

CLIENT ALERT: Pennsylvania Condominiums are Subject to Subdivision Requirements

SUMMARY On January 26, 2010, the Pennsylvania Supreme Court affirmed an appellate court opinion that a project created under the enabling act of the Pennsylvania Uniform Planned Community Act must still comply with local subdivision and land use ordinances.<sup>1</sup>

MEANING: Municipalities may issue subdivision violation notices to condominiums, planned communities, and similar co-ownership projects upon the transfer of a unit, even if the projects comply with the enabling acts, but are not compliant with subdivision laws.

Most practitioners have been interpreting the enabling acts as not preempting building and zoning laws, but as preempting subdivision laws. The case rejects this interpretation of the exemption from subdivision law.

The original trial court adopted the Township Zoning Board's distinction that there is a safe harbor from subdivision compliance for conversion condominiums, at least residential ones, but not for new construction or new division of land or space. In the Shaffer case, the appellate court at first framed its issue as the technical question of whether the Zoning Board committed an error of law or abused its discretion. The appellate court reviewed the facts: that the property had been compliant with subdivision and land use ordinances, had received a certificate of occupancy, and was then subjected to a planned community regime, all of which was lawful. The appellate court concluded that a subsequent conveyance of a unit out of that regime without township approval was an unlawful subdivision under the applicable subdivision ordinance which required Township final approval before a lot line could be created or moved.

The appellate court paid lip service to a prior case<sup>2</sup> which held that a condominium conversion of an existing apartment complex without change of lot lines or existing structure was not a subdivision. Of course the apartment units themselves in the prior case did not comply with subdivision requirements because there was no pre-existing subdivision of apartment units in space. The appellate court's language did not reconcile these inconsistencies when it stated the prior case "emphasized the difference between that [permitted existing apartment complex] and [prohibited] 'new' construction or division of land or space." [emphasis added] The appellate court drew reliance from a handbook's theorizing that "a condominium declaration for an existing structure already in compliance with subdivision requirements would not of itself require a second subdivision."

EFFECT: Local government can require future condominium and planned community projects which are not residential conversions to comply with subdivision requirements before a unit can be conveyed.

Non-compliance can result in the revocation of certificates of occupancy, making the units virtually valueless.

It is unclear whether this can be applied to pre-existing regimes, but there strong arguments that vested rights and equitable estoppel would prevent a retroactive effect.

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If you have any questions about this information please call Gregory G. Gosfield (215-569-4164) or any of our other real estate attorneys listed in the Real Estate & Finance Department at [www.klehr.com](http://www.klehr.com)

<sup>1</sup> *Frank N. Shaffer Family Limited Partnership and Kevin and Kendra Shaffer, Appellants, v. Zoning Hearing Board of Chanceford Township and Chanceford Township*, 964 A.2d 23, 2008 Pa. Commw. LEXIS 657 (PA 2008), aff'd, [J-114-2009] (January 26, 2010)

<sup>2</sup> *Bensalem Township v. Salem Harbour Joint Venture*, 21 Pa. D.&C.3<sup>rd</sup> 341 (C.C.P. Bucks Co., 1981).

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