

No. 1998-37

## AN ACT

SB 1175

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

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

Section 1. Section 5102(a), (b) and (f) of Title 68 of the Pennsylvania Consolidated Statutes are amended to read:

§ 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.]

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

*(2) such a planned community, regardless of the number of units, has common elements or limited common elements which include only storm water management facilities and related devices, real estate containing signage, lighting, landscaping, gates, walls, fences or*

*monuments or open space and is not subject to any rights under section 5215 or under section 5211, it shall be subject only to the sections listed in paragraph (1), the provisions of sections 5103 (relating to definitions), 5104 (relating to variation by agreement), 5105, 5106, 5107, 5108 (relating to supplemental general principles of law applicable), 5109 (relating to construction against implicit repeal), 5110 (relating to uniformity of application and construction), 5111 (relating to severability), 5112 (relating to unconscionable agreement or term of contract), 5113 (relating to obligation of good faith) and 5114 (relating to remedies to be liberally administered) and the provisions of Chapter 53 (relating to management of planned community) and sections 5407 (relating to resales of units), 5408 (relating to escrow of deposits), 5409 (relating to release of liens) and 5411 (relating to warranty against structural defects) unless the declaration provides that the entire subpart is applicable. If a planned community is subject to the provisions of this paragraph, a declarant shall include a provision in any sales agreement for a unit of such planned community which states that an association exists or may be created to own and manage certain generally described common elements or limited common elements. There may be imposed by the association assessments upon unit owners for expenses related to the ownership, management, administration or regulation of such elements and that the declarant shall provide copies of the proposed or recorded declaration or covenants and restrictions, an actual or proposed budget of the planned community in accordance with the provisions of section 5402(a)(7) (relating to public offering statement; general provisions) and the actual or proposed bylaws of the association, provided that the purchaser has the right, before conveyance, to cancel the agreement within seven days of the date of receiving a copy of the proposed or recorded declaration or covenants and restrictions, the actual or proposed budget and the actual or proposed bylaws. As used in this paragraph, the term "open space" shall include an area of land or an area of water or a combination of land and water within a planned community intended for the use or enjoyment of residents, including, but not limited to, ball fields and courts, parks, walking, hiking or biking trails, wetlands, wooded areas and walkways and driveways providing access thereto or parking intended for users of such open space. The term does not include streets, utility lines or facilities or swimming pools or clubhouses owned or leased and maintained by the association.*

(b) Retroactivity.—Except as provided in subsection (c), sections 5105, 5106, 5107, 5203 (relating to construction and validity of declaration and bylaws), 5204 (relating to description of units), 5218, 5219 (relating to amendment of declaration), 5223 (relating to merger or consolidation of planned community), 5302(a)(1) through (6) and (11) through (15) (relating to power of unit owners' association), 5311 (relating to tort and contract

liability), 5315 (relating to lien for assessments), 5316 (relating to association records), 5407 (relating to resales of units) and 5412 (relating to effect of violations on rights of action) and section 5103 (relating to definitions), to the extent necessary in construing any of those sections, apply to all planned communities created in this Commonwealth before the effective date of this subpart; but those sections apply only with respect to events and circumstances occurring after the effective date of this subpart and do not invalidate *specific provisions contained in* existing provisions of the declaration, bylaws or plats and plans of those planned communities.

\* \* \*

(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 purchaser]** unless exempt under section 5401(b)(2) (relating to applicability; waiver).

Section 2. The definitions of “special declarant rights” and “structural defects” in section 5103 of Title 68 are amended to read:

§ 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:

\* \* \*

“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)] 5210 (relating to plats and plans)**;

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

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

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

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

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

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

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

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

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

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

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

(1) any unit or common element; *or*

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

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

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Section 3. Sections 5205(16) and 5206(4) and (8) of Title 68 are amended to read:

§ 5205. Contents of declaration; all planned communities.

The declaration for a planned community must contain:

\* \* \*

(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.

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

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#### § 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:

\* \* \*

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

\* \* \*

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

\* \* \*

Section 4. Section 5210 of Title 68 is amended by adding a subsection to read:

§ 5210. Plats and plans.

\* \* \*

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

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

*(2) such final plans have been recorded; and*

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

Section 5. Sections 5218 and 5406(a) of Title 68 are amended to read:

§ 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]. *An association shall be entitled to recover costs and expenses incurred by the association* for the repair of damage caused to common elements in the exercise of the easement rights.

§ 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] *seven* days before conveyance of such unit.

Unless a purchaser is given the public offering statement, including all the currently effective amendments thereof, within the time period referred to in the preceding sentence, the purchaser, before conveyance, may[, **except in the case of a time-share estate,**] cancel the contract within [15] *seven* 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.

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Section 6. Section 5411(b) of Title 68 is amended and the section is amended by adding a subsection to read:

§ 5411. Warranty against structural defects.

\* \* \*

(b) General rule.—

(1) A declarant warrants against structural defects in *structures constructed, modified, altered or improved by or on behalf of such declarant in:*

(i) each of the units and the controlled facilities that are part of a unit for two years from the date each unit is conveyed to a bona fide purchaser[, and]; *and*

(ii) all of the controlled facilities that are not part of a unit and all common facilities for two years[.] *except facilities which have been dedicated to a municipality, municipal authority or other governmental unit.*

(2) Only the association may bring an action for breach of warranty with respect to common facilities and the controlled facilities that are not part of a unit. An action for breach of warranty with respect to one or more units or controlled facilities that are a part of a unit may be brought either by the association or an owner of an affected unit. Any conveyance of a unit during the two-year warranty period shall be deemed to transfer to the purchaser all of the declarant's warranties created under this section. The two years shall begin, as to each of the controlled facilities that are not part of a unit, whenever the controlled facilities that are not part of the

unit have been completed and, as to each common facility, whenever such common facilities have been completed or, if later:

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

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

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

\* \* \*

*(f) Disclaimer of implied warranties.—To the extent permitted by applicable law, a declarant may disclaim implied warranties applicable to any unit or common elements to which the warranty provided by this section applies, provided such disclaimer is set forth in the contract for the sale of a unit and in the public offering statement for the planned community of which the unit or common element is a part. The disclaimer required under this subsection shall be set forth in 14-point boldface type.*

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

APPROVED—The 24th day of March, A.D. 1998.

THOMAS J. RIDGE