

No. 2004-191

AN ACT

HB 1331

Amending Title 68 (Real and Personal Property) of the Pennsylvania Consolidated Statutes, further providing for condominiums.

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

Section 1. Section 3102 of Title 68 of the Pennsylvania Consolidated Statutes is amended by adding a subsection to read:

§ 3102. Applicability of subpart.

* * *

(a.1) Retroactivity.—

(1) Sections 3103 (relating to definitions), 3108 (relating to supplemental general principles of law), 3112 (relating to obligation of good faith), 3219 (relating to amendment of declaration), 3220(i) (relating to termination of condominium), 3302(a)(8)(i), (16) and (17) (relating to powers of unit owners' association), 3303(a) and (b) (relating to executive board members and officers), 3307 (relating to upkeep of condominium), 3314 (relating to assessments for common expenses) and 3319 (relating to other liens affecting the condominium), to the extent necessary in construing any of those sections, shall apply to all condominiums created in this Commonwealth before the effective date of this subsection, but those sections apply only with respect to events and circumstances occurring after the effective date of this subsection and do not invalidate existing provisions of the declaration, code of regulations, bylaws or declaration plan of those condominiums.

(2) Section 3303(c) and (d), to the extent necessary in construing any of those subsections, applies to all condominiums created in this Commonwealth before the effective date of this subpart, but those subsections apply only with respect to events and circumstances occurring 180 days after the effective date of this subsection and do not invalidate existing provisions of the declaration, code of regulations or declaration plan of those condominiums.

Section 2. Sections 3210(h), 3218 and 3219(a) and (f) of Title 68 are amended to read:

§ 3210. Plats and plans.

* * *

(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.

§ 3218. Easement to facilitate completion, conversion and expansion.

(1) 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, however arising.

(2) *Without affecting the rights, if any, of each unit owner with respect to the use and enjoyment of the common elements, subject to the provisions of the declaration, each unit owner and its agents, contractors and invitees shall have a nonexclusive access easement through the common elements as may be reasonably necessary for the purpose of construction, repair and renovation of the owner's unit. An association shall have the power during spring thaw conditions to restrict usage by vehicles of more than ten tons gross weight if:*

(i) *the restrictions are imposed only on a week-by-week basis for an aggregate period not to exceed eight weeks during any calendar year;*

(ii) *the thaw conditions are reviewed by the association at least weekly; and*

(iii) *signs are conspicuously posted by the association at all entrances to the condominium advising when and where the thaw restrictions are applicable.*

(3) *An association shall not have the power to impose any fees or charges or required financial security, including surety bonds, letters of credit or escrow deposits for the use of the easement rights under this section except for the repair of damage caused to common elements in the exercise of the easement rights.*

(4) *The declarant or owner who exercises the easement rights under this section, whether directly or indirectly through an agent, servant, contractor or employee, shall have the obligation to promptly return any portion of the common elements damaged by the exercise by the declarant or owner or its agent, servant, contractor or employee of the easement under this section to the appearance, condition and function in which it existed prior to the exercise of the easement or to reimburse the association for all reasonable costs, fees and expenses incurred by the association to return any portion of the common elements so damaged to the appearance, condition and function in which it existed prior to the exercise of the easement.*

§ 3219. Amendment of declaration.

(a) Number of votes required.—Except in cases of amendments that may be executed by a declarant under section 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 subsection (f) or section 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 section 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) **and section 3221 (relating to rights of secured lenders)**, 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.

* * *

(f) **Corrective amendments.**—Except as otherwise provided in the declaration, if any amendment to the declaration is necessary in the judgment of the executive board to cure any ambiguity or to correct or supplement any provision of the declaration, including the plats and plans, that is defective, missing or inconsistent with any other provision thereof or with this subpart or if an amendment is necessary in the judgment of the executive board to conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or deeds of trust on units in condominium projects (such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation), **to comply with any statute, regulation, code or ordinance which may now or hereafter be made applicable to the condominium or association, or to make a reasonable accommodation or permit a reasonable modification in favor of handicapped, as may be defined by prevailing Federal or State laws or regulations applicable to the association, unit owners, residents, tenants or employees**, then, at any time and from time to time, the executive board may at its discretion effect an appropriate corrective amendment without the approval of the unit owners or the holders of any liens on all or any part of the condominium, upon receipt by the executive board of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this subsection.

Section 3. Section 3220 of Title 68 is amended by adding a subsection to read:

§ 3220. Termination of condominium.

* * *

(i) **Ineffectiveness of termination provision.**—**In the case of a declaration that contains no provision expressly providing for a means of terminating the condominium other than a provision providing for a self-executing termination upon a specific date or upon the expiration of a specific time period, such termination provision shall be deemed ineffective if no earlier than five years before the date the condominium would otherwise be terminated owners of units to which at least 80% of the votes in the condominium are allocated vote that the self-executing termination**

provision shall be annulled, in which event the self-executing termination provision shall have no force or effect.

Section 4. Sections 3221, 3302(a) and 3303(a) of Title 68 are amended to read:

§ 3221. Rights of secured lenders.

(a) **Secured lender approval.**—The declaration may require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions but no requirement for approval may operate to:

- (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).

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

§ 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 *or engage in arbitrations or mediation* 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, *and to make reasonable accommodations or permit reasonable modifications to be made to units, the limited common elements or the common elements to accommodate handicapped, as defined by prevailing Federal, State or local statute, regulations, code or ordinance, unit owners, residents, tenants or employees.*

(7) Cause additional improvements to be made as a part of the common elements.

(8) (i) Acquire, hold, encumber and convey in its own name any right, title, or interest to real or personal property[, **but common elements may be conveyed or subjected**] *other than common elements; and*

(ii) *convey or subject* to a security interest *common elements* only pursuant to the provisions of section 3318 (relating to conveyance or encumbrance of common elements).

(9) Grant easements, leases, licenses and concessions through or over the common elements, but any such easement, lease, license or concession:

(i) that is not for the benefit of all or substantially all of the unit owners shall not be granted without the same unit owner approval that is required for an amendment to the declaration; or

(ii) that materially impairs any right or benefit that one or more unit owners may have with respect to the common elements shall not be granted without the prior written approval of those unit owners.

(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. *In addition, the association may impose a capital improvement fee, but no other fees, on the resale or transfer of units in accordance with the following:*

(i) The capital improvement fee for any unit shall not exceed the annual assessments for general common expense charged to such unit during the most recently completed fiscal year of the association, provided that:

(A) in the case of resale or transfer of a unit consisting of unimproved real estate, the capital improvement fee shall not exceed one-half of the annual assessments for general common expenses charged to such unit during the most recently completed fiscal year of the association;

(B) in the case of resale or transfer of a unit which was created or added to the condominium in accordance with section 3211 (relating to the conversion and expansion of flexible condominiums) at some time during the most recently completed fiscal year of the association but was not in existence for the entire fiscal year, the capital improvement fee shall not exceed one-half of the annual assessments for general common expenses charged to a unit comparable to such unit during the most recently completed fiscal year of the association; and

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

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

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

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

(A) acquires a unit consisting of unimproved real estate and signs and delivers to the association at the time of such person's acquisition a sworn affidavit declaring the person's intention to reconvey such unit within 18 months of its acquisition; and

(B) completes such reconveyance within 18 months.

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

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

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

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

(17) Assign its right to future income, including the right to receive the payments made on account of common expense assessments[, **but only to the extent the declaration expressly so provides**]. *Reserve funds held for future major repairs and replacements of the common elements may not be assigned or pledged.*

(18) Assign or delegate any powers of the association listed in this section to a master association subject to the provisions of section 3222 (relating to master associations) and accept any assignment or delegation of powers from one or more condominiums or other incorporated or unincorporated associations.

* * *

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

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

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

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

An officer or executive board member shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause his reliance to be unwarranted. *The executive board and its members*

shall have no liability for exercising these powers provided they are exercised in good faith, in the best interest of the association and with such care in the manner set forth in this section.

* * *

Section 5. Sections 3312(a), (b), (e) and (g), 3315(b) and 3407(c) of Title 68 are amended and the sections are amended by adding subsections to read: § 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 insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, 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.

(3) Any property or comprehensive general liability insurance carried by the association may contain a deductible provision.

(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] in such reasonable amounts and with such reasonable deductibles as the executive board may deem** appropriate to protect the association or the unit owners.

* * *

(e) Unit owner may obtain insurance.—*A unit owner may insure his unit for all losses to his unit, including all losses not covered by the insurance maintained by the association due to a deductible provision or otherwise.* An insurance policy issued to the association **[does] shall** not prevent a unit owner from obtaining insurance for his own benefit.

* * *

(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] Except for the costs of repair or replacement which are not covered due to deductibles, the cost of repair or replacement in excess of insurance proceeds and reserves which have not been identified by the executive board to fund costs of capital expenditures for the current fiscal year of the association 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.

* * *

(i) Recovery of deductibles.—If any insurance policy maintained by the association contains a deductible, then that portion of any loss or claim which is not covered by insurance due to the application of a deductible, as well as any claim or loss for which the association is self-insured, shall be levied by the executive board in accordance with section 3314(c) (relating to assessments for common expenses).

§ 3315. Lien for assessments.

* * *

(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) (A) Mortgages and deeds of trust on the unit securing first mortgage holders and recorded before the due date of the assessment,

if the assessment is not payable in installments, or the due date of the unpaid installment, if the assessment is payable in installments.

(B) Judgments obtained for obligations secured by mortgages or deeds of trust under clause (A).

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

(2) Limited nondivestiture.—The association's lien for **[common expenses] assessments** 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] the date of a judicial sale of a unit in** an action to enforce collection of a lien against a unit **[by a judicial sale, only to the extent that the six months unpaid assessments are paid out of the proceeds of the sale]**.

(ii) As to unpaid common expense assessments made under section 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).

* * *

(h) Application of payments.—Unless the declaration otherwise provides, any payment received by an association in connection with the lien under this section shall be applied first to any interest accrued by the association, then to any late fee, then to any costs and reasonable attorney fees incurred by the association in collection or enforcement and then to the delinquent assessment. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instructions placed on or accompanying a payment.

§ 3407. Resales of units.

* * *

(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].

(d) Purchase contract voidable.—The purchase contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever first occurs.

Section 6. Section 3410(d) and (j)(1) of Title 68 are amended to read:
§ 3410. Condominiums containing conversion buildings.

(d) Notice to vacate.—If a conversion notice specifies a date by which a unit or proposed unit must be vacated, the conversion notice also constitutes a notice of termination of the tenant's lease, subject to revocation in accordance with subsection [(j)] (i), and a notice to quit specified by section 501 of the act of April 6, 1951 (P.L.69, No.20), known as The Landlord and Tenant Act of 1951.

(j) Waiver of purchase rights.—Notwithstanding any provisions of this subpart prohibiting waiver of rights, any tenant may waive his right to purchase a unit pursuant to subsection (b) if the waiver is in writing, is acknowledged and is given in consideration of:

(1) an extension of the term of the tenant's tenancy and right of occupancy under this subpart beyond the time period required by [subsection (b)] subsection (a) or (f) as applicable;

Section 7. This act shall take effect in 60 days.

APPROVED—The 30th day of November, A.D. 2004.

EDWARD G. RENDELL