

Caroline A. Edwards
Attorney at Law

www.caedwardsesq.com
caedwards@caedwardsesq.com

Admitted in PA & NJ

FORMING A PLANNED COMMUNITY IN PENNSYLVANIA

In Pennsylvania, planned communities are formed under and governed by the Pennsylvania Uniform Planned Community Act (68 P.S. §§5101 et seq.) (the "Act"). The purpose of this article is to provide a basic understanding of the planned community formation process.

A planned community is defined in the Act as real estate with respect to which a person, by virtue of ownership of an interest in any portion of the real estate, is or may become obligated by a covenant, easement or agreement imposed on the owner's interest to pay any amount for real property taxes, insurance, maintenance, repair, improvement, management, administration or regulation of any part of the real estate other than the portion or interest owned solely by the person. What this means in English is that a planned community must have portions that are to be owned by individuals or entities, just like any parcel of real estate, but that the owner must also have the obligation to pay for maintenance, repairs, etc. for other portions of the property not owned by the owner. Each owner in a planned community is a member of the Community Association. The Community Association is the owner of the common areas within the community.

The basic process of forming a planned community is as follows:

1. **Preparation Phase.** The property owner (known as the "Declarant" under the Act) retains consultants to prepare the planned community documents (*see Page 2 for an explanation of the documents required*). Usually, the consultants include an attorney experienced in preparing community documentation, a civil engineer to prepare the plats and plans and legal descriptions required as exhibits to the Declaration, and a property management company to

give input on management, budget, and maintenance issues. During the preparation phase, I meet with the owner and gather information about the project and the owner's goals and intentions. I also begin the process of determining the best structure for the planned community.

2. **Initial Drafts.** Once I have met or corresponded with the owner to find out the details about the project and the specific intentions for the operation of the community, I prepare a draft set of documents. The draft is circulated to everyone who might have input about the planned community, along with a cover letter or email highlighting the terms that should be carefully reviewed and considered. The initial draft is typically provided to the owner, the broker, and the property manager for review.

3. **Second Draft and Exhibits.** After the comments on the initial drafts are received, I make changes based on the owner's decisions, and prepare a second draft for review. Concurrently, once the structuring of the community has been decided upon, I work with the consultants to begin the preparation of the exhibits to the documents. For preparation of the Declaration plats and plans and legal descriptions, the engineer needs to understand specifics such as whether the community will be phased (or "flexible," as it is termed in the Act), and what notes are required on the plans. Exhibits to the Public Offering Statement include a proposed Association budget and balance sheet, and I consult with the property management company in the preparation of those documents. It is very important to ensure that the exhibits meet the specific requirements of the Act, and that they also reflect the owner's intentions.

4. **Incorporation of Association.** The Act does not require the Community Association to be incorporated; however, many of my clients, and their management companies, prefer to incorporate. If the Association is being incorporated, I handle the

Three primary documents may be required in connection with the formation of a planned community. The Declaration of Planned Community and Bylaws are required for every project; there are a few very limited exceptions to the requirement for a Public Offering Statement. These documents establish the framework for the planned community. Properly drafted documents comply with the legal requirements, meet the Declarant's intentions for the community, are an asset during the sales process, and ensure that the community operates smoothly into the future, which reflects well on the Declarant for later projects. The documents are:

1. **Declaration of Planned Community** – The Declaration of Planned Community is signed by the property owner, notarized, and recorded with the Recorder of Deeds for the county in which the property is located. The Declaration of Planned Community subjects the property to the planned community scheme of ownership, and contains the rights and obligations of the owners of units, and the restrictions applicable to the property. Examples of the types of provisions included in the Declaration are the assignment of percentage interests and votes to units, use restrictions, identifying who is responsible for maintaining each portion of the planned community, and the obligation to pay assessments towards the upkeep of the planned community.
2. **Bylaws** - The Bylaws govern the operation of the Community Association. The Bylaws contain details such as when meetings are held, the responsibilities of the Association officers, and enforcement procedures. The Bylaws are not recorded with the Recorder of Deeds. The Bylaws must be consistent with the Declaration of Planned Community.
3. **Public Offering Statement** - The Public Offering Statement is a detailed document, the purpose of which is to provide disclosures to prospective purchasers that are required by the Act. The Public Offering Statement provides purchasers with detailed information about the project, conditions affecting the property, significant terms in the Declaration of Planned Community, the Bylaws, and the Agreement of Sale, the proposed Association budget, the status of all permits and approvals, and other important matters. A Public Offering Statement is not required for planned communities containing 12 or fewer units which meet certain additional criteria, or for larger planned communities meeting certain requirements, including no private roadways. Other than these limited exceptions, a Public Offering Statement is required.

preparation and filing of the Articles of Incorporation and Docketing Statement with the Pennsylvania Department of State, the required advertisements of Notice of Incorporation, and the preparation of the corporate book.

5. **Further Document and Exhibit Drafts.** It is not uncommon for there to be a fair amount of "back and forth" between me and the owner and others as the documents are fine-tuned to meet the owner's needs and intentions. Similarly, I typically review and comment on several drafts of the plats and plans and legal descriptions before they are in final form. If the project is new construction for which land development approvals have been obtained, the municipality may require that the owner provide the Declaration and Bylaws to the municipality for review. Once all owner comments have been included in the documents, I submit the documents for municipal review and make any changes required by the municipality.

6. **Final Versions of Documents.** When the owner is satisfied with the documents, I prepare the final versions of the documents for the owner's use. For the Declaration of Planned Community, I prepare the

execution version of the Declaration, including the attachment of the exhibits, and transmit it to the owner to be signed, along with the final version of the Bylaws and Public Offering Statement with all exhibits, if required.

7. **Declaration Recording.** The final step in the process is the recording of the Declaration of Planned Community with the Recorder of Deeds. This must be done before the first settlement on a unit.

8. **Sales of Units.** The Act contains specific requirements governing the sale of planned community units. Among these are disclosure requirements (even if a Public Offering Statement is not required), and the recording of a Certificate of Completion for the unit. Some municipalities have further requirements for certifications and disclosures.

Caroline A. Edwards is a commercial real estate law practitioner with more than 25 years of experience in the formation of common ownership communities. Contact her at caedwards@caedwardsesq.com, or at 215.504.8840.