

Title 68

SUBPART D
PLANNED COMMUNITIES

Chapter

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Enactment. Subpart D was added December 19, 1996, P.L.1336, No.180, effective in 45 days.

CHAPTER 51
GENERAL PROVISIONS

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Enactment. Chapter 51 was added December 19, 1996, P.L.1336, No.180, effective in 45 days.

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 (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 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 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

(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) 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.

(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.

(c) Nonflexible planned communities.--If a planned community created within this Commonwealth before the effective date of this subpart contains no more than 12 units and is not a flexible planned community, it is subject only to sections 5105, 5106, 5107 and 5218 unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of the provisions of subsection (d), in which case all the sections enumerated in subsection (b) apply to that planned community.

(d) Amendments to declarations, bylaws, plats and plans.--

(1) In the case of amendments to the declaration, bylaws and plats and plans of any planned community created before the effective date of this subpart:

(i) If the result accomplished by the amendment was permitted by law prior to this subpart, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or may be made under this subpart.

(ii) If the result accomplished by the amendment is permitted by this subpart and was not permitted by law prior to this subpart, the amendment may be made under this subpart.

(2) An amendment to the declaration, bylaws or plats and plans authorized by this subsection to be made under this subpart must be adopted in conformity with applicable law and with the procedures and requirements specified by the document being amended. If any such amendment grants to any person any rights, powers or privileges permitted by this subpart, all correlative obligations, liabilities and restrictions in this subpart also apply to that person.

(e) Nonresidential units.--This subpart does not apply to a planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that the subpart does apply to that planned community. This subpart applies to a planned community containing both units which are restricted exclusively to nonresidential use and other units which are not so restricted only if the declaration so provides or if the real estate comprising the units which may be used for

residential purposes would be a planned community in the absence of the units which may not be used for residential purposes.

(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 purchaser unless exempt under section 5401(b)(2) (relating to applicability; waiver). (Mar. 24, 1998, P.L.206, No.27, eff. 60 days; Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

2004 Amendment. Act 189 amended subsec. (a) and added subsec. (b.1).

2004 Amendment. Act 37 amended subsecs. (a), (b) and (f).

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:

"Additional real estate." Real estate that may be added to a planned community.

"Affiliate of a declarant." Any person who controls, is controlled by or is under common control with a declarant.

(1) A person "controls" a declarant if the person:

(i) is a general partner, officer, director or employer of the declarant;

(ii) directly or indirectly or acting in concert with one or more other persons or through one or more subsidiaries owns, controls, holds with power to vote or holds proxies representing more than 20% of the voting interest in the declarant;

(iii) controls in any manner the election of a majority of the directors of the declarant; or

(iv) has contributed more than 20% of the capital of the declarant.

(2) A person "is controlled by" a declarant if the declarant:

(i) is a general partner, officer, director or employer of the person;

(ii) directly or indirectly or acting in concert with one or more other persons or through one or more subsidiaries owns, controls, holds with power to vote or holds proxies representing more than 20% of the voting interest in the person;

(iii) controls in any manner the election of a majority of the directors of the person; or

(iv) has contributed more than 20% of the capital of the person.

(3) Control does not exist if the powers described in paragraphs (1) and (2) are held solely as security for an obligation and are not exercised.

"Allocated interests." The common expense liability and votes in the association allocated to each unit.

"Association" or "unit owners' association." The unit owners association organized under section 5301 (relating to organization of unit owners' association).

"Common elements." Common facilities or controlled facilities.

"Common expense liability." The liability for common expenses allocated to each unit under section 5208 (relating to allocation of votes and common expense liabilities).

"Common expenses." Expenditures made by or financial liabilities of the association, together with any allocations to reserves. The term includes general common expenses and limited common expenses.

"Common facilities." Any real estate within a planned community which is owned by the association or leased to the association. The term does not include a unit.

"Condominium." Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the portions of the real estate designated for common ownership are vested in the unit owners.

"Controlled facilities." Any real estate within a planned community, whether or not a part of a unit, that is not a common facility but is maintained, improved, repaired, replaced, regulated, managed, insured or controlled by the association.

"Conversion building." A building that, at any time before the conversion notice date with respect to the planned community in which the building is located, was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

"Conversion notice." The notice required to be given to tenants and subtenants by the terms of section 5410(a) (relating to planned communities containing conversion buildings).

"Conversion notice date." The date on which the conversion notice is placed in the United States mail, in the case of mailed notices, or is delivered to the unit leased by the recipient, in the case of hand-delivered notices.

"Convertible real estate." A portion of a flexible planned community not within a building containing a unit, within which

additional units, limited common facilities or limited controlled facilities or any combination thereof may be created.

"Cooperative." Real estate owned by a corporation, trust, trustee, partnership or unincorporated association, if the governing instruments of that organization provide that each of the organization's members, partners, stockholders or beneficiaries is entitled to exclusive occupancy of a designated portion of that real estate.

"Declarant."

(1) If a planned community has been created, the term means any of the following:

(i) Any person who has executed a declaration or an amendment to a declaration to add additional real estate. This subparagraph excludes a person holding interest in the real estate solely as security for an obligation; a person whose interest in the real estate will not be conveyed to unit owners; and, in the case of a leasehold planned community, a lessor who possesses no special declarant rights and who is not an affiliate of a declarant who possesses special declarant rights.

(ii) A person who succeeds under section 5304 (relating to transfer of special declarant rights) to any special declarant rights.

(2) If the planned community has not yet been created, the term means any person who offers to dispose of or disposes of the person's interest in a unit to be created and not previously disposed of.

(3) If a declaration is executed by a trustee of a land trust, the term means the beneficiary of the trust.

"Declaration." Any instrument, however denominated, that creates a planned community and any amendment to that instrument.

"Development rights." Any right or combination of rights reserved by a declarant in the declaration:

(1) to add real estate to a planned community;

(2) to create units, common facilities, limited common facilities, controlled facilities or limited controlled facilities within a planned community;

(3) to subdivide units to convert units into common facilities or controlled facilities; or

(4) to withdraw real estate from a planned community.

"Disposition." A voluntary transfer to a purchaser of any legal or equitable interest in a unit or a proposed unit. The term does not include the transfer or release of a security interest.

"Executive board." The body, regardless of name, designated in the declaration to act on behalf of the association.

"Flexible planned community." A planned community containing withdrawable or convertible real estate or a planned community to which additional real estate may be added or a combination thereof.

"General common expenses." All common expenses other than limited common expenses.

"Identifying number." A symbol or address that identifies only one unit in a planned community.

"Installment sale contract." An executory contract for the purchase and sale of a unit or interest in a unit under which the purchaser is obligated to make more than five installment payments to the seller after execution of the contract and before the time appointed for the conveyance of title to the unit or interest in the unit.

"Interval estate." A combination of:

(1) an estate for years in a unit, during the term of which title to the unit rotates among the time-share owners thereof, vesting in each of them in turn for periods established by a fixed recorded schedule, with the series thus established recurring regularly until the term expires; coupled with

(2) a vested undivided fee simple interest in the remainder in that unit, the magnitude of that interest having been established by the declaration or by the deed creating the interval estate.

"Leasehold planned community." A planned community in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the planned community or reduce its size.

"Limited common element." A limited common facility or a limited controlled facility.

"Limited common expenses." All expenses identified as such under section 5314(c) (relating to assessments for common expenses).

"Limited common facility." A portion of the common facilities allocated by or pursuant to the declaration or by the operation of section 5202(2) or (3) (relating to unit boundaries) for the exclusive use of one or more but fewer than all of the units.

"Limited controlled facility." A portion of the controlled facilities, other than controlled facilities which are themselves part of a unit, allocated by or pursuant to the declaration or by operation of section 5202(2) or (3) (relating to unit boundaries) for the exclusive use of one or more but fewer than all of the units.

"Master association." An organization described in section 5222 (relating to master associations), whether or not it is

also an association described in section 5301 (relating to organization of unit owners' association).

"Offer" or "offering." Any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a unit other than as security for an obligation. The term does not include an advertisement in a newspaper or other periodical of general circulation or in a broadcast medium to the general public of a planned community not located in this Commonwealth if the advertisement states that an offer or offering may be made only in compliance with the law of the jurisdiction in which the planned community is located.

"Original lease termination date." The date on which the lease or sublease of a residential tenant or subtenant in possession of a unit in a conversion building will expire by the terms of the lease or sublease, after taking into account any renewal or extension rights that may have been exercised prior to the conversion notice date.

"Person." A natural person, corporation, partnership, association, trust, other entity or any combination thereof.

"Planned community." Real estate with respect to which a person, by virtue of ownership of an interest in any portion of the real estate, is or may become obligated by covenant, easement or agreement imposed on the owner's interest to pay any amount for real property taxes, insurance, maintenance, repair, improvement, management, administration or regulation of any part of the real estate other than the portion or interest owned solely by the person. The term excludes a cooperative and a condominium, but a condominium or cooperative may be part of a planned community. For purposes of this definition, "ownership" includes holding a leasehold interest of more than 20 years, including renewal options, in real estate. The term includes nonresidential campground communities.

"Purchaser." A person other than a declarant who, by means of a disposition, acquires a legal or equitable interest in a unit, other than either a leasehold interest of less than 20 years, including renewal options, or as security for an obligation. The term includes a person who will become a unit owner in a leasehold planned community upon consummation of the disposition.

"Real estate." Any fee, leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. The term includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water.

"Residential purposes." Use for dwelling or recreational purposes, or both.

"Residential subtenant." An individual lawfully occupying real estate for residential purposes under a sublease.

"Residential tenant." An individual lawfully occupying real estate for residential purposes under a lease.

"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 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 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.

"Time-share estate." An interval estate or a time-span estate.

"Time-span estate." A combination of:

(1) an undivided interest in a present estate in fee simple in a unit, the magnitude of that interest having been established by the declaration or by the deed conveying the time-span estate; coupled with

(2) the exclusive right to possession and occupancy of that unit during a regularly recurring period designated by the deed or by a recorded document referred to in the deed.

"Unit." A physical portion of the planned community designated for separate ownership or occupancy, the boundaries of which are described pursuant to section 5205(5) (relating to contents of declaration; all planned communities) and a portion of which may be designated by the declaration as part of the controlled facilities.

"Unit owner." A declarant or other person who owns a unit or a lessee of a unit in a leasehold planned community whose lease expires simultaneously with a lease the expiration or termination of which will remove the unit from the planned community. The term does not include a person having an interest in a unit solely as security for an obligation.

"Withdrawable real estate." Real estate that may be withdrawn from a flexible planned community.

(Mar. 24, 1998, P.L.206, No.37, eff. 60 days)

1998 Amendment. Act 37 amended the defs. of "special declarant rights" and "structural defects."

Cross References. Section 5103 is referred to in section 5102.

5104. Variation by agreement.

Except as expressly provided in this subpart, provisions of this subpart may not be varied by agreement, and rights conferred by this subpart may not be waived. A declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this subpart or the declaration.

Cross References. Section 5104 is referred to in section 5102 of this title.

5105. Separate titles and taxation.

(a) Title.--Except as provided in subsection (b), each unit that has been created, together with the interests, benefits and burdens created by the declaration, including, without limitation, the rights to any common facilities, constitutes a separate parcel of real estate. The conveyance or encumbrance of a unit includes the transfer of all of the rights, title and interest of the owner of that unit in the common facilities regardless of whether the instrument affecting the conveyance or encumbrance so states.

(b) Taxation and assessment.--If there is a unit owner other than a declarant, each unit must be separately taxed and assessed. The value of a unit shall include the value of that unit's appurtenant interest in the common facilities, excluding convertible or withdrawable real estate. The following shall apply:

(1) Except as provided in paragraph (2), no separate assessed value shall be attributed to and no separate tax shall be imposed against common facilities or controlled facilities.

(2) Convertible or withdrawable real estate shall be separately taxed and assessed until the expiration of the period during which conversion or withdrawal may occur.

(c) Certain additional prohibitions.--

(1) An association shall not impose any of the following fees against an owner or tenant of a unit in a planned community or against any person constructing, altering, renovating or repairing a unit in a planned community:

(i) a tapping, connection or other impact fee in excess of the actual direct cost incurred by the association for the connection or provision of water or sewer service to a building or improvement;

(ii) any fee for the right to construct, alter, renovate or repair a building or improvement except for an inclusive fee for the actual direct costs to the association of either:

(A) architectural, aesthetic or landscaping plan reviews or inspections of units, building siting and exteriors, if those reviews or inspections are required by provisions of the declaration or association bylaws or rules and regulations and if such provisions requiring a fee to be paid for such reviews or inspections were in existence on or before December 31, 1995; or

(B) if association imposed building construction standards or building codes are permitted under section 5106 (relating to applicability of local ordinances, regulations and building codes), building construction standards or building code review; and

(iii) any impact fee for road maintenance or road construction, except that the association shall not be precluded from recovering the cost of repair of any damage that is caused to roads or other common elements in the course of construction, alteration, renovation or repair.

(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).

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

2004 Amendment. Act 189 amended subsec. (c)(2).

Cross References. Section 5105 is referred to in section 5102 of this title.

5106. Applicability of local ordinances, regulations and building codes.

(a) General rule.--A zoning, subdivision, building code or other real estate use law, ordinance or regulation may not prohibit a planned community form of ownership or impose any requirement upon any structure in a planned community which it would not impose upon a physically identical structure under a different form of ownership.

(b) Current law unaffected.--Except as provided in subsection (a), no provision of this subpart invalidates or modifies any provision of any zoning, subdivision, building code or other real estate law, ordinance or regulation.

(c) Status.--

(1) The creation of a planned community under section 5201 (relating to creation of planned community) out of an entire lot, parcel or tract of real estate which has previously received approval for land development or subdivision, as those terms are defined in section 107 of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, or the conveyance of units in the planned community, shall not, in and of itself, constitute a subdivision or land development for the purpose of subdivision, land development or other laws, ordinances and regulations.

(2) The use of the planned community shall comply with zoning regulations applicable to the parcel of land or tract of real estate on which the planned community is created.

(3) Any person creating a planned community out of a vacant parcel or tract of real estate which has not been subject to subdivision or land development approval shall submit a copy of

the planned community declaration and planned community plan to all municipalities in which the parcel or tract of real estate is located, unless the creation of the planned community is for an estate planning purpose of conveying units to family members or an entity controlled by family members so that the conveyance would not be subject to realty transfer taxes pursuant to Article XI-C of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(4) Construction of any structure or building on any unit or common facility shall be subject to the provisions of any zoning, subdivision, land development, building code or other real estate law, ordinance or regulation.

(d) Building code.--An association shall be preempted by any federally, State or locally imposed building code, standard or regulation applicable to a building in a planned community from imposing any building construction standards or building codes for buildings to be constructed, renovated, altered or modified in a planned community. In the absence of a federally, State or locally imposed building code, standard or regulation applicable to a building in a planned community, an association shall not have the power to impose any building construction standards or building codes for buildings to be constructed, renovated, altered or modified in a planned community except:

(1) the BOCA National Building Code, 1996 edition (excluding Chapter 13, Energy Conservation) (the "BOCA Code"), for other than for one-family or two-family residential dwellings, together with the most recently published version of the National Fuel Gas Code (NFPA 54/ANSI Z223.1), as such may be updated periodically, for the installation of fuel gas piping systems, fuel gas utilization equipment and related accessories, and the most recently published version of the National Electric Code (NFPA 70), an ANSI accredited document, as such may be updated periodically, for the construction and subsequent inspection of electrical facilities and equipment; or

(2) with respect to one-family or two-family residential dwellings, unless the declarant or a successor declarant elects to comply with the BOCA Code, the Council of American Building Officials (CABO) One and Two Family Dwelling Code, 1992 edition (excluding Part VII-Energy Conservation and Chapter 25 of Part V-Sewers and Private or Individual Sewage Disposal Systems), together with the most recently published version of the National Fuel Gas Code (NFPA 54/ANSI Z223.1), as such may be updated periodically, for the installation of fuel gas piping systems, fuel gas utilization equipment and related accessories, and the most recently published version of the National Electric Code (NFPA 70), an ANSI accredited document, as such may be

updated periodically, for the construction and subsequent inspection of electrical facilities and equipment. The applicable building code shall constitute the maximum and the only acceptable standard governing building structures. However, nothing in this section shall preclude an association, if and to the extent authorized by the declaration or association bylaws, rules and regulations, from providing for architectural review of units, landscaping, building exteriors and aesthetics or from implementing requirements that may be imposed from time to time by underwriters of insurance actually maintained on portions of the planned community. (July 10, 2015, P.L.167, No.37, eff. 60 days)

2015 Amendment. Act 37 amended subsec. (c).

Cross References. Section 5106 is referred to in sections 5102, 5105 of this title.

5107. Eminent domain.

(a) General rule.--If a unit is acquired by eminent domain or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award shall compensate the unit owner for the unit and, except for the value, if any, of the interest of other units in any controlled facilities that were at the time of the taking a part of the unit subject to the taking, its appurtenant interest in the planned community reflected by its allocated common expenses liability, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, the unit's allocated votes and liabilities shall automatically be reallocated to the remaining units in proportion to the respective allocated votes and liabilities of those units before the taking. The association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection shall be a common facility.

(b) Acquisition of part of unit.--Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award shall compensate the unit owner for the reduction in value of the unit and its appurtenant interest in the planned community, whether or not any common facilities or controlled facilities are acquired, and shall compensate the association for the value, if any, of the interest of other units in any controlled facilities that were at the time of the taking a part of the unit subject to the taking. Upon acquisition, unless the decree otherwise provides, the following shall apply:

(1) The unit's appurtenant votes in the association and common expense liability shall be reduced on the basis specified

in the declaration with respect to the reallocation of votes and common expense liability in the event of eminent domain or, if the declaration does not specify a basis, as initially allocated based on the formulae stated in the declaration under section 5208 (relating to allocation of votes and common expense liabilities).

(2) The portion of the appurtenant votes and common expense liability divested from the partially acquired unit shall be automatically reallocated to that unit and the remaining units in proportion to the respective appurtenant votes and liabilities of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated votes and liabilities.

(c) Acquisition of part of common facilities.--If part of the common facilities is acquired by eminent domain, the portion of the award attributable to the interest of the association in the common facilities taken shall be paid to the association. The association shall divide any portion of the award not used for any restoration or repair of the remaining common facilities among the unit owners in proportion to the common expense liability attributable to the units before the taking, but any portion of the award attributable to the acquisition of a limited common facility shall be equally divided among the owners of the units to which that limited common facility was allocated at the time of acquisition or in any manner as provided in the declaration.

(d) Acquisition of part of controlled facilities.--If, as part of a unit acquired by eminent domain, controlled facilities are taken which benefit other units, that portion of the award attributable to the interest of the other units in the controlled facilities taken shall be paid to the association. The association shall divide any portion of the award not used for any restoration or repair of the remaining controlled facilities equally among the unit owners whose units were benefited by the controlled facilities that have been taken.

Cross References. Section 5107 is referred to in sections 5102, 5207, 5208, 5219, 5220, 5312 of this title.

5108. Supplemental general principles of law applicable.

The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this subpart, except to the extent inconsistent with this subpart.

Cross References. Section 5108 is referred to in section 5102 of this title.

5109. Construction against implicit repeal.

Because this subpart is a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be implicitly repealed by subsequent legislation if that construction can reasonably be avoided.

Cross References. Section 5109 is referred to in section 5102 of this title.

5110. Uniformity of application and construction.

This subpart shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this subpart among states enacting it.

Cross References. Section 5110 is referred to in section 5102 of this title.

5111. Severability.

If any provision of this subpart or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subpart which can be given effect without the invalid provisions or application, and to this end the provisions of this subpart are severable.

Cross References. Section 5111 is referred to in section 5102 of this title.

5112. Unconscionable agreement or term of contract.

(a) Powers of contract.--The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may:

- (1) refuse to enforce the contract;
- (2) enforce the remainder of the contract without the unconscionable clause; or
- (3) limit the application of any unconscionable clause in order to avoid an unconscionable result.

(b) Parties may present evidence.--Whenever it is claimed or appears to the court that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

- (1) the commercial setting of the negotiations;
- (2) whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests by reason of physical or mental infirmity, illiteracy or

inability to understand the language of the agreement or similar factors;

(3) the effect and purpose of the contract or clause;

(4) if a sale, any gross disparity, at the time of contracting, between the amount charged for the real estate and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transaction does not of itself render the contract unconscionable.

Cross References. Section 5112 is referred to in section 5102 of this title.

5113. Obligation of good faith.

Every contract or duty governed by this subpart imposes an obligation of good faith in its performance or enforcement.

Cross References. Section 5113 is referred to in section 5102 of this title.

5114. Remedies to be liberally administered.

(a) **General rule.**--The remedies provided by this subpart shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special or punitive damages may not be awarded except as specifically provided in this subpart or by other rule of law.

(b) **Judicial enforcement of rights and obligations.**--Any right or obligation declared by this subpart is enforceable by judicial proceeding.

Cross References. Section 5114 is referred to in section 5102 of this title.