



FORECLOSURES AND COLLECTIONS

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The full seminar packet will be posted to our blog at <http://www.njlawblog.com>, together with a podcast of this presentation, on or about June 4, 2008.

QUESTIONS & ANSWERS

UNIFORM CONDOMINIUM ACT
68 Pa.C.S. §§3101 – 3414
(current through 1/29/05)

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Chapter 31

§ 3101. Short title of subpart

This subpart shall be known and may be cited as the "Uniform Condominium Act."

§ 3102. Applicability of subpart

(A) GENERAL RULE.-- This subpart applies to all condominiums created within this Commonwealth after the effective date of this subpart. Subsection (b) and sections 3105 (relating to separate titles and taxation), 3106 (relating to applicability of local ordinances, regulations and building codes), 3107 (relating to eminent domain), 3203 (relating to construction and validity of declaration and bylaws), 3204 (relating to description of units), 3222 (relating to master associations), 3223 (relating to merger or consolidation of condominiums), 3302(a)(1) through (6), (9) and (11) through (16) (relating to powers of unit owners' association), 3311 (relating to tort and contract liability), 3315 (relating to lien for assessments), 3316 (relating to association records), 3407 (relating to resales of units) and 3412 (relating to effect of violations on rights of action), and section 3103 (relating to definitions) to the extent necessary in construing any of those sections, apply to all condominiums 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, code of regulations or declaration plan of those condominiums.

(a.1) Retroactivity.--

(1) Sections 3103 (relating to definitions), 3108 (relating to supplemental general principles law), 3112 (relating to obligation of good faith), 3219 (relating to amendment of declaration), 3220 (I) (relating to termination of condominium), 3302 (A) (8) (I), (16) and (17) (relating to powers of unit owners' association), 3303 (A) and (B) (relating to executive board members and officers), 3307 (relating to upkeep of condominium), 3314 (relating to assessments for common expenses) and 3319 (relating to other liens affecting the condominium), to the extent necessary in construing any of those sections, shall apply to all condominiums created in this Commonwealth before the effective

§ 3313. Surplus funds

Any amounts accumulated from assessments for limited common expenses and income from the operation of limited common elements to which such 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 such limited common expenses in proportion to the share of such limited common expenses so assessed, these credits to be applied, unless the declaration provides otherwise, to the next monthly assessments of limited common expenses against that unit under the then 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 such unit's interests in common elements, these credits to be applied, unless the declaration provides otherwise, to the next monthly assessments of general common expenses against that unit under the then current fiscal year's budget, and thereafter, until exhausted.

§ 3314. Assessments for common expenses

(A) GENERAL RULE.-- Until the association makes a common expense assessment, the declarant shall pay all the expenses of the condominium. After any assessment has been made by the association, assessments shall be made at least annually and shall be 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), common expenses shall be assessed against all the units in accordance with the common expense liability allocated to each unit (section 3208) in the case of general common expenses and in accordance with subsection (c) in the case of special allocations of expenses. Any past due assessment or installment thereof shall bear interest at the rate established by the association not exceeding 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 any 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.

§ 3315. 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 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 thereon, except the mortgage for which the sale is being held, if the mortgage is or shall be 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 condominium assessments created under this section. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest

charged pursuant to section 3302(a)(10), (11) and (12) (relating to powers of unit owners' association) and reasonable costs and expenses of the association, including legal fees, incurred in connection with collection of any sums due 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 is 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 recordation of the declaration.

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

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

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

(2) LIMITED NONDIVESTITURE.-- The association's lien for assessments shall be divested by a judicial sale of the unit:

(i) As to unpaid common expense assessments made under section 3314(b) (relating to assessments for common expenses) that come due during the six months immediately preceding the date of a judicial sale of a unit in an action to enforce collection of a lien against a unit.

(ii) As to unpaid common expense assessments made under section 3314(b) other than the six months assessment referred to in subparagraph (i), in the full amount of these unpaid assessments, whether or not the proceeds of the judicial sale are adequate to pay these assessments. To the extent the proceeds of the sale are sufficient to pay some or all of these additional assessments, after satisfaction in full of the costs of the judicial sale, and the liens and encumbrances of the types described in paragraph (1) and the unpaid common expense assessments that come due during the six-month period described in subparagraph (i), they shall be paid before any remaining proceeds may be paid to any other claimant, including the prior owner of the unit.

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

(C) NOTICE AND PERFECTION OF LIEN.-- Subject to the provisions of subsection (b), recording of the declaration constitutes record notice and perfection of the lien.

(D) 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.

(E) 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.

(F) COSTS AND ATTORNEY'S FEES.-- A judgment or decree in any action or suit brought under this section shall include costs and reasonable attorney's fees for the prevailing party.

(G) 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 pursuant to section 3313 (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.

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

§ 3316. Association records

During the period of declarant control, the association shall keep detailed financial records, including, without limitation, a record of expenses paid by the declarant until the commencement of common expense assessments by the association under section 3314(a) (relating to assessments for common expenses), the commencement date of common expense assessments by the association and, for the period commencing on such date, a record for each unit in the condominium (including those owned by the declarants) of its common expense assessments and the payments thereof. The association shall keep financial records sufficiently detailed to enable the association to comply with section 3407 (relating to resales of units). All financial and other records shall be made reasonably available for examination by any unit owner and his authorized agents.

§ 3317. 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 and 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.

§ 3318. Conveyance or encumbrance of common elements

(A) GENERAL RULE.-- Portions of the common elements 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 all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element 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 elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, 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 thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recordation.

(C) ASSOCIATION POWERS.-- The association on behalf of the unit owners may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to 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 elements, unless made pursuant to this section, is void.

(E) RIGHT OF ACCESS AND SUPPORT.-- A conveyance or encumbrance of common elements pursuant to this section does not deprive any unit of its right of access and support.

UNIFORM PLANNED COMMUNITY ACT
68 Pa.C.S. §§5101 – 5414
(current through 1/29/05)

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Chapter 51

§ 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:

(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

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) (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 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 the date of a judicial sale of a unit in an action to enforce collection of a lien against a unit by a judicial sale, only to the extent that the six months' unpaid assessments are paid out of the proceeds of the sale.

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

(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.

§ 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