

No. 1980-82

AN ACT

SB 65

Amending Title 68 (Real and Personal Property) of the Pennsylvania Consolidated Statutes, adding provisions relating to condominiums.

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

Section 1. Title 68, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, is amended by adding a part to read:

**TITLE 68
REAL AND PERSONAL PROPERTY**

Part

II. Real Property

**PART II
REAL PROPERTY**

Subpart

B. Condominiums

**SUBPART B
CONDOMINIUMS**

Chapter

- 31. General Provisions
- 32. Creation, Alteration and Termination of Condominiums
- 33. Management of the Condominium
- 34. Protection of Purchasers

**CHAPTER 31
GENERAL PROVISIONS**

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§ 3101. Short title of subpart.

This subpart shall be known and may be cited as the "Uniform Condominium Act."

§ 3102. Applicability of subpart.

(a) General rule.—This subpart applies to all condominiums created within this Commonwealth after the effective date of this

subpart. Sections 3105 (relating to separate titles and taxation), 3106 (relating to applicability of local ordinances, regulations and building codes), 3107 (relating to eminent domain), 3203 (relating to construction and validity of declaration and bylaws), 3204 (relating to description of units), 3302(a)(1) through (6) and (11) through (16) (relating to powers of unit owners' association), 3311 (relating to tort and contract liability), 3315 (relating to lien for assessments), 3316 (relating to association records), 3407 (relating to resales of units) and 3412 (relating to effect of violations on rights of action), and section 3103 (relating to definitions) to the extent necessary in construing any of those sections, apply to all condominiums 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 existing provisions of the declaration, code of regulations or declaration plan of those condominiums.

(b) Prior statutory law.—The provisions of the act of July 3, 1963 (P.L.196, No.117), known as the "Unit Property Act," do not apply to condominiums created after the effective date of this subpart and do not invalidate any amendment to the declaration, code of regulations or declaration plan of any condominium created before the effective date of this subpart if the amendment would be permitted by this subpart. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by the provisions of the "Unit Property Act." If the 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.

(c) Condominiums outside Commonwealth.—This subpart does not apply to condominiums or units located outside this Commonwealth, but the public offering statement provisions (sections 3402 through 3405) apply to all dispositions thereof in this Commonwealth unless exempt under section 3401(b)(5) (relating to applicability; waiver).

§ 3103. 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 flexible condominium.

"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 employee 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 interests of 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 employee 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 interests of 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.

"Association" or "unit owners' association." The unit owners' association organized under section 3301 (relating to organization of unit owners' association).

"Common elements." All portions of a condominium other than the units.

"Common expenses." Expenditures made or liabilities incurred by or on behalf of the association, together with any allocations to reserves.

"Common expense liability." The liability for common expenses allocated to each unit pursuant to section 3208 (relating to allocation of common element interests, votes and common expense liabilities).

"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 common elements are vested in the unit owners.

"Conversion condominium." A condominium containing any building that at any time before recording of the declaration was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

"Convertible real estate." A portion of a flexible condominium not within a building containing a unit, within which additional units or limited common elements, or both, may be created.

"Declarant."

(1) If the condominium has been created, "declarant" means:

(i) any person who has executed a declaration, or an amendment to a declaration to add additional real estate, other than persons holding interests in the real estate solely as security for an

obligation, persons whose interests in the real estate will not be conveyed to unit owners, or, in the case of a leasehold condominium, a lessor who possesses no special declarant rights and who is not an affiliate of a declarant who possesses special declarant rights; or

(ii) any person who succeeds under section 3304 (relating to transfer of special declarant rights) to any special declarant rights.

(2) If the condominium has not yet been created, "declarant" means any person who offers to dispose of or disposes of his interest in a unit not previously disposed of.

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

"Dispose" or "disposition." A voluntary transfer of any legal or equitable interest in a unit, other than as security for an obligation.

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

"Flexible condominium." A condominium containing withdrawable or convertible real estate, a condominium to which additional real estate may be added, or a combination thereof.

"Identifying number." A symbol that identifies only one unit in a condominium.

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

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

"Limited common element." A portion of the common elements allocated by the declaration or by operation of section 3202(2) or (4) (relating to unit boundaries) for the exclusive use of one or more but fewer than all of the units.

"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. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a condominium not located in this Commonwealth, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the condominium is located.

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

"Purchaser." Any person, other than a declarant, who by means of a voluntary transfer acquires a legal or equitable interest in a unit, other than:

(1) a leasehold interest (including renewal options) of less than five years; or

(2) as security for an obligation.

“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. “Real estate” includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

“Special declarant rights.” Rights reserved for the benefit of a declarant to:

(1) Complete improvements indicated on plats and plans filed with the declaration (section 3210).

(2) Convert convertible real estate in a flexible condominium (section 3211).

(3) Add additional real estate to a flexible condominium (section 3211).

(4) Withdraw withdrawable real estate from a flexible condominium (section 3212).

(5) Convert a unit into two or more units, common elements, or into two or more units and common elements (section 3215).

(6) Maintain sales offices, management offices, signs advertising the condominium, and models (section 3217).

(7) Use easements through the common elements for the purpose of making improvements within the condominium or within any convertible or additional real estate (section 3218).

(8) Appoint or remove any officer of the association or any executive board member during any period of declarant control (section 3303(c)).

“Unit.” A portion of the condominium designated for separate ownership, the boundaries of which are described pursuant to section 3205(4) (relating to contents of declaration; all condominiums).

“Unit owner.” A declarant who owns a unit, a person to whom ownership of a unit has been conveyed, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium. “Unit owner” does not include a person having an interest in a unit solely as security for an obligation.

“Withdrawable real estate.” Real estate that may be withdrawn from a flexible condominium.

§ 3104. 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.

§ 3105. Separate titles and taxation.

(a) Title.—Except as provided in subsection (b), each unit together with its common element interest constitutes for all purposes a separate parcel of real estate.

(b) Taxation and assessment.—If there is a unit owner other than a declarant, each unit together with its common element interest, but excluding its common element interest in convertible or withdrawable real estate, shall be separately taxed and assessed, and each portion of any convertible or withdrawable real estate shall be separately taxed and assessed; otherwise, the real estate comprising the condominium may be taxed and assessed in any manner provided by law.

§ 3106. Applicability of local ordinances, regulations and building codes.

A zoning, subdivision, building code or other real estate use law, ordinance or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of this subpart invalidates or modifies any provision of any zoning, subdivision, building code or other real estate use law, ordinance or regulation. Without limiting the other provisions of this section, the creation of a condominium pursuant to section 3201 (relating to creation of condominium) out of an entire lot, parcel or tract of real estate shall not, in and of itself, constitute a subdivision or land development, for the purposes of these laws, ordinances and regulations.

§ 3107. 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 must compensate the unit owner for his unit and its common element interest, whether or not any common element interest is acquired. Upon acquisition, unless the decree otherwise provides, that unit's entire common element interest, votes in the association and common expense liability are automatically reallocated to the remaining units in proportion to the respective interests, votes and liabilities of those units before the taking, and 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 is thereafter a common element.

(b) Acquisition of part of a unit.—Except as provided in subsection (a), if part of a unit is acquired by eminent domain the award must compensate the unit owner for the reduction in value of the unit and its common element interest. Upon acquisition:

(1) that unit's common element interest, votes in the association and common expense liability are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and

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

(c) Acquisition of part of common elements.—If part of the common elements is acquired by eminent domain, the award must 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 elements among the unit owners in proportion to their respective common element interests before the taking, but the portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition, or in any manner the declaration provides.

§ 3108. Supplemental general principles of law.

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.

§ 3109. Construction against implicit repeal.

This subpart being a general statute intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

§ 3110. 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.

§ 3111. Unconscionable agreement or term of contract.

(a) Powers of court.—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 transactions does not, of itself, render the contract unconscionable.

§ 3112. Obligation of good faith.

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

§ 3113. 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.

CHAPTER 32 CREATION, ALTERATION AND TERMINATION OF CONDOMINIUMS

Sec.

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- 3218. Easement to facilitate completion, conversion and expansion.
- 3219. Amendment of declaration.
- 3220. Termination of condominium.
- 3221. Rights of secured lenders.

§ 3201. Creation of condominium.

(a) General rule.—A condominium 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 condominium or reduce its size, provided, however, in any such lease wherein the lessor is the Commonwealth of Pennsylvania, a municipal government or any agency thereof, said lessor need not execute the declaration if they shall have previously given written consent to its filing and agreed to be bound by the provisions of the Pennsylvania Uniform Condominium Act, in which case said declaration shall be executed by the lessee then in possession of the subject property. The declaration shall be recorded in every county in which any portion of the condominium is located in the same records as are maintained for the recording of deeds of real property and shall be indexed against each declarant as the grantor and the name of the condominium as the grantee.

(b) Substantial completion prerequisite to recording.—A declaration or an amendment to a declaration adding units to a condominium, may not be recorded unless all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion executed by an independent registered surveyor, architect or professional engineer. Whenever a plat or plan complying with section 3210 (relating to plats and plans) has been previously recorded pursuant to the act of July 31, 1968 (P.L.805, No.247), known as the "Pennsylvania Municipalities Planning Code," or an ordinance regulating land development, the plat or plan may be incorporated into the declaration by reference.

(c) Substantial completion prerequisite to conveyance.—No interest in a unit may be conveyed until the unit is substantially completed as evidenced by a recorded certificate of completion executed by an independent registered architect, surveyor or professional engineer.

(d) Construction of section.—Nothing contained in this section 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 completion of the unit.

§ 3202. Unit boundaries.

Except as provided by the declaration:

(1) If walls, floor or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors or ceilings are a part of the common elements.

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(3) Subject to the provisions of paragraph (2), all spaces, interior partitions and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

§ 3203. Construction and validity of declaration and bylaws.

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

(b) Application 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.—In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails 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 common element interest is not 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.

§ 3204. Description of units.

After the declaration is recorded, a description of a unit which sets forth the name of the condominium, the recording data for the declaration, the county or counties in which the condominium is located and the identifying number of the unit is a sufficient legal description of that unit and its common element interest even if the common element interest is not described or referred to therein. 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 shall be indexed by the recorder in the same manner as like instruments are indexed.

§ 3205. Contents of declaration; all condominiums.

The declaration for a condominium must contain:

(1) The name of the condominium which must include the word "condominium" or be followed by the words "a condominium."

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

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

(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 3215(c) (relating to subdivision or conversion of units).

(6) A description of any limited common elements as provided in section 3209 (relating to limited common elements).

(7) A description of any common elements not within the boundaries of any convertible real estate which may be allocated subsequently as limited common elements together with a statement that they may be so allocated and a description of the method by which the allocations are to be made.

(8) An allocation to each unit of an undivided interest in the common elements, a portion of the votes in the association and a percentage or fraction of the common expenses of the association (section 3208).

(9) Any restrictions created by the declarant on use, occupancy and alienation of the units.

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

(11) Any other matters the declarant deems appropriate.

§ 3206. Contents of declaration; flexible condominiums.

The declaration for a flexible condominium shall include, in addition to the matters specified in section 3205 (relating to contents of declaration; all condominiums):

(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 condominium.

(2) A statement of the time limit, not exceeding seven years after the recording of the declaration, upon which any option reserved under paragraph (1) will lapse together with a statement of any circumstances that will terminate the option before the expiration of the time limit.

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

(4) A statement of the extent to which the common element interest, relative voting strength in the association and share of common expense liability of each unit in the condominium 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) either 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 pursuant to paragraph (6);

(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 portions the boundaries of which are not fixed pursuant to paragraph (6).

(8) If any of the units that may be built 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 floor 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 or convertible real estate will be compatible with the other buildings and units in the condominium 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 condominium, or 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 condominium, or 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 pursuant to paragraphs (6) through (14) apply in the event any additional real estate is not added to or any withdrawable land is withdrawn from the condominium, or a statement that those assurances do not apply if the real estate is not added to or is withdrawn from the condominium.

§ 3207. Leasehold condominiums.

(a) Recording lease and contents of declaration.—Any lease the expiration or termination of which may terminate the condominium or reduce its size shall be recorded and the declaration shall state:

(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 within a reasonable time after the expiration or termination of the lease, or a statement that they 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 they do not have those rights.

(b) Limitation on termination of leasehold interest.—After the declaration for a leasehold condominium is recorded, neither the lessor nor his successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of his 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 units reduced.—If the expiration or termination of a lease decreases the number of units in a condominium, the common element interests, votes in the association and common expense liabilities shall be reallocated in accordance with section 3107 (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.

§ 3208. Allocation of common element interests, votes and common expense liabilities.

(a) General rule.—The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in 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.

(b) Flexible condominiums.—In a flexible condominium, the common element interest and common expense liability allocated to each unit must be equal, or proportionate to the relative size of each unit, unless the declaration as originally recorded:

(1) requires that any units created in additional or convertible real estate be substantially identical to the other units in the condominium and provides that common element interests and common expense liabilities will be allocated to those units in accordance with the formulas used for the initial allocations; or

(2) identifies all other types of units that may be created in additional or convertible real estate in terms of architectural style, quality of construction, principal materials to be used and ranges of sizes and states the formulas upon which any reallocations of common element interests and common expense liabilities will be made, or states the common element interest and common expense liability to be allocated to each unit that may be created.

(c) Votes.—The number of votes allocated to each unit must be equal, proportionate to that unit's common expense liability, or proportionate to that unit's common element interest. If the declaration allocates an equal number of votes in the association to each unit, each unit that may be subdivided or converted by the declarant into two or more units, common elements, or both (section 3215), must be allocated a number of votes in the association proportionate to the

relative size of that unit compared to the aggregate size of all units and the remaining votes in the association must be allocated equally to the other units. The declaration may provide that different allocations of votes shall be made to the units on particular matters specified in the declaration.

(d) Alteration or partition of allocations.—Except in the case of eminent domain (section 3107), expansion or conversion of a flexible condominium (section 3211), withdrawal of withdrawable real estate (section 3212), relocation of boundaries between adjoining units (section 3214) or subdivision of units (section 3215), the common element interest, votes and common expense liability allocated to any unit may not be altered without unanimous consent of all unit owners. 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 sums of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units shall each equal one if stated as fractions or 100% if stated as percentages. In the event of discrepancy between the common element interest, votes or common expense liability allocated to a unit and the result derived from application of the formulas, the allocated common element interest, vote or common expense liability prevails.

§ 3209. Limited common elements.

(a) Allocation.—Except for the limited common elements described in section 3202(2) and (4) (relating to unit boundaries), the declaration shall specify to which unit or units each limited common element is allocated. 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 those unit owners. The persons executing the assignment or amendment to the declaration shall provide a copy thereof 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 3205(7) (relating to contents of declaration; all condominiums). 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.

§ 3210. 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 and contain a certification that the plat or plan accurately depicts all existing conditions and contains all information required by this section.

(b) Contents of plat.—Each plat must show:

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

(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 condominium labeled either “MUST BE BUILT” or “NEED NOT BE BUILT” but need not show contemplated improvements within the boundaries of convertible real estate.

(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 extent of any encroachments by or upon any portion of the condominium.

(7) To the extent feasible, the location and dimensions of all easements serving or burdening any portion of the condominium.

(8) The location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (c) and that unit’s identifying number.

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

(10) 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.”

(11) The distance between noncontiguous parcels of real estate comprising the condominium.

(12) 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 3202(2) and (4) (relating to unit boundaries).

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

(c) Contents of plan.—Plans of every building that contains or comprises all or part of any unit and is located or must be built within any portion of the condominium, other than within the boundaries of any convertible real estate, must show:

(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 established datum, not shown on plats recorded pursuant to 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 (section 3215(c)), identified appropriately.

(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 (section 3211), 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 the remaining portion.

(f) Converting units.—If a declarant converts any unit into two or more units, limited common elements, or both (section 3215), he shall record new plans showing the location and dimensions of any new units and limited common elements thus created as well as the location and dimensions 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 or section 3201(b) (relating to creation of condominium) must be made by an independent registered surveyor, architect or professional engineer.

§ 3211. Conversion and expansion of flexible condominiums.

(a) General rule.—To convert convertible real estate or add additional real estate pursuant to an option reserved under section 3206(1) (relating to contents of declaration; flexible condominiums), the declarant shall prepare, execute and record an amendment to the declaration (section 3219) and comply with section 3210 (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 common element interests, 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 3209 (relating to limited common elements).

(b) Creations within added real estate.—Convertible or withdrawable real estate may be created within any additional real estate added to the condominium if the amendment adding that real estate includes all matters required by section 3205 (relating to contents of declara-

tion; all condominiums) or section 3206 (relating to contents of declaration; flexible condominiums), as the case may be, and the plat includes all matters required by section 3210(b) (relating to plats and plans). This provision does not extend the time limit on conversion or contraction of a flexible condominium imposed by the declaration pursuant to section 3206(2).

(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 condominium 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 inures to the declarant.

§ 3212. Withdrawal of withdrawable real estate.

(a) General rule.—To withdraw withdrawable real estate from a flexible condominium pursuant to an option reserved under section 3206(1) (relating to contents of declaration; flexible condominiums), 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 common element interests, votes in the association and common expense liabilities to the remaining units in the condominium in proportion to the respective interests, votes and liabilities of those units before the withdrawal, and the reallocation is effective when the amendment is recorded.

(b) When withdrawal prohibited.—If a portion of the withdrawable real estate was described pursuant to section 3206(6), 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 condominium 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 inures to the declarant.

§ 3213. Alterations of units.

Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium.

(2) May not change the appearance of the common elements or the exterior appearance of a unit or any other portion of the condominium without permission of the association.

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit, 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 condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

§ 3214. Relocation of boundaries between adjoining 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 common element interests, votes in the association and common expense liabilities, 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 recordation, is indexed in the name of the grantor and the grantee.

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

§ 3215. 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 or converted 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, assign an identifying number to each unit created and reallocate the common element interest, 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 other units the common element interest, votes in the association and common expense liability formerly allocated to the converted unit on the same basis used for the initial allocation thereof.

§ 3216. 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 his willful misconduct nor relieve a declarant or any contractor, subcontractor or materialman of liability for failure to adhere to the plats and plans.

§ 3217. Use for sales purposes.

A declarant may maintain sales offices, management offices and models in the condominium only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location and relocation thereof. Any sales office, management office or model not designated a unit by the declaration is a common element, and if a declarant ceases to be a unit owner, he ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium.

§ 3218. 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, whether arising under this subpart or reserved in the declaration.

§ 3219. Amendment of declaration.

(a) Number of votes required.—Except in cases of amendments that may be executed by a declarant under sections 3210(e) and (f) (relating to plats and plans), 3211(a) (relating to conversion and expansion of flexible condominiums) or 3212(a) (relating to withdrawal of withdrawable real estate); the association under sections 3107 (relating to eminent domain), 3207(d) (relating to leasehold condominiums), 3209(c) (relating to limited common elements) or 3215(a) (relating to subdivision or conversion of units); or certain unit owners under sections 3209(b) (relating to limited common elements), 3214(a) (relating to relocation of boundaries between adjoining units), 3215(b) (relating to subdivision or conversion of units) or 3220(b) (relating to termination of condominium), and except as limited by subsection (d), the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least 67% of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

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

(c) **Recording amendment.**—Every amendment to the declaration must be recorded in every county in which any portion of the condominium 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 condominium in both the grantor and grantee index. An amendment is effective only upon recordation.

(d) **When unanimous consent required.**—Except to the extent expressly permitted or required by other provisions of this subpart, no amendment may create or increase special declarant rights, increase the number of units or change the boundaries of any unit, the common element interest, common expense liability or voting strength in the association allocated to a unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

(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 any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

§ 3220. Termination of condominium.

(a) **Number of votes required.**—Except in the case of a taking of all the units by eminent domain (section 3107), a condominium may be terminated only by agreement of unit owners of units to which at least 80% of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

(b) **Execution and recording agreement and ratifications.**—An agreement of unit owners to terminate a condominium must be evidenced by their execution of a termination agreement or ratifications thereof. If, pursuant to a termination agreement, the real estate constituting the condominium is to be sold following termination, the termination agreement must set forth the terms of the sale. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium 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 condominium in both the grantor index and the grantee index. A termination agreement is effective only upon recordation.

(c) **Status if real estate sold.**—The association, on behalf of the unit owners, may contract for the sale of the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b). If the real estate constituting the condominium is to be sold 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 must 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 his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each unit owner and his successors in interest remain liable for all assessments and other obligations imposed on unit owners by this subpart or the declaration.

(d) Status if real estate not sold.—If the real estate constituting the condominium is not to be sold following termination, title to the real estate, upon termination, vests in the unit owners 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 his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit.

(e) Distribution of assets of association.—Following termination of the condominium, and after payment of or provision for the claims of the association's creditors, the assets of the association shall be distributed to unit owners in proportion to their respective interests as provided in subsection (f). The proceeds of sale described in subsection (c) and held by the association as trustee are not assets of the association.

(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, limited common elements and common element interests 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 and common element interest 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 prior to destruction cannot be made, the interests of all unit owners are their

respective common element interests immediately before the termination.

(g) Effect of foreclosure or enforcement of lien.—Foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real estate, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the condominium but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the condominium.

§ 3221. Rights of secured lenders.

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:

(1) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board; or

(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 pursuant to section 3312 (relating to insurance).

CHAPTER 33 MANAGEMENT OF THE CONDOMINIUM

Sec.

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§ 3301. Organization of unit owners' association.

A unit owners' association shall be organized no later than the date the condominium is created. The membership of the association at all times shall consist exclusively of all the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under section 3220 (relating to termination of condominium) or their heirs, successors or assigns. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association.

§ 3302. Powers of unit owners' association.

(a) General rule.—Subject to the provisions of the declaration, 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 in its own name on behalf of itself or two or more unit owners on matters affecting the condominium.
- (5) Make contracts and incur liabilities.
- (6) Regulate the use, maintenance, repair, replacement and modification of common elements.
- (7) Cause additional improvements to be made as a part of the common elements.
- (8) Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property.
- (9) Grant easements, leases, licenses and concessions through or over the common elements.
- (10) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements other than limited common elements described in section 3202(2) and (4) (relating to unit boundaries).
- (11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws and rules and regulations of the association.
- (12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section 3407 (relating to resales of units) or statements of unpaid assessments.
- (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 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.

(b) Restriction on limitations in declaration.—Notwithstanding subsection (a), the declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

§ 3303. Executive board members and officers.

(a) Powers and fiduciary status.—Except as provided in the declaration, the bylaws, in subsection (b) or other provisions of this subpart, the executive board may act in all instances on behalf of the association. The officers and members of the executive board appointed by the declarant are subject to liability as fiduciaries of the unit owners for their acts or omissions.

(b) Limitation on authority.—The executive board may not act on behalf of the association to amend the declaration (section 3219), to terminate the condominium (section 3220) or to elect members of the executive board or determine the qualifications, powers and duties or terms of office of executive board members (section 3303(e)) but the executive board may fill vacancies in its membership for the unexpired portion of any term. 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 the approval.

(c) Status during period of declarant control.—Subject to subsection (d), the declaration may provide for a period of declarant control of the association during which period a declarant or persons designated by him may appoint and remove the officers and members of the executive board. 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 not exceeding seven years in the case of a flexible condominium containing convertible real estate or to which additional real estate may be added, or five years in the case of any other condominium. Regardless of the period provided in the declaration, a period of declarant control terminates no later than 180 days after conveyance of 75% of the units to unit owners other than a declarant. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period but in that event he 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 to unit owners other than a declarant, 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 to unit owners other than a declarant, not less than 33 1/3% 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.—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 must be unit owners. The executive board shall elect the officers. The persons elected shall take office upon election.

(f) Calculation of percentages of units conveyed.—In determining whether the period of declarant control has terminated under subsection (c), or whether unit owners other than a declarant are entitled to elect members of the executive board under subsection (d), the percentage of the units conveyed is presumed to be that percentage which would have been conveyed if all the units the declarant has built or reserved the right to build in the declaration were included in the condominium.

§ 3304. Transfer of special declarant rights.

(a) Execution and recording instrument of transfer.—No special declarant rights (section 3103) 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 condominium 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 condominium in both the grantor and grantee index. 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 upon him 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 transferor retains any special declarant right or if a successor to any special declarant right is an affiliate of a declarant (section 3103), the transferor is subject to liability for all obligations and liabilities imposed on a declarant by this subpart or by the declaration arising after the transfer and is jointly and severally liable with the successor for the liabilities and obligations of the successor which relate to the condominium.

(3) A transferor who retains no special declarant right 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.

(c) Rights of purchaser in foreclosure, etc. proceedings.—Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, sale by a trustee under a deed of trust or sale under the Federal Bankruptcy Act or receivership proceedings of any units owned by a declarant in the condominium, a person acquiring title to all the units being foreclosed or sold, but only upon his request, succeeds to all special declarant rights, or only to any rights reserved in the declaration pursuant to section 3217 (relating to use for sales purposes) 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. proceedings.—Upon foreclosure, sale by a trustee under a deed of trust or sale under the Federal Bankruptcy Act or receivership proceedings of all units in a condominium owned by a declarant:

- (1) the declarant ceases to have any special declarant rights; and
- (2) the period of declarant control (section 3303(c)) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights 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 any declarant 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 upon a declarant by this subpart or the declaration but he is not subject to liability for misrepresentations or warranty obligations on components made by any previous declarant or made before the condominium was created, or for a breach of fiduciary obligation by any previous declarant.

(3) A successor to only a right reserved in the declaration to maintain models, sales offices and signs (section 3217), if he 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 who is not an affiliate of a declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument

conveying title to units under subsection (c) may declare his intention in a recorded instrument 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 the right to control the executive board in accordance with the provisions of section 3303(c) (relating to executive board members and officers) for the duration of any period of declarant control and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection he is not subject to any liability or obligation as a declarant other than liability for the successor's acts and omissions under section 3303(c).

(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.

§ 3305. Termination of contracts and leases of declarant.

If entered into before the executive board elected by the unit owners pursuant to section 3303(e) (relating to executive board members and officers) takes office:

- (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; or
- (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;

may be terminated without penalty by the association at any time after the executive board elected by the unit owners pursuant to section 3303(e) takes office upon not less than 90 days' notice to the other party. This section does not apply to any lease the termination of which would terminate the condominium or reduce its size unless the real estate subject to that lease was submitted to the condominium for the purpose of avoiding the right of the association to terminate a lease under this section.

§ 3306. Bylaws.

(a) **Mandatory provisions.**—The bylaws of the association must provide for:

- (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.

(b) Other provisions.—Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

§ 3307. Upkeep of condominium.

(a) General rule.—Except to the extent provided by the declaration or section 3312(d) (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 his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or 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 thereof.

(b) Nonresidential condominiums.—If any unit in a condominium 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.

§ 3308. Meetings.

The bylaws must require that meetings of the association be held at least once each year and provide for special meetings. The bylaws must 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.

§ 3309. Quorums.

(a) Association.—Unless the bylaws provide otherwise, a quorum is deemed 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 that board are present at the beginning of the meeting.

§ 3310. Voting; proxies.

(a) Multiple owners of a unit.—If only one of the multiple owners of a unit is present at a meeting of the association, he is entitled to cast all the votes allocated to that unit. 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 is 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.

(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 pursuant to 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) Cumulative and class voting.—The declaration may provide for cumulative voting only for the purpose of electing members of the executive board and for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this subpart.

(d) Units owned by association.—No votes allocated to a unit owned by the association may be cast.

§ 3311. 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 condominium 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 an action arising from a contract made by or on behalf of the association, shall 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 (section 3303(c)), 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's fees. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates.

(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.

(b) Lien of judgment.—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 or counties where the condominium is located, or in the office of the branch of the court of common pleas embracing such county or counties, 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 (section 3208). 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 shall be indexed in the name of the condominium.

(d) Applicability of section.—The provisions of this section shall be applicable to all associations without regard to whether the association is organized as a corporation or as an unincorporated association. § 3312. 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:

(1) Property insurance on the common elements and units exclusive of improvements and betterments installed in units by unit owners insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion condominium, against fire and extended coverage perils. 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.

(b) Other insurance carried by association.—If the insurance described in subsection (a) 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 and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

(c) Contents of insurance policies.—Insurance policies carried pursuant to subsection (a) must provide that:

(1) Each unit owner is an insured person under the policy with respect to liability arising out of his ownership of an undivided interest in the common elements or membership in the association.

(2) The insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of his 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 property covered by the policy, the policy is primary insurance not contributing with the other insurance.

(d) Proceeds from property insurance.—Any loss covered by the property policy under subsection (a)(1) 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 (g), 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 condominium is terminated.

(e) Unit owner may obtain insurance.—An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for his own benefit.

(f) 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 cancelled 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 certificates of insurance have been issued.

(g) Disposition of insurance proceeds.—

(1) Any portion of the condominium damaged or destroyed shall be repaired or replaced promptly by the association unless:

- (i) the condominium is terminated;
- (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or
- (iii) eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild.

The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense.

(2) If the entire condominium is not repaired or replaced:

- (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 condominium;
- (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were assigned; and
- (iii) the remainder of the proceeds shall be distributed to all the unit owners in proportion to their common element interests.

If the unit owners vote not to rebuild any unit, that unit's entire common element interest, votes in the association and common expense liability are automatically reallocated upon the vote as if the unit had been condemned under section 3107(a) (relating to eminent domain) and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations.

(3) Notwithstanding the provisions of this subsection, section 3220 (relating to termination of condominium) governs the distribution of insurance proceeds if the condominium is terminated.

(h) Nonresidential condominiums.—The provisions of this section may be varied or waived in the case of a condominium all of whose units are restricted to nonresidential use.

§ 3313. Surplus funds.

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves must be credited to the unit owners to reduce their future common expense assessments.

§ 3314. Assessments for common expenses.

(a) General rule.—Until the association makes a common expense assessment, the declarant shall pay all the expenses of the condominium. After any assessment has been made by the association, assessments shall be made at least annually and shall be based on a budget adopted at least annually by the association.

(b) Allocation and interest.—Except for assessments under subsection (c), common expenses shall be assessed against all the units in accordance with the common expense liability allocated to each unit

(section 3208). Any past due assessment or installment thereof shall bear interest at the rate established by the association not exceeding 15% per year.

(c) Limited 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; and

(2) any common expense benefiting fewer than all of the units shall be assessed exclusively against the units benefited.

(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.

§ 3315. 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 like manner as a mortgage on real estate. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to section 3302(a)(10), (11) and (12) (relating to powers of unit owners' association) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment becomes effective as a lien from the time the first installment thereof becomes due.

(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 recordation of the declaration.

(ii) Mortgages and deeds of trust on the unit securing first mortgage holders and recorded before the due date of the assessment or the due date of the first installment payable on the assessment.

(iii) Liens for real estate taxes and other governmental assessments or charges against the unit.

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

(i) As to unpaid common expense assessments made under section 3314(b) (relating to assessments for common expenses) that come due during the six months immediately preceding institution of 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 3314(b) other than the six months assessment referred to

in subparagraph (i), in the full amount of these unpaid assessments, whether or not the proceeds of the judicial sale are adequate to pay these assessments. To the extent 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), they 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) Notice and perfection of lien.—Subject to the provisions of subsection (b), recording of the declaration constitutes record notice and perfection of the lien.

(d) Limitation of actions.—A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the assessments become payable.

(e) 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.

(f) Costs and attorney's fees.—A judgment or decree in any action or suit brought under this section shall include costs and reasonable attorney's fees for the prevailing party.

(g) 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. 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.

§ 3316. Association records.

The association shall keep financial records sufficiently detailed to enable the association to comply with section 3407 (relating to resales of units). All financial and other records shall be made reasonably available for examination by any unit owner and his authorized agents.

§ 3317. 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 and 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.

CHAPTER 34 PROTECTION OF PURCHASERS

Sec.

- 3401. Applicability; waiver.
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§ 3401. Applicability; waiver.

(a) General rule.—This chapter applies to all units subject to this subpart, except as provided in subsection (b) and section 3411 (relating to warranty against structural defects) or as modified or waived by agreement of purchasers of units in a condominium in which all units are restricted to nonresidential use.

(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 condominium situated wholly outside this Commonwealth pursuant to a contract executed wholly outside this Commonwealth; or
- (6) a transfer to which section 3407 (relating to resales of units) applies.

§ 3402. 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 condominium.
- (2) A general description of the condominium, including without limitation the types, number and declarant's schedule of commencement and completion of construction of all buildings, units and amenities.

(3) The total number of additional units that may be included in the condominium and the proportion of units the declarant intends to rent or market in blocks of units to investors.

(4) A brief narrative description of any options reserved by a declarant to withdraw withdrawable real estate under section 3206(1) (relating to contents of declaration; flexible condominiums) and the expected effects that withdrawal would have on the remaining portion of the condominium.

(5) Copies and a brief narrative description of the significant features of the declaration (other than the plats and plans), the bylaws and rules and regulations, copies of any contracts and leases to be signed by purchasers at closing and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under section 3305 (relating to termination of contracts and leases of declarant).

(6) 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 assumptions 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 of any other reserves.

(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.

(7) Any services not reflected in the budget that the declarant provides, or expenses that he pays, and that he 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 the association and for each type of unit.

(8) Any initial or special fee due from the purchaser at closing together with a description of the purpose and method of calculating the fee.

(9) A description of any liens, defects or encumbrances on or affecting the title to the condominium.

(10) A description of any financing offered by the declarant.

(11) The terms and significant limitations of any warranties provided by the declarant including statutory warranties and limitations on the enforcement thereof or on damages.

(12) A statement in at least ten-point bold face type, appearing on the first page of the public offering statement, that:

(i) Within 15 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, that purchaser may recover from the declarant damages as provided in section 3406(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 15 days before signing a contract, he cannot cancel the contract.

(13) 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 condominium of which a declarant has actual knowledge.

(14) 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 3408 (relating to escrow of deposits) and will be returned to the purchaser if the purchaser cancels the contract pursuant to section 3406.

(15) Any restraints on alienation of any portion of the condominium.

(16) A description of the insurance coverage provided for the benefit of unit owners.

(17) Any current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium.

(18) The extent to which financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" pursuant to section 3414 (relating to declarant's obligation to complete and restore).

(19) All unusual and material circumstances, features and characteristics of the condominium and the units.

(20) In the case of a leasehold condominium, 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 3207(a) (relating to leasehold condominiums).

(vii) The following notice in bold type: "Purchasers should be aware that this is a leasehold condominium and the purchaser's interest therein may be less valuable than a fee interest, may depreciate over time and may be of questionable marketability."

(21) A statement containing a description of any provisions made in the budget for reserves for capital expenditures or, if no provision is made for reserves, a statement to this effect.

(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.

(b) Exceptions.—If a condominium composed of not more than 12 units is not a flexible condominium and no power is reserved to a declarant to make the condominium part of a larger condominium, group of condominiums or other real estate, a public offering statement may but need not include the information otherwise required by subsection (a)(3), (4) and (18) and the narrative descriptions of documents required by subsection (a)(5).

(c) Amendment for material change in information.—A declarant promptly shall amend the public offering statement to report any material change in the information required by this section.

§ 3403. Public offering statement; time-share estates.

(a) Definition.—For purposes of this section, "time-share estate" means either:

(1) an "interval estate," meaning a combination of:

(i) 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

(ii) 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; or

(2) a "time-span estate," meaning a combination of:

(i) 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

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

(b) General rule.—If the declaration provides that ownership or occupancy of the 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 3402 (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 condominium.

(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 he 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 bold face 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 3406(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, he cannot cancel the contract.

§ 3404. Public offering statement; conversion condominiums.

(a) General rule.—The public offering statement of a conversion condominium must contain, in addition to the information required by section 3402 (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, describing the age and present condition of all structural components and mechanical and electrical installations, including but not limited to roofs, plumbing, heating, air conditioning, elevators and pest control conditions, material to the use and enjoyment of the condominium.

(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 code or other municipal regulations, together with the estimated cost of curing those violations.

(b) Applicability of section.—This section applies only to units that may be occupied for residential use.

§ 3405. Public offering statement; condominium securities.

If an interest in a condominium 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 he delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a condominium is not 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."

§ 3406. Purchaser's right to cancel.

(a) General rule.—Unless delivery of a public offering statement is not required under section 3401(b) (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 of any contract of sale. Unless a purchaser is given the public offering statement more than 15 days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within 15 days after first receiving the public offering statement, except in the case of the sale of a time-share estate. Unless a purchaser of a time-share estate is given the public offering statement more than seven days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within seven days after first receiving the public offering statement.

(b) Method and effect of cancellation.—If a purchaser elects to cancel a contract pursuant to subsection (a), he 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 his 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 the 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.

§ 3407. 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.

(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 the health or building codes with respect to the unit, the limited common elements assigned thereto or any other portion of the condominium.

(12) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof.

(b) Information supplied by association.—The association, within ten days after a request by a unit owner, shall furnish a certificate containing the information 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 but 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.

§ 3408. Escrow of deposits.

Any deposit (which shall not include any installment payment under an installment sales contract) made in connection with the purchase or reservation of a unit from a declarant shall be placed in escrow and held in this Commonwealth in an account designated solely for that purpose by an 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.

§ 3409. 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 common element interest 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 lien adequate in nature and amount. This subsection does not apply to any withdrawable real estate in which no unit has been conveyed.

(b) **Lien against multiple units.**—Whether perfected before or after creation of the condominium, if a lien other than a deed of trust or mortgage, including a lien attributable to work performed or materials supplied before creation of the condominium, 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 and its common element interest. The amount of the payment must 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.

§ 3410. Conversion condominiums.

(a) **Notice of conversion.**—A declarant of every conversion condominium shall give each of the tenants and any subtenant in possession of a unit or units in a building or buildings subject to this subpart notice of the conversion no later than one year before the declarant will require the tenants and any subtenant in possession to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and shall be mailed by prepaid United States registered mail return receipt requested to the tenant and subtenant at the address of the unit and not more than one other mailing address provided by a tenant. Every notice shall be accompanied by a public

offering statement concerning the proposed sale of condominium units within such building or buildings. Except as otherwise provided in subsection (f), no tenant or subtenant may be required by the declarant to vacate upon less than one year's notice, 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 may not be altered during that period. Failure of a declarant to give notice as required by this subsection is a defense to an action for possession.

(b) Offer to tenant to purchase unit.—For six months after delivery or mailing of the notice described in subsection (a), the declarant shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the 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 section shall not apply to any rental unit which immediately prior to the conversion was restricted exclusively to nonresidential use. The purchase option set forth in this subsection shall be recorded in the recorder of deeds office in any county in which the proposed conversion condominium is located.

(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, recordation 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 notice of conversion specifies a date by which a unit or proposed unit must be vacated, the notice also constitutes 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 tenant, after receiving notice pursuant to 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 owner of any proposed conversion condominium shall not engage in any activity of any nature which would coerce the tenant into terminating any lease, including but not limited to stampeding, harassing tenants or withholding normal services or repairs.

(f) Units leased to senior citizens and blind and disabled persons.—For the purpose of this subsection, an eligible tenant or subtenant shall be a natural person who, at the time the notice described in subsection (a) is given by the declarant, is 62 years of age or older or is blind or disabled, and has occupied the unit for at least two years. Within 30 days after receipt of the notice from the declarant referred to in subsection (a), 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 date of the notice referred to in subsection (a), 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 condominium, and the terms of the tenancy may not be altered during the time period between the date on which the tenant's lease would otherwise terminate and the expiration of this two-year period except that the rental may be increased to the extent necessary to reflect any increase in real estate taxes and utility charges, applicable to the unit and not separately paid by the tenant, for the time period between the date of the notice referred to in subsection (a) and the date on which the tenant's lease would otherwise terminate. 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.—At least 30 days before the notice of conversion is given, the declarant shall hold a tenant meeting open to the public in the municipality where the conversion is proposed at a place and time convenient to the persons who may be directly affected by the conversion.

(h) Community development grants.—If Federal funds under Title I of the Community Development Act of 1974 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 condominium for a period of ten years from the date the rehabilitation is completed.

§ 3411. Warranty against structural defects.

(a) Definition.—As used in this section "structural defects" means those defects in components constituting any unit or common element which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration or replacement. 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.—A declarant warrants against structural defects in each of the units for two years from the date each is conveyed to a

bona fide purchaser, and all of the common elements for two years. The two years shall begin as to each of the common elements whenever the common element has been completed or, if later:

(1) as to any common element within any additional real estate or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser;

(2) as to any common element within any convertible real estate or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser; and

(3) as to any common element within any other portion of the condominium, at the time the first unit therein is conveyed to a bona fide purchaser.

(c) Conversion condominiums.—A declarant of a conversion condominium warrants against structural defects in components installed by the declarant, work done or improvements made by the declarant, and that the unit and common elements have been inspected for structural and mechanical defects and that any such defects found have been repaired. Otherwise, the declarant of a conversion condominium may offer the units, common elements, or both in an “as is” condition. The declarant of a conversion condominium may also give a more extensive warranty in writing. The times at which these warranties commence and the duration of these 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; and

(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.

§ 3412. Effect of violations on rights of action.

If a declarant or any other person subject to this subpart violates any provision thereof or any provision 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.

§ 3413. Labeling of promotional material.

If any improvement contemplated in a condominium is required by section 3210(b)(3) (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.”

§ 3414. 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 3210 (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 condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created by sections 3211 (relating to conversion and expansion of flexible condominiums), 3212 (relating to withdrawal of withdrawable real estate), 3217 (relating to use for sales purposes) and 3218 (relating to easement to facilitate completion, conversion and expansion).

Section 2. The act of July 3, 1963 (P.L.196, No.117), known as the "Unit Property Act," is repealed except as to condominiums created prior to the effective date of this act.

Section 3. This act shall take effect in 120 days, except for the provisions of 68 Pa.C.S. §§ 3102(a), 3103, 3109, 3110, 3402, 3404, 3406 and 3410 to the extent applicable to conversion condominiums, which shall take effect immediately and apply to any conversion condominium established after such date.

APPROVED—The 2nd, day of July, A. D. 1980.

DICK THORNBURGH