

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1774 Session of
2015

INTRODUCED BY R. BROWN, BARRAR, COHEN, DAVIS, EMRICK, GIBBONS,
A. HARRIS, HEFFLEY, MALONEY, MILLARD, O'NEILL, THOMAS,
TOEPEL, MOUL AND KORTZ, JANUARY 5, 2016

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 21, 2016

AN ACT

Amending Title 68 (Real and Personal Property) of the
Pennsylvania Consolidated Statutes, as follows:

in management of the condominium, providing for
mediation OR ALTERNATIVE DISPUTE RESOLUTION in ~~substantial~~
condominiums and for complaints filed with Bureau of Consumer
Protection;

in protection of purchasers, further providing for effect
of violations on rights of action;

in management of cooperatives, providing for mediation OR
ALTERNATIVE DISPUTE RESOLUTION in ~~substantial~~ cooperatives
and for complaints filed with Bureau of Consumer Protection;

in management of planned community, providing for
mediation OR ALTERNATIVE DISPUTE RESOLUTION in ~~substantial~~
planned communities and for complaints filed with Bureau of
Consumer Protection ~~and further providing for association
records~~; and

in protection of purchasers, further providing for effect
of violations on rights of action.

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

Section 1. Title 68 of the Pennsylvania Consolidated
Statutes is amended by adding sections to read:

§ 3321. Mediation OR ALTERNATIVE DISPUTE RESOLUTION

in substantial condominiums.

(a) Applicability.--

(1) A substantial condominium established after the effective date of this section shall adopt bylaws in compliance with this section.

~~(2) A substantial condominium established on or before the effective date of this section that amends their bylaws after the effective date of this section shall at that time adopt bylaws in compliance with this section.~~

(2) A CONDOMINIUM ESTABLISHED ON OR BEFORE THE EFFECTIVE DATE OF THIS SECTION MAY ADOPT BYLAWS IN COMPLIANCE WITH THE PROVISIONS OF THIS SECTION.

(b) Procedures.--

(1) The bylaws shall establish procedures for mediation or ALTERNATIVE DISPUTE resolution procedure for disputes between:

(i) two or more unit owners; or

(ii) a unit owner and the association.

(2) Mediation or ALTERNATIVE dispute resolution shall be limited to disputes where all parties agree to mediation OR ALTERNATIVE DISPUTE RESOLUTION.

(3) Costs and fees associated with mediation or ALTERNATIVE dispute resolution, excluding attorney fees, shall be assessed equally against all parties to a dispute.

~~(c) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:~~

~~"Substantial condominium." A condominium consisting of more than 12 units created before, on or after the effective date of~~

this section. The term shall not include a condominium in which all units are restricted exclusively to nonresidential use.

(C) CONSTRUCTION.--NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT OR IMPAIR THE RIGHT OF A UNIT OWNER, DECLARANT OR ASSOCIATION TO PURSUE A PRIVATE CAUSE OF ACTION OR SEEK OTHER RELIEF.

§ 3322. Complaints filed with Bureau of Consumer Protection.

(a) General rule.--A unit owner IN GOOD STANDING may file a complaint with the Bureau of Consumer Protection in the Office of Attorney General in the event of a violation by the declarant or the association of sections 3308 (relating to meetings), 3309 (relating to quorums), 3310 (relating to voting; proxies) and 3316 (relating to association records).

(b) Condition.--If a mediation or ALTERNATIVE dispute RESOLUTION procedure is available to the unit owner under the association's declaration, bylaws, rules or regulations, a complaint may not be filed by a unit owner with the Bureau of Consumer Protection until the earlier of:

(1) the unit owner exhausting the mediation or ALTERNATIVE dispute resolution procedure without a resolution between the unit owner and the association; or

(2) at least 100 days have passed since the unit owner commenced the mediation or ALTERNATIVE dispute resolution procedure and the unit owner and association having not reached a resolution.

(C) IMMEDIATE FILING.--A COMPLAINT MAY BE FILED BY A UNIT OWNER WITH THE BUREAU OF CONSUMER PROTECTION IMMEDIATELY, IF:

(1) A MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION PROCEDURE IS NOT AVAILABLE TO THE UNIT OWNER UNDER THE

ASSOCIATION'S DECLARATION, BYLAWS, RULES OR REGULATIONS; OR

(2) THE ASSOCIATION REFUSES MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION UNDER SECTION 3321(B)(2) (RELATING TO MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION IN CONDOMINIUMS).

(e) (D) Construction.--Nothing in this section shall be construed to affect or impair the right of a unit owner, declarant or association to pursue a private cause of action or seek other relief.

(E) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

"UNIT OWNER IN GOOD STANDING." A UNIT OWNER WHO IS CURRENT IN PAYMENT OF ASSESSMENTS AND FINES, UNLESS THE ASSESSMENT OR FINES ARE DIRECTLY RELATED TO THE COMPLAINT BEING FILED WITH THE BUREAU OF CONSUMER PROTECTION REGARDING SECTIONS 3308 (RELATING TO MEETINGS), 3309 (RELATING TO QUORUMS), 3310 (RELATING TO VOTING; PROXIES) AND 3316 (RELATING TO ASSOCIATION RECORDS).

Section 2. Section 3412 of Title 68 is amended to read:
§ 3412. Effect of violations on rights of action.

If a declarant or any other person subject to this subpart violates any provision thereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the violation has a claim for appropriate relief. Punitive damages may be awarded in the case of a willful violation of the subpart and, if appropriate, the prevailing party may be entitled to an award of costs and reasonable attorney fees.

Section 3. Title 68 is amended by adding sections to read:
§ 4322. Mediation OR ALTERNATIVE DISPUTE RESOLUTION

in substantial cooperatives.

(a) Applicability.--

(1) A substantial cooperative established after the effective date of this section shall adopt bylaws in compliance with this section.

~~(2) A substantial cooperative established on or before the effective date of this section that amends their bylaws after the effective date of this section shall at that time adopt bylaws in compliance with this section.~~

(2) A COOPERATIVE ESTABLISHED ON OR BEFORE THE EFFECTIVE DATE OF THIS SECTION MAY ADOPT BYLAWS IN COMPLIANCE WITH THE PROVISIONS OF THIS SECTION.

(b) Procedures.--

(1) The bylaws shall establish procedures for ALTERNATIVE dispute resolution or mediation of disputes between:

(i) two or more proprietary lessees; or

(ii) a proprietary lessee and the association.

(2) Mediation or ALTERNATIVE dispute resolution shall be limited to disputes where all parties agree to mediation OR ALTERNATIVE DISPUTE RESOLUTION.

(3) Costs and fees associated with mediation or ALTERNATIVE dispute resolution, excluding attorney fees, shall be assessed equally against all parties to a dispute.

~~(c) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:~~

~~"Substantial cooperative." A cooperative consisting of more than 12 units created before, on or after the effective date of~~

this section. The term shall not include a cooperative in which all units are restricted exclusively to nonresidential use.

(C) CONSTRUCTION.--NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT OR IMPAIR THE RIGHT OF A PROPRIETARY LESSEE, DECLARANT OR ASSOCIATION TO PURSUE A PRIVATE CAUSE OF ACTION OR SEEK OTHER RELIEF.

§ 4323. Complaints filed with Bureau of Consumer Protection.

(a) General rule.--A proprietary lessee IN GOOD STANDING may file a complaint with the Bureau of Consumer Protection in the Office of Attorney General in the event of a violation by the declarant or the association of sections 4308 (relating to meetings), 4309 (relating to quorums), 4310 (relating to voting; proxies) and 4317 (relating to association records).

(b) Condition.--If a mediation or ALTERNATIVE dispute RESOLUTION procedure is available to the proprietary lessee under the association's declaration, bylaws, rules or regulations, a complaint may not be filed by a proprietary lessee with the Bureau of Consumer Protection until the earlier of:

(1) the proprietary lessee exhausting the mediation or ALTERNATIVE dispute resolution procedure without a resolution between the proprietary lessee and the association; or

(2) at least 100 days have passed since the proprietary lessee commenced the mediation or ALTERNATIVE dispute resolution procedure and the proprietary lessee and association having not reached a resolution.

(C) IMMEDIATE FILING.--A COMPLAINT MAY BE FILED BY A PROPRIETARY LESSEE WITH THE BUREAU OF CONSUMER PROTECTION IMMEDIATELY, IF:

(I) A MEDIATION OR ALTERNATIVE DISPUTE PROCEDURE IS NOT AVAILABLE TO THE PROPRIETARY LESSEE UNDER THE ASSOCIATION'S DECLARATION, BYLAWS, RULES OR REGULATIONS; OR

(II) THE ASSOCIATION REFUSES MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION UNDER SECTION 4322(B)(2) (RELATING TO MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION IN COOPERATIVES).

~~(e)~~ (D) Construction.--Nothing in this section shall be construed to affect or impair the right of a proprietary lessee, declarant or association to pursue a private cause of action or seek other relief, as authorized by law.

~~Section 4. Section 5316(c) of Title 68 is amended to read:
§ 5316. Association records.~~

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~~{(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.}~~

(E) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

"PROPRIETARY LESSEE IN GOOD STANDING." A PROPRIETARY LESSEE WHO IS CURRENT IN PAYMENT OF ASSESSMENTS AND FINES, UNLESS THE

ASSESSMENT OR FINES ARE DIRECTLY RELATED TO THE COMPLAINT BEING FILED WITH THE BUREAU OF CONSUMER PROTECTION REGARDING SECTIONS 4308 (RELATING TO MEETINGS), 4309 (RELATING TO QUORUMS), 4310 (RELATING TO VOTING; PROXIES) AND 4317 (RELATING TO ASSOCIATION RECORDS).

Section 5 4. The act is amended by adding sections to read:
§ 5321. Mediation OR ALTERNATIVE DISPUTE RESOLUTION

in ~~substantial~~ planned communities.

(a) Applicability.--

(1) A ~~substantial~~ planned community established after the effective date of this section shall adopt bylaws in compliance with this section.

~~(2) A substantial community established on or before the effective date of this section that amends their bylaws after the effective date of this section shall at that time adopt bylaws in compliance with this section.~~

(2) A PLANNED COMMUNITY ESTABLISHED ON OR BEFORE THE EFFECTIVE DATE OF THIS SECTION MAY ADOPT BYLAWS IN COMPLIANCE WITH THE PROVISIONS OF THIS SECTION.

(b) Procedures.--

(1) The bylaws shall establish procedures for ALTERNATIVE dispute resolution or mediation of disputes between:

(i) two or more unit owners; or

(ii) a unit owner and the association.

(2) Mediation or ALTERNATIVE dispute resolution shall be limited to disputes where all parties agree to mediation OR ALTERNATIVE DISPUTE RESOLUTION.

(3) Costs and fees associated with mediation or

ALTERNATIVE dispute resolution, excluding attorney fees, shall be assessed equally against all parties to a dispute.

~~(c) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:~~

~~"Substantial planned community." A planned community consisting of more than 12 units created before, on or after the effective date of this section. The term shall not include a planned community in which all units are restricted exclusively to nonresidential use.~~

(C) CONSTRUCTION.--NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT OR IMPAIR THE RIGHT OF A UNIT OWNER, DECLARANT OR ASSOCIATION TO PURSUE A PRIVATE CAUSE OF ACTION OR SEEK OTHER RELIEF.

§ 5322. Complaints filed with Bureau of Consumer Protection.

(a) General rule.--A unit owner IN GOOD STANDING may file a complaint with the Bureau of Consumer Protection in the Office of the Attorney General in the event of a violation by the declarant or the association of sections 5308 (relating to meetings), 5309 (relating to quorums), AND 5310 (relating to voting; proxies) and 5316 (relating to association records).

(b) Condition.--If a mediation or ALTERNATIVE dispute RESOLUTION procedure is available to the unit owner under the association's declaration, bylaws, rules or regulations, a complaint may not be filed by a unit owner with the Bureau of Consumer Protection until the earlier of:

(1) the unit owner exhausting the mediation or ALTERNATIVE dispute resolution procedure without a resolution between the unit owner and the association; or

(2) at least 100 days have passed since the unit owner commenced the mediation or ALTERNATIVE dispute resolution procedure and the unit owner and association having not reached a resolution.

(C) IMMEDIATE FILING.--A COMPLAINT MAY BE FILED BY A UNIT OWNER WITH THE BUREAU OF CONSUMER PROTECTION IMMEDIATELY, IF:

(1) A MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION PROCEDURE IS NOT AVAILABLE TO THE UNIT OWNER UNDER THE ASSOCIATION'S DECLARATION, BYLAWS, RULES OR REGULATIONS; OR

(2) THE ASSOCIATION REFUSES MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION UNDER SECTION 5321(B)(2) (RELATING TO MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION IN PLANNED COMMUNITIES).

~~(e)~~ (D) Construction.--Nothing in this section shall be construed to affect or impair the right of a unit owner, declarant or association to pursue a private cause of action or seek other relief, as authorized by law.

(E) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

"UNIT OWNER IN GOOD STANDING." A UNIT OWNER WHO IS CURRENT IN PAYMENT OF ASSESSMENTS AND FINES, UNLESS THE ASSESSMENT OR FINES ARE DIRECTLY RELATED TO THE COMPLAINT BEING FILED WITH THE BUREAU OF CONSUMER PROTECTION REGARDING SECTIONS 5308 (RELATING TO MEETINGS), 5309 (RELATING TO QUORUMS), 5310 (RELATING TO VOTING; PROXIES) AND 5316 (RELATING TO ASSOCIATION RECORDS).

Section ~~6~~ 5. Section 5412 of Title 68 is amended to read:
§ 5412. Effect of violations on rights of action.

If a declarant or any other person subject to this subpart

violates any provision of this subpart or any provisions of the declaration or bylaws, any person or class of persons adversely affected by the violation has a claim for appropriate relief. Punitive damages may be awarded in the case of a willful violation of the subpart and, if appropriate, the prevailing party may be entitled to an award of costs and reasonable attorney fees.

Section 7 6. This act shall take effect in 60 days.