

No. 2004-190

AN ACT

HB 1330

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

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

Section 1. Section 4102 of Title 68 of the Pennsylvania Consolidated Statutes is amended by adding a subsection to read:

§ 4102. Applicability of subpart.

* * *

(b.1) Retroactivity.—

(1) Sections 4103, 4108 (relating to supplemental general principles of law applicable), 4112 (relating to obligation of good faith), 4216 (relating to amendment of declaration), 4217(g) (relating to termination of cooperative ownership), 4302(a)(8)(i) and (9), 4303(a), (b) and (c) (relating to executive board members and officers), 4307 (relating to upkeep of cooperative), 4314 (relating to assessments for common expenses) and 4316 (relating to other liens affecting cooperative), to the extent necessary in construing any of those sections, apply to all cooperatives created in this Commonwealth before the effective date of this subpart, but those sections apply only with respect to events and circumstances occurring after the effective date of this subsection and do not invalidate existing provisions of the cooperative documents of those cooperatives.

(2) Section 4303(d), to the extent necessary in construing that subsection, applies to all cooperatives created in this Commonwealth before the effective date of this subpart, but the subsection applies only with respect to events and circumstances occurring 180 days after the effective date of this subsection and does not invalidate specific provisions contained in existing provisions of the declaration, bylaws or plats and plans of those cooperatives.

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Section 2. Section 4216(a) and (f) of Title 68 are amended to read:
§ 4216. Amendment of declaration.

(a) Number of votes required.—Except in cases of amendments that may be executed by a declarant under section 4209 (relating to exercise of development rights), the association under section 4107 (relating to eminent domain), 4206(c) (relating to leasehold cooperatives), 4208(c) (relating to limited common elements), 4211(a) (relating to relocation of boundaries between adjoining units) or 4212 (relating to subdivision of units), the executive board of the association under subsection (f) or certain proprietary

lessees under section 4208(b), 4211(a), 4212(b) or 4217(b) (relating to termination of cooperative ownership), and except as limited by subsection (d) *and section 4218 (relating to rights of secured lenders and secured creditors)*, the declaration may be amended only by vote or agreement of proprietary lessees of cooperative interests 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 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] cooperative** projects (such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation), *to comply with any statute, regulation, code or ordinance applicable to the cooperative 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 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 proprietary lessees or the holders of any liens on all or any part of the cooperative, 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 4217 of Title 68 is amended by adding a subsection to read:

§ 4217. Termination of cooperative ownership.

* * *

(g) **Ineffectiveness of termination provision.**—*In the case of a declaration that contains no provision expressly providing for a means of terminating the cooperative 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 cooperative would otherwise be terminated the owners of at least 80% of the units in the cooperative 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 4218, 4302(a)(4), (6), (8), (12) and (14) and 4303(a) of Title 68 are amended to read:

§ 4218. Rights of secured lenders and secured creditors.

(a) **Secured lender approval.**—The declaration may provide that all or a specified number or percentage of secured creditors of the association or lenders holding security interests encumbering the cooperative interests approve specified actions of the proprietary lessees of the association as a condition to the effectiveness of those actions, and the declaration may provide for procedures that will enable such lenders to have their approval rights recognized by the executive board, but no requirement for approval may operate to:

(1) Deny or delegate control over the general administrative affairs of the association by the proprietary lessees or the executive board.

(2) Prevent the association or the executive board from commencing, intervening in or settling any litigation or proceeding.

(3) Receive and distribute any insurance proceeds except pursuant to section 4313 (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 proprietary lessees or the association as a condition to the effectiveness of those actions, then the executive board will provide the lender with written notice of the specified action proposed to be taken, together with a request for the secured lender to approve or disapprove the actions specified. If the notice to the secured lender, issued in accordance with the procedures set forth in this subsection, states that the secured lender will be deemed to have approved the actions specified in the written notice if it does not respond to the request within 45 days and the secured lender does not respond in writing within 45 days, then the secured lender will be deemed for all purposes to have approved the action specified in the notice. Written notice to the secured lender shall be given by certified, registered or first-class mail, evidenced by a United States Postal Service certificate of mailing, postage prepaid, at the address provided by the secured lender or, in the absence thereof, at the address of the secured lender endorsed on any mortgage or deed of trust of record and at the address to which the unit owner mails any periodic payment paid to the secured lender. The notice to the secured lender shall include a statement of the specified action, a copy of the full text of any proposed amendment and a form prepared by the association upon which the secured lender may indicate its approval or rejection of the specified action or amendment.*

§ 4302. Powers of association.

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

* * *

(4) Institute, defend or intervene in litigation or administrative proceedings, *or engage in arbitrations or mediations*, in its own name on

behalf of itself or two or more proprietary lessees on matters affecting the cooperative.

* * *

(6) Regulate the use, maintenance, repair, replacement and modification of common elements[.] *and make reasonable accommodation or permit reasonable modifications to be made to units or the common elements to accommodate handicapped as defined by prevailing Federal, State or local statute, regulation, code or ordinance, proprietary lessees, residents, tenants or employees.*

* * *

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

(ii) *convey or subject all or part of the cooperative* to a security interest only pursuant to section 4312 (relating to conveyance or encumbrance of cooperative).

* * *

(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section 4409 (relating to resales of cooperative interests) or statements of unpaid assessments. *In addition, an association may impose a capital improvement fee on the resale or transfer the leasehold interest in units in accordance with the following:*

(i) *The capital improvement fee for any unit may 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 the leasehold interest in a unit consisting of unimproved real estate, the capital improvement fee may 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 the leasehold interest in a unit which was created or added to the cooperative in accordance with section 4209 (relating to exercise of development rights) 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 may 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 other transfer of the proprietary lease to a unit.*

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

(iii) No capital improvement fee may be imposed on any gratuitous transfer of a proprietary interest in 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 proprietary interest in 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.

(14) 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.

§ 4303. Executive board members and officers.

(a) Fiduciary status and exercise of duties.—Except as provided in the declaration, the bylaws in subsection (b) or in other provisions of this subpart, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board shall stand in a fiduciary relation to the association and shall perform their duties, including duties as members of any committee of the board upon which they may serve, in good faith, in a manner they reasonably believe to be in the best interests of the association and with 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 4313(a), (b), (e) and (g), 4315(b)(1) and (2) and 4409(c) of Title 68 are amended and the sections are amended by adding subsections to read:

§ 4313. Insurance.

(a) Insurance to be carried by association.—Commencing not later than the time of the first conveyance of a cooperative interest 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 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 at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(2) 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 and units.

(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 reasonably available, the association promptly shall

cause notice of that fact to be hand delivered or sent prepaid by the United States mail to all proprietary lessees. 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 proprietary lessees.

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

* * *

(g) Disposition of insurance proceeds.—

(1) Any portion of the cooperative for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless:

(i) the cooperative is terminated;

(ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance; or

(iii) 80% of the proprietary lessees, including every proprietary lessee 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 cooperative is not repaired or replaced:

(i) the insurance proceeds attributed to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the cooperative; and

(ii) except to the extent that other persons will be distributees and except as is otherwise provided in section 4321(i) (relating to limited equity cooperatives):

(A) the insurance proceeds attributable to units and limited common elements which are not rebuilt must be distributed to the proprietary lessees of those units and the proprietary lessees of the units to which those limited common elements were located or to lienholders, as their interests may appear; and

(B) the remainder of the proceeds must be distributed to all the proprietary lessees or lienholders, as their interests may appear, in

proportion to the common expense liabilities of all the cooperative interests.

If the proprietary lessees vote not to rebuild any unit, the allocated interests of the cooperative interest of which that unit is a part are automatically reallocated upon the vote as if the unit had been condemned under section 4107(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 4217 (relating to termination of cooperative ownership) governs the distribution of insurance proceeds if the cooperative is terminated.

(i) Recovery of deductibles.—If an 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 4314(c) (relating to assessments for common expenses).

§ 4315. Lien for assessments.

(b) Priority of lien.—

(1) A lien under this section is prior to all other liens and encumbrances on a cooperative interest except:

(i) Liens and encumbrances on the cooperative which the association creates, assumes or takes subject to.

(ii) (A) The first security interest encumbering only the cooperative interest and perfected before the date on which the assessment or the first installment payable on the assessment, if the assessment is payable in installments, sought to be enforced became delinquent.

(B) *Judgments obtained for obligations secured by a security interest under clause (A).*

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

(2) The association's lien for [common expenses] assessments shall be divested by a judicial sale of the cooperative interest:

(i) As to unpaid common expense assessments made under section 4314(b) that come due during the six months immediately preceding [Institution of] the date of a judicial sale of a cooperative interest in an action to enforce collection of a lien against a cooperative interest 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 4314(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 cooperative interest.

* * *

(i) Application of payments.—

(1) Unless the declaration otherwise provides, any payment received by an association in connection with the lien under this section shall be applied:

(i) First to any interest accrued by the association.

(ii) Second to any late fee.

(iii) Third to any costs and reasonable attorney fees incurred by the association in collection or enforcement.

(iv) Last to the delinquent assessment.

(2) Paragraph (1) shall apply notwithstanding any restrictive endorsement, designation or instructions placed on or accompanying a payment.

§ 4409. Resales of cooperative interests.

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(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 proprietary lessee 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 4412(h)(1) of Title 68 is amended to read:

§ 4412. Cooperatives containing conversion buildings.

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

(1) a written extension of the term of that tenant's tenancy and right of occupancy under this subpart beyond the time period required by **[subsection (a)] 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