



Urban Issues: How Green is Your Building Presented to:

CAI Pennsylvania and Delaware Valley Chapter

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*57 Million Americans – approaching one
person out of five – live in homes regulated
by Community Associations*

Restrictive Covenants

Pennsylvania Condominium Act

§ 3213 Alterations of units

Subject to the provisions of the declaration and other provisions of law, a unit owner:

- (1) May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium.
- (2) May not change the appearance of the common elements or the exterior appearance of a unit or any other portion of the condominium without permission of the association

Pennsylvania Uniform Planned Community Act

§ 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

Rules and Regulations

Pennsylvania Condominium Act

§ 3302 Powers of unit owners' association

- (a) General rule.--Subject to the provisions of the declaration, the association, even if unincorporated, may:
- (1) Adopt and amend bylaws and rules and regulations
 - (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 elements
 - (9) Grant easements, leases, licenses and concessions through or over the common elements, but any such easement, lease, license or concession

Pennsylvania Uniform Planned Community Act

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Rules and Regulations

Flexibility

Business Judgment

- Authorized by Governing Documents and/or not obligated to Act by virtue of Governing Documents
- Good Faith and Reasonableness

Discrimination and “Slippery Slope”

Restrictive Covenants

- ◆ Initial or amended Governing Documents
- ◆ Flexibility
- ◆ Interpretation and community norms and standards
- ◆ Public Policy
- ◆ Shelley v. Kraemer (1948)
 - ◆ On February 16, 1911, thirty out of a total of thirty-nine owners of property fronting both sides of Labadie Avenue between Taylor Avenue and Cora Avenue in the city of St. Louis, signed an agreement, which was subsequently recorded, providing in part:

it being intended hereby to restrict the use of said property for said period of time against the occupancy as owners or tenants of any portion of said property for resident or other purpose by people of the Negro or Mongolian Race.

Liability to Board Members

§ 3303 (A), Condominium Act

- “good faith”, “best interest” and “with care”

§ 5303 (A), Planned Community Act

- “good faith”, “best interest” and “with care”

Make Paper a Thing of the Past

According to the Worldwatch Institute and Environmental Protection Agency:

- Every ton of paper that is recycled saves 17 trees and 7,000 gallons of water
- One fifth of all wood harvested in the world ends up in paper
- It takes 2 to 3.5 tons of trees to make one ton of paper
- In the United States, paper accounts for nearly 40 percent of all municipal solid waste
- Making paper uses more water per ton than any other product in the world



Replace Routine Paper Mailings with Email Communications

- Vendor communications and contracts
- Board discussions – effective way of keeping records
- Notices to individual units – violation notices, collection notices, notices of capital expenditures
- Copies of budgets
- Payment coupons and account history balances
- Homeowner payments via credit cards/debit cards
- Notice of meetings need not be distributed to each unit. Homeowners can access the meeting calendar via the website

§3303 Executive board members and officers

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 either such approval

Meetings

- Election meetings: Save the money in gas and vote online
 - ◆ Candidate profiles can be provided via website and/or email
 - ◆ Time period established where homeowners can vote
 - ◆ *Think American Idol style*
 - ◆ Electronic ballot counting – very reliable and fast
- Board Meetings/Executive Sessions
 - ◆ Why not teleconference?

§3308 Meetings

The bylaws must require that meetings of the association be held at least once each year and provide for special meetings. The bylaws must 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 an executive board member or officer.

§3309 Quorums

- (a) Association.--Unless the bylaws provide otherwise, a quorum is deemed 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 that board are present at the beginning of the meeting

Retention of Documents

- Contracts, meeting minutes, financial statements, accounting records, work orders, insurance policies, resolutions, building/architectural plans....like all businesses, Associations retain a lot of documentation
- The days of storing this information in binders, on shelves, in filing cabinets are behind us – no reason any of this needs to be printed out
- Everything should be stored within the Association's hard drive and copies made on disks and flash drives for distribution purposes

§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.

§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

Pennsylvania Enacts Law Funding Solar Energy

- On July 11, 2008, Governor Rendell signed a bill dedicating \$650 million to the development of alternative and renewable energy
- 28% of the fund will be allocated to the installation of solar energy technology
- The Legislation provides \$100 million for solar power and water heating systems on homes, paying up to 35% of the installation costs

New Jersey Jumps on Solar Energy Bandwagon

Last summer, Governor Jon Corzine signed into law C. 45:22A-48.2, which makes it unlawful for homeowners associations to prohibit the installation of solar collectors on certain roofs of dwelling units....

Delaware is not far behind

DELAWARE STATE SENATE
144th GENERAL ASSEMBLY

SENATE BILL NO. 238

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO SOLAR PHOTOVOLTAIC SYSTEMS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 80, Title 29 of the Delaware Code, by adding a new §8060 as follows:

2 “§8060. Restrictive Covenants.

3 Any covenant, restriction, or condition contained in a deed, contract or other legal instrument which
4 affects the transfer, sale or any other interest in real property that prohibits or unreasonably restricts the owner of the
5 property from using a system for obtaining solar energy on his property is void and unenforceable. A covenant is
6 considered unreasonable if it significantly increases the cost of the solar energy system or significantly decreases its
7 efficiency or specified performance.”

SYNOPSIS

This Bill bans the use of covenants or other restrictions to prohibit the installation of solar photovoltaic systems in Delaware.

Author: Senator McBride

Florida takes the initiative in Legislation –
Other Eco-Friendly states are likely to follow
Florida's lead

Solar Energy and Clotheslines

Florida Statute, Section 163.04 “Energy devices based on renewable resources” forbids ordinances, deed restrictions, covenants or similar binding agreements from prohibiting solar collectors, clotheslines, or other energy devices based on renewable resources from being installed on buildings erected on the lots or parcels covered by the deed restrictions, covenant, declaration or binding agreement.

Utah and Hawaii have passed similar Legislation

Utah's Code, § 10-9a-610, does not explicitly create a right to dry, but does permit municipalities to deny approval or renewal of any map, plan, dedications, or other grounds, if binding agreements prohibit, or have the effect of prohibiting, solar collectors, clotheslines, or other renewable energy devices, on those grounds. The statute therefore allows municipalities to choose whether to create a right to dry.

Hawaii (HRS § 196-7) allows for some reasonable restrictions on solar energy devices, but does not prohibit them on privately owned single-family residential units or townhouse units. Although the statute does not explicitly mention clotheslines, solar energy devices are defined as “any identifiable facility, equipment, apparatus, or the like, [that] makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent on fossil fuel for generation”.

For further information on how your
Community can
“GO GREEN”

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