

# Pennsylvania Statutes Title 68 Pa.C.S.A. Real and Personal Property § 5223.

## CHAPTER 52

### CREATION, ALTERATION AND TERMINATION OF PLANNED COMMUNITIES

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**Enactment.** Chapter 52 was added December 19, 1996, P.L.1336, No.180, effective in 45 days.

#### **§ 5201. Creation of planned community.**

A planned community may be created pursuant to this subpart only by recording a declaration executed in the same manner as a deed by all persons whose interests in the real estate will be conveyed to unit owners and by every lessor of a lease, the expiration or termination of which will terminate the planned community or reduce its size. If the lessor is the Commonwealth, a municipal government or any agency of either, the lessor need not execute the declaration if it has previously given written notice of its filing and agreed to be bound by the provisions of this subpart, in which case the declaration shall be executed by the

lessee in possession of the subject property. The declaration must be recorded in every county in which any portion of the planned community is located, must be indexed in the same records as are notarized for the recording of a deed and shall identify each declarant as the grantor and the name of the planned community as grantee.

**Cross References.** Section 5201 is referred to in sections 5106, 5207 of this title.

**§ 5202. Unit boundaries.**

Except as provided by the declaration:

(1) Subject to the provisions of paragraph (2), all space, fixtures and improvements within the boundaries of a unit are a part of the unit.

(2) If any fixture or improvement lies partially within and partially outside the designated boundaries of a unit, any portion of the fixture or improvement serving only that unit is a limited common element allocated solely to that unit, and any portion of the fixture or improvement serving more than one unit or any portion of the common facilities is a part of the common elements.

(3) Any fixtures or improvements designed or designated in the declaration to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

**Cross References.** Section 5202 is referred to in sections 5103, 5209, 5210, 5302 of this title.

**§ 5203. Construction and validity of declaration and bylaws.**

**(a) Provisions severable.--**All provisions of the declaration and bylaws are severable.

**(b) Applications of rule against perpetuities.--**The rule against perpetuities may not be applied to defeat any provision of the declaration or this subpart or any instrument executed pursuant to the declaration or this subpart.

**(c) Conflict between declaration and bylaws.--**If there is a conflict between the declaration and the bylaws, the declaration shall prevail except to the extent the declaration is inconsistent with this subpart.

**(d) Effect of noncompliance on title to unit.--**Title to a unit and its appurtenant votes in the association shall not be rendered unmarketable or otherwise affected by any provision of unrecorded bylaws or by reason of an insubstantial failure of the declaration to comply with this subpart.

**(e) Effect of noncompliance.--**If the declarant preserved the rights identified in section 5205(13), (14), (15) or (16)

(relating to contents of declaration; all planned communities) in the declaration or any of those provisions are otherwise applicable, the declarant's failure to include in the declaration any of the provisions or statements as required under each of those provisions shall not affect the enforceability of the provisions or statements as if they were included in the declaration.

(Oct. 19, 2018, P.L.551, No.84, eff. 60 days)

**2018 Amendment.** Act 84 added subsec. (e).

**Cross References.** Section 5203 is referred to in section 5102 of this title.

**§ 5204. Description of units.**

After the declaration is recorded, a description of the unit which sets forth the name of the planned community, the recording data for the declaration, the county or counties in which the planned community is located and the identifying number of the unit is a sufficient legal description of that unit and all rights, obligations and interests appurtenant to that unit which were created by the declaration or bylaws. Deeds, leases and mortgages of units shall be recorded in the same records as are maintained by the recorder for the recording of like instruments and indexed by the recorder in the same manner as like instruments are indexed.

**Cross References.** Section 5204 is referred to in section 5102 of this title.

**§ 5205. Contents of declaration; all planned communities.**

The declaration for a planned community must contain:

(1) The name of the planned community, which must include the words "planned community" or be followed by the words "a planned community."

(2) The name of every county in which any part of the planned community is situated.

(3) A legally sufficient description of the real estate included in the planned community.

(4) A description or delineation of the boundaries of each unit, including the unit's identifying number.

(5) A statement of the maximum number of units that may be created by the subdivision or conversion of units owned by the declarant pursuant to section 5215 (relating to subdivision or conversion of units).

(6) A description of any controlled facilities and the obligations of the association for the maintenance, improvement, repair, replacement, regulation, management, insurance or control of the controlled facilities.

(7) A description of any limited common facilities and any limited controlled facilities as provided in section 5209 (relating to limited common elements) and limited common expenses, if any, and how they are assessed.

(8) A description of any common facilities and controlled facilities not within the boundaries of any convertible real estate which may be allocated subsequently as limited common facilities or limited controlled facilities, with a statement that they may be so allocated and a description of the method by which the allocations are to be made.

(9) An allocation to each unit of a portion of the votes in the association and a percentage or fraction of the common expenses of the association in section 5208 (relating to allocation of votes and common expense liabilities).

(10) Any restrictions created by the declarant on use, occupancy and alienation of the units and any easement or license rights that unit owners are to have with respect to the use or enjoyment of any of the common elements and that are not contained in other documents which are recorded.

(11) The recording data for recorded easements and licenses appurtenant to or included in the planned community or to which any portion of the planned community is or may become subject.

(12) If all or any of the units are or may be owned in time-share estates, which units may be owned in time-share estates and the maximum number of time-share estates that may be created in the planned community, it being intended that time-share estates shall not be permitted except if and to the extent expressly authorized by the declaration.

(13) If the declarant wishes to retain the special declarant right to cause section 5222 (relating to master associations) to become applicable to a planned community, then:

(i) an explicit reservation of such right;

(ii) a statement of the time limit upon which the option reserved under subparagraph (i) will lapse, together with and a statement of any circumstances that will terminate the option before the expiration of the time limit. The time limit shall not exceed the later of:

(A) ten years after the recording of the declaration; or

(B) in the case of a preliminary plat calling for the installation of improvements in sections, 120 days after municipal approval or denial of each particular section's final plat which was filed prior to the deadline approved or modified by the municipal

governing body pursuant to section 508(4)(v) of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, or, in the event of an appeal from the municipal approval or denial of such final plat, 120 days after a final judgment on appeal; and

(iii) the information required to be included in the declaration by the provisions of section 5222.

(14) If the declarant wishes to retain the special declarant right to merge or consolidate the planned community pursuant to section 5223 (relating to merger or consolidation of planned community), then all of the following:

(i) An explicit reservation of such right.

(ii) A statement of the time limit upon which any option reserved under subparagraph (i) will lapse, together with a statement of any circumstances that will terminate the option before the expiration of the time limit. The time limit shall not exceed the later of:

(A) ten years after the recording of the declaration; or

(B) in the case of a preliminary plat calling for the installation of improvements in sections, 120 days after municipal approval or denial of each particular section's final plat which was filed prior to the deadline approved or modified by the municipal governing body pursuant to section 508(4)(v) of the Pennsylvania Municipalities Planning Code or, in the event of an appeal from the municipal approval or denial of such final plat, 120 days after a final judgment on appeal.

(iii) A statement of the name and location of each other planned community that may be subject to such a merger or consolidation. If such other planned communities do not exist, then the declaration shall include the following:

(A) A statement of the extent to which the interest in the association, relative voting strength in the association and share of common expense liability of each unit in the planned community at the time the merger or consolidation is effectuated may be increased or decreased by actions pursuant to any option reserved under subparagraph (i), including the formulas to be used for those reallocations.

(B) Legally sufficient descriptions of each portion of real estate that is part of any other planned communities with which the planned community

may merge or consolidate.

(C) If mergers or consolidations may be effectuated at different times, a statement to that effect, together with:

(I) either a statement fixing the boundaries of those planned communities and regulating the order in which they may be merged or consolidated or a statement that no assurances are made in those regards; and

(II) a statement as to whether, if any other planned communities are merged or consolidated with the planned community, all or any of such planned communities must be merged or consolidated.

(D) A statement of:

(I) the maximum number of units that may be created within the other planned communities, the boundaries of which are fixed under clause (C);

(II) how many of those units will be restricted exclusively to residential use; and

(III) the maximum number of units per acre that may be created within any such other planned communities, the boundaries of which are not fixed under clause (C).

(E) If any of the units that may be built within any of the other planned communities are not to be restricted exclusively to residential use, a statement with respect to each other planned community of the maximum percentage of the real estate areas and the maximum percentage of the floor areas of all units that may be created in the planned community that are not restricted exclusively to residential use.

(F) A statement of the extent to which any buildings and units that may be part of the other planned communities will be compatible with the other buildings and units in the planned community in terms of architectural style, quality of construction, principal materials employed in construction and size or a statement that no assurances are made in those regards.

(G) A statement that all restrictions in the declaration affecting use, occupancy and alienation of units will apply to units created within any of the other planned communities or a statement of any differentiations that may be made as to those units.

(H) General descriptions of all other improvements and limited common elements that may be made or created

within the other planned communities or a statement that no assurances are made in that regard.

(I) A statement of any limitations as to the locations of any buildings or other improvements that may be made within the other planned communities or a statement that no assurances are made in that regard.

(J) A statement that any limited common elements created within any other planned communities will be of the same general types and sizes as those within the planned community, a statement of any other assurances in that regard or a statement that no assurances are made in that regard.

(K) A statement that the proportion of limited common elements to units created within the other planned communities will be approximately equal to the proportion existing within the planned community, a statement of any assurances in that regard or a statement that no assurances are made in that regard.

(L) A statement of whether and to what extent assurances made in the declaration regarding the other planned communities under clauses (C) through (K) apply if the other planned communities are not merged or consolidated with the planned community.

(iv) A summary description of the other provisions which materially change any rights, obligations or liabilities that will be included in the agreement of merger or consolidation if the right to merge or to consolidate is exercised.

(15) If a declarant wishes to retain the right to subject any portion of the planned community to an easement or license in favor of any real estate not included in the planned community or in favor of any person who is not an owner or occupant of a unit in the planned community, then an explicit reservation and description of such right and a description of the effects on the association and the unit owners of the easement or license, including, without limitation, any impact on the budget of the association.

(16) If a declarant designates or wishes to retain the right to designate in the declaration as a common facility any portion of a planned community or any improvement or facility then existing or contemplated for a planned community, then all of the following:

(i) An explicit reservation of such right and an identification and description of the portion of the planned community, improvement or facility.

(ii) A statement of when any portion of a planned

community, improvement or facility will become a common facility and that the portion will be conveyed or leased to the association by the declarant or a successor to the interest of the declarant in the portion by the later of the date of conveyance or lease by the declarant of the last unit the declarant reserves the right to include in the planned community or the date of expiration of the rights under section 5211 (relating to conversion and expansion of flexible planned communities).

(iii) A statement that the obligation of the declarant to convey or lease to the association a portion of the planned community, improvement or facility shall be binding on the declarant and any successor in interest of the declarant in the portion whether or not the successor succeeds to any special declarant right.

(iv) A statement of who will own the portion of the planned community, improvement or facility before a conveyance or lease to the association.

(v) A description of the procedure to be followed by the declarant and the association for the conveyance or lease to the association.

(vi) A statement that the portion of the planned community, improvement or facility will be conveyed or leased to the association for no consideration or, if additional consideration is to be given by the association for the conveyance, a description of the consideration and a description of the effects on the association and each unit owner of the association providing the consideration, including the impact on the budget of the association and common expense or other liabilities of the unit owners.

(vii) A description of the effect of the conveyance or lease to the association of the portion of the planned community, improvement or facility on the expenses and budget of the association and the common expense liability of the unit owners.

(viii) A statement that no conveyance or lease to the association of any portion of the planned community, improvement or facility shall occur until the portion has been completed unless a third-party guarantee, bond, escrow, letter of credit or other mechanism assuring completion has been provided by the declarant, in addition to the declarant's own guarantee of completion, for the benefit of the association and a statement that the third-party mechanism and the declarant's own guarantee shall not expire until completion of the portion of the planned community, improvement or facility.

(ix) As to any uncompleted improvement or facility that may become a common facility:

(A) a statement of the time for completion of such improvement or facility;

(B) a statement that a declarant is required to complete such improvement or facility by the later of the date of the conveyance or lease by the declarant of the last unit the declarant reserves the right to include in the planned community or the date of the expiration of the rights under section 5211;

(C) a statement that, until the facility or improvement is completed, the declarant shall be solely responsible for real estate taxes assessed against or allocable to the improvement or facility and for all other expenses in connection with the improvement or facility; and

(D) a description of any third-party guarantee, bond, escrow, letter of credit or other mechanism that the declarant shall provide, in addition to the declarant's own guarantee of completion, to assure, for the benefit of the association, completion of the improvement or facility and a statement of the time limit, if any, of the term of such third-party guarantee, bond, escrow, letter of credit or other mechanism or, if no such mechanism is to be provided by the declarant, an explicit statement that no third-party guarantee, bond, escrow, letter of credit or other mechanism shall be provided by the declarant, and only the declarant's own guarantee shall be provided to assure completion of the improvement or facility.

(x) A statement that any portion of the planned community, an improvement or facility will be deemed to be completed upon the recording of a certificate executed by an independent registered surveyor, architect or professional engineer stating that the portion of the planned community, improvement or facility is substantially completed in accordance with the descriptions set forth in the declaration, the plats and plans and the public offering statement and so as to permit the use of such portion of the planned community, improvement or facility for its intended use.

(16.1) If the declaration provides that the association or a unit owner is or shall be responsible for operation and maintenance of storm water management facilities, a statement that upon approval of the permittee's notice of termination by the Department of Environmental Protection or by an authorized

county conservation district, it shall be deemed that the association or unit owner, as applicable, agree to and shall become responsible for compliance with the storm water management facilities' permit terms and conditions, including long-term operation and maintenance of postconstruction storm water best management practices in accordance with applicable requirements. The declarant shall remain responsible for compliance with other obligations with respect to storm water management facilities as may be required by the approved subdivision and land development plans, the declaration or this subpart until such time as the obligations of the declarant may cease.

(16.2) Any fees or charges to be paid by unit owners, currently or in the future, for the use of the common elements, limited common elements and any other facilities related to the planned community.

(17) Any other matters the declarant deems appropriate. (Mar. 24, 1998, P.L.206, No.37, eff. 60 days; July 2, 2013, P.L.204, No.37, eff. imd.; Oct. 19, 2018, P.L.551, No.84, eff. 60 days; Mar. 27, 2020, P.L.35, No.11, eff. 60 days)

**2020 Amendment.** Act 11 added par. (16.2).

**2018 Amendment.** Act 84 amended par. (16) intro. par. and added par. (16.1).

**2013 Amendment.** Act 37 amended pars. (13) and (14)(ii) and carried without amendment par. (14)(i). See section 2 of Act 37 in the appendix to this title for special provisions relating to applicability.

**1998 Amendment.** Act 37 amended par. (16).

**Cross References.** Section 5205 is referred to in sections 5102, 5103, 5203, 5206, 5209, 5211, 5219, 5222, 5223, 5402, 5407, 5414 of this title.

**§ 5206. Contents of declaration for flexible planned communities.**

The declaration for a flexible planned community shall include, in addition to the matters specified in section 5205 (relating to contents of declaration; all planned communities), all of the following:

(1) An explicit reservation of any options to create units, limited common elements or both within convertible real estate or to add additional real estate to or withdraw withdrawable real estate from the planned community.

(2) A statement of the time limit upon which any option reserved under paragraph (1) will lapse, together with a statement of circumstances that will terminate the option before the expiration of the time limit. The time limit shall not exceed the later of:

(i) ten years after the recording of the declaration;  
or

(ii) in the case of a preliminary plat calling for the installation of improvements in sections, 120 days after municipal approval or denial of each particular section's final plat which was filed prior to the deadline approved or modified by the municipal governing body pursuant to section 508(4)(v) of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, or, in the event of an appeal from the municipal approval or denial of such final plat, 120 days after a final judgment on appeal.

(3) A statement of any limitations on any option reserved under paragraph (1), other than limitations created by or imposed by operation of law, or a statement that there are no such limitations.

(4) A statement of the extent to which the interest in the association, relative voting strength in the association and share of common expenses liability of each unit in the planned community at the time the declaration is recorded may be increased or decreased by actions pursuant to any option reserved under paragraph (1), including the formulas to be used for those reallocations.

(5) Legally sufficient descriptions of each portion of convertible, additional and withdrawable real estate.

(6) If portions of any convertible, additional or withdrawable real estate may be converted, added or withdrawn at different times, a statement to that effect, together with:

(i) a statement fixing the boundaries of those portions and regulating the order in which they may be converted, added or withdrawn or a statement that no assurances are made in those regards; and

(ii) a statement as to whether, if any portion of convertible, additional or withdrawable real estate is converted, added or withdrawn, all or any particular portion of that or any other real estate must be converted, added or withdrawn.

(7) A statement of:

(i) the maximum number of units that may be created within any additional or convertible real estate or within any portion of either, the boundaries of which are fixed under paragraph (6);

(ii) how many of those units will be restricted exclusively to residential use; and

(iii) the maximum number of units per specified volume of space that may be created within any portions the

boundaries of which are not fixed under paragraph (6).

(8) If any of the units that may be created within any additional or convertible real estate are not to be restricted exclusively to residential use, a statement with respect to each portion of the additional and convertible real estate of the maximum percentage of the real estate areas and the maximum percentage of the areas of all units that may be created therein that are not restricted exclusively to residential use.

(9) A statement of the extent to which any buildings and units that may be erected upon each portion of the additional and convertible real estate will be compatible with the other buildings and units in the planned community in terms of architectural style, quality of construction, principal materials employed in construction and size or a statement that no assurances are made in those regards.

(10) A statement that all restrictions in the declaration affecting use, occupancy and alienation of units will apply to units created within any convertible or additional real estate or a statement of any differentiations that may be made as to those units.

(11) General descriptions of all other improvements and limited common elements that may be made or created upon or within each portion of the additional or convertible real estate or a statement that no assurances are made in that regard.

(12) A statement of any limitations as to the locations of any buildings or other improvements that may be made within convertible or additional real estate or a statement that no assurances are made in that regard.

(13) A statement that any limited common elements created within any convertible or additional real estate will be of the same general types and sizes as those within other parts of the planned community, a statement of any other assurances in that regard or a statement that no assurances are made in that regard.

(14) A statement that the proportion of limited common elements to units created within convertible or additional real estate will be approximately equal to the proportion existing within other parts of the planned community, a statement of any other assurances in that regard or a statement that no assurances are made in that regard.

(15) A statement of the extent to which any assurances made in the declaration regarding additional or withdrawable real estate under paragraphs (6) through (14) apply if any additional real estate is not added to or any withdrawable land is withdrawn from the planned community or a statement that

those assurances do not apply if the real estate is not added to or withdrawn from the planned community.  
(Mar. 24, 1998, P.L.206, No.37, eff. 60 days; July 2, 2013, P.L.204, No.37, eff. imd.)

**2013 Amendment.** Act 37 amended par. (2). See section 2 of Act 37 in the appendix to this title for special provisions relating to applicability.

**1998 Amendment.** Act 37 amended pars. (4) and (8).

**Cross References.** Section 5206 is referred to in sections 5102, 5211, 5212, 5219, 5402 of this title.

**§ 5207. Leasehold planned communities.**

**(a) Recording lease and contents of declaration.--**A lease the expiration or termination of which may terminate the planned community or reduce its size shall be recorded in the same county where the declaration is recorded under section 5201 (relating to creation of planned community). Every lessor of those leases shall execute the declaration, and the declaration shall state the following:

- (1) The recording data for the lease.
- (2) The date on which the lease is scheduled to expire.
- (3) A legally sufficient description of the real estate subject to the lease.
- (4) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised or a statement that they do not have those rights.
- (5) Any right of the unit owners to remove any improvements after the expiration or termination of the lease or a statement that the unit owners do not have those rights.
- (6) Any rights of the unit owners to renew the lease and the conditions of any renewal or a statement that the unit owners do not have those rights.

**(b) Limitations on termination of leasehold interest.--**After the declaration for a leasehold planned community is recorded, neither the lessor nor a successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of the owner's share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.

**(c) Merger of leasehold and fee simple interests.--**Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

**(d) Reallocation of interests if number of votes reduced.**--If the expiration or termination of a lease decreases the number of units in a planned community, the allocated votes in the association and common expense liabilities shall be reallocated in accordance with section 5107 (relating to eminent domain) as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed and recorded by the association.

**Cross References.** Section 5207 is referred to in sections 5219, 5402 of this title.

**§ 5208. Allocation of votes and common expense liabilities.**

**(a) General rule.**--The declaration shall allocate a fraction or percentage of the common expenses of the association and a portion of the votes in the association to each unit and state the formulas used to establish those allocations. Such formulas may take into account unusual attributes of identified units if the formulas state how the deviation from the normal rule applies to such units.

**(b) Flexible planned communities.**--If units may be added, including by conversion of convertible real estate to one or more units, to or withdrawn from the planned community, the declaration shall state the formulas to be used to reallocate the fractions, as percentages of the allocated share of the common expenses of the association and the percentages of votes in the association, among all units included in the planned community after the addition or withdrawal.

**(c) Votes.**--

(1) Each unit shall be allocated one or more votes in the association. The declaration shall specify how votes in the association shall be allocated among the units and may provide:

(i) for different allocations of votes among units on particular matters specified in the declaration; and

(ii) for class voting on specified issues affecting a particular class of units if necessary to protect the valid interests of the owners of such units and not affecting units outside of the class.

(2) Cumulative voting shall only be permitted if so provided expressly in the declaration and only for the purpose of electing members of the executive board. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this subpart. The declaration may provide that different allocations of votes shall be made to the units in particular matters specified in the declaration.

**(d) Alteration or partition of allocations.**--Except as

provided in section 5107 (relating to eminent domain), 5211 (relating to conversion and expansion of flexible planned communities), 5212 (relating to withdrawal of withdrawable real estate), 5214 (relating to relocation of boundaries between units) or 5215 (relating to subdivision or conversion of units), the votes and common expense liability allocated to any unit may not be changed without the consent of all unit owners whose allocated votes and common expense liabilities are changed. The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which it is allocated is void.

**(e) Calculations for undivided interests.**--Except for minor variations due to rounding, the sum of the common expense liabilities allocated at any time to all the units must equal one if stated as a fraction or 100% if stated as percentages. If there is a discrepancy between the allocated common expense liability and the result derived from application of the formulas, the allocated common expense liability prevails.

**Cross References.** Section 5208 is referred to in sections 5103, 5107, 5205, 5311 of this title.

**§ 5209. Limited common elements.**

**(a) Allocation.**--Except for the limited common elements described in section 5202 (relating to unit boundaries), the declaration shall specify to which unit or units each limited common element is allocated, distinguishing between limited common facilities and limited controlled facilities. That allocation may not be altered without the consent of the unit owners whose units are affected.

**(b) Reallocation.**--Subject to any provisions of the declaration, a limited common element may be reallocated by a recorded assignment executed by the unit owners between or among whose units the reallocation is made or by an amendment to the declaration executed by the unit owners. The persons executing assignment or the amendment to the declaration shall provide a copy to the association.

**(c) Common elements not previously allocated.**--A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration made in accordance with section 5205(7) (relating to contents of declaration; all planned communities). The declaration may provide that the allocations shall be made by deeds or assignments executed by the declarant or the association or by amendments to the declaration.

**Cross References.** Section 5209 is referred to in sections 5205, 5210, 5211, 5219 of this title.

**§ 5210. Plats and plans.**

**(a) General rule.--**Plats and plans are a part of the declaration. Separate plats and plans are not required by this subpart if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible. The plats and plans must contain, on the first page of the plats and plans, a certification that all of the plats and plans contain all information required by this section.

**(b) Contents of plat.--**Each plat must show all of the following:

- (1) The name, location and dimensions of the planned community.
- (2) The location and dimensions of all existing improvements.
- (3) The intended location and dimensions of any contemplated improvement to be constructed anywhere within the planned community labeled with "MUST BE BUILT" or "NEED NOT BE BUILT." Contemplated improvements within the boundaries of convertible real estate need not be shown, but, if contemplated improvements within the boundaries of convertible real estate are shown, they must be labeled "MUST BE BUILT" or "NEED NOT BE BUILT."
- (4) The location and dimensions of any convertible real estate, labeled as such.
- (5) The location and dimensions of any withdrawable real estate, labeled as such.
- (6) The location and dimensions of any additional real estate, labeled as such.
- (7) The extent of any encroachments by or upon any portion of the planned community.
- (8) To the extent feasible, the location and dimensions of all easements serving or burdening any portion of the planned community.
- (9) The location and dimensions of any vertical unit boundaries not shown or projected on plans recorded under subsection (c) and that unit's identifying number.
- (10) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded under subsection (c) and that unit's identifying number.
- (11) The location and dimensions of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate."
- (12) The distance between noncontiguous parcels of real

estate comprising the planned community.

(13) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and the other limited common elements described in section 5202 (relating to unit boundaries) not shown on plans referred to in subsection (c).

(14) All other matters customarily shown on land surveys.

**(c) Contents of plans.--**To the extent not shown or projected on the plats, plans of every building that contains or comprises all or part of any unit and is located or must be built within a portion of the planned community, other than within the boundaries of any convertible real estate, must show all of the following:

(1) The location and dimensions of the vertical boundaries of each unit, to the extent those boundaries lie within or coincide with the boundaries of the building in which the unit is located, and that unit's identifying number.

(2) Any horizontal unit boundaries, with reference to an established datum not shown on plats recorded under subsection (b), and that unit's identifying number.

(3) Any units that may be converted by the declarant to create additional units or common elements under section 5215 (relating to subdivision or conversion of units), identified appropriately.

(4) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and other limited common elements described in sections 5202 and 5209 (relating to limited common elements) not shown on plats recorded under subsection (b).

**(d) Horizontal boundaries of unit partly outside building.--**Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans.

**(e) Converting or adding real estate.--**Upon converting convertible real estate or adding additional real estate taking action under section 5211 (relating to conversion and expansion of flexible planned communities), the declarant shall record new plats for that real estate conforming to the requirements of subsection (b) and new plans for any buildings on that real estate conforming to the requirements of subsection (c). If less than all of any convertible real estate is being converted, the new plats must also show the location and dimensions of any remaining portion.

**(f) Converting units.--**If a declarant converts any unit into two or more units or limited common elements or both under section 5215, the declarant shall record new plats and plans showing the

location and dimensions of any new units and limited common elements thus created, as well as the location and dimension of any portion of that space not being converted.

**(g) Alternative recording.**--Instead of recording new plats and plans as required by subsections (e) and (f), the declarant may record new certifications of plats and plans previously recorded if those plats and plans show all improvements required by subsections (e) and (f).

**(h) Who may make certifications.**--Any certification of a plat or plan required by this section must be made by an independent registered surveyor, architect or professional engineer.

**(i) Land development plans.**--Final plans filed with and approved by a municipality in connection with any land development approvals may serve as plats and plans required under this section if:

- (1) all of the contents required under subsections (b) and (c) are contained either in such final plans or in the declaration by specific reference to such plans;
- (2) such final plans have been recorded; and
- (3) a certification in accordance with subsection (a) is recorded and the certification specifies the recording information for final plans.

(Mar. 24, 1998, P.L.206, No.37, eff. 60 days; Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

**2004 Amendment.** Act 189 amended subsec. (h).

**1998 Amendment.** Act 37 added subsec. (i).

**Cross References.** Section 5210 is referred to in sections 5103, 5211, 5219, 5413, 5414 of this title.

**§ 5211. Conversion and expansion of flexible planned communities.**

**(a) General rule.**--To convert convertible real estate or add additional real estate pursuant to an option reserved under section 5206 (relating to contents of declaration for flexible planned communities), the declarant shall prepare, execute and record an amendment to the declaration under section 5219 (relating to amendment of declaration) and comply with section 5210 (relating to plats and plans). The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each unit formed in the convertible or additional real estate and reallocate votes in the association and common expense liabilities. The amendment must describe or delineate any limited common elements formed out of the convertible or additional real estate, showing or designating the unit to which each is allocated to the extent required by section 5209 (relating to limited common elements).

**(b) Creations within additional real estate.**--Convertible or

withdrawable real estate may be created within any additional real estate added to the planned community if the amendment adding that real estate includes all matters required by section 5205 (relating to contents of declaration; all planned communities) or 5206, as the case may be, and the plat includes all matters required by section 5210. This subsection does not extend the time limit on conversion or contraction of a flexible planned community imposed by the declaration under section 5206.

**(c) Liability for expenses and right to income.**--Until conversion occurs or the period during which conversion may occur expires, whichever occurs first, the declarant alone is liable for real estate taxes assessed against convertible real estate and all other expenses in connection with that real estate. No other unit owner and no other portion of the planned community is subject to a claim for payment of those taxes or expenses. Unless the declaration provides otherwise, any income or proceeds from convertible real estate inure to the declarant.

**Cross References.** Section 5211 is referred to in sections 5102, 5103, 5205, 5208, 5210, 5219, 5302, 5316, 5414 of this title.

**§ 5212. Withdrawal of withdrawable real estate.**

**(a) General rule.**--To withdraw withdrawable real estate from a flexible planned community pursuant to an option reserved under section 5206 (relating to contents of declaration for flexible planned communities), the declarant shall prepare, execute and record an amendment to the declaration containing a legally sufficient description of the real estate being withdrawn and stating the fact of withdrawal. The amendment must reallocate votes in the association and common expense liabilities to the remaining units in the planned community in proportion to the respective votes and liabilities of those units before the withdrawal. The reallocation is effective when the amendment is recorded.

**(b) When withdrawal prohibited.**--If a portion of a planned community was described under section 5206, that portion may not be withdrawn if any person other than the declarant owns a unit situated therein. If the portion was not so described, none of it is withdrawable if any person other than the declarant owns a unit situated therein.

**(c) Liability for expenses and right to income.**--Until withdrawal occurs or the period during which withdrawal may occur expires, whichever occurs first, the declarant alone is liable for real estate taxes assessed against withdrawable real estate and all other expenses in connection with that real estate. No other unit owner and no other portion of the planned community is

subject to a claim for payment of those taxes or expenses. Unless the declaration provides otherwise, any income or proceeds from withdrawable real estate inure to the declarant.

**Cross References.** Section 5212 is referred to in sections 5103, 5208, 5219, 5414 of this title.

**§ 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.

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit, a unit owner may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the planned community. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

**§ 5214. Relocation of boundaries between units.**

**(a) General rule.**--Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated votes in the association and common expense liability, the application must state the proposed reallocations. Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them and, upon recording, is indexed in the name of the grantor and the grantee.

**(b) Recording.**--The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers.

**Cross References.** Section 5214 is referred to in sections 5208, 5219 of this title.

**§ 5215. Subdivision or conversion of units.**

(a) **General rule.**--If the declaration expressly so permits, a unit may be subdivided into two or more units or, in the case of a unit owned by a declarant, may be subdivided into two or more units, common elements or a combination of units and common elements. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit or upon application of a declarant to convert a unit, the association shall prepare, execute and record an amendment to the declaration, including the plats and plans, subdividing or converting that unit.

(b) **Execution and contents of amendment.**--The amendment to the declaration must be executed by the owner of the unit to be subdivided, must assign an identifying number to each unit created and must reallocate the allocated votes in the association and common expense liability formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

(c) **Conversion of unit of declarant to common elements.**--In the case of a unit owned by a declarant, if a declarant converts all of a unit to common elements, the amendment to the declaration must reallocate among the unit owners votes in the association and common expense liability formerly allocated to the converted unit on a pro rata basis, inter se.

**Cross References.** Section 5215 is referred to in sections 5102, 5205, 5208, 5210, 5219, 5316 of this title.

**§ 5216. Easement for encroachments.**

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of the unit owner's willful misconduct nor relieve a declarant or any contractor, subcontractor or materialman or any other person of liability for failure to adhere to the plats and plans.

**§ 5217. Declarant offices, models and signs.**

(a) **Common elements.**--A declarant may maintain offices and models in the common element portion of the planned community only in connection with management of or sale or rental of units owned by the declarant in the planned community if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location and relocation thereof. At such time as a declarant ceases to be a unit owner, the declarant ceases to

have any rights with regard to such portions of the common elements so used unless the portions are removed promptly from the planned community in accordance with a right to remove reserved in the declaration. Upon the relocation of a model or office constituting a common element, a declarant may remove all personal property and fixtures therefrom. Any fixtures not so removed shall be deemed common elements, and any personal property not so removed shall be deemed the property of the association.

**(b) Signs.**--Subject to any limitation in the declaration, a declarant may maintain signs in the declarant's units and on the common elements advertising units in the planned community owned by the declarant for sale or lease.

**(c) Units.**--A declarant shall have the right to locate, relocate and maintain offices and models used only in connection with management of or sale or rental of units owned by the declarant in the planned community in the declarant's unit or units in the planned community notwithstanding the fact that the declaration would otherwise preclude use of units for such purpose, but subject to all other provisions in the declaration, including, without limitation, modification or elimination of the declarant's rights under this subsection by specific reference thereto.

**Cross References.** Section 5217 is referred to in sections 5103, 5304, 5414 of this title.

**§ 5218. Easement to facilitate completion, conversion and expansion.**

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights. In addition, without affecting the rights, if any, of each unit owner with respect to the use and enjoyment of the common elements, subject to the provisions of the declaration, each unit owner and its agents, contractors and invitees shall have a nonexclusive access easement through the common elements as may be reasonably necessary for the purpose of construction, repair and renovation of the owner's unit. An association shall have the power during spring thaw conditions to restrict road usage by vehicles of more than ten tons gross weight, provided:

- (1) such restrictions shall be imposed only on a week-by-week basis for an aggregate period not to exceed eight weeks during any calendar year;
- (2) thaw conditions shall be reviewed by the association at least weekly; and
- (3) signs shall be conspicuously posted by the association

at all entrances to the planned community advising when and where such thaw restrictions are applicable.

An association shall not have the power to impose any fees or charges or require financial security, including, but not limited to, surety bonds, letters of credit or escrow deposits for the use of the easement rights described in this section; however, the declarant or owner who exercises the easement rights described in this section, whether directly or indirectly through an agent, servant, contractor or employee, shall have the obligation to promptly return any portion of the common elements damaged by the exercise by the declarant or owner or its agent, servant, contractor or employee of the easement under this section to the appearance, condition and function in which it existed prior to the exercise of the easement or to reimburse the association for all reasonable costs, fees and expenses incurred by the association to return any portion of the common elements which were damaged to the appearance, condition and function in which it existed prior to the exercise of the easement.

(Mar. 24, 1998, P.L.206, No.37, eff. 60 days; Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

**Cross References.** Section 5218 is referred to in sections 5102, 5103, 5105, 5301, 5414 of this title.

**§ 5219. Amendment of declaration.**

**(a) Number of votes required.--**

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

- (i) 67% of votes in the association are allocated; or
- (ii) a larger percentage of the votes in the association as specified in the declaration; or
- (iii) a smaller percentage of the votes in the association as specified in the declaration if all units are restricted exclusively to nonresidential use.

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

(3) Paragraph (1) shall not apply to any of the following:

(i) Amendments executed by a declarant under:

(A) section 5210(e) or (f) (relating to plats and plans);

(B) section 5211(a) (relating to conversion and expansion of flexible planned communities); or

(C) section 5212(a) (relating to withdrawal of withdrawable real estate).

(ii) Amendments executed by the association under:

(A) subsection (f);

- (B) section 5107 (relating to eminent domain);
- (C) section 5207(d) (relating to leasehold planned communities);
- (D) section 5209 (relating to limited common elements); or
- (E) section 5215 (relating to subdivision or conversion of units).

(iii) Amendments executed by certain unit owners under:

- (A) section 5209(b);
- (B) section 5214(a) (relating to relocation of boundaries between units);
- (C) section 5215; or
- (D) section 5220(b) (relating to termination of planned community).

(iv) Amendments executed by a declarant which conform the maximum time limit for exercising declarant options to the time limit authorized by sections 5205(13) and (14) (relating to contents of declaration; all planned communities) and 5206(2) (relating to contents of declaration for flexible planned communities).

**(b) Limitation of action to challenge amendment.--**No action to challenge the validity of an amendment adopted by the association under this section may be brought more than one year after the amendment is recorded.

**(c) Recording amendment.--**The following shall apply:

(1) Every amendment to the declaration must be recorded in every county in which any portion of the planned community is located in the same records as are maintained for the recording of deeds of real property and shall be indexed in the name of the planned community in both the grantor and grantee index. An amendment is effective only upon recording.

(2) Except for counties which do not maintain a uniform parcel identifier number system of indexing, all counties shall assign a master parcel number to each planned community, and every amendment to the declaration shall be indexed against the master parcel. If required by the county, an amendment may be indexed against a parcel assigned to each unit within the planned community, but no fees shall be charged to each unit unless the indexing against each parcel is requested by the declarant or association.

(3) The provisions of this subsection shall control over any conflicting provisions in any other statute, regulation or ordinance.

**(d) When unanimous consent or declarant joinder required.--**

(1) Except to the extent expressly permitted or required

by other provisions of this subpart, without unanimous consent of all unit owners affected, no amendment may create or increase special declarant rights, alter the terms or provisions governing the completion or conveyance or lease of common facilities or increase the number of units or change the boundaries of any unit, the common expense liability or voting strength in the association allocated to a unit or the uses to which any unit is restricted. In addition, no declaration provisions pursuant to which any special declarant rights have been reserved to a declarant shall be amended without the express written joinder of the declarant in such amendment.

(2) As used in this subsection, the term "uses to which any unit is restricted" shall not include leasing of units.

**(e) Officer authorized to execute amendment.**--Amendments to the declaration required by this subpart to be recorded by the association shall be prepared, executed, recorded and certified by an officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

**(f) Technical corrections.**--Except as otherwise provided in the declaration, if any amendment to the declaration is necessary in the judgment of the executive board to do any of the following:

(1) cure an ambiguity;

(2) correct or supplement any provision of the declaration, including the plats and plans, that is defective, missing or inconsistent with any other provision of the declaration or with this subpart;

(3) conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or deeds of trust or units in planned community or so-called "PUD" projects, such as Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; or

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

then, at any time, the executive board may, at its discretion, effect an appropriate corrective amendment without the approval of the unit owners or the holders of liens on all or any part of the planned community, upon receipt of an opinion from legal counsel who is independent from the declarant to the effect that the proposed amendment is permitted by the terms of this subsection.

(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days; July 2, 2013,

P.L.204, No.37, eff. imd.; Apr. 20, 2016, P.L.156, No.21, eff. 60 days; Nov. 4, 2016, P.L.1214, No.162, eff. 60 days; Mar. 27, 2020, P.L.35, No.11, eff. 60 days)

**2020 Amendment.** Act 11 amended subsec. (f)

**2016 Amendments.** Act 21 amended subsec. (d) and Act 162 amended subsec. (c).

**2013 Amendment.** Act 37 amended subsec. (a)(3). See section 2 of Act 37 in the appendix to this title for special provisions relating to applicability.

**2004 Amendment.** Act 189 amended subsecs. (a) and (f).

**Cross References.** Section 5219 is referred to in sections 5102, 5211, 5303 of this title.

**§ 5220. Termination of planned community.**

**(a) Number of votes required.--**Except in the case of a taking of all the units by eminent domain in section 5107 (relating to eminent domain), a planned community may be terminated only by agreement of unit owners of units to which at least 80%, or such larger percentage specified in the declaration, of the votes in the association are allocated. The declaration may specify a smaller percentage only if all of the units in the planned community are restricted exclusively to nonresidential uses.

**(b) Execution and recording agreement and ratifications.--**An agreement to terminate must be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of unit owners who are owners of record as of the date preceding the date of recording of the termination agreement. The termination agreement must specify the date it was first executed or ratified by a unit owner. The termination agreement shall become void unless it is recorded on or before the earlier of the expiration of one year from the date it was first executed and ratified by a unit owner or such date as shall be specified in the termination agreement. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the planned community is located in the same records as are maintained for the recording of deeds of real property and shall be indexed in the name of the planned community in both the grantor and grantee index. A termination agreement is effective only upon recording.

**(c) Sale of real estate.--**The association, on behalf of the unit owners, may contract for the sale of real estate in the planned community. The contract is not binding until approved under subsections (a) and (b). If any real estate in the planned community is to be sold by the association following termination, title to that real estate upon termination vests in the association as trustee for the holders of all interests in the

units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to unit owners and lienholders as their interests may appear in proportion to the respective interests of unit owners as provided in subsection (f). Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the owner's unit. During the period of that occupancy, each unit owner and the owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this subpart or the declaration.

**(d) Nonsale upon termination.**--If the real estate constituting the planned community is not to be sold following termination, title to the common facilities and, in a planned community containing only units having horizontal boundaries described in the declaration, title to all the real estate in the planned community vest in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (f), and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the owner's unit.

**(e) Proceeds of sale.**--Following termination of the planned community, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units which were recorded, filed of public record or otherwise perfected before termination may enforce those liens in the same manner as any lienholder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

**(f) Respective interests of unit owners.**--The respective interests of unit owners referred to in subsections (c), (d) and (e) are as follows:

(1) Except as provided in paragraph (2), the respective interests of unit owners are the fair market values of their units and limited common elements immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners

and becomes final unless disapproved within 30 days after distribution by unit owners of units to which 25% of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit by the total fair market values of all the units and common elements.

(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common expense liabilities immediately before the termination.

**(g) Effect of foreclosure or enforcement of lien.**--Except as provided in subsection (h), foreclosure or enforcement of a lien or encumbrance against the entire planned community does not of itself terminate the planned community. Foreclosure or enforcement of a lien or encumbrance against a portion of the planned community does not of itself withdraw that portion from the planned community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the planned community, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the planned community.

**(h) Exclusion from planned community upon foreclosure.**--If a lien or encumbrance against a portion of the real estate comprising the planned community has priority over the declaration and if the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the planned community.

**(i) Ineffectiveness of termination provision.**--In the case of a declaration that contains no provision expressly providing for a means of terminating the planned community other than a provision for a self-executing termination upon a specific date or upon the expiration of a specific time period, such termination provision shall be deemed ineffective if no earlier than five years before the date the planned community would otherwise be terminated, owners of units to which at least 80% of the votes in the association are allocated vote that the self-executing termination provision shall be annulled, in which event the self-executing termination provision shall have no force or effect.  
(Nov. 30, 2004, P.L.1486, No.189, eff. 60 days)

**2004 Amendment.** Act 189 added subsec. (i).

**Cross References.** Section 5220 is referred to in sections 5102, 5219, 5303, 5312 of this title.

**§ 5221. Rights of secured lenders.**

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

(1) Deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board.

(2) Prevent the association or the executive board from commencing, intervening in or settling any litigation or proceeding or receiving and distributing any insurance proceeds except under section 5312 (relating to insurance).

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

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

**Cross References.** Section 5221 is referred to in section 5219 of this title.

**§ 5222. Master associations.**

**(a) Applicability of section.**--If the declaration for a

planned community provides that any of the powers described in section 5302 (relating to power of unit owners' association) with respect to the planned community are to be exercised by or may be delegated to a profit or nonprofit corporation or unincorporated association (a "master association") which exercises those or other powers on behalf of one or more other planned communities or other incorporated or unincorporated associations, then, except as modified by this section, all provisions of this subpart applicable to unit owners' associations shall apply to any such master association insofar as its actions affect the planned community.

**(b) Powers.--**Unless a master association is acting in the capacity of an association described in section 5301 (relating to organization of unit owners' association) with respect to a planned community which is part of the master association, it may exercise with respect to the planned community only such powers set forth in section 5302 and only to the extent expressly permitted in the declaration which provides for the delegation of powers from its planned community association to the master association and accepted by the master association, as indicated in the provisions of the declaration or other organizational documents of the master association.

**(c) Liability of executive board members and officers.--**If the declaration of a planned community provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation. The officers and members of the governing board of the master association are subject to liability to the planned community association whose powers are delegated to the master association and the unit owners of the planned community on the same basis as officers and executive board members of the planned community immediately before such delegation of powers.

**(d) Rights and responsibilities of persons electing governing body.--**The rights and responsibilities of unit owners with respect to the unit owners' association set forth in sections 5302, 5303 (relating to executive board members and officers), 5309 (relating to quorums), 5310 (relating to voting; proxies) and 5320 (relating to declarant delivery of items to association) apply in the conduct of the affairs of a master association with respect to the exercise of powers elected pursuant to a planned community declaration to the master association, but apply only to those persons who elect the governing body of a master association, whether or not those persons are otherwise unit owners within the meaning of this subpart.

**(e) Election of master association governing body.--**

Notwithstanding the provisions of section 5303(e) with respect to the election of the executive board by all unit owners after the period of declarant control ends and even if a master association is also an association described in section 5301, the instrument creating the master association and the declaration of each planned community of the organizational documents of other associations, the powers of which are assigned pursuant to the declaration or organizational documents or delegated to the master association, shall provide that the governing body of the master association must be elected after the period of declarant control in any of the following ways:

(1) All unit owners of all planned communities and other properties subject to the master association elect all members of the governing body of the master association.

(2) All members of the governing bodies of the planned community associations and other property owners' associations subject to the master association elect all members of the master association governing body.

(3) All unit owners of each planned community and other property owners' association subject to the master association elect specified members of the master association governing body.

(4) All members of the governing bodies of the planned communities and other property associations subject to the master association elect specified members of the master association governing body.

**(f) Delegation of responsibility and authority.**--The provisions of this section shall apply to a planned community upon any of the following:

(1) A date specified in the declaration or any amendment thereto from and after which this section shall apply to the planned community.

(2) An event or action that the declaration or any amendment thereto states shall cause this section to become applicable and the association causes to be recorded an instrument duly executed by the president of the association stating that:

(i) the event or action has occurred and the date of such occurrence, thereby causing this section to become applicable to the planned community; and

(ii) a copy of such instrument has been sent to all unit owners.

(3) The declarant executes and records an instrument stating that this section shall thereafter apply to the planned community and that a copy of such instrument has been sent to the executive board and all unit owners. This paragraph shall

be applicable only if the declarant shall have expressly reserved in the declaration, under section 5205(13) (relating to contents of declaration; all planned communities), the special declarant right to make this section applicable to the planned community and only if the instrument exercising such right has been recorded during the time period allowed for the exercise of such right.

**(g) Delegation of all powers.**--If all of the powers of a planned community association are delegated to a master association and accepted by the master association under subsection (b), then the governing body of the master association may act in all respects as the executive board of the planned community, and no separate executive board need be elected or exist.

**Cross References.** Section 5222 is referred to in sections 5102, 5103, 5205, 5302 of this title.

**§ 5223. Merger or consolidation of planned community.**

**(a) General rule.**--Any two or more planned communities by agreement of the unit owners as provided in subsection (b) may be merged or consolidated into a single planned community. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant planned community is, for all purposes, the legal successor of all of the preexisting planned communities, and the operations and activities of all associations of the preexisting planned communities shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all preexisting associations. The resultant planned community shall, in addition, be subject in all respects to the provisions and requirements of this subpart regardless of whether or not any of the preexisting planned communities have been established under this subpart.

**(b) Requirements of agreement.**--The merger or consolidation of two or more planned communities under subsection (a) must be evidenced by a recorded agreement duly executed by the president of the association of each of the preexisting planned communities following approval by owners of units to which are allocated the percentage of votes in each planned community required to terminate such planned community. Any such agreement must be recorded in every county in which a portion of the planned community is located and is not effective until so recorded.

**(c) Reallocations.**--

(1) Every merger or consolidation agreement must provide for the reallocation of the common expense liability, including both general and limited common expenses, and portion of the votes in the resulting association among the units of the

resulting planned community in one of the following manners:

(i) by stating the reallocations or the formulas upon which they are based; or

(ii) by stating the common expense liability, including both general and limited common expenses, and portion of the votes in the resulting association which are allocated to all of the units comprising each of the preexisting planned communities, and providing that the common expense liability, including both general and limited common expenses, and portion of the votes in the association for the resulting planned community shall be the same as was allocated to each unit formerly comprising a part of the preexisting planned community by the declaration of the preexisting planned community.

**(d) Action by declarant.**--Notwithstanding the provisions of subsections (a) and (b), if a declarant shall have expressly retained the special declarant right to merge or consolidate a planned community under section 5205(14) (relating to contents of declaration; all planned communities) and if the declarant shall have exercised such right within the time period allowed for such exercise by giving written notice to that effect to all unit owners accompanied by a copy of the agreement evidencing such merger or consolidation, then such agreement may be executed by the declarant rather than by the president of the association of that planned community and without the necessity for approval or consent by unit owners or their mortgagees, provided that the agreement is recorded within the time period allowed for the exercise of this special declarant right.

**Cross References.** Section 5223 is referred to in sections 5102, 5103, 5205 of this title.