

THE GENERAL ASSEMBLY OF PENNSYLVANIA

JOINT INFORMATIONAL MEETING

SENATE URBAN AFFAIRS AND HOUSING COMMITTEE

HOUSE URBAN AFFAIRS COMMITTEE

April 21, 2015

COMMUNITY ASSOCIATIONS IN PENNSYLVANIA

Anthony G. Campisi, Executive Director
PA and Delaware Valley Chapter, CAI
601 S. Henderson Road, Suite 151
King of Prussia, PA 19406
(877) 608-9777 (FAX) (610) 783-1818
tony@cai-padelval.org

Steven L. Sugarman, Esquire
Steven L. Sugarman & Associates
1273 Lancaster Avenue
Berwyn, PA 19312
(610) 889-0700 (FAX) (610) 993-0498
ssugarman@suglaw.com

Carl N. Weiner, Esquire
Hamburg, Rubin, Mullin, Maxwell & Lupin, P.C.
375 Morris Road; ACTS Center Blue Bell
Landsdale, PA 19446
(215) 661-0400 (FAX) (215) 661-0315
cweiner@hrmml.com

PENNSYLVANIA AND
DELAWARE VALLEY CHAPTER

community
ASSOCIATIONS INSTITUTE



A. WHO WE ARE

1. Formed in 1973 to serve as a clearinghouse of ideas and best practices in the community association field. CAI's mission is to assist community associations in promoting harmony, building community and providing responsible leadership.

2. More than 33,000 members nationwide; homeowners, community association volunteers, community managers, attorneys, accountants, developers and other professionals.

3. CAI's research foundation is the primary source of research in the association field and publishes reports on best practices in community association management and governance.

4. CAI and its 60 chapters are the primary source of education nationwide for community association volunteers and managers. CAI provides credentialing for managers and association professionals in law, insurance, and reserve funding.

5. Over 1400 members in the Pennsylvania and Delaware Valley Chapter of CAI. Estimated number of community associations in Pennsylvania is 10,000-12,000. Nearly 3 million or close to 25% of all Pennsylvanians live in some form of association-governed community.

B. GROWING NUMBERS

1. More than 330,000 community associations nationwide with more than 26 million housing units and 63 million residents.

2. More than 2 million people nationwide serve on community association governing boards, with tens of thousands more involved as committee members. Assuming the typical board or committee member spends just one hour a week on association business, these volunteer leaders dedicate more than 76 million hours of service to their communities every year.

3. Close to four out of five (80%) housing starts since 2000 have been in association-governed communities, including condominiums converted from existing rental units. In Pennsylvania, that percentage is even higher.

4. The value of the homes in all community associations is estimated at \$4 trillion, approximately 20 percent of the value of all U.S. residential real estate.

C. WHAT THE NUMBERS SAY

1. In a 2014 Public Opinion Strategies Poll, 90% of community association residents rated their overall experience with their community association as positive (64%) or neutral (26%).
2. 90% of residents say association board members “absolutely” or “for the most part” serve the best interests of their communities.
3. 70% of community association residents believe association rules protect and enhance their property values.

4. In previous polls, 86% of community association residents surveyed stated they did not want to see more government control over the management of their community association.
5. Proposed legislation concerning community associations always has the potential for an enormous impact on the quality of life and the cost of living in community associations.

OVERVIEW OF *COMMUNITY ASSOCIATIONS*



A. CONDOMINIUMS

Unit Property Act

68 Pa. C.S.A. § 700.101 *et seq.*

Uniform Condominium Act

68 Pa. C.S.A. § 3101 *et seq.* (UCA), effective October 30, 1980, amended 1992 and 2004.

B. PLANNED COMMUNITIES

Uniform Planned Community Act,

68 Pa. C.S.A. § 5101 *et seq.* (UPCA), effective February 2, 1997, amended 1998 and 2004.

C. COOPERATIVES

Uniform Real Estate Cooperative Act

68 Pa. C.S.A. § 4101 *et seq.* (RECA), effective February 16, 1993, amended 2004.

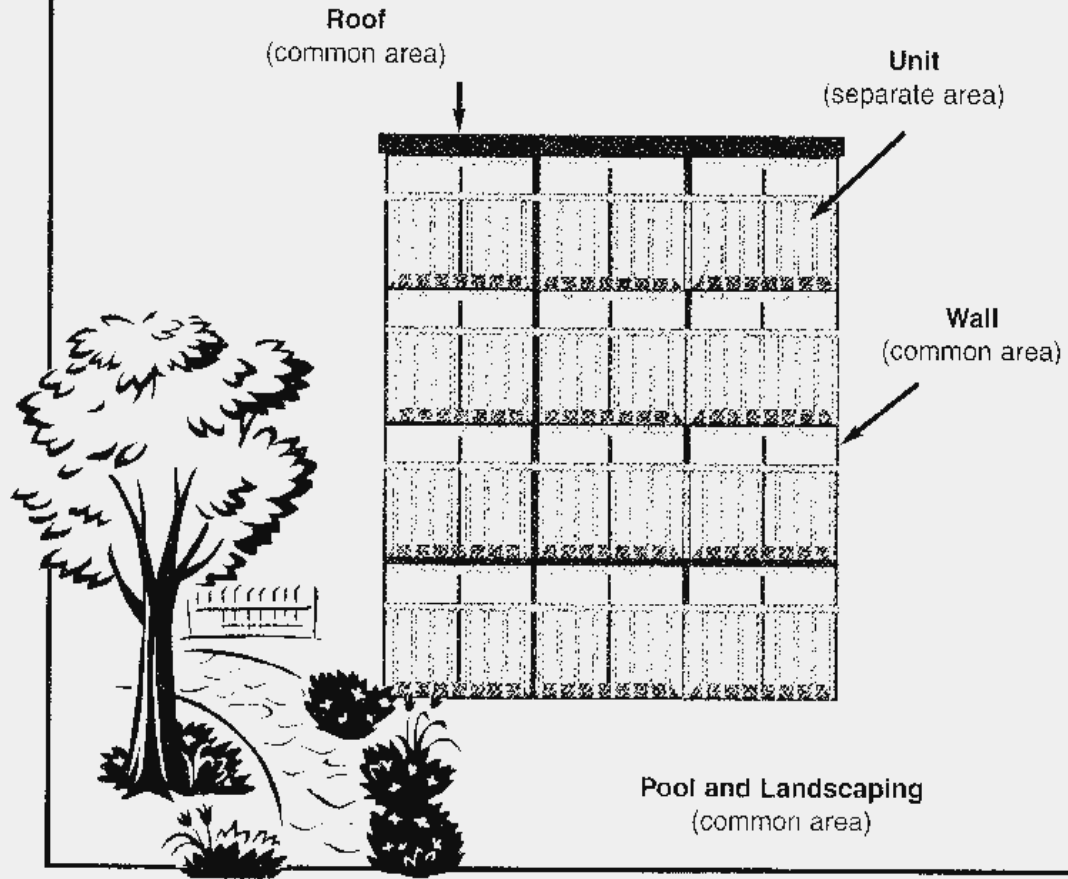
D. BASIC CHARACTERISTICS OF COMMON INTEREST OWNERSHIP COMMUNITIES

1. Owners, by virtue of accepting a deed, automatically become members of a community association.
2. Governing documents create mutual obligations.
3. Assessments are levied and collected for the operation of the association.
4. Owners share a property interest.
5. All constitute forms of common interest ownership, not a structure or style of housing.

E. DISTINCTIVE OWNERSHIP INTERESTS

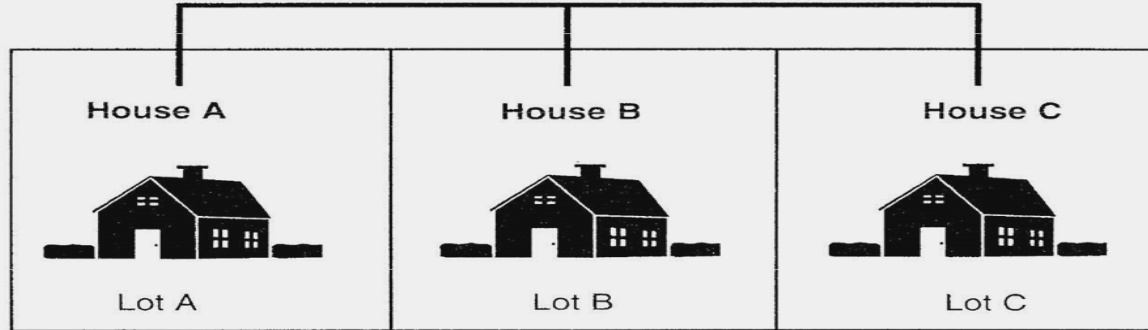
- 1.** *Condominium* – buyer owns space within a unit and an undivided percentage interest in the common area.
- 2.** *Planned Communities* – buyer owns the entire unit and the association owns the common area.
- 3.** *Cooperative* – buyer owns shares of the cooperative, plus an exclusive right, under a proprietary lease, to occupy a unit and the cooperative owns the entire project.
- 4.** *Master Associations* – buyer owns a unit, plus an interest in the common area owned by an umbrella association and in the common area within a neighborhood association.

CONDOMINIUM

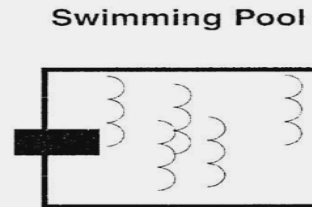


PLANNED COMMUNITY

SEPARATE AREA



COMMON AREAS



MASTER ASSOCIATION

Condominium
(Building A)

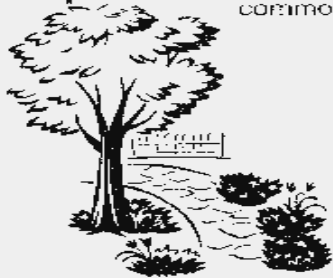


Condominium
(Building B)



Road
(Master
Association
common area)

Landscaping
(Master Association
common area)



Landscaping
(Planned Community
common area)



Planned Community

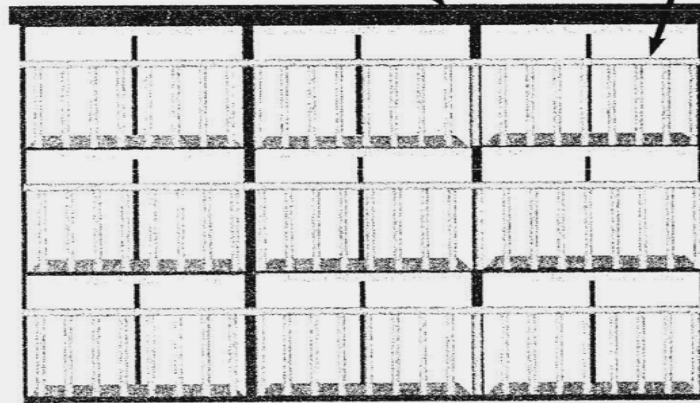
Lot A	Lot B	Lot C	Lot D
----------	----------	----------	----------

COOPERATIVES

Roof
(common area)

Wall
(common area)

Apartment
(separate area)



Landscaping
(common area)

FORMATION OF THE COMMUNITY ASSOCIATION



A. BUSINESS ENTITY

1. Developer-declarant forms the entity.
2. Usually a Nonprofit Corporation, per 15 Pa. C.S.A. § 5101 *et seq.*
3. May be an unincorporated association, business corporation or trust.

4. The association is a private (housing) community.

5. Formed to maintain and regulate the “common” property and provide services traditionally provided by municipal governments, e.g., snow and trash removal, street maintenance and lighting, storm water management, etc.

B. SOURCES OF AUTHORITY

1. Declaration of Covenants, Conditions and Restrictions.
2. Plats and Plans.
3. Articles of Incorporation.
4. Bylaws.
5. Rules and Regulations.

C. HIERARCHY OF DOCUMENTS

1. *Declaration*
 - a. Recorded document.
 - b. Amendment requires a membership vote (usually 67%).

2. *Articles of Incorporation*
 - a. Filed with the Pennsylvania Department of State
 - b. Amendment usually requires a membership vote.

3. *Bylaws*
 - a. Not recorded.
 - b. Amendment usually requires a membership vote (typically .50%).

4. *Rules and Regulations*
 - a. Not recorded.
 - b. Adoption or amendments require Board vote, only.

ROLES IN COMMUNITY ASSOCIATIONS



A. DEVELOPER

1. Creates the structure of the regime and the governing documents.
2. Referred to as the “Declarant.”
3. Appoints Board members and controls the Association until turnover of control to the homeowners.

- a. Unit owners are elected to the Board when 25% and 50% of the units are sold.
- b. All Board members are elected by the owners following the sale of 75% of the units.
- c. Regardless of the percentage of sales, the period of Declarant control terminates 5 years after the first conveyance (or 7 years in the case of a “flexible” regime).

4. Conflicting Roles of the Developer:

THE FOUR "HATS" OF THE DEVELOPER

DEVELOPER

Declarant

Public Offering Statement
Declaration
By-Laws
UCA/UPCA

Builder

Agreement(s) of Sale
Express Warranties
Implied Warranties
Representations
Subsidies
Subdivision Plan

Board Member(s)

Fiduciary Duty
Reserves
Collection of Assessments
Maintenance
Enforce Architectural Controls
Insurance

Owner

Payment of Assessments
Adhere to Architectural Controls
Use Restrictions



B. OWNER

1. Becomes a member of Association upon acceptance of a deed.
2. Must comply with the governing documents, including use restrictions and payment of assessments.
3. Eligible for election to the Board of Directors or committees.

C. BOARD MEMBER

1. Elected by the unit owners.
2. Usually required to be a unit owner.
3. Responsible for managing the affairs of the Association.
4. Owes a fiduciary duty to the Association.
5. In discharging duties, may engage third-party professionals.

CONFLICT RESOLUTION



A. FIDUCIARY DUTY

1. *Uniform Planned Community Act, § 5303(a).*
2. *Uniform Condominium Act, § 3303(a).*
3. *Nonprofit Corporation Law of 1988, 15 Pa. C.S.A. § 5712.*
4. *Declaration and/or Bylaws.*

B. STANDARD OF CARE

1. Executive Board acts in all instances on behalf of the association.
2. Board members must perform duties in good faith, in the best interest of the association and with reasonable care, including reasonably inquiry, skill and diligence as a person of ordinary prudence would use under similar circumstances.
3. Business Judgment Rule - No liability if Board's actions are authorized and conform to the foregoing standards.
4. Retroactive application of the Business Judgment Rule per the 2004 Trilogy Amendments.

C. DISPUTE RESOLUTION PROCEDURES

1. Internal grievance procedures.
2. Use of due process, i.e., notice and an opportunity to be heard.
3. Arbitration or mediation optional.
4. Private contractual agreements, including indemnification & maintenance agreements.
5. Non-interference with operations and affairs of associations absent contravention of the Business Judgment Rule.

