

HRMM&L

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MUNICIPALITIES AND COMMON INTEREST COMMUNITIES

September 13, 2016

Whitpain Township – Planning Commission

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FORMATION OF CONDOMINIUMS AND PLANNED COMMUNITIES IN PENNSYLVANIA

- Condominiums and Planned Communities involve mixtures of individual and common interests in real estate.
 - Terms represent different forms of ownership; not necessarily different housing types and not necessarily residential.

FORMATION OF CONDOMINIUMS AND PLANNED COMMUNITIES IN PENNSYLVANIA (CONTINUED)

- Forms of ownership have been established by the General Assembly in trilogy of common interest communities.
 - Uniform Condominium Act, 68 Pa. CSA § 3101 *et seq.* (“UCA”).
 - Real Estate Cooperative Act, 68 Pa. CSA § 4101 *et seq.*
 - Uniform Planned Community Act, 68 Pa. CSA § 5101 *et seq.* (“UPCA”).

FORMATION OF CONDOMINIUMS AND PLANNED COMMUNITIES IN PENNSYLVANIA (CONTINUED)

- Structure of ownership.
 - Condominium units are owned individually; each unit has ownership interest in common elements.
 - Cooperative – association owns everything
 - individuals lease units.
 - Planned Community – units are owned individually; balance of development is owned by association.

FORMATION OF CONDOMINIUMS AND PLANNED COMMUNITIES IN PENNSYLVANIA (CONTINUED)

- Key definitions.
 - "Real Estate" – Any fee or other interest – in, over and under the land.
 - "Common Elements" – Open space, roads, storm water – not owned by unit owners.
 - "Flexible Community" – Right to add or withdraw land.
 - "Limited Common" – Assigned parking spaces, roofs on building.

FORMATION OF CONDOMINIUMS AND PLANNED COMMUNITIES IN PENNSYLVANIA (CONTINUED)

- Developing a common interest community.
 - Setting up the association. The developer starts with an undeveloped parcel of ground and a concept for a development.
 - Structuring the association – The developer's obligations to the association are based, in part, on the type of association.

FORMATION OF CONDOMINIUMS AND PLANNED COMMUNITIES IN PENNSYLVANIA (CONTINUED)

- The developer first determines the market, e.g., first time buyers, over-55 adults.
- Local zoning and subdivision land development regulations may impact the association.
- Occupancy restricted to older adult residents may be required to achieve density; may dictate higher level of maintenance.
- May designate lots or footprint boundaries.
- Roads may be public or private.

FORMATION OF CONDOMINIUMS AND PLANNED COMMUNITIES IN PENNSYLVANIA (CONTINUED)

- The developer determines the level of maintenance and establishes the expectations of the unit owners and level of association fees.
 - Driveways and walkways.
 - The association's maintenance and snow removal.
 - Landscaping.
 - Lawn mowing within lots.
 - Landscaping around homes.
 - Exterior maintenance of homes.
 - Whether units will include exterior walls and roofs.
 - Whether the association is responsible for ongoing maintenance or periodic replacement.

FORMATION OF CONDOMINIUMS AND PLANNED COMMUNITIES IN PENNSYLVANIA (CONTINUED)

- Extent of community amenities.
 - Recreational facilities – active or passive recreation.
 - Clubhouses.

FORMATION OF CONDOMINIUMS AND PLANNED COMMUNITIES IN PENNSYLVANIA (CONTINUED)

- The declaration establishes the framework for the community.
 - Obligations of the association are based upon the definition of the unit.
 - The unit boundaries should be clearly stated in the declaration.
 - Common elements and limited common elements should be specifically listed.

FORMATION OF CONDOMINIUMS AND PLANNED COMMUNITIES IN PENNSYLVANIA (CONTINUED)

- Convertible/withdrawal/additional real estate.
 - Developer may retain the right to establish an initial community while reserving the balance of the tract as convertible real estate.
 - Obviates the requirement for a developer to declare all units and pay assessments on units which may not be built for an extended period of time.
 - Permits greater flexibility in developing different sections to meet the demands of a changing housing market.
 - Phasing may reduce developer's initial costs in providing infrastructure for entire development.

FORMATION OF CONDOMINIUMS AND PLANNED COMMUNITIES IN PENNSYLVANIA (CONTINUED)

- Identifying withdrawable real estate also permits developer flexibility in meeting market demand.
 - Municipality regulations may change.
 - Allows developer option of creating different housing types.
- Developer may acquire an adjoining parcel subsequent to initial development approval which may be identified as additional land.
 - Also allows flexibility for developer to modify parcel adjacent to an association in a manner compatible with existing association and to tie into existing infrastructure.

FORMATION OF CONDOMINIUMS AND PLANNED COMMUNITIES IN PENNSYLVANIA (CONTINUED)

- Based on recent legislation changes, developer now has 10 years to convert or withdraw real estate or to add additional land.

DOCUMENTING COMMON INTEREST COMMUNITIES

- Contents of declaration.
 - The name of the condominium; the name of the planned community.
 - A description of the boundaries of each unit.
 - A statement of the maximum number of units.
 - A description of any limited common elements.
 - A description of any common elements.
 - An allocation to each unit of votes in the association.

DOCUMENTING COMMON INTEREST COMMUNITIES

- The declaration establishes the framework for assessments.
 - The formula on which assessments are based.
- Any restrictions created by the declarant on use, occupancy and alienation of the units.
 - Age restrictions.
 - Use and structural prohibitions.
 - Signs, sheds, play sets, clothes lines.
 - Commercial vehicles, unregistered vehicles, recreational vehicles.
 - Architectural controls.

AGE-RESTRICTED COMMUNITIES

- Permitted under the Fair Housing Act Amendments that allow exception to anti-discrimination provisions.
- Criteria to qualify:
 - Development must be intended for occupancy by persons 55 and older.
 - At least 80% of units must be occupied by at least one person 55 and older.
 - Does not apply to ownership – only occupancy.
 - Declaration or zoning may require more than 80% occupancy.
 - Community must develop procedures to verify ages and do so routinely.

TURNOVER OF CONTROL

- Turnover of documents required by Section 3320/5320.
 - Within sixty (60) days of the termination of declarant control, the declarant shall deliver to the association all documents.
 - Developer should convey to association title to common elements.
 - Developer is required to cause the association, during the period of declarant control, to maintain detailed financial records.

TURNOVER OF CONTROL (Continued)

- An audit of finances of association is required to be performed within ninety (90) days after termination of declarant control.
- Developer must turnover control of all association funds.

TURNOVER OF CONTROL (Continued)

- Even after termination of control, declarant retains certain special rights if reserved in the declaration.
 - The declarant may exercise the following rights:
 - Completing improvements on plans.
 - Converting convertible real estate.
 - Additional additional real estate.
 - Withdrawing withdrawable real estate.
 - Subdividing and converting units.
 - Maintain offices, signs and models.
 - Easements through common elements.

TURNOVER OF CONTROL (Continued)

- Post turnover conflicts between developer and association.
 - Completion and/or repair of common elements.
 - Accounting for full payment of assessments by developer.

TURNOVER OF CONTROL (Continued)

- Developer agreements with municipality govern.
 - Land development/subdivision plan specifies work to be completed.
 - Completion of common elements versus individual units.
 - Municipal focus is generally on completion of improvements.
 - Municipality is not required to accept dedication of improvements.

TURNOVER OF CONTROL (Continued)

- Municipality has the right but not the obligation to use financial security to complete development.
 - Victoria Gardens Condominium Assoc. v. Kennett Twp., 23 A.3d 1098 (Pa. Commw. 2011) – Court held that association had to first bring suit against the developer even if it was clear that association would not recover.
 - College Woods Homeowners v. Trappe Borough, No. C.D. 2013 (Commonwealth Court, July 7, 2014), unpublished decision.
 - Association has standing as a third-party beneficiary to enforce development agreement provisions for the municipality to accept dedication of streets within the community.

TURNOVER OF CONTROL (Continued)

- Association and municipality can cooperatively determine what construction issues are municipal concerns.
 - Private vs. public facilities.
 - Streets, sidewalks, curbs.
 - Grading, landscaping.
 - Driveways.
 - Clubhouses.
 - Individual homes – generally not municipal issue unless there is a common structural issue.

ONGOING ENFORCEMENT ISSUES

- Municipal violation notices.
 - Association or individual issue.
 - Familiarity with association documents.
- Building permits.
 - Mutual contingencies between association and municipalities for approving additions and changes.
 - Association should make every approval subject to permit.
 - Municipality should not grant permit unless it has association approval.

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ENGINEERING TRANSITION

September 13, 2016
Whitpain Township

By

Jeffrey A. Wert, P.E., P.L.S., ASCE
Principal



TRANSITION STUDY

How is a Transition Study similar to Municipal “Punchlist”?

Field inspect all improvements to determine status, defects to be remediated

What escrow is remaining, for what items?

Communicate with Municipality on status of development

Permit status?

Maintenance period?

Televise storm sewer and sanitary sewer systems – pre-acceptance video to determine if any defects exist that need to be corrected

Component and responsibility chart – sometimes prepared by attorney for developer

Review of development documentation

CONSTRUCTION

Inspection Reports

Field changes

Escrow releases, balances

ADA Compliance

As-builts for utilities (many are not located by PA One Call)

Utilities – Dedicated, approved, accepted or closed?

Final notice from developer per MPC?

DEVELOPMENT DOCUMENTATION

Approved Plans

Subdivision & Land Development

Highway Occupancy Plan

Structural (walls)

Landscaping and Lighting

Zoning Hearing Board

Conditional Use Decision

Building Plans (including HVAC, Architectural, Lighting, MEP)

Reports

Stormwater Management

Traffic

Erosion & Sediment Control

Soils Testing

Wetlands

Infiltration Testing

Development Agreements

Letters of Credit

Easements

Deeds of Dedication

Covenants

Dedicated vs. Non-Dedicated Improvements

Responsibility Chart - What is Community responsible for?

Post Construction Maintenance Plans

Inspection and Maintenance Responsibilities

MS4 Inspections

Permits/Close-Out

PennDOT

MCCD/NPDES

Township

Water

Sewer

ACOE

County Health Department

Maintenance agreement

Required?

Are the documents recorded?

Copies to Association.

“Keys to the car”

COORDINATION AND COMMUNICATION BY COMMUNITY

Obtain copies of all documentation

Digital

Paper

Continuity of documentation

Communicate with Municipal Engineer and Township as to status

Transition Engineer can inform and educate the Board and the community

When does control turn over to homeowners?

Contact information for continuity of records

Communication between Elected Board of HOA and Elected Board or Municipal Management