

No. 1996-180

AN ACT

HB 1757

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

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

Section 1. Part II of Title 68 of the Pennsylvania Consolidated Statutes is amended by adding a subpart to read:

PART II
REAL PROPERTY

* * *

SUBPART D
PLANNED COMMUNITIES

Chapter

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

CHAPTER 51
GENERAL PROVISIONS

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§ 5101. Short title of subpart.

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

§ 5102. Applicability.

(a) General rule.—This subpart applies to all planned communities created within this Commonwealth after the effective date of this subpart; but, if such a planned community contains no more than 12 units and is not subject to any rights under section 5215 (relating to subdivision or conversion of units) to subdivide units or to convert into common elements or under section 5211 (relating to conversion and expansion of flexible planned communities) to add additional real estate, create units or limited common elements within convertible real estate or withdraw real estate, it is subject only to sections 5105 (relating to separate titles and taxation), 5106 (relating to applicability of local ordinances, regulations and building codes), 5107 (relating to eminent domain) and 5218 (relating to easement to facilitate completion, conversion and expansion) unless the declaration provides that the entire subpart is applicable.

(b) Retroactivity.—Except as provided in subsection (c), sections 5105, 5106, 5107, 5203 (relating to construction and validity of declaration and bylaws), 5204 (relating to description of units), 5218, 5219 (relating to amendment of declaration), 5223 (relating to merger or consolidation of planned community), 5302(a)(1) through (6) and (11) through (15) (relating to power of unit owners' association), 5311 (relating to tort and contract liability), 5315 (relating to lien for assessments), 5316 (relating to association records), 5407 (relating to resales of units) and 5412 (relating to effect of violations on rights of action) and section 5103 (relating to definitions), to the extent necessary in construing any of those sections, apply to all planned communities created in this Commonwealth before the effective date of this subpart; but those sections apply only with respect to events and circumstances occurring after the effective date of this subpart and do not invalidate existing provisions of the declaration, bylaws or plats and plans of those planned communities.

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

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

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

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

(ii) If the result accomplished by the amendment is permitted by this subpart and was not permitted by law prior to this subpart, the amendment may be made under this subpart.

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

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

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

§ 5103. Definitions.

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

“Additional real estate.” Real estate that may be added to a planned community.

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

(1) A person “controls” a declarant if the person:

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

(ii) directly or indirectly or acting in concert with one or more other persons or through one or more subsidiaries owns, controls, holds with

power to vote or holds proxies representing more than 20% of the voting interest in the declarant;

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

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

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

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

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

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

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

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

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

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

"Common elements." Common facilities or controlled facilities.

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

"Common expenses." Expenditures made by or financial liabilities of the association, together with any allocations to reserves. The term includes general common expenses and limited common expenses.

"Common facilities." Any real estate within a planned community which is owned by the association or leased to the association. The term does not include a unit.

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

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

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

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

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

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

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

“Declarant.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“General common expenses.” All common expenses other than limited common expenses.

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

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

“Interval estate.” A combination of:

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

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

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

“Limited common element.” A limited common facility or a limited controlled facility.

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

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

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

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

“Offer” or “offering.” Any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a unit other than as security for an obligation. The term does not include an advertisement in a newspaper or other periodical of general circulation or in a broadcast medium to the general public of a planned community not located in this Commonwealth if the advertisement states that an offer or offering may be made only in compliance with the law of the jurisdiction in which the planned community is located.

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

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

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

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

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

“Residential purposes.” Use for dwelling or recreational purposes, or both.

“Residential subtenant.” An individual lawfully occupying real estate for residential purposes under a sublease.

“Residential tenant.” An individual lawfully occupying real estate for residential purposes under a lease.

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

(1) complete improvements indicated on plats and plans filed with the declaration under section 5209 (relating to limited common elements);

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

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

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

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

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

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

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

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

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

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

“Structural defects.” As used in section 5411 (relating to warranty against structural defects), the term means defects in 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 the structure and require repair, renovation, restoration or replacement.

“Time-share estate.” An interval estate or a time-span estate.

“Time-span estate.” A combination of:

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

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

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

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

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

§ 5104. Variation by agreement.

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

§ 5105. Separate titles and taxation.

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

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

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

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

(c) Certain additional prohibitions.—

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

(i) a tapping, connection or other impact fee in excess of the actual direct cost incurred by the association for the connection or provision of water or sewer service to a building or improvement;

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

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

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

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

(2) Except as specifically provided in this section, an association shall not impose any fees related to construction, alteration, renovation or repair of a unit.

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

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

(b) Current law unaffected.—Except as provided in subsection (a), no provision of this subpart invalidates or modifies any provision of any zoning, subdivision, building code or other real estate law, ordinance or regulation.

(c) Status.—The creation of a planned community under section 5201 (relating to creation of planned community) out of an entire lot, parcel or tract of real estate shall not, in and of itself, constitute a subdivision or land development for the purpose of laws, ordinances and regulations.

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

(1) the BOCA National Building Code, 1996 edition (excluding Chapter 13, Energy Conservation) (the “BOCA Code”), for other than for one-family or two-family residential dwellings, together with the most

recently published version of the National Fuel Gas Code (NFPA 54/ANSI Z223.1), as such may be updated periodically, for the installation of fuel gas piping systems, fuel gas utilization equipment and related accessories, and the most recently published version of the National Electric Code (NFPA 70), an ANSI accredited document, as such may be updated periodically, for the construction and subsequent inspection of electrical facilities and equipment; or

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

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

§ 5107. Eminent domain.

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

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

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

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

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

(d) Acquisition of part of controlled facilities.—If, as part of a unit acquired by eminent domain, controlled facilities are taken which benefit other units, that portion of the award attributable to the interest of the other units in the controlled facilities taken shall be paid to the association. The association shall divide any portion of the award not used for any restoration or repair of the remaining controlled facilities equally among the unit owners whose units were benefited by the controlled facilities that have been taken. § 5108. Supplemental general principles of law applicable.

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

§ 5109. Construction against implicit repeal.

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

§ 5110. Uniformity of application and construction.

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

§ 5111. Severability.

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

§ 5112. Unconscionable agreement or term of contract.

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

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

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

- (1) the commercial setting of the negotiations;
- (2) whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmity, illiteracy or inability to understand the language of the agreement or similar factors;
- (3) the effect and purpose of the contract or clause;
- (4) if a sale, any gross disparity, at the time of contracting, between the amount charged for the real estate and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transaction does not of itself render the contract unconscionable.

§ 5113. Obligation of good faith.

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

§ 5114. Remedies to be liberally administered.

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

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

CHAPTER 52
CREATION, ALTERATION AND TERMINATION OF
PLANNED COMMUNITIES

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§ 5201. Creation of planned community.

A planned community may be created pursuant to this subpart only by recording a declaration executed in the same manner as a deed by all persons whose interests in the real estate will be conveyed to unit owners and by every lessor of a lease, the expiration or termination of which will terminate the planned community or reduce its size. If the lessor is the Commonwealth, a municipal government or any agency of either, the lessor need not execute the declaration if it has previously given written notice of its filing and

agreed to be bound by the provisions of this subpart, in which case the declaration shall be executed by the lessee in possession of the subject property. The declaration must be recorded in every county in which any portion of the planned community is located, must be indexed in the same records as are notarized for the recording of a deed and shall identify each declarant as the grantor and the name of the planned community as grantee.

§ 5202. Unit boundaries.

Except as provided by the declaration:

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

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

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

§ 5203. Construction and validity of declaration and bylaws.

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

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

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

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

§ 5204. Description of units.

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

§ 5205. Contents of declaration; all planned communities.

The declaration for a planned community must contain:

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) an explicit reservation of such right;

(ii) a statement of the time limit, not exceeding seven years after the recording of the declaration, upon which the option reserved under subparagraph (i) will lapse, together with a statement of any circumstances that will terminate the option before the expiration of the time limit; and

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

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

(i) An explicit reservation of such right.

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

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

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

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

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

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

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

(D) A statement of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) A statement that the portion of the planned community, improvement or facility will be conveyed or leased to the association for no consideration other than the association's acceptance of the conveyance or lease or, if additional consideration is to be given by the association for the conveyance, a description of the consideration and a description of the effects on the association and each unit owner of the association providing the consideration, including the impact on the

budget of the association and common expense or other liabilities of the unit owners.

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

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

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

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

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

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

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

(17) Any other matters the declarant deems appropriate.

§ 5206. Contents of declaration for flexible planned communities.

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

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

(2) A statement of the time limit, 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 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 by operation of law, or a statement that there are no such limitations.

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

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

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

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

(ii) a statement as to whether, if any portion of convertible, additional or withdrawable real estate is converted, added or withdrawn, all or any particular portion of that or any other real estate must be converted, added or withdrawn.

(7) A statement of:

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

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

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

(8) If any of the units that may be 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 areas of all units that may be created therein that are not restricted exclusively to residential use.

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

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

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

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

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

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

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

§ 5207. Leasehold planned communities.

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

- (1) The recording data for the lease.
- (2) The date on which the lease is scheduled to expire.
- (3) A legally sufficient description of the real estate subject to the lease.

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

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

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

(b) Limitations on termination of leasehold interest.—After the declaration for a leasehold planned community is recorded, neither the lessor nor a successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of the owner's share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.

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

(d) Reallocation of interests if number of votes reduced.—If the expiration or termination of a lease decreases the number of units in a planned community, the allocated votes in the association and common expense liabilities shall be reallocated in accordance with section 5107 (relating to eminent domain) as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed and recorded by the association.

§ 5208. Allocation of votes and common expense liabilities.

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

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

(c) Votes.—

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

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

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

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

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

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

§ 5209. Limited common elements.

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

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

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

§ 5210. Plats and plans.

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

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

- (1) The name, location and dimensions of the planned community.
- (2) The location and dimensions of all existing improvements.
- (3) The intended location and dimensions of any contemplated improvement to be constructed anywhere within the planned community labeled with “MUST BE BUILT” or “NEED NOT BE BUILT.” Contemplated improvements within the boundaries of convertible real estate need not be shown, but, if contemplated improvements within the boundaries of convertible real estate are shown, they must be labeled “MUST BE BUILT” or “NEED NOT BE BUILT.”
- (4) The location and dimensions of any convertible real estate, labeled as such.
- (5) The location and dimensions of any withdrawable real estate, labeled as such.
- (6) The location and dimensions of any additional real estate, labeled as such.
- (7) The extent of any encroachments by or upon any portion of the planned community.
- (8) To the extent feasible, the location and dimensions of all easements serving or burdening any portion of the planned community.
- (9) The location and dimensions of any vertical unit boundaries not shown or projected on plans recorded under subsection (c) and that unit’s identifying number.
- (10) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded under subsection (c) and that unit’s identifying number.
- (11) The location and dimensions of any real estate in which the unit owners will own only an estate for years, labeled as “leasehold real estate.”
- (12) The distance between noncontiguous parcels of real estate comprising the planned community.

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

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

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

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

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

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

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

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

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

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

(g) Alternative recording.—Instead of recording new plats and plans as required by subsections (e) and (f), the declarant may record new

certifications of plats and plans previously recorded if those plats and plans show all improvements required by subsections (e) and (f).

(h) Who may make certifications.—Any certification of a plat or plan required by this section or section 5201 (relating to creation of planned community) must be made by an independent registered surveyor, architect or professional engineer.

§ 5211. Conversion and expansion of flexible planned communities.

(a) General rule.—To convert convertible real estate or add additional real estate pursuant to an option reserved under section 5206 (relating to contents of declaration for flexible planned communities), the declarant shall prepare, execute and record an amendment to the declaration under section 5219 (relating to amendment of declaration) and comply with section 5210 (relating to plats and plans). The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each unit formed in the convertible or additional real estate and reallocate votes in the association and common expense liabilities. The amendment must describe or delineate any limited common elements formed out of the convertible or additional real estate, showing or designating the unit to which each is allocated to the extent required by section 5209 (relating to limited common elements).

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

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

§ 5212. Withdrawal of withdrawable real estate.

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

those units before the withdrawal. The reallocation is effective when the amendment is recorded.

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

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

§ 5213. Alteration of units.

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

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

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

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

§ 5214. Relocation of boundaries between units.

(a) **General rule.**—Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated votes in the association and common expense liability, the application must state the proposed reallocations. Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those

unit owners, contains words of conveyance between them and, upon recording, is indexed in the name of the grantor and the grantee.

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

§ 5215. Subdivision or conversion of units.

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

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

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

§ 5216. Easement for encroachments.

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of the unit owner's willful misconduct nor relieve a declarant or any contractor, subcontractor or materialman or any other person of liability for failure to adhere to the plats and plans.

§ 5217. Declarant offices, models and signs.

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

removed shall be deemed common elements, and any personal property not so removed shall be deemed the property of the association.

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

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

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

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights. In addition, without affecting the rights, if any, of each unit owner with respect to the use and enjoyment of the common elements, subject to the provisions of the declaration, each unit owner and its agents, contractors and invitees shall have a nonexclusive access easement through the common elements as may be reasonably necessary for the purpose of construction, repair and renovation of the owner's unit. An association shall have the power during spring thaw conditions to restrict road usage by vehicles of more than ten tons gross weight provided:

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

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

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

An association shall not have the power to impose any fees or charges or require financial security, including, but not limited to, surety bonds, letters of credit or escrow deposits for the use of the easement rights described in this section except for the repair of damage caused to common elements in the exercise of the easement rights.

§ 5219. Amendment of declaration.

(a) Number of votes required.—

(1) The declaration, including the plats and plans, may be amended only by vote of at least:

(i) 67% of the association;

- (ii) a larger percentage of the association specified in the declaration; or
 - (iii) a smaller percentage of the association specified in the declaration if all units are restricted exclusively to nonresidential use.
- (2) Paragraph (1) is limited by subsection (d).
- (3) Paragraph (1) shall not apply to any of the following:
- (i) Amendments executed by a declarant under:
 - (A) section 5210(e) or (f) (relating to plats and plans);
 - (B) section 5211(a) (relating to conversion and expansion of flexible planned communities); or
 - (C) section 5212(a) (relating to withdrawal of withdrawable real estate).
 - (ii) Amendments executed by the association under:
 - (A) subsection (f);
 - (B) section 5107 (relating to eminent domain);
 - (C) section 5207(d) (relating to leasehold planned communities);
 - (D) section 5209 (relating to limited common elements); or
 - (E) section 5215 (relating to subdivision or conversion of units).
 - (iii) Amendments executed by certain unit owners under:
 - (A) section 5209(b);
 - (B) section 5214(a) (relating to relocation of boundaries between units);
 - (C) section 5215; or
 - (D) section 5220(b) (relating to termination of planned community).
- (b) Limitation of action to challenge amendment.—No action to challenge the validity of an amendment adopted by the association under this section may be brought more than one year after the amendment is recorded.
- (c) Recording amendment.—Every amendment to the declaration must be recorded in every county in which any portion of the planned community is located in the same records as are maintained for the recording of deeds of real property and shall be indexed in the name of the planned community in both the grantor and grantee index. An amendment is effective only upon recording.
- (d) When unanimous consent or declarant joinder required.—Except to the extent expressly permitted or required by other provisions of this subpart, without unanimous consent of all unit owners affected, no amendment may create or increase special declarant rights, alter the terms or provisions governing the completion or conveyance or lease of common facilities or increase the number of units or change the boundaries of any unit, the common expense liability or voting strength in the association allocated to a unit or the uses to which any unit is restricted. In addition, no declaration provisions pursuant to which any special declarant rights have been reserved to a declarant shall be amended without the express written joinder of the declarant in such amendment.

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

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

(1) cure an ambiguity;

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

(3) conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or deeds of trust or units in planned community or so-called “PUD” projects, such as Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;

the executive board may effect an appropriate corrective amendment without the approval of the unit owners or the holders of liens on the planned community, upon receipt of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this subsection.

§ 5220. Termination of planned community.

(a) Number of votes required.—Except in the case of a taking of all the units by eminent domain in section 5107 (relating to eminent domain), a planned community may be terminated only by agreement of unit owners of units to which at least 80%, or such larger percentage specified in the declaration, of the votes in the association are allocated. The declaration may specify a smaller percentage only if all of the units in the planned community are restricted exclusively to nonresidential uses.

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

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

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

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

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

- (1) Except as provided in paragraph (2), the respective interests of unit owners are the fair market values of their units and limited common elements immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit

owners of units to which 25% of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit by the total fair market values of all the units and common elements.

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

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

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

§ 5221. 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 do any of the following:

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

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

§ 5222. Master associations.

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

shall apply to any such master association insofar as its actions affect the planned community.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) Delegation of all powers.—If all of the powers of a planned community association are delegated to a master association and accepted by the master association under subsection (b), then the governing body of the master association may act in all respects as the executive board of the planned community, and no separate executive board need be elected or exist. § 5223. Merger or consolidation of planned community.

(a) General rule.—Any two or more planned communities by agreement of the unit owners as provided in subsection (b) may be merged or consolidated into a single planned community. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant planned community is, for all purposes, the legal successor of all of the preexisting planned communities, and the operations and activities of all associations of the preexisting planned communities shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all preexisting associations. The resultant planned community

shall, in addition, be subject in all respects to the provisions and requirements of this subpart regardless of whether or not any of the preexisting planned communities have been established under this subpart.

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

(c) Reallocations.—

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

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

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

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

CHAPTER 53 MANAGEMENT OF PLANNED COMMUNITY

Sec.

5301. Organization of unit owners' association.

- 5302. Power of unit owners' association.
- 5303. Executive board members and officers.
- 5304. Transfer of special declarant rights.
- 5305. Termination of contracts and leases of declarant.
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- 5308. Meetings.
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- 5311. Tort and contract liability.
- 5312. Insurance.
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- 5315. Lien for assessments.
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- 5317. Association as trustee.
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- 5319. Other liens affecting planned community.
- 5320. Declarant delivery of items to association.

§ 5301. Organization of unit owners' association.

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

§ 5302. Power of unit owners' association.

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

- (1) Adopt and amend bylaws and rules and regulations.
- (2) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners.
- (3) Hire and terminate managing agents and other employees, agents and independent contractors.
- (4) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the planned community.
- (5) Make contracts and incur liabilities.
- (6) Regulate the use, maintenance, repair, replacement and modification of common elements.

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

(8) Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, but common facilities may be conveyed or subjected to a security interest only under the provisions of section 5318 (relating to conveyance or encumbrance of common facilities).

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

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

(11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws and rules and regulations of the association.

(12) Impose reasonable charges for the preparation and recording of amendments to the declaration, resale certificates required by section 5407 (relating to resales of units) which shall be one charge that may be made by the association solely because of the resale or retransfer of any unit or statement of unpaid assessments. In addition, an association may impose a capital improvement fee, but no other fees, on the resale or transfer of units in accordance with the following:

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

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

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

(ii) Capital improvement fees allocated by an association must be maintained in a separate capital account and may be expended only for

new capital improvements or replacement of existing common elements and may not be expended for operation, maintenance or other purposes.

(iii) No capital improvement fee shall be imposed on any gratuitous transfer of a unit between any of the following family members: spouses, parent and child, siblings, grandparent and grandchild.

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

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

(B) completes such reconveyance within such 18 months.

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

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

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

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

(17) Assign its right to future income, including the right to receive common expense assessments, only to the extent the declaration expressly provides.

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

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

§ 5303. Executive board members and officers.

(a) Powers and fiduciary status.—Except as provided in the declaration, in the bylaws, in subsection (b) or in other provisions of this subpart, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board shall stand in a fiduciary relation to the association and shall perform their duties, including duties as members of any committee of the board upon which they may serve, in good faith; in a manner they reasonably believe to be in the best interests of the association; and with care, including reasonable inquiry, skill and diligence as a person of ordinary prudence would use under similar circumstances. In performing any duties, an officer or executive board

member shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

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

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

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

(b) **Limitation on authority.**—The executive board may not act on behalf of the association to amend the declaration under section 5219 (relating to amendment of declaration), to terminate the planned community under section 5220 (relating to termination of planned community) or to elect members of the executive board or determine the qualifications, powers and duties or terms of office of executive board members under subsection (e), but the executive board may fill vacancies in its membership for the unexpired portion of any term. The executive board shall deliver to all unit owners copies of each budget approved by the executive board and notice of any capital expenditure approved by the executive board promptly after such approval. In addition to other rights conferred by the declaration, bylaws or this subpart, the unit owners, by majority or any larger vote specified in the declaration, may reject any budget or capital expenditure approved by the executive board within 30 days after approval.

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

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

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

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

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

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

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

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

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

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

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

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

(f) Removal of members.—Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant. § 5304. Transfer of special declarant rights.

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

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

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed on a declarant by this subpart. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) A successor to all special declarant rights held by his transferor who is not an affiliate of that transferor declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units or an instrument conveying solely special declarant rights under subsection (c) may declare his intention to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to control the executive board in accordance with the provisions of section 5303(d) for the duration of any period of declarant control; and any attempted exercise of those rights is void. As long as a successor declarant may not exercise special declarant rights under this paragraph, the successor is not subject to any liability or obligation as a declarant other than liability for his acts and omissions under section 5303(d).

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

§ 5305. Termination of contracts and leases of declarant.

(a) General rule.—If entered into before the executive board elected by the unit owners under section 5303(e) (relating to executive board members and officers) takes office, any of the following may be terminated without penalty by the association at any time after the executive board elected by the unit owners under section 5303(e) takes office upon not less than 90 days' notice to the other party:

(1) Any management contract, employment contract or lease of recreational or parking areas or facilities.

(2) Any other contract or lease to which a declarant or an affiliate of a declarant is a party.

(3) Any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing.

(b) Exception.—This section does not apply to any lease the termination of which would terminate the planned community or reduce its size unless the real estate subject to that lease was included in the planned community for the purpose of avoiding the right of the association to terminate a lease under this section.

§ 5306. Bylaws.

(a) Mandatory provisions.—The bylaws of the association shall provide for all of the following:

(1) The number of members of the executive board and the titles of the officers of the association.

(2) Election by the executive board of a president, treasurer, secretary and any other officers of the association the bylaws specify.

(3) The qualifications, powers and duties, terms of office and manner of electing and removing executive board members and officers and filling vacancies.

(4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent.

(5) Which of its officers may prepare, execute, certify and record amendments to the declaration on behalf of the association.

(6) The method of amending the bylaws.

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

§ 5307. Upkeep of planned community.

(a) General rule.—Except to the extent provided by the declaration, subsection (b) or section 5312 (relating to insurance), the association is responsible for maintenance, repair and replacement of the common elements, and each unit owner is responsible for maintenance, repair and replacement of his unit. Each unit owner shall afford to the association and the other unit owners and to their agents or employees access through the unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage or the association if it is responsible is liable for the prompt repair of the damage.

(b) Nonresidential planned communities.—If any unit in a planned community all of whose units are restricted to nonresidential use is damaged and the exterior appearance of the unit is thereby affected, the person responsible for the exterior of the unit shall cause the unit to be repaired or

rebuilt to the extent necessary to restore its exterior appearance. If that person fails within a reasonable period of time to effect the repairs or rebuilding, the association may purchase the unit at its fair market value to be determined by an independent appraiser selected by the association.

§ 5308. Meetings.

The bylaws shall require that meetings of the association be held at least once each year and shall provide for special meetings. The bylaws shall specify which of the association's officers, not less than ten nor more than 60 days in advance of any meeting, shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws; any budget or assessment changes; and, where the declaration or bylaws require approval of unit owners, any proposal to remove a director or officer.

§ 5309. Quorums.

(a) Association.—Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast 20% of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting. The bylaws may require a larger percentage or a smaller percentage not less than 10%.

(b) Executive board.—Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast 50% of the votes on the board are present at the beginning of the meeting.

§ 5310. Voting; proxies.

(a) Unit owner other than natural person.—If the owner of a unit is a corporation, joint venture, partnership or unincorporated association, the natural person who shall be entitled to cast the vote for that unit shall be the person named in a certificate executed by that entity pursuant to its governing documents. If the owner of a unit is a trust, the trustee or trustees shall be deemed to be the owner for voting purposes. If the ownership of a unit is in more than one person, the natural person who shall be entitled to cast the vote of the unit shall be the person named in a certificate executed by all of the owners of the unit and filed with the secretary of the association or, in the absence of that named person from the meeting or in the event of failure to execute and file such a certificate, the person owning such unit who is present. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with their unanimous agreement unless the declaration expressly provides otherwise. There shall be deemed to be unanimous agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit. Such a certificate shall be valid until revoked by a subsequent certificate

similarly executed. Except where execution by owners of a unit in the same manner as a deed is required in this subpart and subject to the provisions of the declaration and bylaws, wherever the approval or disapproval of a unit owner is required by this subpart, the declaration or the bylaws, the approval or disapproval shall be made only by the person who would be entitled to cast the vote of the unit at any meeting of the association.

(b) Proxies.—Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given under this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date unless it specifies a shorter term.

(c) Voting by lessees.—If the declaration requires that votes on specified matters affecting the planned community be cast by lessees rather than unit owners of leased units, all of the following apply:

(1) The provisions of subsections (a) and (b) apply to lessees as if they were unit owners.

(2) Unit owners who have leased their units to other persons may not cast votes on those specified matters.

(3) Lessees are entitled to notice of meetings, access to records and other rights respecting those matters as if they were unit owners.

Unit owners shall also be given notice, in the manner provided in section 5308 (relating to meetings), of all meetings at which lessees may be entitled to vote.

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

§ 5311. Tort and contract liability.

(a) General rule.—

(1) An action in tort alleging a wrong done by a declarant or his agent or employee in connection with a portion of any convertible or withdrawable real estate or other portion of the planned community which the declarant has the responsibility to maintain may not be brought against the association or against a unit owner other than a declarant.

(2) Except as otherwise provided by paragraph (1):

(i) An action in tort alleging a wrong done by the association or by an agent or employee of the association, or on behalf of the association, must be brought against the association.

(ii) A unit owner shall not be subject to suit or, except as otherwise provided by subsection (b), be otherwise directly or indirectly held accountable for the acts of the association or its agents or employees on behalf of the association.

(3) If the tort or breach of contract occurred during any period of declarant control under section 5303(c) (relating to executive board

members and officers), the declarant is liable to the association for all unreimbursed losses suffered by the association as a result of that tort or breach of contract, including costs and reasonable attorney fees. If a claim for a tort or breach of contract is made after the period of declarant control, the association shall have no right against the declarant under this paragraph unless the association shall have given the declarant all of the following:

(i) Notice of the existence of the claim promptly after the date on which a member of the executive board who is not a designee of the declarant learns of the existence of the claim.

(ii) An opportunity to defend against the claim on behalf of the association but at the declarant's expense.

(4) A unit owner is not precluded from bringing an action contemplated by this subsection because he is a unit owner or a member or officer of the association.

Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates.

(b) Lien of judgment.—Except as otherwise provided in this subpart, a judgment for money against the association if and when entered of record against the name of the association in the office of the clerk of the court of common pleas of the county where the planned community is located shall also constitute a lien against each unit for a pro rata share of the amount of that judgment, including interest thereon, based on the common expense liability allocated to that unit under section 5208 (relating to allocation of votes and common expense liabilities). No other property of a unit owner is subject to the claims of creditors of the association.

(c) Indexing judgment.—A judgment against the association must be indexed in the name of the planned community.

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

§ 5312. Insurance.

(a) Insurance to be carried by association.—Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available, all of the following:

(1) Property insurance on the common facilities and controlled facilities to the extent the controlled facilities can be insured separately from the unit and, if insurance for the unit is not provided by the association under subsection (b) or the declaration, insuring against all common risks of direct physical loss. The total amount of insurance after application of any deductibles shall be not less than 80% of the actual cash value of the insured property, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(2) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration covering all occurrences commonly insured against for death, bodily injury and property damage, arising out of or in connection with the use, ownership or maintenance of the common elements.

(b) Units having horizontal boundaries.—In the case of a building containing units having horizontal boundaries described in the declaration, that insurance described in subsection (a)(1), to the extent reasonably available, shall include the units but need not include improvements and betterments installed by unit owners.

(c) Other insurance carried by association.—If the insurance described in subsections (a) and (b) is not maintained, the association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance. The association may carry any other insurance it deems appropriate to protect the association or the unit owners.

(d) Policy terms.—Insurance policies carried under subsections (a) and (b) shall provide all of the following:

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

(2) The insurer waives its right to subrogation under the policy against any unit owner or member of the owner's household.

(3) No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy.

(4) If at the time of a loss under the policy there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy is primary insurance not contributing with the other insurance.

(e) Proceeds from property insurance.—Any loss covered by the property policy under subsections (a)(1) and (b) shall be adjusted with the association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (h), the proceeds shall be disbursed first for the repair or restoration of the damaged common elements and units, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the common elements and units have been completely repaired or restored or the planned community is terminated.

(f) Unit owner insurance.—A residential unit owner shall insure the owner's unit except as insurance is provided by the association in accordance

with this section or the declaration. An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the owner's own benefit.

(g) Evidence and cancellation of insurance.—An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon request, to any unit owner, mortgagee or beneficiary under a deed of trust. The insurance may not be canceled until 30 days after notice of the proposed cancellation has been mailed to the association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued.

(h) Disposition of insurance proceeds.—

(1) Any portion of the planned community for which insurance is required to be maintained by the association by this section or the declaration and which is damaged or destroyed shall be repaired or replaced promptly by the association unless:

(i) the planned community is terminated;

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

(iii) 80% of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild.

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

(2) Any portion of the planned community for which insurance is required to be maintained by the unit owner by this section or the declaration and which is damaged or destroyed shall be repaired or replaced promptly by the unit owner unless:

(i) the planned community is terminated;

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

(iii) 80% of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild.

The cost of repair or replacement of these portions in excess of insurance proceeds is the unit owner's expense.

(3) If the entire planned community is not repaired or replaced, the following apply:

(i) The insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the planned community.

(ii) The insurance proceeds attributable to units shall be paid to unit owners except those proceeds attributable to controlled facilities for which insurance is separately maintained by the association under this section or the declaration shall be distributed to all unit owners in

proportion to their common expense liability. Proceeds attributable to limited common facilities which are not rebuilt shall be distributed equally to owners of units to which those limited common facilities were assigned.

(iii) The remainder of the proceeds shall be distributed to all the unit owners in proportion to their common expense liability.

(4) If the unit owners vote not to rebuild any unit, that unit's votes in the association and common expense liability are automatically reallocated upon the vote as if the unit had been condemned under section 5107(a) (relating to eminent domain), and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations.

(5) Notwithstanding the provisions of this subsection, section 5220 (relating to termination of planned community) governs the distribution of insurance proceeds if the planned community is terminated.

(i) Nonresidential planned communities.—The provisions of this section may be varied or waived in the case of a planned community all of whose units are restricted to nonresidential use.

§ 5313. Surplus funds.

Any amounts accumulated from assessments for limited common expenses and income from the operation of limited common elements to which those limited common expenses pertain in excess of the amount required for actual limited common expenses and reserves for future limited common expenses shall be credited to each unit assessed for a share of those limited common expenses in proportion to the share of those limited common expenses so assessed. These credits shall be applied, unless the declaration provides otherwise, to the next monthly assessments of limited common expenses against that unit under the current fiscal year's budget and thereafter until exhausted. Any amounts accumulated from assessments for general common expenses and income from the operation of the common elements, other than limited common elements with regard to which limited common expenses are assessed, in excess of the amount required for actual general common expenses and reserves for future general common expenses shall be credited to each unit in accordance with that unit's interests in common elements. These credits shall be applied, unless the declaration provides otherwise, to the next monthly assessments of general common expenses against the unit under the current fiscal year's budget and thereafter until exhausted.

§ 5314. Assessments for common expenses.

(a) General rule.—Until the association makes a common expense assessment, the declarant shall pay all the expenses of the planned community. After any assessment has been made by the association, assessments shall be made at least annually, based on a budget adopted at least annually by the association. The budgets of the association shall segregate limited common expenses from general common expenses if and to the extent appropriate.

(b) Allocation and interest.—Except for assessments under subsection (c), all common expenses shall be assessed against all the units in accordance with the common expense liability allocated to each unit in the case of general common expenses and in accordance with subsection (c) in the case of special allocation of expenses. Any past due assessment or installment thereof shall bear interest at the rate established by the association at not more than 15% per year.

(c) Special allocations of expenses.—Except as provided by the declaration:

(1) Any common expense associated with the maintenance, repair or replacement of a limited common element shall be assessed in equal shares against the units to which that limited common element was assigned at the time the expense was incurred.

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

(3) The costs of insurance shall be assessed in proportion to risk, and the costs of utilities that are separately metered to each unit shall be assessed in proportion to usage.

(4) If a common expense is caused by the negligence or misconduct of any unit owner, the association may assess that expense exclusively against his unit.

(d) Reallocation.—If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities. § 5315. Lien for assessments.

(a) General rule.—The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in a like manner as a mortgage on real estate. A judicial or other sale of the unit in execution of a common element lien or any other lien shall not affect the lien of a mortgage on the unit, except the mortgage for which the sale is being held, if the mortgage is prior to all other liens upon the same property except those liens identified in 42 Pa.C.S. § 8152(a) (relating to judicial sale as affecting lien of mortgage) and liens for planned community assessments created under this section. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged under section 5302(a)(10), (11) and (12) (relating to power of unit owners' association) and reasonable costs and expenses of the association, including legal fees, incurred in connection with collection of any sums due to the association by the unit owner or enforcement of the provisions of the declaration, bylaws, rules or regulations against the unit owner are enforceable as assessments under this section. If an assessment is payable in installments and one or more installments are not paid when due, the entire outstanding balance of the assessment becomes effective as a lien from the due date of the delinquent installment.

(b) Priority of lien.—

(1) General rule.—A lien under this section is prior to all other liens and encumbrances on a unit except:

(i) Liens and encumbrances recorded before the recording of the declaration.

(ii) First mortgages or deeds of trust on the unit securing first mortgage holders and recorded before due date of the assessment if the assessment is not payable in installments or the due date of the unpaid installment if the assessment is payable in installments.

(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 5314(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 5314(b) other than the six months' assessment referred to in subparagraph (i), in a full amount of the unpaid assessments, whether or not the proceeds of the judicial sale are adequate to pay these assessments. To the extent that the proceeds of the sale are sufficient to pay some or all of these additional assessments after satisfaction in full of the costs of the judicial sale and the liens and encumbrances of the types described in paragraph (1) and the unpaid common expense assessments that come due during the six-month period described in subparagraph (i), the assessments shall be paid before any remaining proceeds may be paid to any other claimant, including the prior owner of the unit.

(3) Monetary exemption.—The lien is not subject to the provisions of 42 Pa.C.S. § 8123 (relating to general monetary exemption).

(c) Liens having equal priority.—If the association and one or more associations, condominium associations or cooperative associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(d) Notice and perfection of lien.—Subject to the provisions of subsection (b), recording of the declaration constitutes record notice and perfection of the lien.

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

(f) Other remedies preserved.—Nothing in this section shall be construed to prohibit actions or suits to recover sums for which subsection (a) creates a lien or to prohibit an association from taking a deed in lieu of foreclosure.

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

(h) Statement of unpaid assessments.—The association shall furnish to a unit owner upon written request a recordable statement setting forth the amount of unpaid assessments currently levied against his unit and any credits of surplus in favor of his unit under section 5313 (relating to surplus funds). The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board and every unit owner.

§ 5316. Association records.

(a) Financial records.—The association shall keep financial records sufficiently detailed to enable the association to comply with section 5407 (relating to resales of units). All financial and other records shall be made reasonably available for examination by any unit owner and authorized agents.

(b) Annual financial statements.—Within 180 days after the close of its fiscal year, the association in any planned community having more than 12 units or subject to any rights under section 5215 (relating to subdivision or conversion of units) or 5211 (relating to conversion and expansion of flexible planned communities) shall prepare annual financial statements consisting of at least a balance sheet and a statement of revenues and expenses for the association. The cost of preparing the financial statements shall be a common expense. Each unit owner shall be entitled to receive from the association, within 30 days after submitting a written request to the association, a copy of the annual financial statements and, if such financial statements are audited, reviewed or compiled by an independent certified public accountant or independent public accountant, a copy of the independent accountant's report on the financial statements. The association may charge a fee not to exceed the cost of producing copies of records other than the financial statement.

(c) Filing of complaints.—If an association subject to subsection (a) fails to provide a copy of the annual financial statements and, if applicable, the report of an independent accountant as required under subsection (b) to the requesting unit owner within 30 days of the unit owner's written request or if the financial records of the association which substantiate an association's financial statements are not made reasonably available by any association for examination by any unit owner and authorized agents, the unit owner may file a complaint with the Bureau of Consumer Protection in the Office of Attorney General.

§ 5317. Association as trustee.

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person without actual knowledge that the association is exceeding or improperly exercising its powers is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

§ 5318. Conveyance or encumbrance of common facilities.

(a) General rule.—Portions of the common facilities may be conveyed or subjected to a security interest by the association if the persons entitled to cast at least 80% of the votes in the association, including 80% of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies agree to that action; but the owners of units to which any limited common facility is allocated must agree in order to convey that limited common facility or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

(b) Required agreement.—An agreement to convey common facilities or subject them to a security interest shall be evidenced by the execution of an agreement or ratifications of the agreement, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications shall be recorded in every county in which a portion of the planned community is situated and is effective only upon recording.

(c) Association powers.—The association on behalf of the unit owners may contract to convey common facilities or subject them to a security interest, but the contract is not enforceable against the association until approved under subsections (a) and (b). Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(d) Other conveyances or encumbrances void.—Any purported conveyance, encumbrance, judicial sale or other voluntary transfer of common facilities, unless made pursuant to this section, is void.

(e) Right of access and support.—A conveyance or encumbrance of common facilities pursuant to this section does not deprive any unit of its right of access and support.

(f) Preexisting encumbrances.—Unless the declaration otherwise provides, a conveyance or encumbrance of common facilities pursuant to this section does not affect the priority or validity of preexisting encumbrances.

(g) Limitation.—Common facilities which may be conveyed or encumbered pursuant to this section shall not include any land, buildings or other facilities:

- (1) containing or comprising one or more units; or
- (2) necessary for the use or operation of one or more units.

§ 5319. Other liens affecting planned community.

(a) General rule.—Except as provided in subsection (b), a judgment for money against the association, if and when the judgment has been perfected as a lien on real property, is not a lien on the common facilities but is a lien in favor of the judgment lienholder against all of the units in the planned community at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(b) Security interest in common facilities.—If the association has granted a security interest in the common facilities to a creditor of the association under section 5318 (relating to conveyance or encumbrance of common facilities), the holder of that security interest shall exercise its right against the common facilities before its judgment lien on any unit may be enforced.

(c) Release upon payment of unit owner's share.—Whether perfected before or after the creation of the planned community, if a lien other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the planned community, becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his unit; and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment shall be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(d) Indexing of judgments.—A judgment against the association shall be indexed in the name of the planned community and the association and, when so indexed, is notice of the lien against the units.

§ 5320. Declarant delivery of items to association.

Except as set forth in paragraph (9), not later than 60 days after the required termination of the period of declarant control under section 5303(c) (relating to executive board members and officers) or the declarant's earlier voluntary termination of control, the declarant shall deliver to the association all property of the unit owners and of the association held by or controlled by the declarant, including, without limitation, all of the following items, if applicable, as to each planned community or other owners' association operated by the association:

- (1) The original or a certified copy or a photocopy of the recorded declaration and all amendments thereto. If a photocopy is delivered, the photocopy shall reflect the recording information and shall be accompanied

by an affidavit executed by the declarant certifying the photocopy to be a true, correct and complete copy of the actual recorded declaration and all amendments thereto.

(2) The association articles of incorporation, if incorporated, with evidence of filing with the Department of State.

(3) A copy of the bylaws.

(4) A complete set of all executive board minutes and resolutions and all other books and records of the association.

(5) A complete copy of all rules and regulations that may have been adopted.

(6) Copies of all Federal, State and local tax returns filed by or on behalf of the association and copies of any tax-exempt elections made by or on behalf of the association.

(7) Copies of all past and current budgets of the association.

(8) Resignations of officers and members of the executive board who are required to resign because the declarant is required to relinquish or has relinquished control of the association.

(9) Not later than 90 days after the required termination of the period of declarant control under section 5303(c) or the declarant's earlier voluntary termination of control, a complete audit of the finances of the association for the time period between the last audit of the association's financial books and records and the date of termination of the period of declarant control, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, the costs of which audit are to be borne equally by the declarant and the association. If the planned community consists of not more than 12 units, a warranty from the declarant to the association that the books and records of the association completely and accurately reflect all activities of the association from its inception through the date of termination of the period of declarant control may be substituted for the audit referred to in this paragraph.

(10) All association funds or control thereof.

(11) All tangible personal property and inventories thereof:

(i) that may have been represented or should have been represented by the declarant in any public offering statement, sales materials or other writings to be part of the common elements; or

(ii) that are otherwise property of the association.

(12) A copy of the plans or drawings and specifications, if any, utilized in the construction, rehabilitation, renovation or remodeling of any buildings and improvements within the planned community and in the construction and installation of any mechanical components and equipment serving the buildings and improvements and property if and to the extent the construction, rehabilitation, renovation, remodeling or installation was performed by or on behalf of the declarant and substantially completed during the period commencing three years prior to the date of the first

public offering statement regarding the planned community. If no public offering statement is required for any unit in the planned community, the three-year period shall commence on the date of the recording of the planned community declaration or amendment thereto with respect to such improvements and shall end on the date by which compliance with this section is required. If such construction, rehabilitation, renovation, remodeling or installation was substantially completed within the three-year period but not by or on behalf of the declarant, the obligation of the declarant under this paragraph shall be to provide all such plans, drawings and specifications in the possession of the declarant and to use reasonable efforts to obtain and provide any such plans, drawings or specifications not within the possession of the declarant. If such construction, rehabilitation, renovation, remodeling or installation was substantially completed more than three years prior to the commencement of the three-year period described in this paragraph, the obligations of the declarant under this paragraph shall be to provide all such plans, drawings and specifications in the possession of the declarant. To the extent previously made available to the declarant, the declarant in all cases shall deliver to the association owners operating, care and maintenance manuals and other information regarding mechanical components and equipment serving any buildings and improvements in the planned community. A declarant's delivery of plans, drawings or specifications under this paragraph shall not constitute a representation or warranty of the accuracy or completeness of the plans, drawings or specifications and shall not expand or otherwise affect the declarant's warranties created under section 5411 (relating to warranty against structural defects).

(13) All insurance policies insuring the association then in force.

(14) Copies of any certificates or statements of occupancy which may have been issued with respect to the improvements comprising the planned community, if and to the extent available.

(15) Any other permits issued by governmental bodies applicable to the planned community property which are then currently in force, notices of violations of governmental requirements then outstanding and incurred and all reports of investigations for the presence of hazardous conditions as defined in section 5402(a)(27) (relating to public offering statement; general provisions).

(16) Any written warranties then in force and effect from contractors, subcontractors, suppliers or manufacturers who have performed work with respect to the planned community property or have supplied equipment or services to the planned community property.

(17) A roster of unit owners and mortgagees and their respective addresses and telephone numbers, if known, as shown on the declarant's records.

(18) Employment contracts in which the association is or is to be one of the contracting parties.

(19) Service and other contracts and leases in which the association is or is to be one of the contracting parties and service contracts in which the association has directly or indirectly an obligation or a responsibility to pay some or all of the fees or charges of the person or persons performing such services.

CHAPTER 54
PROTECTION OF PURCHASERS

Sec.

- 5401. Applicability; waiver.
- 5402. Public offering statement; general provisions.
- 5403. Public offering statement; time-share estates.
- 5404. Public offering statement; planned communities containing conversion buildings.
- 5405. Public offering statement; planned community securities.
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- 5412. Effect of violations on rights of action.
- 5413. Labeling of promotional material.
- 5414. Declarant's obligation to complete and restore.

§ 5401. Applicability; waiver.

(a) General rule.—This chapter applies to all units subject to this subpart, except as provided in subsection (b) and section 5411 (relating to warranty against structural defects) or as modified or waived by agreement of the purchaser of any unit which is intended for nonresidential use at the time of sale of such unit by the declarant or by agreement of purchasers of units in a planned community who are or intend to be in the business of buying and selling planned community units, provided that:

(1) a purchaser of a unit intended for residential use at the time of sale by the declarant may not modify or waive the provisions of section 5411 with regard to such unit and the common elements;

(2) with regard to any limited common element appurtenant only to nonresidential units, the unit owners of all such units have agreed to such modification or waiver and, with regard to any common elements other than limited common elements in a planned community in which all units are restricted to nonresidential use, all unit owners have agreed to such modification or waiver; and

(3) no modification or waiver shall prevent any unit owner from indirectly benefiting from any provision in this chapter by reason of such

unit owner being a unit owner in the planned community and a member of the association.

(b) Public offering statements.—A public offering statement need not be prepared or delivered in the case of:

- (1) a gratuitous transfer of a unit;
- (2) a disposition pursuant to court order;
- (3) a disposition by a government or governmental agency;
- (4) a disposition by foreclosure or deed in lieu of foreclosure;
- (5) a disposition of a unit situated wholly outside this Commonwealth pursuant to a contract executed wholly outside this Commonwealth; or
- (6) a transfer to which section 5407 (relating to resales of units) applies.

(c) Resale certificates.—A resale certificate as described in section 5407 need not be prepared or delivered in the cases described in subsection (b)(1) through (5).

(d) Unified public offering statement.—If a unit is part of two or more planned communities or is part of a planned community and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this Commonwealth, a single public offering statement conforming to the requirements of sections 5402 (relating to public offering statement; general provisions), 5403 (relating to public offering statement; time-share estates) and 5404 (relating to public offering statement; planned communities containing conversion buildings), as those requirements relate to any real estate regimes in which the unit is located and to any other requirements imposed under the laws of this Commonwealth, may be prepared and delivered in lieu of providing two or more public offering statements.

§ 5402. Public offering statement; general provisions.

(a) General rule.—Except as provided in subsection (b), a public offering statement must contain or fully and accurately disclose:

- (1) The name and principal address of the declarant and of the planned community.
- (2) A general description of the planned community, including, without limitation, the types, number and declarant's schedule of commencement and completion of construction of all buildings, units and amenities.
- (3) A narrative description of the type and character of units offered, including a statement of the degree of completion to be provided or undertaken by the declarant of such units and the common elements necessary for use and enjoyment of such units upon the conveyance by the declarant of units offered.
- (4) The total number of additional units that may be included in the planned community and the proportion of units the declarant intends to rent or market in blocks of units to investors.

(5) A brief narrative description of any options reserved by a declarant to withdraw withdrawable real estate under section 5206(1) (relating to

contents of declaration for flexible planned communities) and the expected effect that withdrawal would have on the remaining portion of the planned community.

(6) Copies and a brief narrative description of the significant features of the declaration, other than the plats and plans, and the bylaws, rules and regulations, agreement of sale, copies of any contracts and leases to be signed by the purchasers prior to or at closing and a brief narrative description of any other contracts or leases or agreements of a material nature to the planned community that will or may be subject to cancellation by the association under section 5305 (relating to termination of contracts and leases of declarant).

(7) Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first conveyance to a purchaser and thereafter the current budget of the association, a statement of who prepared the budget and a statement of the budget's material assumptions, including those concerning occupancy and inflation factors. The budget must include, without limitation:

(i) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement.

(ii) A statement containing a description of any provisions made in the budget for reserves for anticipated material capital expenditures or any other reserves or, if no provision is made for reserves, a statement to that effect.

(iii) The projected common expense assessment by category of expenditures for the association.

(iv) The projected monthly common expense assessment for each type of unit.

(8) Any of the following:

(i) Services not reflected in the budget that the declarant provides or expenses that the declarant pays and that the declarant expects may become at any subsequent time a common expense of the association.

(ii) Personal property not owned by the association but provided by the declarant and being used or to be used in the operation and enjoyment of the common elements which is or will be required in connection with the operation and enjoyment of the common elements after such personal property is no longer provided by the declarant and the projected common expense assessment for the association and for each type of unit attributable to each of those services or expenses and purchase or rental of such personal property.

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

(10) A description of any liens, defects or encumbrances on or affecting the title to the planned community.

(11) A description of any financing for purchasers offered or arranged by the declarant.

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

(13) A statement in at least ten-point boldface type, appearing on the first page of the public offering statement, as follows:

(i) That, within 15 days or, in case of a sale of a time-share estate, seven days after receipt of a public offering statement or an amendment to the public offering statement that materially and adversely affects the rights or obligations of the purchaser, the purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant.

(ii) That, if a declarant fails to provide a public offering statement and any amendments to a purchaser before conveying a unit, the purchaser may recover from the declarant damages as provided in section 5406(c) (relating to purchaser's right to cancel).

(iii) A description of damages under section 5406(c).

(iv) That, if a purchaser receives the public offering statement more than 15 days or, in case of a sale of a time-share estate, seven days before signing a contract, the purchaser cannot cancel the contract unless there is an amendment to the public offering statement that would have a material and adverse effect on the rights or obligations of that purchaser.

(14) A statement of any judgments against the association, the status of any pending suits to which the association is a party and the status of any pending suits material to the planned community of which a declarant has actual knowledge.

(15) A statement that any deposit made in connection with the purchase of a unit will be held in an escrow account in accordance with the provisions of section 5408 (relating to escrow of deposits) and will be returned to the purchaser if the purchaser cancels the contract pursuant to section 5406.

(16) Any restraints on alienation of any portion of the planned community.

(17) A description of all insurance coverage provided or intended to be provided, if such insurance is not then in effect, for the benefit of unit owners, including the types and extent of coverage and the extent to which such coverage includes or excludes improvements or betterments made to units, in accordance with section 5312 (relating to insurance).

(18) Any 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 planned community.

(19) The extent to which financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" under section 5414 (relating to declarant's obligation to complete and restore).

(20) All unusual and material circumstances, features and characteristics of the planned community and the units.

(21) In the case of a leasehold planned community, at least the following information:

(i) The name and address of each lessor and his assignee, if any.

(ii) Any relationship between the declarant and any lessor or assignee.

(iii) A description of the leased property.

(iv) The rent and any provision in the lease for increases in the rent and any other charges or payments required to be paid by the lessee under the lease.

(v) Whether the lessee has any right to terminate the lease.

(vi) The information contained in the declaration as required by section 5207(a) (relating to leasehold planned communities).

(vii) The following notice in boldface type:

“Purchasers should be aware that this is a leasehold planned community, and the purchaser’s interest therein may be less valuable than a fee interest, may depreciate over time and may be of questionable marketability.”

(22) A statement containing a declaration as to the present condition of all structural components and major utility installations in the subject property, including the dates of construction, installation and major repairs, if known or ascertainable, and the expected useful life of each item, together with the estimated cost in current dollars of replacing each of the same.

(23) A description of how votes are allocated among the units and a statement as to whether cumulative or class voting is permitted and, if so, under what circumstances. The statement shall also explain the operation of cumulative or class voting.

(24) A description of any circumstances under which the association is to become a master association or part of a master association.

(25) A statement of all governmental approvals and permits required for the use and occupancy of the planned community, indicating the name and expiration date of each such approval or permit that has been obtained and, as to any approvals or permits that have not been obtained, a statement indicating when each such approval or permit is expected to be obtained and the person responsible for the expense of obtaining each such approval or permit.

(26) A statement as to whether there are any outstanding and uncured notices of violations of governmental requirements and, if there are any such notices of violations, a description of the alleged violation and a statement indicating when each violation is expected to be cured and the person who shall bear the expense of curing such violation.

(27) A statement as to whether the declarant has knowledge of any one or more of the following:

(i) Hazardous conditions, including contamination, affecting the planned community site by hazardous substances, hazardous wastes or the like or the existence of underground storage tanks for petroleum products or other hazardous substances.

(ii) Any investigation conducted to determine the presence of hazardous conditions on or affecting the planned community site.

(iii) Any finding or action recommended to be taken in the report of any such investigation or by any governmental body, agency or authority, in order to correct any hazardous conditions and any action taken pursuant to those recommendations. If the declarant has no knowledge of such matters, the declarant shall make a statement to that effect. The declarant shall also set forth the address and phone number of the regional offices of the Department of Environmental Resources and the United States Environmental Protection Agency where information concerning environmental conditions affecting the planned community site may be obtained.

(28) A summary and description of all the provisions of the declaration for the planned community to comply with section 5205(16) (relating to contents of declaration; all planned communities).

(29) A statement identifying all facilities and amenities in the planned community which the declarant shall be obligated to complete and with respect thereto:

(i) The time within which each identified facility or amenity shall be completed.

(ii) Whether there is a source of funding to complete the facilities and amenities or any security for the completion, and a description of any such funding source and security.

(iii) Who will own the facilities and amenities to be completed by the declarant.

(iv) The responsibilities of unit owners and the association, respectively, for the maintenance, repair, improvement, administration and regulation of the facilities and amenities.

(b) Exceptions.—If a planned community composed of not more than 12 units is not a flexible planned community and no power is received to a declarant to make the planned community part of a larger planned community, a group of planned communities or other real estate, a public offering statement may, but need not, include the information otherwise required by subsection (a)(4) and (5) and the narrative descriptions of documents required by subsection (a)(6).

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

§ 5403. Public offering statement; time-share estates.

If the declarant provides that ownership or occupancy of any units are or may be owned in time-shares, the public offering statement shall contain or

disclose in addition to the information required by section 5402 (relating to public offering statement; general provisions):

(1) The total number of units in which time-share estates may be created.

(2) The total number of time-share estates that may be created in the planned community.

(3) The projected common expense assessment for each time-share estate and whether those assessments may vary seasonally.

(4) A statement of any services, not reflected in the budget, which the declarant provides or expenses which he pays and which the declarant expects may become at any subsequent time a common expense of the association and the projected common expense assessment attributable to each of those services or expenses for each time-share estate.

(5) The extent to which the time-share owners of a unit are jointly and severally liable for the payment of real estate taxes and all assessments and other charges levied against that unit.

(6) The extent to which a suit for partition may be maintained against a unit owned in time-share estates.

(7) The extent to which a time-share estate may become subject to a tax or other lien arising out of claims against other time-share owners of the same unit.

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

(i) Within seven days after receipt of a public offering statement, a purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant.

(ii) If a declarant fails to provide a public offering statement to a purchaser before conveying a unit, the purchaser may recover from the declarant damages as provided in section 5406(c) (relating to purchaser's right to cancel) and a description of such damages.

(iii) If a purchaser receives the public offering statement more than seven days before signing a contract, the purchaser cannot cancel the contract.

§ 5404. Public offering statement; planned communities containing conversion buildings.

(a) General rule.—The public offering statement of a planned community containing a conversion building must contain, in addition to the information required by section 5402 (relating to public offering statement; general provisions):

(1) A statement by the declarant, based on a report prepared by an independent registered architect or professional engineer:

(i) Describing the age and present condition and, if known or reasonably ascertainable, the dates of construction, installation and major repairs of all structural components and mechanical and electrical installations, including, but not limited to, roofs, plumbing, heating, air

conditioning, elevators, storm water systems and sewage treatment systems material to the use and enjoyment of the planned community.

(ii) Describing the results of the inspection of the units and common elements required pursuant to section 5411(c) (relating to warranty against structural defects) for visible conditions that adversely affect the health or safety of residential occupants. The statement should also state the extent to which the report by the architect or professional engineer is based upon a visual inspection of the units as well as the common elements.

(2) A statement by the declarant of the expected useful life of each item reported on in paragraph (1), including the current replacement costs of such item.

(3) A list of any outstanding notices of uncured violations of building codes or other municipal regulations, together with the estimated cost of curing those violations.

(4) A statement by the declarant, based on a report prepared by an independent licensed exterminating company, describing the presence at the planned community of any visible pest conditions dangerous to health and safety, such as the presence of insects and rodents dangerous to health or safety, and outlining actions taken or to be taken to eliminate the existence of pest conditions dangerous to health or safety.

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

§ 5405. Public offering statement; planned community securities.

If an interest in a planned community is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement in this subpart if the declarant delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a planned community is not in and of itself a security under the provisions of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972. The offer and sale of planned community units in accordance with the requirements of this chapter shall not also be subject to the registration requirements of section 201 or 301 of the Pennsylvania Securities Act of 1972 or the promotional real estate sales requirements of the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act.

§ 5406. Purchaser's right to cancel.

(a) General rule.—In cases where delivery of a public offering statement is required under section 5401 (relating to applicability; waiver), a declarant shall provide a purchaser of a unit with a copy of the public offering statement and all amendments thereto not later than the date the purchaser executes the contract of sale for such unit or, if no contract of sale is executed, not later than 15 days before conveyance of such unit. Unless a purchaser is given the public offering statement, including all the currently

effective amendments thereof, within the time period referred to in the preceding sentence, the purchaser, before conveyance, may, except in the case of a time-share estate, cancel the contract within 15 days, after first receiving the public offering statement and all currently effective amendments. Unless a purchaser of a time-share estate is given the public offering statement, including all the currently effective amendments thereof, more than seven days before the purchaser executes the contract for the purchase of the unit or, if no contract of sale is executed, seven days before conveyance of the unit, the purchaser, before conveyance, may cancel the contract within seven days after first receiving the public offering statement and all currently effective amendments thereof. If a public offering statement is amended after the public offering statement has been received by a purchaser of a unit, the amendment shall be provided to the purchaser promptly after it becomes effective. If the amendment materially and adversely affects the rights or obligations or both of the purchaser, then the purchaser, before conveyance, may cancel the contract of sale within 15 days, or within seven days in case of the sale of a time-share estate, after receiving the amendment.

(b) Method and effect of cancellation.—If a purchaser elects to cancel a contract pursuant to subsection (a), the purchaser may do so by hand-delivering notice thereof to the declarant or by mailing notice thereof by prepaid United States mail to the declarant or to the declarant's agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

(c) Penalty for noncompliance by declarant.—If a declarant fails to provide a purchaser to whom a unit is conveyed with a public offering statement and all amendments thereto as required by subsection (a), the purchaser, in addition to any other relief, is entitled to receive from the declarant an amount equal to 5% of the sales price of the unit up to a maximum of \$2,000 or actual damages, whichever is the greater amount. A minor omission or error in the public offering statement or an amendment thereto that is not willful shall entitle the purchaser to recover only actual damages, if any.

§ 5407. Resales of units.

(a) Information supplied by unit owner.—In the event of a resale of a unit by a unit owner other than a declarant, the unit owner shall furnish to a purchaser before execution of any contract for sale of a unit or otherwise before conveyance a copy of the declaration other than the plats and plans, the bylaws, the rules or regulations of the association and a certificate containing:

(1) A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit.

(2) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner and any

surplus fund credits to be applied with regard to the unit pursuant to section 5313 (relating to surplus funds).

(3) A statement of any other fees payable by unit owners.

(4) A statement of any capital expenditures proposed by the association for the current and two next succeeding fiscal years.

(5) A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified project.

(6) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association.

(7) The current operating budget of the association.

(8) A statement of any judgments against the association and the status of any pending suits to which the association is a party.

(9) A statement describing any insurance coverage provided for the benefit of unit owners.

(10) A statement as to whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned thereto violate any provision of the declaration.

(11) A statement as to whether the executive board has knowledge of any violations of applicable governmental requirements or knowledge of the existence of any hazardous conditions pursuant to section 5402(a)(27) (relating to public offering statement; general provisions) with respect to the unit, the limited common elements assigned to the unit or any other portion of the planned community.

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

(13) A statement as to whether the declaration provides for cumulative voting or class voting.

(14) A statement as to whether an agreement to terminate the planned community has been submitted to the unit owners for approval and remains outstanding.

(15) A statement of whether the planned community is a master association or is part of a master association or could become a master association or part of a master association.

(16) A statement describing which units, if any, may be owned in time-share estates and the maximum number of time-share estates that may be created in the planned community.

(17) A statement of whether the declarant retains the special declarant right to cause a merger or consolidation of the planned community and, if so, the information describing such right which was supplied by the declaration pursuant to section 5205(13) (relating to contents of declaration; all planned communities), if any.

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

information and copies of documents necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to subsection (a) is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

(c) Liability for error or inaction by association.—A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, 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.

§ 5408. Escrow of deposits.

Any deposit (which shall not include any installment payment under an installment sales contract nor a payment specifically stated in a sales contract to be in payment of or on account of extras, changes or custom work) made in connection with the purchase or reservation of a unit from a declarant shall be placed in escrow and held in this Commonwealth by a licensed real estate broker, an attorney admitted to practice in this Commonwealth, a financial institution or a licensed title insurance company in an account or in the form of a certificate of deposit designated solely for that purpose with a financial institution whose accounts are insured by a governmental agency or instrumentality until:

- (1) delivered to the declarant at closing or, in the case of the sale of a unit pursuant to an installment sales contract, upon the expiration of 30 days from the date of occupancy of the unit;
- (2) delivered to the declarant because of purchaser's default under a contract to purchase the unit; or
- (3) refunded to the purchaser.

§ 5409. Release of liens.

(a) General rule.—Before conveying a unit, other than by deed in lieu of foreclosure, to a purchaser other than a declarant, a declarant shall record or furnish to the purchaser releases of all liens affecting that unit and its rights with respect to any common elements which the purchaser does not expressly agree to take subject to or assume or shall provide a surety bond or substitute collateral for or insurance against the liens adequate in nature and amount. This subsection does not apply to any convertible or withdrawable real estate in which no unit has been conveyed.

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

- (1) All liens the foreclosure of which would deprive unit owners of any right of access to or easements of support of their units.
- (2) All other liens on that real estate unless the public offering statement describes certain real estate which may be conveyed subject to liens in specified amounts.

§ 5410. Planned communities containing conversion buildings.

(a) Notice of conversion.—The declarant of every planned community containing one or more conversion buildings shall give each of the residential tenants and residential subtenants, if any, lawfully in possession of a unit or units in a conversion building or buildings a conversion notice no later than one year before the declarant requires the residential tenant and residential subtenant to vacate. The conversion notice must set forth generally the rights of residential tenants and residential subtenants under this section and shall be hand delivered to the unit or mailed by prepaid United States certified or registered mail, return receipt requested, to the residential tenant and residential subtenant at the address of the unit and not more than one other mailing address provided by the residential tenant. Every notice shall be accompanied by a public offering statement concerning the proposed sale of planned community units within such building or buildings. Except as provided in subsection (f), no residential tenant or residential subtenant in a conversion building may be required by the declarant to vacate the unit earlier than one year after the conversion notice date except by reason of nonpayment of rent, waste or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy, including those terms that apply to a period occurring in whole or in part after the conversion notice date, may not be altered but may be enforced during that period. Failure of a declarant to give notice to a residential tenant or residential subtenant entitled to such notice under this subsection is a defense to an action for possession against such residential tenant or residential subtenant.

(b) Offer to tenant to purchase unit.—For six months after the conversion notice date, the declarant shall offer to convey each unit or proposed unit occupied for residential use in a conversion building to the tenant who leases that unit. If the tenant fails to purchase his unit during that six-month period, the declarant may not offer to dispose of an interest in that unit during the following six months at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection shall not apply to any rental unit:

(1) which, immediately prior to the conversion notice date, was restricted or devoted exclusively to nonresidential use; or

(2) the boundaries of which, after the creation of the planned community, will not substantially conform to the boundaries of such unit on the conversion notice date.

(c) Effect of wrongful conveyance.—If a declarant, in violation of subsection (b), conveys a unit to a purchaser for value who has no knowledge of the violation, recording of the deed conveying the unit extinguishes any right a tenant may have under subsection (b) to purchase that unit if the deed states that the seller has complied with subsection (b) but does not affect the right of a tenant to recover damages from the declarant for a violation of subsection (b).

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

(e) Improper lease termination prohibited.—

(1) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

(2) Nothing in this section or in any lease shall prohibit a residential tenant, after receiving notice under subsection (a), from terminating any lease without any liability for such termination provided such tenant gives the building owner 90 days' written notice of the intent to terminate the lease.

(3) The declarant or owner of any proposed conversion planned community shall not engage in any activity of any nature which would coerce the tenant into terminating any lease, including, but not limited to, harassing tenants or withholding normal services or repairs.

(f) Units leased to senior citizens and disabled persons.—

(1) For the purpose of this subsection, an eligible tenant or subtenant shall be a natural person who, on the conversion notice date, lawfully occupies a unit in a conversion building as a principal residence and is 62 years of age or older or is disabled and has occupied the unit for at least two years. For purposes of this subsection, a person shall be deemed to be disabled if on the conversion notice date he is totally and permanently unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impediment, including, but not limited to, blindness.

(2) Within 60 days after the conversion notice date, any tenant or subtenant in possession of a unit who believes that he is an eligible tenant or subtenant shall so notify the declarant and shall provide the declarant with proof of his eligibility. Any eligible tenant or subtenant who has established his eligibility as aforesaid shall be entitled to remain in possession of his unit for two years following the conversion notice date, notwithstanding any prior termination date in his lease, except by reason of nonpayment of rent, waste or conduct that disturbs other occupants' peaceful enjoyment of the planned community, and the terms of the tenancy, including terms that apply to a time period after the conversion notice date, may not be altered but may be enforced during the time period between the original lease termination date and the expiration of this two-year period except as is otherwise provided in paragraph (3).

(3) The monthly rental payable by the tenant during the time period commencing upon the later to occur of the original lease termination date or the first anniversary of the conversion notice date and ending upon the expiration of the two-year period described in paragraph (2) shall be the

same monthly rental as was payable for the month immediately preceding the original lease termination date, except that, at the landlord's option, such monthly rental may be increased by the lesser of 5% of such monthly rental or the same percentage increase as the percentage increase, if any, in the Consumer Price Index as calculated and published by the United States Department of Labor for the six-month time period commencing on the first day of the first full calendar month after the conversion notice date.

(4) Failure of a declarant to comply with the provisions of this subsection is a defense to an action for possession.

(g) Tenant meetings; open to the public.—With respect to any conversion building containing one or more units then occupied for residential use, at least 30 days before the conversion notice date, the declarant shall hold a tenant meeting open to the public in the municipality where the proposed conversion building is located at a place and time convenient to the persons who may be directly affected by the conversion. At least ten days' notice of the time and place of the meeting shall be given to residential tenants and subtenants in lawful possession of their units, in the same manner as is required for the giving of the conversion notice, and to the general public by a notice in a newspaper of general circulation in the municipality in which the planned community is located, except that no notice to the general public need be given with respect to conversion buildings as to which the provisions of section 5402(b) (relating to public offering statement; general provisions) are applicable. At such meeting, representatives of the declarant shall briefly describe the following and may, but shall not be required to, discuss other matters:

(1) The rights and obligations of tenants and subtenants under this section.

(2) Improvements, if any, then planned to be made to the planned community by the declarant.

(3) The anticipated approximate range of initial unit sales prices. Specific unit sales prices need not, however, be provided.

(4) The anticipated approximate range of estimated monthly common expenses for various types of units; however, specific per unit estimates need not be provided.

(h) Community development grants.—If Federal funds under the Community Economic Development Act of 1981 (Public Law 97-35, 42 U.S.C. § 9801 et seq.) have been used to finance the rehabilitation of multifamily rental housing, with the intent that such housing subsequent to the rehabilitation is to be used for residential rental purposes, such housing shall not be converted to a planned community for a period of ten years from the date the rehabilitation is completed.

(i) Revocation.—A declarant may subsequently revoke a conversion notice if the declarant has expressly reserved the right of revocation in the conversion notice and if the notice of revocation:

(1) Is given prior to the conveyance of any unit in the planned community occurring after the conversion notice date other than a unit or units conveyed to a successor declarant or as a result of foreclosure of a mortgage on the unit or a deed in lieu thereof.

(2) Is given in the same manner as is required for the giving of the conversion notice.

(3) Is given to all persons who were entitled to receive the conversion notice and who continue to be in lawful occupancy at the time such notice of revocation is given. The giving of a notice of revocation revokes all rights granted under this section but does not revoke the rights granted to residential tenants under subsection (a) or (f), and such rights shall be deemed to have been incorporated in each residential tenant's lease.

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

(1) an extension of the term of the tenant's tenancy and right of occupancy under this subpart beyond the time period required by subsection (b);

(2) the tenant entering into an agreement to purchase another unit in the planned community; or

(3) all occupants of the unit making alternative living arrangements.

(k) Alteration of terms of tenancy.—Notwithstanding any provisions of subsection (a) or (f), the terms of the tenancy of a tenant or subtenant may be altered with the express written consent of that tenant or subtenant, and such altered terms shall then be the terms of tenancy referred to in this section.

(l) Application of section.—The provisions of this section shall apply only with respect to conversion buildings in which one or more residential tenants or residential subtenants are in lawful occupancy on the conversion notice date, and the only tenants who are entitled to exercise the rights granted under this section are residential tenants or residential subtenants:

(1) who are in lawful occupancy of conversion building on the date the declarant gives the conversion notice; or

(2) who commence their tenancy after the notice of conversion is given to the other residential tenants without having been notified in writing, at or prior to the commencement of their tenancy, that the property is then a planned community and that they are not entitled to the rights granted under this section. Such rights continue only so long as the lawful occupancy of the tenant or subtenant continues.

§ 5411. Warranty against structural defects.

(a) Scope.—Nothing in this section shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

(b) General rule.—A declarant warrants against structural defects in each of the units and the controlled facilities that are part of a unit for two years from the date each unit is conveyed to a bona fide purchaser, and all of the controlled facilities that are not part of a unit and all common facilities for two years. Only the association may bring an action for breach of warranty with respect to common facilities and the controlled facilities that are not part of a unit. An action for breach of warranty with respect to one or more units or controlled facilities that are a part of a unit may be brought either by the association or an owner of an affected unit. Any conveyance of a unit during the two-year warranty period shall be deemed to transfer to the purchaser all of the declarant's warranties created under this section. The two years shall begin, as to each of the controlled facilities that are not part of a unit, whenever the controlled facilities that are not part of the unit have been completed and, as to each common facility, whenever such common facilities have been completed or, if later:

(1) As to any controlled facilities that are not part of a unit and as to common facilities within any additional real estate or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser.

(2) As to any controlled facilities that are not part of a unit and as to common facilities within any convertible real estate or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser.

(3) As to any controlled facilities that are not part of a unit and as to common facilities within any other portion of the planned community, at the time the first unit therein is conveyed to a bona fide purchaser.

(c) Planned communities containing conversion buildings.—A declarant of a planned community containing one or more conversion building warrants as follows:

(1) That there are no structural defects in components installed anywhere in the planned community or in work done or improvements made by or on behalf of the declarant anywhere in the planned community.

(2) That all units and common elements in each conversion building have been inspected for visible structural and mechanical defects and for other visible conditions that adversely affect the health or safety of residential occupants, as required by section 5404(a)(1) (relating to public offering statement; planned communities containing conversion buildings), except no such inspection is required of any unit if the tenant or other lawful occupant of the unit does not permit such inspection to be conducted.

(3) That any defects and other visible conditions found have been repaired.

The warranties under subsection (b) shall be applicable to any units and common elements that are located within a building that contains or comprises one or more units and is not a conversion building. Otherwise, the declarant may offer the units, common elements or both in an "as is"

condition. The declarant of a planned community containing any conversion buildings may also give a more extensive warranty in writing. The times at which the warranties required by this subsection commence and the duration of such warranties shall be as provided in subsection (b).

(d) Exclusion or modification of warranty.—Except with respect to a purchaser of a unit for residential use, the warranty against structural defects:

(1) May be excluded or modified by agreement of the parties.

(2) Is excluded by expression of disclaimer, such as “as is,” “with all faults” or other language which in common understanding calls the buyer’s attention to the exclusion of warranties.

(e) Limitation of actions.—No action to enforce the warranty created by this section shall be commenced later than six years after the warranty begins. § 5412. Effect of violations on rights of action.

If a declarant or any other person subject to this subpart violates any provision of this subpart or any provisions of the declaration or bylaws, any person or class of persons adversely affected by the violation has a claim for appropriate relief. Punitive damages may be awarded in the case of a willful violation of the subpart.

§ 5413. Labeling of promotional material.

If any improvement contemplated in a planned community is required by section 5210 (relating to plats and plans) to be labeled “NEED NOT BE BUILT” on a plat or plan or is to be located within convertible real estate, no promotional material may be displayed or delivered to prospective purchasers which describes or depicts that improvement unless the description or depiction of the improvement is conspicuously labeled or identified as “NEED NOT BE BUILT.”

§ 5414. Declarant’s obligation to complete and restore.

(a) Completing improvements.—The declarant shall complete all improvements labeled “MUST BE BUILT” on plats or plans prepared pursuant to section 5210 (relating to plats and plans).

(b) Repair and restoration.—The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the planned community, of any portion of the planned community affected by the exercise of rights reserved pursuant to or created by sections 5211 (relating to conversion and expansion of flexible planned communities), 5212 (relating to withdrawal of withdrawable real estate), 5217 (relating to declarant offices, models and signs) and 5218 (relating to easement to facilitate completion, conversion and expansion).

(c) Substantial completion prerequisite to conveyance.—A unit which is part of or constitutes a structure shall not be conveyed to a person other than a successor to any special declarant rights unless all structural components and common element mechanical systems of the structure containing or constituting such unit or units are substantially completed to the extent required of the declarant so as to permit the use of such unit or units and any limited common elements appurtenant thereto for their intended use. Such

substantial completion shall be evidenced by a recorded certification of completion executed by an independent registered surveyor, architect or professional engineer with regard to any such structure.

(d) Substantial completion of unit.—No interest in a unit shall be conveyed to a person other than a successor to any special declarant rights until the unit is substantially completed in accordance with the descriptions set forth in both the declaration under section 5205 (relating to contents of declaration; all planned communities) and in the public offering statement under section 5402(a) (relating to public offering statement; general provisions), as evidenced by a recorded certificate of completion executed by an independent registered surveyor, architect or professional engineer.

(e) Construction of section.—Nothing contained in this subpart shall prevent the offering for sale of a unit or interest in a unit or the execution of any agreement to sell and purchase a unit or any interest in a unit (as opposed to actual conveyance) prior to the completion of the unit or any other portion of the planned community.

Section 2. This act shall take effect in 45 days.

APPROVED—The 19th day of December, A.D. 1996.

THOMAS J. RIDGE