

No. 2004-189

AN ACT

HB 1329

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

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

Section 1. Section 5102(a) of Title 68 of the Pennsylvania Consolidated Statutes is amended and the section is amended by adding a subsection 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:

(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:

(i) include **[a provision] provisions** 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] and that 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]; and**

(ii) **prepare and record a declaration in the manner set forth in section 5205 (relating to contents of declaration; all planned communities) or 5206 (relating to contents of declaration for flexible planned communities) or covenants and restrictions as may be appropriate for the planned community.** The declarant shall provide to the purchaser 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.1) Retroactivity.—

(1) Sections 5103, 5108, 5113, 5220(i) (relating to termination of planned community), 5222 (relating to master associations), 5302(a)(8)(i), (16) and (17) (relating to power of unit owners' association), 5303(a) and (b) (relating to executive board members and officers), 5307 (relating to upkeep of planned community), 5314 (relating to assessments for common expenses) and 5319 (relating to other liens affecting planned community), 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 subsection and do not

invalidate specific provisions contained in existing provisions of the declaration, bylaws or plats and plans of those planned communities.

(2) Section 5303(c) and (d), to the extent necessary in construing any of those subsections, apply to all planned communities created in this Commonwealth before the effective date of this subpart, but those subsections apply only with respect to events and circumstances occurring 180 days after the effective date of this subsection and do not invalidate specific provisions contained in existing provisions of the declaration, bylaws or plats and plans of those planned communities.

* * *

Section 2. Sections 5105(c)(2), 5210(h), 5218 and 5219(a) and (f) of Title 68 are amended to read:

§ 5105. Separate titles and taxation.

* * *

(c) Certain additional prohibitions.—

* * *

(2) Except as specifically provided in this section *and notwithstanding any fees or fee schedules or general rulemaking authority that existed prior to the effective date of this paragraph*, an association shall not *have the power to* impose any fees *or financial security* related to construction, alteration, renovation or repair of a unit *or exercise an access easement under section 5218 (relating to easement to facilitate completion, conversion and expansion)*.

§ 5210. Plats and plans.

* * *

(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.

* * *

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

§ 5219. Amendment of declaration.

(a) Number of votes required.—

(1) The declaration, including the plats and plans, may be amended only by vote [of] **or agreement of unit owners of units to which** at least:

(i) 67% of **votes in** the association **are allocated; or**

(ii) a larger percentage of **the votes in** the association **as** specified in the declaration; or

(iii) a smaller percentage of **the votes in** the association **as** specified in the declaration if all units are restricted exclusively to nonresidential use.

(2) Paragraph (1) is limited by subsection (d) **and section 5221 (relating to rights of secured lenders).**

(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).

* * *

(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; *or*
- (4) *comply with any statute, regulation, code or ordinance which may now or hereafter be made applicable to the planned community or association, or to make a reasonable accommodation or permit a reasonable modification in favor of handicapped, as may be defined by prevailing Federal or State laws or regulations applicable to the association, unit owners, residents or employees;*

then, at any time, the executive board may, at its discretion, effect an appropriate corrective amendment without the approval of the unit owners or the holders of liens on all or any part of 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.

Section 3. Section 5220 of Title 68 is amended by adding a subsection to read:

§ 5220. Termination of planned community.

* * *

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

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

Section 4. Sections 5221, 5302(a)(4), (6), (8), (12) and (17) and 5303(a) of Title 68 are amended to read:

§ 5221. Rights of secured lenders.

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

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

§ 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:

* * *

(4) Institute, defend or intervene in litigation or administrative proceedings, *or engage in arbitrations or mediations*, in its own name on behalf of itself or two or more unit owners on matters affecting the planned community.

* * *

(6) Regulate the use, maintenance, repair, replacement and modification of common elements *and make reasonable accommodations or permit reasonable modifications to be made to units, the common facilities, the controlled facilities or the common elements, to accommodate people with disabilities, as defined by prevailing Federal, State or local statute, regulations, code or ordinance, unit owners, residents, tenants or employees.*

* * *

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

(ii) *convey or subject* to a security interest *common facilities* only under the provisions of section 5318 (relating to conveyance or encumbrance of common facilities).

* * *

(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[.]; **and**

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

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

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

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

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

(B) completes such reconveyance within such 18 months.

* * *

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

* * *

§ 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 managing the association's reserve funds, the officers and members of the executive board shall have the power to invest the association's reserve funds in investments permissible by law for the investment of trust funds and shall be governed in the management of the association's reserve funds by 20 Pa.C.S. § 7203 (relating to prudent investor rule).*** In performing 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.

An officer or executive board member shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause his reliance to be unwarranted. The executive board and its members shall have no liability for exercising these powers provided they are exercised in good faith, in the best interest of the association and with care in the manner set forth in this section.

* * *

Section 5. Sections 5312(a), (c), (f) and (h) and 5315(b)(1) and (2)(i) of Title 68 are amended and the sections are amended by adding subsections to read:

§ 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.

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

* * *

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

* * *

(f) Unit owner insurance.—***A unit owner may insure his unit for all losses to his unit, including losses not covered by the insurance maintained by the association due to a deductible provision or otherwise.*** 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] shall** not prevent a unit owner from obtaining insurance for the owner's own benefit, ***including, but not limited to, insurance to cover any deductibles or losses not covered by the association's property or comprehensive general liability insurance.***

* * *

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

* * *

(j) Recovery of deductibles.—If any insurance policy maintained by the association contains a deductible, then that portion of any loss or claim which is not covered by insurance due to the application of a deductible, as well as any claim or loss for which the association is self-insured, shall be levied by the executive board in accordance with section 5314(c) (relating to assessments for common expenses).

§ 5315. Lien for assessments.

* * *

(b) Priority of lien.—

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

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

(ii) **[First mortgages or]**

(A) *Mortgages and* 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.

(B) Judgments obtained for obligations secured by any such mortgage or deed of trust under clause (A).

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

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

(i) As to unpaid common expense assessments made under section 5314(b) (relating to assessments for common expenses) that come due during the six months immediately preceding **[institution of] the date of a judicial sale of a unit in** an action to enforce collection of a lien against a unit by a judicial sale, only to the extent that the six months' unpaid assessments are paid out of the proceeds of the sale.

* * *

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

Section 6. Section 5402(a)(13)(i) and (iv) of Title 68 are amended to read:

§ 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:

* * *

(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.

* * *

(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.

* * *

Section 7. Section 5407(c) of Title 68 is amended and the section is amended by adding a subsection to read:

§ 5407. Resales of units.

* * *

(c) Liability for error or inaction by association.—A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner[, **but the purchase contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever first occurs**].

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

Section 8. Section 5410(d) and (j)(1) of Title 68 are amended to read:
§ 5410. Planned communities containing conversion buildings.

* * *

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

* * *

(j) Waiver of purchase rights.—Notwithstanding any provisions of this subpart prohibiting waiver of rights, any tenant may waive his right to purchase a unit 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)] subsections (a) and (f) as applicable;**

* * *

Section 9. This act shall take effect in 60 days.

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

EDWARD G. RENDELL