given to the other residential tenants without having been notified in writing, at or prior to the commencement of their tenancy, that the property is then a planned community and that they are not entitled to the rights granted under this section. Such rights continue only so long as the lawful occupancy of the tenant or subtenant continues.

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

**2004 Amendment.** Act 189 amended subsecs. (d) and (j)(1).

**Cross References.** Section 5410 is referred to in section 5103 of this title.

**§ 5411. Warranty against structural defects.**

**(a) Scope.--**Nothing in this section shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

**(b) General rule.--**

(1) A declarant warrants against structural defects in structures constructed, modified, altered or improved by or on behalf of such declarant in:

(i) each of the units and the controlled facilities that are part of a unit for two years from the date each unit is conveyed to a bona fide purchaser; and

(ii) all of the controlled facilities that are not part of a unit and all common facilities for two years except facilities which have been dedicated to a municipality, municipal authority or other governmental unit.

(2) Only the association may bring an action for breach of warranty with respect to common facilities and the controlled facilities that are not part of a unit. An action for breach of warranty with respect to one or more units or controlled facilities that are a part of a unit may be brought either by the association or an owner of an affected unit. Any conveyance of a unit during the two-year warranty period shall be deemed to transfer to the purchaser all of the declarant's warranties created under this section. The two years shall begin, as to each of the controlled facilities that are not part of a unit, whenever the controlled facilities that are not part of the unit have been completed and, as to each common facility, whenever such common facilities have been completed or, if later:

(i) As to any controlled facilities that are not part of a unit and as to common facilities within any additional real estate or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser.

(ii) As to any controlled facilities that are not part of a unit and as to common facilities within any convertible real estate or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser.

(iii) As to any controlled facilities that are not part of a unit and as to common facilities within any other portion of the planned community, at the time the first unit therein is conveyed to a bona fide purchaser.

**(c) Planned communities containing conversion buildings.--**A declarant of a planned community containing one or more conversion building warrants as follows:

(1) That there are no structural defects in components installed anywhere in the planned community or in work done or improvements made by or on behalf of the declarant anywhere in the planned community.

(2) That all units and common elements in each conversion building have been inspected for visible structural and mechanical defects and for other visible conditions that adversely affect the health or safety of residential occupants, as required by section 5404(a)(1) (relating to public offering statement; planned communities containing conversion buildings), except no such inspection is required of any unit if the tenant or other lawful occupant of the unit does not permit such inspection to be conducted.

(3) That any defects and other visible conditions found have been repaired.

The warranties under subsection (b) shall be applicable to any units and common elements that are located within a building that contains or comprises one or more units and is not a conversion building. Otherwise, the declarant may offer the units, common elements or both in an "as is" condition. The declarant of a planned community containing any conversion buildings may also give a more extensive warranty in writing. The times at which the warranties required by this subsection commence and the duration of such warranties shall be as provided in subsection (b).

**(d) Exclusion or modification of warranty.**--Except with respect to a purchaser of a unit for residential use, the warranty against structural defects:

(1) May be excluded or modified by agreement of the parties.

(2) Is excluded by expression of disclaimer, such as "as is," "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

**(e) Limitation of actions.**--No action to enforce the warranty created by this section shall be commenced later than six years after the warranty begins, provided, however, that the limitation period affecting a right of action by the association under this section shall be six years after the warranty begins or two years after the unit owners elect an executive board under section 5303(e) (relating to executive board members and officers), whichever is later.

**(f) Disclaimer of implied warranties.**--To the extent permitted by applicable law, a declarant may disclaim implied warranties applicable to any unit or common elements to which the warranty provided by this section applies, provided such disclaimer is set forth in the contract for the sale of a unit

and in the public offering statement for the planned community of which the unit or common element is a part. The disclaimer required under this subsection shall be set forth in 14-point boldface type.

(Mar. 24, 1998, P.L.206, No.37, eff. 60 days; Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

**2018 Amendment.** Act 84 amended subsec. (e).

**1998 Amendment.** Act 37 amended subsec. (b) and added subsec. (f).

**Cross References.** Section 5411 is referred to in sections 5102, 5103, 5320, 5401, 5404 of this title.

**§ 5412. Effect of violations on rights of action.**

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

(May 4, 2018, P.L.96, No.17, eff. 60 days)

**Cross References.** Section 5412 is referred to in section 5102 of this title.

**§ 5413. Labeling of promotional material.**

If any improvement contemplated in a planned community is required by section 5210 (relating to plats and plans) to be labeled "NEED NOT BE BUILT" on a plat or plan or is to be located within convertible real estate, no promotional material may be displayed or delivered to prospective purchasers which describes or depicts that improvement unless the description or depiction of the improvement is conspicuously labeled or identified as "NEED NOT BE BUILT."

**§ 5414. Declarant's obligation to complete and restore.**

**(a) Completing improvements.--**The declarant shall complete all improvements labeled "MUST BE BUILT" on plats or plans prepared pursuant to section 5210 (relating to plats and plans).

**(b) Repair and restoration.--**The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the planned community, of any portion of the planned community affected by the exercise of rights reserved pursuant to or created by sections 5211 (relating to conversion and expansion of flexible planned communities), 5212 (relating to withdrawal of withdrawable real estate), 5217 (relating to declarant offices, models and signs)

and 5218 (relating to easement to facilitate completion, conversion and expansion).

**(c) Substantial completion prerequisite to conveyance.--**A unit which is part of or constitutes a structure shall not be conveyed to a person other than a successor to any special declarant rights unless all structural components and common element mechanical systems of the structure containing or constituting such unit or units are substantially completed to the extent required of the declarant so as to permit the use of such unit or units and any limited common elements appurtenant thereto for their intended use. Such substantial completion shall be evidenced by a recorded certification of completion executed by an independent registered surveyor, architect or professional engineer with regard to any such structure.

**(d) Substantial completion of unit.--**No interest in a unit shall be conveyed to a person other than a successor to any special declarant rights until the unit is substantially completed in accordance with the descriptions set forth in both the declaration under section 5205 (relating to contents of declaration; all planned communities) and in the public offering statement under section 5402(a) (relating to public offering statement; general provisions), as evidenced by a recorded certificate of completion executed by an independent registered surveyor, architect or professional engineer.

**(e) Construction of section.--**Nothing contained in this subpart shall prevent the offering for sale of a unit or interest in a unit or the execution of any agreement to sell and purchase a unit or any interest in a unit (as opposed to actual conveyance) prior to the completion of the unit or any other portion of the planned community.

**Cross References.** Section 5414 is referred to in section 5402 of this title.



## **Retroactive Provisions – Uniform Planned Community Act**

Explanation: A number of residential developments which fall within the definition of planned community found in 68 Pa.C.S.A. § 5103 were created prior to the effective date of the Uniform Planned Community Act (February 3, 1997<sup>i</sup>). Included below are the provisions which **may** be retroactively applied pursuant to 68 Pa.C.S.A. § 5102(b) and (b.1) to a planned community created before February 3, 1997.<sup>ii</sup> The materials below are not specifically tailored for application to small/limited communities under 68 Pa.C.S.A. § 5102(a), nonflexible communities under § 5102(c), or nonresidential communities under § 5102 (e).

Act 189 of 2004, by adding subsection (b.1) to section 5102, increased the provisions of the Uniform Planned Community Act which apply retroactively. The sections below do not incorporate all of the changes made to the Uniform Planned Community Act by Act 189 of 2004, rather, only those changes which concern retroactive provisions. All of the material below is found in Title 68 of the Pennsylvania Consolidated Statutes, specifically the Uniform Planned Community Act. For ease of use, sections which were applied retroactively by Act 189 of 2004 are followed by the notation –as per Act 189|| or similar explanation.

### **§ 5102. Applicability.**

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

(1) such a planned community contains no more than 12 units and is not subject to any rights under section 5215 (relating to subdivision or conversion of units) to subdivide units or to convert into common elements or under section 5211 (relating to conversion and expansion of flexible planned communities) to add additional real estate, create units or limited common elements within convertible real estate or withdraw real estate, it is subject only to sections 5105 (relating to separate titles and taxation), 5106 (relating to applicability of local ordinances, regulations and building codes), 5107 (relating to eminent domain) and 5218 (relating to easement to facilitate completion, conversion and expansion) unless the declaration provides that the entire subpart is applicable; or

(2) such a planned community, regardless of the number of units, has common elements or limited common elements which include only storm water management facilities and related devices, real estate containing signage, lighting, landscaping, gates, walls, fences or monuments or open space and is not subject to any rights under section 5215 or under section 5211, it shall be subject only to the sections listed in paragraph (1), the provisions of sections 5103 (relating to definitions), 5104 (relating to variation by agreement), 5105, 5106, 5107, 5108 (relating to supplemental general principles of law applicable), 5109 (relating to construction against implicit repeal), 5110 (relating to uniformity of application and construction), 5111 (relating to severability), 5112 (relating to unconscionable agreement or term of contract), 5113 (relating to obligation of good faith) and 5114 (relating to remedies to be liberally administered) and the provisions of Chapter 53 (relating to management of planned community) and sections 5407 (relating to resales of units), 5408 (relating to escrow of deposits), 5409 (relating to release of liens) and 5411 (relating to warranty against structural defects) unless the declaration provides that the entire subpart is applicable. If a planned community is subject to the provisions of this paragraph, a declarant shall:

(i) include provisions in any sales agreement for a unit of such planned community which states that an association exists or may be created to own and manage certain generally described common



elements or limited common elements and that there may be imposed by the association assessments upon unit owners for expenses related to the ownership, management, administration or regulation of such elements; and

(ii) prepare and record a declaration in the manner set forth in section 5205 (relating to contents of declaration; all planned communities) or 5206 (relating to contents of declaration for flexible planned communities) or covenants and restrictions as may be appropriate for the planned community. The declarant shall provide to the purchaser copies of the proposed or recorded declaration or covenants and restrictions, an actual or proposed budget of the planned community in accordance with the provisions of section 5402(a)(7) (relating to public offering statement; general provisions) and the actual or proposed bylaws of the association, provided that the purchaser has the right, before conveyance, to cancel the agreement within seven days of the date of receiving a copy of the proposed or recorded declaration or covenants and restrictions, the actual or proposed budget and the actual or proposed 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) Retroactivity.--**Except as provided in subsection (c), sections 5105, 5106, 5107, 5203 (relating to construction and validity of declaration and bylaws), 5204 (relating to description of units), 5218, 5219 (relating to amendment of declaration), 5223 (relating to merger or consolidation of planned community), 5302(a)(1) through (6) and (11) through (15) (relating to power of unit owners' association), 5311 (relating to tort and contract liability), 5315 (relating to lien for assessments), 5316 (relating to association records), 5407 (relating to resales of units) and 5412 (relating to effect of violations on rights of action) and section 5103 (relating to definitions), 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 subpart; but those sections apply only with respect to events and circumstances occurring after the effective date of this subpart and do not invalidate specific provisions contained in existing provisions of the declaration, bylaws or plats and plans of those planned communities.

**(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(a) and (b) (relating to executive board members and officers), 5307 (relating to upkeep of planned community), 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 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.

**(c) Nonflexible planned communities.--**If a planned community created within this Commonwealth before the effective date of this subpart contains no more than 12 units and is not a flexible planned community, it is subject only to sections 5105, 5106, 5107 and 5218 unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of the provisions of subsection (d), in which case all the sections enumerated in subsection (b) apply to that planned community.

**(d) Amendments to declarations, bylaws, plats and plans.--**

(1) In the case of amendments to the declaration, bylaws and plats and plans of any planned community created before the effective date of this subpart:

(i) If the result accomplished by the amendment was permitted by law prior to this subpart, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or may be made under this subpart.

(ii) If the result accomplished by the amendment is permitted by this subpart and was not permitted by law prior to this subpart, the amendment may be made under this subpart.

(2) An amendment to the declaration, bylaws or plats and plans authorized by this subsection to be made under this subpart must be adopted in conformity with applicable law and with the procedures and requirements specified by the document being amended. If any such amendment grants to any person any rights, powers or privileges permitted by this subpart, all correlative obligations, liabilities and restrictions in this subpart also apply to that person.

**(e) Nonresidential units.--**This subpart does not apply to a planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that the subpart does apply to that planned community. This subpart applies to a planned community containing both units which are restricted exclusively to nonresidential use and other units which are not so restricted only if the declaration so provides or if the real estate comprising the units which may be used for residential purposes would be a planned community in the absence of the units which may not be used for residential purposes.

**(f) Planned communities outside Commonwealth.--**This subpart does not apply to planned communities or units located outside this Commonwealth, but the public offering statement provisions under sections 5402 (relating to public offering statement; general provisions) through 5405 (relating to public offering statement; planned community securities) shall apply to all contracts for the disposition thereof signed in this Commonwealth by any purchaser unless exempt under section 5401(b)(2) (relating to applicability; waiver).

(Mar. 24, 1998, P.L.206, No.27, eff. 60 days; Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

**2004 Amendment.** Act 189 amended subsec. (a) and added subsec. (b.1).

**2004 Amendment.** Act 37 amended subsecs. (a), (b) and (f).

**§ 5103. Definitions.**

The following words and phrases when used in this subpart and in the declaration and bylaws shall have the meanings given to them in this section unless specifically provided otherwise or unless the context clearly indicates otherwise:

**"Additional real estate."** Real estate that may be added to a planned community.

**"Affiliate of a declarant."** Any person who controls, is controlled by or is under common control with a declarant.

(1) A person "controls" a declarant if the person:

(i) is a general partner, officer, director or employer of the declarant;

(ii) directly or indirectly or acting in concert with one or more other persons or through one or more subsidiaries owns, controls, holds with power to vote or holds proxies representing more than 20% of the voting interest in the declarant;

(iii) controls in any manner the election of a majority of the directors of the declarant; or

(iv) has contributed more than 20% of the capital of the declarant.

(2) A person "is controlled by" a declarant if the declarant:

(i) is a general partner, officer, director or employer of the person;

(ii) directly or indirectly or acting in concert with one or more other persons or through one or more subsidiaries owns, controls, holds with power to vote or holds proxies representing more than 20% of the voting interest in the person;

(iii) controls in any manner the election of a majority of the directors of the person; or

(iv) has contributed more than 20% of the capital of the person.

(3) Control does not exist if the powers described in paragraphs (1) and (2) are held solely as security for an obligation and are not exercised.

**"Allocated interests."** The common expense liability and votes in the association allocated to each unit.

**"Alternative dispute resolution."** A procedure for settling a dispute by means other than litigation, such as arbitration or mediation.

**"Association" or "unit owners' association."** The unit owners association organized under section 5301 (relating to organization of unit owners' association).

**"Common elements."** Common facilities or controlled facilities.

**"Common expense liability."** The liability for common expenses allocated to each unit under section 5208 (relating to allocation of votes and common expense liabilities).

**"Common expenses."** Expenditures made by or financial liabilities of the association, together with any allocations to reserves. The term includes general common expenses and limited common expenses.

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

**"Condominium."** Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the portions of the real estate designated for common ownership are vested in the unit owners.

**"Controlled facilities."** Any real estate within a planned community, whether or not a part of a unit, that is not a common facility but is maintained, improved, repaired, replaced, regulated, managed, insured or controlled by the association.

**"Conversion building."** A building that, at any time before the conversion notice date with respect to the planned community in which the building is located, was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

**"Conversion notice."** The notice required to be given to tenants and subtenants by the terms of section 5410(a) (relating to planned communities containing conversion buildings).

**"Conversion notice date."** The date on which the conversion notice is placed in the United States mail, in the case of mailed notices, or is delivered to the unit leased by the recipient, in the case of hand-delivered notices.

**"Convertible real estate."** A portion of a flexible planned community not within a building containing a unit, within which additional units, limited common facilities or limited controlled facilities or any combination thereof may be created.

**"Cooperative."** Real estate owned by a corporation, trust, trustee, partnership or unincorporated association, if the governing instruments of that organization provide that each of the organization's members, partners, stockholders or beneficiaries is entitled to exclusive occupancy of a designated portion of that real estate.

**"Declarant."**

(1) If a planned community has been created, the term means any of the following:

(i) Any person who has executed a declaration or an amendment to a declaration to add additional real estate. This subparagraph excludes a person holding interest in the real estate solely as security for an obligation; a person whose interest in the real estate will not be conveyed to unit owners; and, in the case of a leasehold planned community, a lessor who possesses no special declarant rights and who is not an affiliate of a declarant who possesses special declarant rights.

(ii) A person who succeeds under section 5304 (relating to transfer of special declarant rights) to any special declarant rights.

(2) If the planned community has not yet been created, the term means any person who offers to dispose of or disposes of the person's interest in a unit to be created and not previously disposed of.

(3) If a declaration is executed by a trustee of a land trust, the term means the beneficiary of the trust.

**"Declaration."** Any instrument, however denominated, that creates a planned community and any amendment to that instrument.

**"Development rights."** Any right or combination of rights reserved by a declarant in the declaration:

(1) to add real estate to a planned community;

(2) to create units, common facilities, limited common facilities, controlled facilities or limited controlled facilities within a planned community;

(3) to subdivide units to convert units into common facilities or controlled facilities; or

(4) to withdraw real estate from a planned community.

**"Disposition."** A voluntary transfer to a purchaser of any legal or equitable interest in a unit or a proposed unit. The term does not include the transfer or release of a security interest.

**"Executive board."** The body, regardless of name, designated in the declaration to act on behalf of the association.

**"Flexible planned community."** A planned community containing withdrawable or convertible real estate or a planned community to which additional real estate may be added or a combination thereof.

**"General common expenses."** All common expenses other than limited common expenses.

**"Identifying number."** A symbol or address that identifies only one unit in a planned community.

**"Installment sale contract."** An executory contract for the purchase and sale of a unit or interest in a unit under which the purchaser is obligated to make more than five installment payments to the seller after execution of the contract and before the time appointed for the conveyance of title to the unit or interest in the unit.

**"Interval estate."** A combination of:

(1) an estate for years in a unit, during the term of which title to the unit rotates among the time-share owners thereof, vesting in each of them in turn for periods established by a fixed recorded schedule, with the series thus established recurring regularly until the term expires; coupled with

(2) a vested undivided fee simple interest in the remainder in that unit, the magnitude of that interest having been established by the declaration or by the deed creating the interval estate.

**"Leasehold planned community."** A planned community in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the planned community or reduce its size.

**"Limited common element."** A limited common facility or a limited controlled facility.

**"Limited common expenses."** All expenses identified as such under section 5314(c) (relating to assessments for common expenses).

**"Limited common facility."** A portion of the common facilities allocated by or pursuant to the declaration or by the operation of section 5202(2) or (3) (relating to unit boundaries) for the exclusive use of one or more but fewer than all of the units.

**"Limited controlled facility."** A portion of the controlled facilities, other than controlled facilities which are themselves part of a unit, allocated by or pursuant to the declaration or by operation of section 5202(2) or (3) (relating to unit boundaries) for the exclusive use of one or more but fewer than all of the units.

**"Master association."** An organization described in section 5222 (relating to master associations), whether or not it is also an association described in section 5301 (relating to organization of unit owners' association).

**"Offer" or "offering."** Any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a unit other than as security for an obligation. The term does not include an advertisement in a newspaper or other periodical of general circulation or in a broadcast medium to the general public of a planned community not located in this Commonwealth if the advertisement states that an offer or offering may be made only in compliance with the law of the jurisdiction in which the planned community is located.

**"Original lease termination date."** The date on which the lease or sublease of a residential tenant or subtenant in possession of a unit in a conversion building will expire by the terms of the lease or sublease, after taking into account any renewal or extension rights that may have been exercised prior to the conversion notice date.

**"Person."** A natural person, corporation, partnership, association, trust, other entity or any combination thereof.

**"Planned community."** Real estate with respect to which a person, by virtue of ownership of an interest in any portion of the real estate, is or may become obligated by covenant, easement or agreement imposed on the owner's interest to pay any amount for real property taxes, insurance, maintenance, repair, improvement, management, administration or regulation of any part of the real estate other than the portion or interest owned solely by the person. The term excludes a cooperative and a condominium, but a condominium or cooperative may be part of a planned community. For purposes of this definition, "ownership" includes holding a leasehold interest of more than 20 years, including renewal options, in real estate. The term includes nonresidential campground communities.

**"Purchaser."** A person other than a declarant who, by means of a disposition, acquires a legal or equitable interest in a unit, other than either a leasehold interest of less than 20 years, including renewal options, or as security for an obligation. The term includes a person who will become a unit owner in a leasehold planned community upon consummation of the disposition.

**"Real estate."** Any fee, leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. The term includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water.

**"Residential purposes."** Use for dwelling or recreational purposes, or both.

**"Residential subtenant."** An individual lawfully occupying real estate for residential purposes under a sublease.

**"Residential tenant."** An individual lawfully occupying real estate for residential purposes under a lease.

**"Special declarant rights."** Rights reserved for the benefit of a declarant to:

(1) complete improvements indicated on plats and plans filed with the declaration under section 5210 (relating to plats and plans);

(2) convert convertible real estate in a flexible planned community under section 5211 (relating to conversion and expansion of flexible planned communities);

(3) add additional real estate to a flexible planned community under section 5211;

(4) withdraw withdrawable real estate from a flexible planned community under section 5212 (relating to withdrawal of withdrawable real estate);

(5) convert a unit into two or more units, common facilities or controlled facilities or into two or more units and common facilities or controlled facilities;

(6) maintain offices, signs and models under section 5217 (relating to declarant offices, models and signs);

(7) use easements through the common facilities or controlled facilities for the purpose of making improvement within the planned community or within any convertible or additional real estate under section 5218 (relating to easement to facilitate completion, conversion and expansion);

(8) cause the planned community to be merged or consolidated with another planned community under section 5223 (relating to merger or consolidation of planned community);

(9) make the planned community part of a larger planned community or group of planned communities under sections 5222 (relating to master associations) and 5223 (relating to merger or consolidation of planned community);

(10) make the planned community subject to a master association under section 5222 (relating to master associations); or

(11) appoint or remove an officer of the association or a master association or an executive board member during any period of declarant control under section 5303 (relating to executive board members and officers).

**"Structural defects."** As used in section 5411 (relating to warranty against structural defects), the term means defects in any structure which is a component of:

(1) any unit or common element; or

(2) any other portion of a unit or common element constructed, modified, altered or improved by or on behalf of a declarant;

any of which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of the structure and require repair, renovation, restoration or replacement.

**"Time-share estate."** An interval estate or a time-span estate.

**"Time-span estate."** A combination of:

(1) an undivided interest in a present estate in fee simple in a unit, the magnitude of that interest having been established by the declaration or by the deed conveying the time-span estate; coupled with

(2) the exclusive right to possession and occupancy of that unit during a regularly recurring period designated by the deed or by a recorded document referred to in the deed.

**"Unit."** A physical portion of the planned community designated for separate ownership or occupancy, the boundaries of which are described pursuant to section 5205(5) (relating to contents

of declaration; all planned communities) and a portion of which may be designated by the declaration as part of the controlled facilities.

**"Unit owner."** A declarant or other person who owns a unit or a lessee of a unit in a leasehold planned community whose lease expires simultaneously with a lease the expiration or termination of which will remove the unit from the planned community. The term does not include a person having an interest in a unit solely as security for an obligation.

**"Unit owner in good standing."** A unit owner who is current in payment of assessments and fines, unless the assessments or fines are directly related to a complaint filed with the Bureau of Consumer Protection in the Office of Attorney General regarding section 5308 (relating to meetings), 5309 (relating to quorums), 5310 (relating to voting; proxies) or 5316 (relating to association records).

**"Withdrawable real estate."** Real estate that may be withdrawn from a flexible planned community.

(Mar. 24, 1998, P.L.206, No.37, eff. 60 days; May 4, 2018, P.L.96, No.17, eff. 60 days; Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

**2018 Amendments.** Act 17 added the defs. of "alternative dispute resolution" and "unit owner in good standing" and Act 84 amended the def. of "common facilities."

**1998 Amendment.** Act 37 amended the defs. of "special declarant rights" and "structural defects."

**Cross References.** Section 5103 is referred to in section 5102.

#### **§ 5105. Separate titles and taxation.**

**(a) Title.--**Except as provided in subsection (b), each unit that has been created, together with the interests, benefits and burdens created by the declaration, including, without limitation, the rights to any common facilities, constitutes a separate parcel of real estate. The conveyance or encumbrance of a unit includes the transfer of all of the rights, title and interest of the owner of that unit in the common facilities regardless of whether the instrument affecting the conveyance or encumbrance so states.

**(b) Taxation and assessment.--**If there is a unit owner other than a declarant, each unit must be separately taxed and assessed. The value of a unit shall include the value of that unit's appurtenant interest in the common facilities, excluding convertible or withdrawable real estate. The following shall apply:

(1) Except as provided in paragraph (2), no separate assessed value shall be attributed to and no separate tax shall be imposed against common facilities or controlled facilities.

(2) Convertible or withdrawable real estate shall be separately taxed and assessed until the expiration of the period during which conversion or withdrawal may occur.

**(c) Certain additional prohibitions.--**

(1) An association shall not impose any of the following fees against an owner or tenant of a unit in a planned community or against any person constructing, altering, renovating or repairing a unit in a planned community:

(i) a tapping, connection or other impact fee in excess of the actual direct cost incurred by the association for the connection or provision of water or sewer service to a building or improvement;

(ii) any fee for the right to construct, alter, renovate or repair a building or improvement except for an inclusive fee for the actual direct costs to the association of either:

(A) architectural, aesthetic or landscaping plan reviews or inspections of units, building siting and exteriors, if those reviews or inspections are required by provisions of the declaration or association bylaws or rules and regulations and if such provisions requiring a fee to be paid for such reviews or inspections were in existence on or before December 31, 1995; or

(B) if association imposed building construction standards or building codes are permitted under section 5106 (relating to applicability of local ordinances, regulations and building codes), building construction standards or building code review; and

(iii) any impact fee for road maintenance or road construction, except that the association shall not be precluded from recovering the cost of repair of any damage that is caused to roads or other common elements in the course of construction, alteration, renovation or repair.

(2) Except as specifically provided in this section and notwithstanding any fees or fee schedules or general rulemaking authority that existed prior to the effective date of this paragraph, an association shall not have the power to impose any fees or financial security related to construction, alteration, renovation or repair of a unit or exercise an access easement under section 5218 (relating to easement to facilitate completion, conversion and expansion).

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

**2004 Amendment.** Act 189 amended subsec. (c)(2).

**Cross References.** Section 5105 is referred to in section 5102 of this title.

**§ 5106. Applicability of local ordinances, regulations and building codes.**

**(a) General rule.--**A zoning, subdivision, building code or other real estate use law, ordinance or regulation may not prohibit a planned community form of ownership or impose any requirement upon any structure in a planned community which it would not impose upon a physically identical structure under a different form of ownership.

**(b) Current law unaffected.--**Except as provided in subsection (a), no provision of this subpart invalidates or modifies any provision of any zoning, subdivision, building code or other real estate law, ordinance or regulation.

**(c) Status.--**

(1) The creation of a planned community under section 5201 (relating to creation of planned community) out of an entire lot, parcel or tract of real estate which has previously received approval for land development or subdivision, as those terms are defined in section 107 of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, or the conveyance of units in the planned community, shall not, in and of itself, constitute a subdivision or land development for the purpose of subdivision, land development or other laws, ordinances and regulations.

(2) The use of the planned community shall comply with zoning regulations applicable to the parcel of land or tract of real estate on which the planned community is created.

(3) Any person creating a planned community out of a vacant parcel or tract of real estate which has not been subject to subdivision or land development approval shall submit a copy of the planned community declaration and planned community plan to all municipalities in which the parcel or tract of real estate is located, unless the creation of the planned community is for an estate planning purpose of conveying units to family members or an entity controlled by family members so that the conveyance would not be subject to realty transfer taxes pursuant to Article XI-C of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.



(4) Construction of any structure or building on any unit or common facility shall be subject to the provisions of any zoning, subdivision, land development, building code or other real estate law, ordinance or regulation.

**(d) Building code.**--An association shall be preempted by any federally, State or locally imposed building code, standard or regulation applicable to a building in a planned community from imposing any building construction standards or building codes for buildings to be constructed, renovated, altered or modified in a planned community. In the absence of a federally, State or locally imposed building code, standard or regulation applicable to a building in a planned community, an association shall not have the power to impose any building construction standards or building codes for buildings to be constructed, renovated, altered or modified in a planned community except:

(1) the BOCA National Building Code, 1996 edition (excluding Chapter 13, Energy Conservation) (the "BOCA Code"), for other than for one-family or two-family residential dwellings, together with the most recently published version of the National Fuel Gas Code (NFPA 54/ANSI Z223.1), as such may be updated periodically, for the installation of fuel gas piping systems, fuel gas utilization equipment and related accessories, and the most recently published version of the National Electric Code (NFPA 70), an ANSI accredited document, as such may be updated periodically, for the construction and subsequent inspection of electrical facilities and equipment; or

(2) with respect to one-family or two-family residential dwellings, unless the declarant or a successor declarant elects to comply with the BOCA Code, the Council of American Building Officials (CABO) One and Two Family Dwelling Code, 1992 edition (excluding Part VII-Energy Conservation and Chapter 25 of Part V-Sewers and Private or Individual Sewage Disposal Systems), together with the most recently published version of the National Fuel Gas Code (NFPA 54/ANSI Z223.1), as such may be updated periodically, for the installation of fuel gas piping systems, fuel gas utilization equipment and related accessories, and the most recently published version of the National Electric Code (NFPA 70), an ANSI accredited document, as such may be updated periodically, for the construction and subsequent inspection of electrical facilities and equipment.

The applicable building code shall constitute the maximum and the only acceptable standard governing building structures. However, nothing in this section shall preclude an association, if and to the extent authorized by the declaration or association bylaws, rules and regulations, from providing for architectural review of units, landscaping, building exteriors and aesthetics or from implementing requirements that may be imposed from time to time by underwriters of insurance actually maintained on portions of the planned community.

(July 10, 2015, P.L.167, No.37, eff. 60 days)

**2015 Amendment.** Act 37 amended subsec. (c).

**Cross References.** Section 5106 is referred to in sections 5102, 5105 of this title.

#### **§ 5107. Eminent domain.**

**(a) General rule.**--If a unit is acquired by eminent domain or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award shall compensate the unit owner for the unit and, except for the value, if any, of the interest of other units in any controlled facilities that were at the time of the taking a part of the unit subject to the taking, its appurtenant interest in the planned community reflected by its allocated common expenses liability, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, the unit's

allocated votes and liabilities shall automatically be reallocated to the remaining units in proportion to the respective allocated votes and liabilities of those units before the taking. The association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection shall be a common facility.

**(b) Acquisition of part of unit.**--Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award shall compensate the unit owner for the reduction in value of the unit and its appurtenant interest in the planned community, whether or not any common facilities or controlled facilities are acquired, and shall compensate the association for the value, if any, of the interest of other units in any controlled facilities that were at the time of the taking a part of the unit subject to the taking. Upon acquisition, unless the decree otherwise provides, the following shall apply:

(1) The unit's appurtenant votes in the association and common expense liability shall be reduced on the basis specified in the declaration with respect to the reallocation of votes and common expense liability in the event of eminent domain or, if the declaration does not specify a basis, as initially allocated based on the formulae stated in the declaration under section 5208 (relating to allocation of votes and common expense liabilities).

(2) The portion of the appurtenant votes and common expense liability divested from the partially acquired unit shall be automatically reallocated to that unit and the remaining units in proportion to the respective appurtenant votes and liabilities of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated votes and liabilities.

**(c) Acquisition of part of common facilities.**--If part of the common facilities is acquired by eminent domain, the portion of the award attributable to the interest of the association in the common facilities taken shall be paid to the association. The association shall divide any portion of the award not used for any restoration or repair of the remaining common facilities among the unit owners in proportion to the common expense liability attributable to the units before the taking, but any portion of the award attributable to the acquisition of a limited common facility shall be equally divided among the owners of the units to which that limited common facility was allocated at the time of acquisition or in any manner as provided in the declaration.

**(d) Acquisition of part of controlled facilities.**--If, as part of a unit acquired by eminent domain, controlled facilities are taken which benefit other units, that portion of the award attributable to the interest of the other units in the controlled facilities taken shall be paid to the association. The association shall divide any portion of the award not used for any restoration or repair of the remaining controlled facilities equally among the unit owners whose units were benefited by the controlled facilities that have been taken.

**Cross References.** Section 5107 is referred to in sections 5102, 5207, 5208, 5219, 5220, 5312 of this title.

**§ 5108. Supplemental general principles of law applicable.**

The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this subpart, except to the extent inconsistent with this subpart.

**Cross References.** Section 5108 is referred to in section 5102 of this title.

**§ 5113. Obligation of good faith.**

Every contract or duty governed by this subpart imposes an obligation of good faith in its performance or enforcement

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

**(a) Provisions severable.--**All provisions of the declaration and bylaws are severable.

**(b) Applications of rule against perpetuities.--**The rule against perpetuities may not be applied to defeat any provision of the declaration or this subpart or any instrument executed pursuant to the declaration or this subpart.

**(c) Conflict between declaration and bylaws.--**If there is a conflict between the declaration and the bylaws, the declaration shall prevail except to the extent the declaration is inconsistent with this subpart.

**(d) Effect of noncompliance on title to unit.--**Title to a unit and its appurtenant votes in the association shall not be rendered unmarketable or otherwise affected by any provision of unrecorded bylaws or by reason of an insubstantial failure of the declaration to comply with this subpart.

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

(Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

**2018 Amendment.** Act 84 added subsec. (e).

**Cross References.** Section 5203 is referred to in section 5102 of this title.

**§ 5204. Description of units.**

After the declaration is recorded, a description of the unit which sets forth the name of the planned community, the recording data for the declaration, the county or counties in which the planned community is located and the identifying number of the unit is a sufficient legal description of that unit and all rights, obligations and interests appurtenant to that unit which were created by the declaration or bylaws. Deeds, leases and mortgages of units shall be recorded in the same records as are maintained by the recorder for the recording of like instruments and indexed by the recorder in the same manner as like instruments are indexed.

**Cross References.** Section 5204 is referred to in section 5102 of this title.

**§ 5218. Easement to facilitate completion, conversion and expansion.**

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

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

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

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

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

An association shall not have the power to impose any fees or charges or require financial security, including, but not limited to, surety bonds, letters of credit or escrow deposits for the use of the easement rights described in this section; however, the declarant or owner who exercises the easement rights described in this section, whether directly or indirectly through an agent, servant, contractor or employee, shall have the obligation to promptly return any portion of the common elements damaged by the exercise by the declarant or owner or its agent, servant, contractor or employee of the easement under this section to the appearance, condition and function in which it existed prior to the exercise of the easement or to reimburse the association for all reasonable costs, fees and expenses incurred by the association to return any portion of the common elements which were damaged to the appearance, condition and function in which it existed prior to the exercise of the easement.

(Mar. 24, 1998, P.L.206, No.37, eff. 60 days; Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

**Cross References.** Section 5218 is referred to in sections 5102, 5103, 5105, 5301, 5414 of this title.

**§ 5219. Amendment of declaration.**

**(a) Number of votes required.--**

(1) The declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least:

(i) 67% of votes in the association are allocated; or

(ii) a larger percentage of the votes in the association as specified in the declaration; or

(iii) a smaller percentage of the votes in the association as specified in the declaration if all units are restricted exclusively to nonresidential use.

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

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

(i) Amendments executed by a declarant under:

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

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

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

(ii) Amendments executed by the association under:

(A) subsection (f);

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

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

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

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

(iii) Amendments executed by certain unit owners under:

(A) section 5209(b);

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

(C) section 5215; or

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

(iv) Amendments executed by a declarant which conform the maximum time limit for exercising declarant options to the time limit authorized by sections 5205(13) and (14) (relating to contents of declaration; all planned communities) and 5206(2) (relating to contents of declaration for flexible planned communities).

**(b) Limitation of action to challenge amendment.--**No action to challenge the validity of an amendment adopted by the association under this section may be brought more than one year after the amendment is recorded.

**(c) Recording amendment.--**The following shall apply:

(1) Every amendment to the declaration must be recorded in every county in which any portion of the planned community is located in the same records as are maintained for the recording of deeds of real property and shall be indexed in the name of the planned community in both the grantor and grantee index. An amendment is effective only upon recording.

(2) Except for counties which do not maintain a uniform parcel identifier number system of indexing, all counties shall assign a master parcel number to each planned community, and every amendment to the declaration shall be indexed against the master parcel. If required by the county, an amendment may be indexed against a parcel assigned to each unit within the planned community, but no fees shall be charged to each unit unless the indexing against each parcel is requested by the declarant or association.

(3) The provisions of this subsection shall control over any conflicting provisions in any other statute, regulation or ordinance.

**(d) When unanimous consent or declarant joinder required.--**

(1) Except to the extent expressly permitted or required by other provisions of this subpart, without unanimous consent of all unit owners affected, no amendment may create or increase special declarant rights, alter the terms or provisions governing the completion or conveyance or lease of common facilities or increase the number of units or change the boundaries of any unit, the common expense liability or voting strength in the association allocated to a unit or the uses to which any unit is restricted. In addition, no declaration provisions pursuant to which any special declarant rights have been reserved to a declarant shall be amended without the express written joinder of the declarant in such amendment.

(2) As used in this subsection, the term "uses to which any unit is restricted" shall not include leasing of units.

**(e) Officer authorized to execute amendment.--**Amendments to the declaration required by this subpart to be recorded by the association shall be prepared, executed, recorded and certified by an officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

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

(1) cure an ambiguity;

(2) correct or supplement any provision of the declaration, including the plats and plans, that is defective, missing or inconsistent with any other provision of the declaration or with this subpart;

(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, tenants 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 legal counsel who is independent from the declarant to the effect that the proposed amendment is permitted by the terms of this subsection.

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days; July 2, 2013, P.L.204, No.37, eff. imd.; Apr. 20, 2016, P.L.156, No.21, eff. 60 days; Nov. 4, 2016, P.L.1214, No.162, eff. 60 days; Mar. 27, 2020, P.L.35, No.11, eff. 60 days)

**2020 Amendment.** Act 11 amended subsec. (f).

**2016 Amendments.** Act 21 amended subsec. (d) and Act 162 amended subsec. (c).

**2013 Amendment.** Act 37 amended subsec. (a)(3). See section 2 of Act 37 in the appendix to this title for special provisions relating to applicability.

**2004 Amendment.** Act 189 amended subsecs. (a) and (f).

**Cross References.** Section 5219 is referred to in sections 5102, 5211, 5303 of this title.

### **§ 5220. Termination of planned community.**

**(a) Number of votes required.--**Except in the case of a taking of all the units by eminent domain in section 5107 (relating to eminent domain), a planned community may be terminated only by 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.

**(b) Execution and recording agreement and ratifications.--**An agreement to terminate must be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of unit owners who are owners of record as of the date preceding the date of recording of the termination agreement. The termination agreement must specify the date it was first executed or ratified by a unit owner. The termination agreement shall become void unless it is recorded on or before the earlier of the expiration of one year from the date it was first executed and ratified by a unit owner or such date as shall be specified in the termination agreement. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the planned community is located in the same records as are maintained for the recording of deeds of real property and shall be indexed in the name of the planned community in both the grantor and grantee index. A termination agreement is effective only upon recording.

**(c) Sale of real estate.--**The association, on behalf of the unit owners, may contract for the sale of real estate in the planned community. The contract is not binding until approved under subsections (a) and (b). If any real estate in the planned community is to be sold by the association following termination, title to that real estate upon termination vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to unit owners and lienholders as their interests may appear in proportion to the respective interests of unit owners as provided in subsection (f). Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the owner's unit. During the period of that occupancy, each unit owner and the owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this subpart or the declaration.

**(d) Nonsale upon termination.--**If the real estate constituting the planned community is not to be sold following termination, title to the common facilities and, in a planned community containing only units having horizontal boundaries described in the declaration, title to all the real estate in the

planned community vest in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (f), and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the owner's unit.

**(e) Proceeds of sale.**--Following termination of the planned community, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units which were recorded, filed of public record or otherwise perfected before termination may enforce those liens in the same manner as any lienholder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

**(f) Respective interests of unit owners.**--The respective interests of unit owners referred to in subsections (c), (d) and (e) are as follows:

(1) Except as provided in paragraph (2), the respective interests of unit owners are the fair market values of their units and limited common elements immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which 25% of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit by the total fair market values of all the units and common elements.

(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common expense liabilities immediately before the termination.

**(g) Effect of foreclosure or enforcement of lien.**--Except as provided in subsection (h), foreclosure or enforcement of a lien or encumbrance against the entire planned community does not of itself terminate the planned community. Foreclosure or enforcement of a lien or encumbrance against a portion of the planned community does not of itself withdraw that portion from the planned community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the planned community, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the planned community.

**(h) Exclusion from planned community upon foreclosure.**--If a lien or encumbrance against a portion of the real estate comprising the planned community has priority over the declaration and if the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the 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.

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

**2004 Amendment.** Act 189 added subsec. (i).

**Cross References.** Section 5220 is referred to in sections 5102, 5219, 5303, 5312 of this title.

**§ 5222. Master associations.**

**(a) Applicability of section.**--If the declaration for a planned community provides that any of the powers described in section 5302 (relating to power of unit owners' association) with respect to the planned community are to be exercised by or may be delegated to a profit or nonprofit corporation or unincorporated association (a "master association") which exercises those or other powers on behalf of one or more other planned communities or other incorporated or unincorporated associations, then, except as modified by this section, all provisions of this subpart applicable to unit owners' associations shall apply to any such master association insofar as its actions affect the planned community.

**(b) Powers.**--Unless a master association is acting in the capacity of an association described in section 5301 (relating to organization of unit owners' association) with respect to a planned community which is part of the master association, it may exercise with respect to the planned community only such powers set forth in section 5302 and only to the extent expressly permitted in the declaration which provides for the delegation of powers from its planned community association to the master association and accepted by the master association, as indicated in the provisions of the declaration or other organizational documents of the master association.

**(c) Liability of executive board members and officers.**--If the declaration of a planned community provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation. The officers and members of the governing board of the master association are subject to liability to the planned community association whose powers are delegated to the master association and the unit owners of the planned community on the same basis as officers and executive board members of the planned community immediately before such delegation of powers.

**(d) Rights and responsibilities of persons electing governing body.**--The rights and responsibilities of unit owners with respect to the unit owners' association set forth in sections 5302, 5303 (relating to executive board members and officers), 5309 (relating to quorums), 5310 (relating to voting; proxies) and 5320 (relating to declarant delivery of items to association) apply in the conduct of the affairs of a master association with respect to the exercise of powers elected pursuant to a planned community declaration to the master association, but apply only to those persons who elect the governing body of a master association, whether or not those persons are otherwise unit owners within the meaning of this subpart.

**(e) Election of master association governing body.**--Notwithstanding the provisions of section 5303(e) with respect to the election of the executive board by all unit owners after the period of declarant control ends and even if a master association is also an association described in section 5301, the instrument creating the master association and the declaration of each planned community of the organizational documents of other associations, the powers of which are assigned pursuant to the declaration or organizational documents or delegated to the master association, shall provide that the governing body of the master association must be elected after the period of declarant control in any of the following ways:

(1) All unit owners of all planned communities and other properties subject to the master association elect all members of the governing body of the master association.

(2) All members of the governing bodies of the planned community associations and other property owners' associations subject to the master association elect all members of the master association governing body.

(3) All unit owners of each planned community and other property owners' association subject to the master association elect specified members of the master association governing body.

(4) All members of the governing bodies of the planned communities and other property associations subject to the master association elect specified members of the master association governing body.



**(f) Delegation of responsibility and authority.**--The provisions of this section shall apply to a planned community upon any of the following:

(1) A date specified in the declaration or any amendment thereto from and after which this section shall apply to the planned community.

(2) An event or action that the declaration or any amendment thereto states shall cause this section to become applicable and the association causes to be recorded an instrument duly executed by the president of the association stating that:

(i) the event or action has occurred and the date of such occurrence, thereby causing this section to become applicable to the planned community; and

(ii) a copy of such instrument has been sent to all unit owners.

(3) The declarant executes and records an instrument stating that this section shall thereafter apply to the planned community and that a copy of such instrument has been sent to the executive board and all unit owners. This paragraph shall be applicable only if the declarant shall have expressly reserved in the declaration, under section 5205(13) (relating to contents of declaration; all planned communities), the special declarant right to make this section applicable to the planned community and only if the instrument exercising such right has been recorded during the time period allowed for the exercise of such right.

**(g) Delegation of all powers.**--If all of the powers of a planned community association are delegated to a master association and accepted by the master association under subsection (b), then the governing body of the master association may act in all respects as the executive board of the planned community, and no separate executive board need be elected or exist.

**Cross References.** Section 5222 is referred to in sections 5102, 5103, 5205, 5302 of this title.

### **§ 5223. Merger or consolidation of planned community.**

**(a) General rule.**--Any two or more planned communities by agreement of the unit owners as provided in subsection (b) may be merged or consolidated into a single planned community. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant planned community is, for all purposes, the legal successor of all of the preexisting planned communities, and the operations and activities of all associations of the preexisting planned communities shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all preexisting associations. The resultant planned community shall, in addition, be subject in all respects to the provisions and requirements of this subpart regardless of whether or not any of the preexisting planned communities have been established under this subpart.

**(b) Requirements of agreement.**--The merger or consolidation of two or more planned communities under subsection (a) must be evidenced by a recorded agreement duly executed by the president of the association of each of the preexisting planned communities following approval by owners of units to which are allocated the percentage of votes in each planned community required to terminate such planned community. Any such agreement must be recorded in every county in which a portion of the planned community is located and is not effective until so recorded.

#### **(c) Reallocations.**--

(1) Every merger or consolidation agreement must provide for the reallocation of the common expense liability, including both general and limited common expenses, and portion of the votes in the resulting association among the units of the resulting planned community in one of the following manners:

(i) by stating the reallocations or the formulas upon which they are based; or

(ii) by stating the common expense liability, including both general and limited common expenses, and portion of the votes in the resulting association which are allocated to all of the units comprising each of the preexisting planned communities, and providing that the common expense liability, including both general and limited common expenses, and portion of the votes in the

association for the resulting planned community shall be the same as was allocated to each unit formerly comprising a part of the preexisting planned community by the declaration of the preexisting planned community.

**(d) Action by declarant.**--Notwithstanding the provisions of subsections (a) and (b), if a declarant shall have expressly retained the special declarant right to merge or consolidate a planned community under section 5205(14) (relating to contents of declaration; all planned communities) and if the declarant shall have exercised such right within the time period allowed for such exercise by giving written notice to that effect to all unit owners accompanied by a copy of the agreement evidencing such merger or consolidation, then such agreement may be executed by the declarant rather than by the president of the association of that planned community and without the necessity for approval or consent by unit owners or their mortgagees, provided that the agreement is recorded within the time period allowed for the exercise of this special declarant right.

**Cross References.** Section 5223 is referred to in sections 5102, 5103, 5205 of this title.

**§ 5302. Power of unit owners' association.**

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

- (1) Adopt and amend bylaws and rules and regulations.
- (2) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners.
- (3) Hire and terminate managing agents and other employees, agents and independent contractors.
- (4) Institute, defend or intervene in litigation or administrative proceedings, or engage in arbitrations or mediations, in its own name on behalf of itself or two or more unit owners on matters affecting the planned community.
- (5) Make contracts and incur liabilities.
- (6) Regulate the use, maintenance, repair, replacement and modification of common elements and make reasonable accommodations or permit reasonable modifications to be made to units, the common facilities, the controlled facilities or the common elements, to accommodate people with disabilities, as defined by prevailing Federal, State or local statute, regulations, code or ordinance, unit owners, residents, tenants or employees.
- (7) Cause additional improvements to be made as a part of the common facilities and, only to the extent permitted by the declaration, the controlled facilities.
- (8) (i) acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property 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).
- (9) Grant easements, leases, licenses and concessions through or over the common facilities and, only to the extent permitted by the declaration, the controlled facilities.
- (10) Impose and receive payments, fees or charges for the use, except as limited by other provisions of this subpart, rental or operation of the common elements other than the limited common elements described in section 5202(2) and (3) (relating to unit boundaries).
- (11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard:
  - (i) Levy reasonable fines for violations of the declaration, bylaws and rules and regulations of the association.
  - (ii) For any period during which assessments are delinquent or violations of the declaration, bylaws and rules and regulations remain uncured, suspend unit owners' rights, including, without

limitation, the right to vote, the right to serve on the board or committees and the right of access to common elements, recreational facilities or amenities.

(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;

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

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

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

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

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

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

(B) completes such reconveyance within such 18 months.

(13) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance.

(14) Exercise any other powers conferred by this subpart, the declaration or bylaws.

(15) Exercise all other powers that may be exercised in this Commonwealth by legal entities of the same type as the association.

(16) Exercise any other powers necessary and proper for the governance and operation of the association.

(17) Assign its right to future income, including the right to receive common expense assessments. Reserve funds held for future major repairs and replacements of the common elements may not be assigned or pledged.

(18) Assign or delegate any powers of the association listed in this section to a master association subject to the provisions of section 5222 (relating to master associations) and accept an assignment or delegation of powers from one or more planned communities or other incorporated or unincorporated associations.

**(b) Restrictions on limitations in declaration.--**Notwithstanding subsection (a), the declaration may not impose limitations on the power of the association to deal with declarants which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

Any exercise of a power under subsection (a)(7), (8) or (9) which would materially impair quiet enjoyment of a unit shall require the prior written approval of the owner of that unit.

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days; Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

**2018 Amendment.** Act 84 amended subsec. (a)(11).

**2004 Amendment.** Act 189 amended subsec. (a)(4), (6), (8), (12) and (17).

**Cross References.** Section 5302 is referred to in sections 5102, 5222, 5315 of this title.

### **§ 5303. Executive board members and officers.**

**(a) Powers and fiduciary status.--**Except as provided in the declaration, in the bylaws, in subsection (b) or in other provisions of this subpart, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board shall stand in a fiduciary relation to the association and shall perform their duties, including duties as members of any committee of the board upon which they may serve, in good faith; in a manner they reasonably believe to be in the best interests of the association; and with care, including reasonable inquiry, skill and diligence as a person of ordinary prudence would use under similar circumstances. In managing the association's reserve funds, the officers and members of the executive board shall have the power to invest the association's reserve funds in investments permissible by law for the investment of trust funds and shall be governed in the management of the association's reserve funds by 20 Pa.C.S.A. § 7203 (relating to prudent investor rule). In performing any duties, an officer or executive board member shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

- (1) One or more other officers or employees of the association whom the officer or executive board member reasonably believes to be reliable and competent in the matters presented.
- (2) Counsel, public accountants or other persons as to matters which the officer or executive board member reasonably believes to be within the professional or expert competence of that person.
- (3) A committee of the executive board upon which the officer or executive board member does not serve, designated in accordance with law, as to matters within its designated authority, which committee the officer or executive board member reasonably believes to merit confidence.

An officer or executive board member shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause his reliance to be unwarranted. The executive board and its members shall have no liability for exercising these powers provided they are exercised in good faith, in the best interest of the association and with care in the manner set forth in this section.

**(b) Limitation on authority.--**The executive board may not act on behalf of the association to amend the declaration under section 5219 (relating to amendment of declaration), to terminate the planned community under section 5220 (relating to termination of planned community) or to elect members of the executive board or determine the qualifications, powers and duties or terms of office of executive board members under subsection (e), but the executive board may fill vacancies in its membership for the unexpired portion of any term. The executive board shall deliver to all unit owners copies of each budget approved by the executive board and notice of any capital expenditure approved by the executive board promptly after such approval. In addition to other rights conferred by the declaration, bylaws or this subpart, the unit owners, by majority or any larger vote specified in the declaration, may reject any budget or capital expenditure approved by the executive board within 30 days after approval.

**(c) Status during period of declarant control.--**

(1) Subject to subsection (d), the declaration may provide for a period of declarant control of the association during which a declarant or persons designated by the declarant may appoint and remove the officers and members of the executive board.

(2) Any period of declarant control extends from the date of the first conveyance of a unit to a person other than a declarant for a period of not more than:

(i) seven years in the case of a flexible planned community containing convertible real estate or to which additional real estate may be added; and

(ii) five years in the case of any other planned community.

(3) Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of:

(i) sixty days after conveyance of 75% of the units which may be created to unit owners other than a declarant;

(ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business; or

(iii) two years after any development right to add new units was last exercised.

(4) A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period. In that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

**(d) Election of members during transfer of declarant control.--**Not later than 60 days after conveyance of 25% of the units which may be created to unit owners other than a declarant, at least one member and not less than 25% of the members of the executive board shall be elected by unit owners other than the declarant. Not later than 60 days after conveyance of 50% of the units which may be created to unit owners other than a declarant, not less than 33% of the members of the executive board shall be elected by unit owners other than the declarant.

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

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

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

**(f) Removal of members.--**Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days; Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

**2018 Amendment.** Act 84 amended subsec. (e).

**2004 Amendment.** Act 189 amended subsec. (a).

**Cross References.** Section 5303 is referred to in sections 5102, 5103, 5222, 5304, 5305, 5311, 5320, 5411 of this title.

### **§ 5307. Upkeep of planned community.**

**(a) General rule.--**Except to the extent provided by the declaration, subsection (b) or section 5312 (relating to insurance), the association is responsible for maintenance, repair and replacement of the common elements, and each unit owner is responsible for maintenance, repair and replacement of his unit. Each unit owner shall afford to the association and the other unit owners and

to their agents or employees access through the unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage or the association if it is responsible is liable for the prompt repair of the damage.

**(b) Nonresidential planned communities.--**If any unit in a planned community all of whose units are restricted to nonresidential use is damaged and the exterior appearance of the unit is thereby affected, the person responsible for the exterior of the unit shall cause the unit to be repaired or rebuilt to the extent necessary to restore its exterior appearance. If that person fails within a reasonable period of time to effect the repairs or rebuilding, the association may purchase the unit at its fair market value to be determined by an independent appraiser selected by the association.

**Cross References.** Section 5307 is referred to in section 5102 of this title.

**§ 5311. Tort and contract liability.**

**(a) General rule.--**

(1) An action in tort alleging a wrong done by a declarant or his agent or employee in connection with a portion of any convertible or withdrawable real estate or other portion of the planned community which the declarant has the responsibility to maintain may not be brought against the association or against a unit owner other than a declarant.

(2) Except as otherwise provided by paragraph (1):

(i) An action in tort alleging a wrong done by the association or by an agent or employee of the association, or on behalf of the association, must be brought against the association.

(ii) A unit owner shall not be subject to suit or, except as otherwise provided by subsection (b), be otherwise directly or indirectly held accountable for the acts of the association or its agents or employees on behalf of the association.

(3) If the tort or breach of contract occurred during any period of declarant control under section 5303(c) (relating to executive board members and officers), the declarant is liable to the association for all unreimbursed losses suffered by the association as a result of that tort or breach of contract, including costs and reasonable attorney fees. If a claim for a tort or breach of contract is made after the period of declarant control, the association shall have no right against the declarant under this paragraph unless the association shall have given the declarant all of the following:

(i) Notice of the existence of the claim promptly after the date on which a member of the executive board who is not a designee of the declarant learns of the existence of the claim.

(ii) An opportunity to defend against the claim on behalf of the association but at the declarant's expense.

(4) A unit owner is not precluded from bringing an action contemplated by this subsection because he is a unit owner or a member or officer of the association.

Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates.

**(b) Lien of judgment.--**Except as otherwise provided in this subpart, a judgment for money against the association if and when entered of record against the name of the association in the office of the clerk of the court of common pleas of the county where the planned community is located shall also constitute a lien against each unit for a pro rata share of the amount of that judgment, including interest thereon, based on the common expense liability allocated to that unit under section 5208 (relating to allocation of votes and common expense liabilities). No other property of a unit owner is subject to the claims of creditors of the association.

**(c) Indexing judgment.--**A judgment against the association must be indexed in the name of the planned community.

**(d) Applicability of section.**--The provisions of this section shall apply to all associations without regard to whether the association is organized as a corporation or as an unincorporated association.

**Cross References.** Section 5311 is referred to in section 5102 of this title

**§ 5314. Assessments for common expenses.**

**(a) General rule.**--Until the association makes a common expense assessment, the declarant shall pay all the expenses of the planned community. After any assessment has been made by the association, assessments shall be made at least annually, based on a budget adopted at least annually by the association. The budgets of the association shall segregate limited common expenses from general common expenses if and to the extent appropriate.

**(b) Allocation and interest.**--Except for assessments under subsection (c), all common expenses shall be assessed against all the units in accordance with the common expense liability allocated to each unit in the case of general common expenses and in accordance with subsection (c) in the case of special allocation of expenses. Any past due assessment or installment thereof shall bear interest at the rate established by the association at not more than 15% per year.

**(c) Special allocations of expenses.**--Except as provided by the declaration:

(1) Any common expense associated with the maintenance, repair or replacement of a limited common element shall be assessed in equal shares against the units to which that limited common element was assigned at the time the expense was incurred.

(2) Any common expense benefiting fewer than all of the units shall be assessed exclusively against the units benefited.

(3) The costs of insurance shall be assessed in proportion to risk, and the costs of utilities that are separately metered to each unit shall be assessed in proportion to usage.

(4) If a common expense is caused by the negligence or misconduct of any unit owner, the association may assess that expense exclusively against his unit.

**(d) Reallocation.**--If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

**Cross References.** Section 5314 is referred to in sections 5102, 5103, 5312, 5315 of this title.

**§ 5315. Lien for assessments.**

**(a) General rule.**--The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in a like manner as a mortgage on real estate. A judicial or other sale of the unit in execution of a common element lien or any other lien shall not affect the lien of a mortgage on the unit, except the mortgage for which the sale is being held, if the mortgage is prior to all other liens upon the same property except those liens identified in 42 Pa.C.S.A. § 8152(a) (relating to judicial sale as affecting lien of mortgage) and liens for planned community assessments created under this section. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged under section 5302(a)(10), (11) and (12) (relating to power of unit owners' association) and reasonable costs and expenses of the association, including legal fees, incurred in connection with collection of any sums due to the association by the unit owner or enforcement of the provisions of the declaration, bylaws, rules or regulations against the unit owner are enforceable as assessments under this section. If an assessment is payable in installments and one or more installments are not paid when due, the entire outstanding balance of the assessment becomes effective as a lien from the due date of the delinquent installment.

**(b) Priority of lien.--**

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

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

(ii) (A) Mortgages and deeds of trust on the unit securing first mortgage holders and recorded before due date of the assessment if the assessment is not payable in installments or the due date of the unpaid installment if the assessment is payable in installments.

(B) Judgments obtained for obligations secured by any such mortgage or deed of trust under clause (A).

(iii) Liens for real estate taxes and other governmental assessments or charges against the unit.

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

(i) As to unpaid common expense assessments made under section 5314(b) (relating to assessments for common expenses) that come due during the six months immediately preceding 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 additional 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.

**(3) Monetary exemption.--**The lien is not subject to the provisions of 42 Pa.C.S.A. § 8123 (relating to general monetary exemption).

**(c) Liens having equal priority.--**If the association and one or more associations, condominium associations or cooperative associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

**(d) Notice and perfection of lien.--**Subject to the provisions of subsection (b), recording of the declaration constitutes record notice and perfection of the lien.

**(e) Limitation of actions.--**A lien for unpaid assessments is extinguished unless proceedings to enforce the lien or actions or suits to recover sums for which subsection (a) establishes a lien are instituted within four years after the assessments become payable.

**(f) Other remedies preserved.--**Nothing in this section shall be construed to prohibit actions or suits to recover sums for which subsection (a) creates a lien or to prohibit an association from taking a deed in lieu of foreclosure.

**(g) Costs and attorney fees.--**A judgment or decree in any action or suit brought under this section shall include costs and reasonable attorney fees for the prevailing party.

**(h) Statement of unpaid assessments.--**The association shall furnish to a unit owner upon written request a recordable statement setting forth the amount of unpaid assessments currently levied against his unit and any credits of surplus in favor of his unit under section 5313 (relating to surplus funds). The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board and every unit owner.

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



(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days; Apr. 20, 2016, P.L.156, No.21, eff. 60 days)

**2016 Amendment.** Act 21 amended subsec. (e).

**2004 Amendment.** Act 189 amended subsec. (b)(1) and (2)(i) and added subsec. (i).

**Cross References.** Section 5315 is referred to in section 5102 of this title.

**§ 5316. Association records.**

**(a) Financial records.--**The association shall keep financial records sufficiently detailed to enable the association to comply with section 5407 (relating to resales of units). All financial and other records shall be made reasonably available for examination by any unit owner and authorized agents.

**(b) Annual financial statements.--**Within 180 days after the close of its fiscal year, the association in any planned community having more than 12 units or subject to any rights under section 5215 (relating to subdivision or conversion of units) or 5211 (relating to conversion and expansion of flexible planned communities) shall prepare annual financial statements consisting of at least a balance sheet and a statement of revenues and expenses for the association. The cost of preparing the financial statements shall be a common expense. Each unit owner shall be entitled to receive from the association, within 30 days after submitting a written request to the association, a copy of the annual financial statements and, if such financial statements are audited, reviewed or compiled by an independent certified public accountant or independent public accountant, a copy of the independent accountant's report on the financial statements. The association may charge a fee not to exceed the cost of producing copies of records other than the financial statement.

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

**Cross References.** Section 5316 is referred to in sections 5103, 5102, 5322 of this title.

**§ 5319. Other liens affecting planned community.**

**(a) General rule.--**Except as provided in subsection (b), a judgment for money against the association, if and when the judgment has been perfected as a lien on real property, is not a lien on the common facilities but is a lien in favor of the judgment lienholder against all of the units in the planned community at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

**(b) Security interest in common facilities.--**If the association has granted a security interest in the common facilities to a creditor of the association under section 5318 (relating to conveyance or encumbrance of common facilities), the holder of that security interest shall exercise its right against the common facilities before its judgment lien on any unit may be enforced.

**(c) Release upon payment of unit owner's share.--**Whether perfected before or after the creation of the planned community, if a lien other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the planned community, becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his unit; and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment shall be proportionate to the ratio which that unit owner's common expense liability bears

to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

**(d) Indexing of judgments.**--A judgment against the association shall be indexed in the name of the planned community and the association and, when so indexed, is notice of the lien against the units.

**Cross References.** Section 5319 is referred to in section 5102 of this title.

**§ 5407. Resales of units.**

**(a) Information supplied by unit owner.**--In the event of a resale of a unit by a unit owner other than a declarant, the unit owner shall furnish to a purchaser before execution of any contract for sale of a unit or otherwise before conveyance a copy of the declaration other than the plats and plans, the bylaws, the rules or regulations of the association and a certificate containing:

(1) A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit.

(2) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner and any surplus fund credits to be applied with regard to the unit pursuant to section 5313 (relating to surplus funds).

(3) A statement of any other fees payable by unit owners.

(4) A statement of any capital expenditures proposed by the association for the current and two next succeeding fiscal years.

(5) A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified project.

(6) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association.

(7) The current operating budget of the association.

(8) A statement of any judgments against the association and the status of any pending suits to which the association is a party.

(9) A statement describing any insurance coverage provided for the benefit of unit owners.

(10) A statement as to whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned thereto violate any provision of the declaration.

(11) A statement as to whether the executive board has knowledge of any violations of applicable governmental requirements or knowledge of the existence of any hazardous conditions pursuant to section 5402(a)(27) (relating to public offering statement; general provisions) with respect to the unit, the limited common elements assigned to the unit or any other portion of the planned community.

(12) A statement of the remaining term of any leasehold estate affecting the planned community and the provisions governing any extension or renewal thereof.

(13) A statement as to whether the declaration provides for cumulative voting or class voting.

(14) A statement as to whether an agreement to terminate the planned community has been submitted to the unit owners for approval and remains outstanding.

(15) A statement of whether the planned community is a master association or is part of a master association or could become a master association or part of a master association.

(16) A statement describing which units, if any, may be owned in time-share estates and the maximum number of time-share estates that may be created in the planned community.

(17) A statement of whether the declarant retains the special declarant right to cause a merger or consolidation of the planned community and, if so, the information describing such right which was supplied by the declaration pursuant to section 5205(13) (relating to contents of declaration; all planned communities), if any.

**(b) Information supplied by association.--**The association, within ten days after a request by a unit owner, shall furnish a certificate containing the information and copies of documents necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to subsection (a) is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

**(c) Liability for error or inaction by association.--**A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner.

**(d) Purchase contract voidable.--**The purchase contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever first occurs. (Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

**2004 Amendment.** Act 189 amended subsec. (c) and added subsec. (d).

**Cross References.** Section 5407 is referred to in sections 5102, 5302, 5316, 5401 of this title.

**§ 5412. Effect of violations on rights of action.**

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

(May 4, 2018, P.L.96, No.17, eff. 60 days)

**Cross References.** Section 5412 is referred to in section 5102 of this title.





A portrait of Rosemary M. Brown, a woman with long brown hair, wearing a black jacket over a white top, smiling. The background of the entire page is a stone archway with a view of a residential street with houses.

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