

SENATE, No. 1132

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JANUARY 23, 2012

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

Senator RONALD L. RICE

District 28 (Essex)

SYNOPSIS

The “Owners’ Rights and Obligations in Shared Ownership Communities Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/21/2012)

1 **AN ACT** concerning rights and obligations of homeowners living in
2 shared ownership communities, amending various parts of the
3 statutory law, and supplementing Title 46 of the Revised
4 Statutes.

5
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8
9 1. (New section) This act shall be known and may be cited as
10 the “Owners’ Rights and Obligations in Shared Ownership
11 Communities Act.”

12
13 2. (New section) The Legislature finds and declares that:

14 a. Homeowners’ associations formed to manage property
15 shared by all homeowners, whether that property be in
16 condominiums, planned communities, or cooperatives, function as
17 quasi-governments, often providing services in lieu of governmental
18 services, levying assessments and imposing fines, and, through their
19 control of maintenance and assessment levels, rulemaking powers,
20 and enforcement efforts, have substantial power to affect both the
21 quality of life and financial health of the individual homeowners
22 comprising their membership.

23 b. Current statutes are ineffective to compel homeowners’
24 associations to treat fairly the owners of homes in planned
25 communities or the holders of proprietary leases in cooperatives, in
26 the manner of fair treatment required for condominium owners.
27 The “Condominium Act,” P.L.1969, c.257 (C.46:8B-1 et seq.)
28 requires developers and associations to clearly recognize the
29 coexisting interests of each individual homeowner in the
30 commonly-owned facilities of a condominium, by requiring the
31 consent of a majority of the owners prior to making changes in the
32 governing documents. That act also provides “quasi-governmental”
33 powers to condominium boards to impose fines on members, and to
34 place liens on their individual homes. Similar protections and
35 powers have not been enunciated in the statutes for owners of
36 homes or holders of proprietary leases in planned communities and
37 cooperatives, respectively. The Legislature attempted to expand the
38 law to apply to all types of homeowners’ association through the
39 enactment of P.L.1993, c.30, but that act has proven ineffective in
40 making sure that owners in all types of these communities are
41 treated fairly and democratically by their governing boards.

42 c. The unilateral manner in which a developer is permitted
43 under the law to make all decisions for an association until a certain
44 level of sales of homes have been reached may serve to protect the
45 developer’s investment in the community while he is selling, but

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
 not enacted and is intended to be omitted in the law.

 Matter underlined thus is new matter.

1 does not serve an association well when it is required to act as a
2 governing board and operate in a democratic and fair manner, and
3 in the best interests of all of the owners as required by statute.
4 While protecting the interests of both, there is a need to clearly
5 separate in the law (1) the interests and role of a developer of a
6 shared ownership community from (2) the interests and role of the
7 association formed to represent the collective shared property
8 interests of owners of individual properties within such
9 communities, and (3) a need to provide standards to association
10 governing boards to foster transparent governance.

11 d. There is a further need to update New Jersey's laws to
12 provide improved, relevant disclosure to a prospective purchaser as
13 to the exact nature of what is being purchased, and a clear statement
14 of their rights and responsibilities as a member of a homeowners'
15 association. There is a need to standardize certain information, and
16 to allow developers to submit it in an electronic format for an
17 expedited review by the State.

18 e. There is a need to eliminate exemptions from required
19 disclosures by developers to purchasers in smaller shared ownership
20 communities.

21 f. In order to minimize State involvement in the affairs of
22 homeowners' associations, and in order to reduce the need for
23 litigation by members of associations, there is a need to create a
24 truly objective, reliable, and low cost system of dispute resolution
25 for shared ownership communities which will be overseen and
26 provided by experienced neutral parties, with adequate due process
27 protections.

28 g. There is a need to foster democratic governance in
29 community associations in the following areas, including, but not
30 limited to, the regulation of elections, budget adoption, access to
31 association records, open meetings, education of owners and
32 governing board members, and to raise awareness of the rights and
33 obligations of owners and those owners serving their communities
34 as governing board members. The Legislature declares that it is
35 necessary and in the public interest to establish an independent
36 Commission on Shared Ownership Communities, comprised of
37 individuals living in and providing services to such communities, to
38 function as a State liaison for such communities. The commission
39 will promote an equitable balance between the interests of
40 association governing boards, developers, owners, and residents in
41 these communities, through the provision of information and the
42 establishment of governance standards for such associations, and
43 will serve as a coordinating entity for the provision of alternative
44 dispute resolution services and enforcement of statutory rights.

45

46 3. (New section) As used in this act:

47 "Association," "community association" or "homeowners'
48 association" means any legal entity, incorporated or unincorporated,

1 that is responsible for the governance over common property of a
2 shared ownership community, regardless of whether the association
3 was required to be formed pursuant to any law or ordinance.

4 “Association documents” means governing documents.

5 “Commission” means the Commission on Shared Ownership
6 Communities established pursuant to section 5 of P.L. , c. (C.)
7 (pending before the Legislature as this bill).

8 “Common ownership community” means a shared ownership
9 community.

10 “Cooperative housing project” means any system of land
11 ownership and possession in which the fee title to the land and
12 structure is owned by a corporation in which the shareholders of
13 that corporation each also have a long term proprietary lease or
14 other long term arrangement of exclusive possession for a specific
15 unit of occupancy space located within the same structure.

16 "Declaration" means the recorded document or documents
17 containing the servitudes that create and govern the common
18 ownership community.

19 “Director” means the Director of the Division of Consumer
20 Affairs in the Department of Law and Public Safety.

21 “Dispute” means any disagreement between two or more parties
22 that conforms to the requirements of section 6 of P.L. , c. (C.)
23 (pending before the Legislature as this bill).

24 “Executive director” means the executive director of the
25 Commission on Shared Ownership Communities.

26 “Governing body” or “governing board” means the council of
27 unit owners, board of directors, trustees, or any other body
28 authorized by a governing document to adopt binding rules or
29 regulations.

30 "Governing documents" means the declaration and other
31 documents, such as a deed, the articles of incorporation or articles
32 of association, bylaws, and rules and regulations that govern the
33 operation of an association, or determine the rights and obligations
34 of the members of the shared ownership community.

35 "Member" means the owner of an individually-owned property
36 bound by a servitude described in an association document to
37 contribute to maintenance of common property or to pay mandatory
38 dues to the association. In the case of a shared ownership
39 community in which membership in the association and the
40 obligation to pay assessments are independent, the term member
41 shall mean an owner who is bound by a servitude described in an
42 association document to contribute to maintenance of common
43 property or to pay mandatory dues to the association.

44 “Owner” means the individual owner of a residence in a shared
45 ownership community, and includes a unit owner in a
46 condominium, a lot owner in a homeowners' association, and a
47 holder of a proprietary lease in a cooperative housing project.

1 “Owners’ coordinating council” means the group to which
2 owners may be elected to serve, other than the governing board.

3 “Party” means a developer, an owner, a governing body, or an
4 occupant of a dwelling unit in a shared ownership community.

5 “Period of developer control” means the period of time during
6 which a developer has a controlling voting interest in the decisions
7 of the governing board of an association pursuant to section 5 of
8 P.L.1993, c.30 (C.45:22A-47), prior to the developer’s interests
9 terminating.

10 “Public Advocate” means the commissioner of the Department of
11 the Public Advocate.

12 “Shared ownership community” means a community in which
13 individual property owners are bound by a servitude in documents
14 required to be recorded for real property, which servitude requires
15 support of the shared or commonly-owned property, and the benefit
16 and use of the shared property is appurtenant to the individually-
17 owned property. A shared ownership community may consist of a
18 fee-simple estate, a leasehold, or an easement, unless the
19 responsibility for maintenance of such easement is determined by
20 the extent of actual use, and it may be any kind of property held or
21 enjoyed in common by owners of the individually owned property.
22 The term shall include, but not be limited to:

23 a development subject to a declaration, master deed or other
24 document enforced by an association;

25 a residential condominium, as that term is defined in section 3 of
26 P.L.1969, c. 257 (C. 46:8B-3 et seq.); and

27 a cooperative housing project.
28

29 4. (New section) This act is intended to supplement the law on
30 community associations, including, but not limited to, the
31 "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), the
32 “Horizontal Property Act,” P.L.1963, c.168 (C.46:8A-1 et seq.),
33 “The Planned Real Estate Development Full Disclosure Act,”
34 P.L.1977, c.419 (C.45:22A-21 et seq.), P.L.1993, c.30 (C.45:22A-
35 43 et seq.), and any other law hereinafter enacted regulating shared
36 ownership communities and associations. To the extent that any
37 other law conflicts with the provisions of P.L. , c. (C.)
38 (pending before the Legislature as this bill), the laws shall be
39 harmonized to the extent possible; however, in the event of any
40 unreconciled conflicts, the provisions of P.L. , c. (C.)
41 (pending before the Legislature as this bill) shall control.
42

43 5. (New section) a. The Legislature finds it is necessary and
44 in the public interest to form a special State entity to:

45 (1) foster proper operation of homeowners' associations,
46 condominium associations, and cooperative housing corporations;

1 (2) promote education, public awareness and association
2 membership understanding of the rights and obligations of living in
3 a shared ownership community;

4 (3) reduce the number and divisiveness of disputes, and
5 encourage informal resolution of disputes;

6 (4) maintain property values and quality of life in these
7 communities;

8 (5) assist and oversee in the development of coordinated
9 community and government policies, programs, and services which
10 support these communities; and

11 (6) prevent potential public financial liability for repair or
12 replacement of shared ownership community facilities.

13 b. There is established in, but not of, the Department of Law
14 and Public Safety, the Commission on Shared Ownership
15 Communities. The commission shall serve as the State liaison for
16 citizens residing in shared ownership communities, and shall
17 provide educational and reference materials as requested by an
18 association or its members. The commission, in conjunction with
19 the director, shall adopt governance standards for shared ownership
20 communities and their governing boards and managers, in
21 accordance with P.L. , c. (C.) (pending before the Legislature
22 as this bill), to promote fair and democratic governance and good
23 business practices within such communities, in accordance with the
24 “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et
25 seq.). The commission shall monitor requests for alternative
26 dispute resolution services, and, working in conjunction with the
27 Office of Consumer Protection within the Division of Consumer
28 Affairs in the Department of Law and Public Safety, shall
29 coordinate and facilitate the resolution of disputes and enforce
30 statutory rights in such communities.

31 c. The commission shall appoint an executive director of the
32 commission and such other personnel as may be deemed necessary.
33 The executive director and professional staff shall serve at the
34 pleasure of the commission and shall receive such compensation as
35 provided by law. The executive director and professional staff, and
36 all expenses of the commission, shall be paid from the portion of
37 the registration fees required to be collected and allocated pursuant
38 to section 7 of P.L.1977, c.419 (C.45:22A-27), and directed to be
39 used for the purposes of the commission pursuant to P.L. , c.
40 (C.) (pending before the Legislature as this bill). Members of
41 the commission shall not be paid compensation, but shall be entitled
42 to be reimbursed for reasonable travel and meal expenses, not to
43 exceed \$100 per occurrence.

44 d. The Attorney General shall provide legal representation to
45 the commission.

46 e. The commission shall be comprised of 12 voting members.
47 Eleven public members shall be recommended for appointment by
48 the Attorney General and appointed by the Governor, as follows:

- 1 (1) One member shall be a resident of a shared ownership
2 community containing fewer than 26 units;
- 3 (2) One member shall be a resident of a shared ownership
4 community located in the northern region of the State;
- 5 (3) One member shall be a resident of a shared ownership
6 community located in the central region of the State;
- 7 (4) One member shall be a resident of a shared ownership
8 community located in the southern region of the State;
- 9 (5) One member shall be a resident of a cooperative housing
10 corporation;
- 11 (6) One member shall be a resident of an age-restricted shared
12 ownership community; and
- 13 (7) One member shall be a resident of a shared ownership
14 community containing more than 499 units.
- 15 Of the members selected under subparagraphs (1) through (7), no
16 more than three may include current members or former members
17 of association governing boards;
- 18 (8) One member shall be selected from developers of shared
19 ownership communities.
- 20 (9) Two members shall be selected from persons who are
21 members of professions associated with shared ownership
22 communities; one shall be an attorney, and one shall be a
23 professional community association manager; and
- 24 (10) One member who shall be a certified public accountant.
- 25 (11) The Public Advocate, or the Public Advocate's designee,
26 shall serve as an ex-officio voting member of the commission, and
27 shall represent the rights and interests of low and moderate income
28 households residing in dwelling units reserved by deed restriction
29 for occupancy by such households within shared ownership
30 communities.
- 31 f. Each public member shall serve a three-year term. Of the
32 members first appointed, one-third shall be appointed for one-year
33 terms, one-third shall be appointed for two-year terms, and one-
34 third shall be appointed for three-year terms. A member shall not
35 serve more than two consecutive full terms. A member appointed to
36 fill a vacancy shall serve the rest of the unexpired term. Members
37 shall continue in office until their successors are appointed and
38 qualified.
- 39 g. All public members shall serve at the pleasure of the
40 Governor.
- 41 h. The members of the commission shall elect annually a
42 chairman of the commission. The commission shall meet at the call
43 of the chair as often as required to perform its duties, but shall meet
44 at least quarterly. A majority of the voting members shall be a
45 quorum for the transaction of business, and a majority of the voting
46 members present at any meeting may take any official action.
- 47 i. The Director of the Division of Consumer Affairs shall
48 arrange for offices and supplies for staff of the commission as

1 appropriate, and shall be entitled to reimbursement for all costs
2 incurred in complying with the provisions of P.L. , c. (C.)
3 (pending before the Legislature as this bill) from the funds available
4 from the fees collected from developers of planned real estate
5 developments pursuant to subsection e. of section 7 of P.L.1977,
6 c. 419 (C.45:22A-27).

7 j. The commission shall submit annually by March 1 of each
8 year, a report to the Legislature and the Governor covering its
9 activities of the previous calendar year, summarizing its activities,
10 needs, and recommendations, and the extent to which the goals of
11 P.L. , c. (C.) (pending before the Legislature as this bill) are
12 being met, in the manner provided under section 2 of P.L. 1992,
13 c.164 (C.52:14-19.1).

14
15 6. (New section) Any party in a shared ownership community
16 may request alternative dispute resolution services from the
17 Commission on Shared Ownership Communities established
18 pursuant to section 5 of P.L. , c. (C.) (pending before the
19 Legislature as this bill), in accordance with the provisions of section
20 7 of P.L. , c. (C.) (pending before the Legislature as this
21 bill).

22 For the purposes of this section, “dispute” shall be interpreted
23 broadly to mean any matter for which a resolution is sought which
24 is connected in some relevant manner to a shared ownership
25 community or its association.

26 a. Prior to the filing of a request for dispute resolution with the
27 Commission on Shared Ownership Communities, a party shall make
28 a good faith effort to utilize the dispute resolution procedures
29 required to be adopted by their respective community association
30 pursuant to section 2 of P.L.1993, c. 30 (C.45:22A-44), or any
31 reallocation thereof, and section 14 of P.L.1969, c. 257 (C.46:8B-
32 14). If the dispute resolution services provided or arranged by the
33 association do not resolve the dispute in the view of any of the
34 parties, then any of those parties may file a request with the
35 Commission on Shared Ownership Communities. The commission
36 shall process all requests for dispute resolution in accordance with
37 rules to be promulgated by the commission and the Attorney
38 General, in accordance with the provisions of P.L. , c. (C.)
39 (pending before the Legislature as this bill).

40 b. In the event a party alleges that a violation of statutory law,
41 or any regulations promulgated thereto, or that a violation of
42 association governing documents, has occurred by a governing
43 board or a governing board member of an association, then that
44 party may submit a request for review and enforcement
45 consideration pursuant to section 8 of P.L. , c. (C.) (pending
46 before the Legislature as this bill).

47 c. Prior to filing a lien for unpaid fines assessed upon an
48 owner, an association shall be required to submit the matter for

1 review through arbitration arranged by the commission through the
2 Division of Consumer Affairs in the Department of Law and Public
3 Safety, in accordance with section 9 the provisions of P.L. ,
4 c. (C.) (pending before the Legislature as this bill.). Only those
5 liens based on fines imposed which are submitted in accordance
6 with this section and section 9 shall be eligible for recording with
7 the county recording office.

8
9 7. (New section) The Executive Director of the Commission
10 on Shared Ownership Communities shall review all requests for
11 dispute resolution services which are received by the commission,
12 and shall:

13 a. issue a letter opinion advising the requester of available
14 options or solutions, or the applicability of the provisions of P.L. ,
15 c. (C.) (pending before the Legislature as this bill) to a
16 particular set of facts, in lieu of the provision of alternative dispute
17 resolution services (ADR);

18 b. arrange for ADR services to be provided within a reasonable
19 period of time through the dispute resolution programs of the
20 Division of Consumer Affairs in the Department of Law and Public
21 Safety, in accordance with regulations to be promulgated by that
22 department;

23 c. arrange for a hearing to proceed in accordance with section 8
24 of P.L. , c. (C.) (pending before the Legislature as this bill)
25 for an alleged violation of regulatory or statutory law; provided,
26 however, that the executive director may arrange for ADR services
27 in lieu of a hearing for allegations of violations of governing
28 documents, at his discretion;

29 d. arrange for a special hearing panel for claims concerning
30 construction deficiencies; or

31 e. request the commission's preliminary review of any request
32 which the executive director deems frivolous, unreasonable, or
33 lacking any basis in fact, prior to arranging for ADR services, or
34 submitting a matter for review for enforcement action. If the
35 commission deems the request frivolous, unreasonable, or lacking
36 any basis in fact, it shall reject the request.

37 The executive director of the commission shall be authorized to
38 act on behalf of the commission to process initial claims and make
39 arrangements for the provision of dispute resolution services or
40 hearings. The executive director of the commission shall also be
41 authorized to act on behalf of the commission to impose a stay on
42 the actions of any governing board pending the processing and
43 resolution of a request.

44
45 8. (New section) a. The executive director shall arrange for a
46 hearing for allegations of a violation of statutory or regulatory law,
47 or may arrange for a hearing for allegations of violations by
48 members of the governing board of the governing documents of an

1 association, within 10 business days for claims of election fraud,
2 and 90 calendar days of the receipt of all other types of requests, as
3 follows:

4 The executive director of the commission shall arrange for the
5 services of an arbitrator through the local consumer affairs offices
6 of the Division of Consumer Affairs, through any other dispute
7 resolution programs of the division, or alternatively, by
8 interdepartmental agreement, may arrange for the services of the
9 Department of the Public Advocate, to conduct the hearing which
10 shall be a binding arbitration, or, if a majority of its members
11 approves, the commission may convene a hearing panel, and may
12 make determinations with at least five of its members participating.

13 b. At the hearing authorized to be conducted pursuant to this
14 section, the panel or arbitrator, as the case may be, shall give full
15 hearing to both the complaint of the resident or residents and to any
16 evidence in contradiction or mitigation that the association, if
17 present or represented and offering such evidence, may present. At
18 the conclusion of the hearing, the arbitrator or panel shall
19 determine, if required, from the circumstances of the case:

20 (1) whether the governing documents are deficient under the
21 law, or violate any provision of P.L. , c. (C.) (pending
22 before the Legislature as this bill) or any other statute or regulation
23 relevant to homeowners' associations;

24 (2) whether the actions of any members of the governing board
25 or its employees or agents violate statutory law;

26 (3) whether the governing documents were violated by any
27 party;

28 or

29 (4) under a claim of election fraud, whether the election
30 proceedings comported with the standards promulgated by the
31 commission, and if they did not, should the election be voided, and
32 a new election ordered.

33 c. (1) On all matters the commission shall have the authority,
34 on the basis of the arbitrator's findings or the hearing panel's
35 determination, to install a temporary governing body in the event it
36 is determined that no properly-elected members are serving on the
37 governing body.

38 (2) The commission shall also have the powers necessary to
39 reform deficient governing documents that do not comply with the
40 provisions of P.L. , c. (C.) (pending before the Legislature
41 as this bill), or any other State or federal law to make those
42 documents comply.

43 (3) The commission shall have the power to impose fines on
44 governing board members, or a governing board's employees or
45 agents, equal to those powers granted by the Legislature to
46 governing boards permitting them to impose fines on members of
47 associations.

1 (4) The commission shall have the power to stay a lien filing for
2 an assessment, attorney's fees, or late fees if it is determined
3 through either an ADR or a hearing that the basis for the lien is not
4 warranted or on the basis that the association has not registered with
5 the commission; the commission shall also have the power to order
6 a release of lien to be prepared and filed by an association.

7 (5) The commission may:

8 (a) petition the court to appoint a receiver of a shared ownership
9 development in any case in which the developer has abandoned the
10 development;

11 (b) in the case of a shared ownership community which has
12 more than 50 percent of its units foreclosed upon, appoint a
13 governing board from the members of the association who are not
14 banks, mortgagees or other lending institutions which hold the units
15 through foreclosures, and appoint a property manager, which
16 appointment power shall terminate upon the owners, other than
17 foreclosing banks or mortgages, holding a 51 percent voting interest
18 in the association, electing their own governing board and
19 contracting on their own behalf for management services.

20 (c) appoint to the governing board of an association a temporary
21 member to replace the voting interests of the developer, in the event
22 the developer has filed for bankruptcy.

23 (d) appoint a temporary property manager for an association that
24 has a dispute under review, when that association has no properly
25 elected governing board members and no property manager, which
26 appointment shall be effective until valid elections are held or until
27 the community terminates in accordance with law.

28 d. The commission, in conjunction with the Director of the
29 Division of Consumer Affairs and the Director of the Division of
30 Codes and Standards in the Department of Community Affairs,
31 shall empanel a select advisory panel for claims concerning
32 construction defects in common elements. The panel should be
33 comprised, to the extent feasible, of individuals with significant
34 knowledge in the construction of residential housing and other
35 structures, and may include any of the following:

36 (1) members of a county construction board of appeals;

37 (2) members of the code advisory board in the Department of
38 Community Affairs; or

39 (3) local code enforcement officials;

40 but shall not include any officials or individuals who were or are
41 serving in a capacity which gave or gives them responsibility in any
42 manner for oversight of the specific construction which is the
43 subject of the dispute resolution.

44 Upon receiving a claim from an owners' coordinating council
45 concerning construction deficiencies or warranty issues pertaining
46 to common elements of a shared ownership community, the
47 executive director of the commission shall arrange for arbitration
48 for claims of construction defects in the common elements of a

1 shared ownership community, and, shall be authorized to utilize the
2 expertise of the select advisory panel to make a determination of
3 developer negligence or liability.

4 e. Hearings under P.L. , c. (C.) (pending before the
5 Legislature as this bill may be conducted:

6 (1) by the division at the local consumer affairs office servicing
7 the region in which the homeowners' association is located;

8 (2) by the commission with at least five of its members
9 participating, if no local panel is available to the division; or

10 (3) by an arbitrator selected by the director.

11 f. (1) If any person summoned to be examined pursuant to this
12 section shall refuse to be sworn, or to affirm, or to testify, or to
13 answer a proper question, or to produce the books, papers,
14 documents or tangible things demanded, or shall otherwise engage
15 in misconduct, the Superior Court may, on motion, and after
16 affording that person the opportunity to be heard, punish that person
17 in the same manner as like failure is punishable in a case pending in
18 the court.

19 (2) Orders of an arbitrator under this section, if binding
20 arbitration has been selected, shall be binding upon the parties. The
21 failure of any person to obey a binding order of the arbitrator issued
22 in accordance with this section shall be punishable as contempt of
23 court by the court in the same manner as like failure is punishable
24 in an action pending in the court when the matter is brought before
25 the court by motion filed by the Attorney General and supported by
26 affidavit stating the circumstances. In the case of a finding by the
27 commission that an officer or trustee of the governing body
28 knowingly or willfully failed to follow the governing documents,
29 such officer or trustee shall be deemed to have vacated their
30 position on the governing body, and a new election for his or her
31 position shall be held within 90 days of the finding.

32
33 9. (New section) a. The commission shall arrange for
34 arbitration on all proposed lien filings based on fines imposed
35 within 15 days of submission by an association. A determination to
36 approve or disapprove an association's request for lien filing on the
37 basis of fines imposed shall be made no later than 60 days from the
38 date of the claim submission. Extensions may be granted to any
39 party to submit additional information; however, the commission
40 shall have the discretion to disapprove a lien filing upon the
41 repeated failure of an association to provide requested information
42 to either entity.

43 b. The director shall establish expedited procedures to approve
44 or disapprove lien filings for unpaid fines, and shall establish the
45 forms required to be filed with the county clerk to authorize such
46 lien filing when approved pursuant to this section.

47 c. Unless otherwise specified in P.L. , c. (C.) (pending
48 before the Legislature as this bill), all hearings and alternative

1 dispute resolution procedures shall be conducted in accordance with
2 procedures adopted by the agency providing the services, and
3 relevant applicable law. Dispute resolution may be handled as a
4 binding arbitration at the discretion of the commission; if so, an
5 appeal may be made only to the extent allowed for appeals made
6 under binding arbitration. An arbitrator shall make a final
7 determination in any matter no later than 90 days from the last
8 hearing date, but may grant reasonable continuances of the hearing
9 in order to fully investigate the matter.

10
11 10. (New section) Upon the adoption of the regulations required
12 to be promulgated pursuant to section 14 of P.L. , c. (C.)
13 (pending before the Legislature as this bill), every association as
14 defined under section 3 of P.L. , c. (C.) (pending before the
15 Legislature as this bill) shall complete and submit an annual
16 informational disclosure to the Commission on Shared Ownership
17 Communities established pursuant to section 5 of P.L. ,
18 c. (C.) (pending before the Legislature as this bill), on such
19 form and in such a manner as the commission shall require.
20 Thereafter, an association shall be required to disclose these items
21 annually to the commission, in accordance with its regulations.
22 There shall be no fees required of any association, or any member
23 of an association, for submitting such information.

24 At a minimum, the disclosure form shall require:

25 The name, location and address of the shared interest
26 community, and the number of dwelling units located therein;

27 A statement as to whether the association is incorporated, and the
28 location of the corporate agent;

29 The name of the most recently-elected officers or trustees of the
30 association, the length of their terms of office, and contact
31 information, including mailing addresses for each of them;

32 The name of the agent for service of process of the association;

33 The name of the developer of the community, if still actively
34 selling or renting in the community, and the developer's current
35 address, if known; and

36 Any additional information that the commission may deem
37 useful to carry out its purposes under P.L. , c. (C.) (pending
38 before the Legislature as this bill).

39
40 11. (New section) a. It shall be unlawful under P.L. 1960, c. 39
41 C.56:8-1 et seq.) for an association which has been formed to
42 manage a shared ownership community to violate the provisions of
43 P.L. , c. (C.) (pending before the Legislature as this bill.)

44 b. It shall be unlawful under P.L. 1960, c. 39 (C.56:8-1 et seq.)
45 for a developer of a shared ownership community to violate the
46 provisions of P.L. , c. (C.) (pending before the Legislature as
47 this bill).

1 c. The Alternative Dispute Resolution Program established by
2 the Division of Consumer Affairs in the Department of Law and
3 Public Safety shall be expanded to include dispute resolution
4 services to homeowners and residents of shared ownership
5 communities. The expanded program shall permit trained
6 volunteers who are also residents or professional employees of such
7 communities to participate in the provision of dispute resolution,
8 provided that for each dispute at least three volunteers shall be
9 utilized, and no more than one of them shall be an employee of, or
10 sit as a current member of, a homeowners' association governing
11 board, or has served as a member of a homeowners' association
12 governing board within the immediate preceding two years. A
13 property manager currently employed by an association shall not
14 participate as a dispute resolution volunteer for that association.

15 d. The director shall promulgate such rules and regulations as
16 necessary to effectuate this section pursuant to the "Administrative
17 Procedures Act," P.L. 1968, c. 410 (C.52:14B-1 et seq.).

18

19 12. (New section) a. The activities of the Commission on
20 Shared Ownership Communities shall be funded from the fees
21 imposed upon developers upon the registration of planned
22 developments pursuant to section 7 of P.L.1977, c. 419 (C.45:22A-
23 27), as amended by P.L. , c. (C.) (pending before the
24 Legislature as this bill).

25 b. In the event that these fees described in section a. of this
26 section are insufficient to defray the costs associated with the
27 provision of dispute resolution services under the provision of
28 P.L. , c. (C.) (pending before the Legislature as this bill), the
29 provider of dispute resolution services may charge an association a
30 reasonable fee to defray the costs of dispute resolution services
31 provided, or administrative costs incurred in connection with, the
32 provision of those services.

33 c. Dispute resolution services shall be deemed to be provided
34 upon the agreement of the commission to hear, or arrange for
35 mediation or arbitration. Those associations that have not provided
36 information as required pursuant to section 10 of P.L. ,
37 c. (C.) (pending before the Legislature as this bill) as of the
38 date dispute resolution services are deemed provided shall do so
39 immediately prior to the provision of services.

40

41 13. (New section) This section shall be known and may be cited
42 as the "Bill Of Rights And Responsibilities For Owners In Shared
43 Ownership Communities."

44 a. The commission shall publish the following and post on its
45 Internet site, the following information, as set off by quotation
46 marks:

47 "Bill Of Rights And Responsibilities For Owners In Shared
48 Ownership Communities.

1 As a member of a shared ownership community association:

2 (1) You have the right to be informed before buying a home in a
3 shared ownership community of the community's governing
4 documents, financial condition, assessments and fees, and its rules
5 and regulations. You have the duty to ask for this information from
6 the seller, to read and understand it, and to obey the rules if you buy
7 the home; You have the right to notify the Division of Consumer
8 Affairs in the Department of Law and Public Safety if a developer
9 has not furnished you with this information;

10 (2) You have the right to be treated with respect by your
11 neighbors and by the governing board members and managers of
12 your community. You have the duty to treat your neighbors,
13 directors, officers, and managers with respect.

14 (3) You have the right to privacy consistent with the law and the
15 reasonable rules of the community. You (and your tenants, if any)
16 have the duty to respect the rights of your neighbors to enjoy their
17 privacy.

18 (4) You have the right to prompt and effective service from your
19 association's governing board members or management. You have
20 the duty to pay your legitimately imposed assessments on time.

21 (5) You have the right to vote in elections and to vote on the
22 adoption of new rules, as permitted under State law; and to vote on
23 the assessments, when permitted by law or community rules. You
24 have the duty to inform yourself of the issues, and to vote on them.

25 (6) You have the right to vote to approve the sale of any of the
26 common elements or common property of the community as
27 provided under State law; and you have the right to vote to approve
28 the construction of any new common facilities or common elements
29 if those facilities were not listed on the master deed or declaration
30 as "to be built" when you purchased your individual property in the
31 community, as provided under State law. You have the duty to
32 participate in voting when required for association actions.

33 (7) You have the right to fair elections and to be nominated for
34 and to run for office. You have the duty to make sure that elections
35 are fair and that candidates for whom you vote are qualified.

36 (8) You have the right to honest and reasonable government
37 from your elected board and the managers it chooses. You have the
38 duty to participate in the affairs of the community by volunteering
39 your time and talents as needed and by informing yourself of the
40 board's activities.

41 (9) You have the right to be informed of your community's acts
42 and financial condition, including balances in reserve accounts, and
43 to inspect, and make copies of, its books and records. You have the
44 duty to know and understand its rules, and to provide to the
45 community any information required by the rules, unless prohibited
46 by law.

47 (10) You have the right to meet with your fellow owners to
48 discuss the community's and the board's conduct, free of charge.

1 You have the duty to obtain the information necessary to form a fair
2 and balanced opinion, and to promote positive solutions for the
3 good of the community.

4 (11) You have the right to fair treatment if you are charged with
5 a violation of the community rules. This includes the right to know
6 what rule is involved and to a fair hearing, and a right to appeal any
7 violation to the Commission on Shared Ownership Communities.
8 You have the duty to respond to any such claim promptly and
9 honestly, and to cooperate in good faith and in a civilized manner in
10 an effort to resolve the dispute.

11 (12) If you are unable to resolve disputes directly with your
12 community, you have the right to bring your dispute to the
13 Commission on Shared Ownership Communities, where it may be
14 resolved without the need for expensive litigation. You have the
15 duty first to bring your dispute to the attention of the community's
16 governing board and to allow the board a fair opportunity to
17 respond, and to use whatever dispute resolution procedures your
18 community requires, provided those procedures comport with State
19 law; if you bring your dispute to the commission you have the duty
20 to cooperate in the commission's complaint process and to treat
21 other parties with respect.

22 (13) You have the right to architectural and other rules (such as
23 parking or pets) that are properly adopted and published, that are
24 clear and reasonable, and that are fairly and consistently enforced.
25 You have the right to seek changes to any rules that you believe are
26 obsolete or inappropriate. You (and your tenants, if any) have the
27 duty to obey the rules, to follow the proper procedures to obtain any
28 required permission for modifications you wish to make, and to
29 keep the area around your home clean and free of trash, pests, and
30 other nuisances.”

31 b. Nothing in this section shall be construed as permitting the
32 rights enumerated in this section to be waived in any manner by any
33 association or owner.

34 c. Nothing in this section shall be construed as prohibiting the
35 waiver of any constitutional rights by an owner, provided that any
36 waiver so executed shall be in writing and shall contain
37 documentation that the owner has:

38 (1) a specific knowledge of the constitutional right being waived;
39 and

40 (2) made an intentional decision to abandon the protection of the
41 constitutional right.

42

43 14. (New section) a. Within 120 days of the effective date of
44 P.L. , c. (C.) (pending before the Legislature as this bill),
45 the commission shall adopt, and from time to time review for
46 amendment, minimum standards for conduct for shared ownership
47 community associations, which shall include, but not be limited to,
48 all the requirements for such associations as provided in P.L. ,

1 c. (C.) (pending before the Legislature as this bill) on such
2 matters as elections, including recall elections, voting, access to
3 records, maintenance and retention of records, minutes, association-
4 provided dispute resolution services, bidding, audits, and conflicts
5 of interests. The commission may adopt more specific requirements
6 for each of these matters than those required pursuant to P.L. ,
7 c. (C.) (pending before the Legislature as this bill), provided
8 that the standards adopted comport with the intent of the Legislature
9 to foster democracy and fairness in matters of governance by an
10 association, and protect the rights of owners to vote on matters
11 guaranteed under P.L. , c. (C.) (pending before the
12 Legislature as this bill).

13 b. The commission shall establish a program and materials for
14 the training of owners who are elected to serve on the governing
15 boards of shared ownership communities. At least two hours of
16 training shall be mandatory on the part of board members, which
17 shall be completed no later than 180 days prior to the expiration of
18 the member's term of office. The program shall provide guidance
19 on all of the information relevant to a board member effectively
20 serving at the helm of their community, and shall include good
21 business practices, model record keeping procedures, legal
22 requirements for boards, the making of a budget and maintaining
23 reserve accounts, information on various State entities available to
24 assist the board, and any other information the commission deems
25 relevant. The commission shall have the authority to remove a
26 board member who does not complete the training required pursuant
27 to this section.

28 c. The commission shall adopt forms and procedures for the
29 disclosure of information by associations as required pursuant to
30 section 10 of P.L. , c. (C.) (pending before the Legislature
31 as this bill).

32 d. The commission shall maintain an Internet site to effectuate
33 the purposes of P.L. , c. (C.) (pending before the Legislature
34 as this bill).

35 The commission shall adopt the regulations necessary to
36 effectuate this section pursuant to the "Administrative Procedure
37 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

38

39 15. (New section) Within 120 days of the effective date of
40 P.L. , c. (C.) (pending before the Legislature as this bill), the
41 director, in consultation with the Commission of Shared Ownership
42 Communities, established pursuant to section 5 of P.L. ,c. (C.)
43 (pending before the Legislature as this bill), shall:

44 a. cause to be prepared and distributed in written form and on
45 available on the Internet, a booklet, which shall be made available
46 to the general public, to associations and to homeowners in shared
47 ownership communities, and which shall serve as a general guide to
48 community associations. The booklet shall be distributed free of

1 charge by the association to each homeowner and by each developer
2 to prospective purchasers prior to the signing of a sales contract; it
3 shall be the duty of each seller of a unit to provide a copy of the
4 booklet to a purchaser of the unit before the time of signing of the
5 sales contract. The booklet shall include at least the following:

6 (1) An explanation of the nature of home ownership in a shared
7 ownership community and a glossary of relevant terms, including,
8 but not limited to, "master declaration," "bylaws," "master deed,"
9 "covenants and restrictions," "common elements," "liens," "fines,"
10 "rules," "alternative dispute resolution," "fees," and "governing
11 board";

12 (2) A description of the rights and responsibilities of
13 homeowners, including those contained in section 12 of P.L. ,
14 c. (C.) (pending before the Legislature as this bill);

15 (3) A description of the duties and powers of, and restrictions on,
16 governing boards, including reference to any applicable statutes,
17 regulations, and relevant court decisions. The booklet shall include
18 information concerning conflict of interest requirements applicable
19 to governing board members, officers and to professionals hired by
20 associations and shall also include reference to any other sources of
21 information that may be recommended by the commission as being
22 of assistance to governing board members and officers in the
23 discharge of their duties;

24 (4) A description of the statutory and regulatory requirements
25 for association bylaws or rules and such other material as the
26 commission shall deem useful;

27 (5) A description of the special rules applicable to units which
28 are subject to affordability controls, including municipal ordinances
29 or other items which may affect the payment of common expenses,
30 and reference materials concerning resale controls which may apply
31 to such units;

32 (6) A description and reference to the federal law concerning the
33 housing for older persons exception from discrimination under the
34 federal Fair Housing Act Amendments of 1988, which applies to
35 age-restricted communities; and

36 (7) A listing of documents and other information that a potential
37 purchaser of a unit in a shared ownership community should obtain
38 before entering into a contract to purchase a unit, including, but not
39 limited to: copies of the association's governing documents; a copy
40 of the latest capital reserve study, if any, showing the condition, life
41 expectancy, and replacement costs of major mechanical systems and
42 other common elements; any litigation pending against the
43 association; any pending notices or orders issued by any
44 governmental entity; the association's procedures for alternate
45 dispute resolution and an explanation of statutory and regulatory
46 requirements, process of adopting rules, conducting elections,
47 providing access to records, approval of budgets, and review of
48 homeowners' applications to do work on their units; delinquency

1 and foreclosure rates; the association's insurance coverages; and
2 governmental and non-governmental remedies available in the event
3 of violation of the rights of unit owners. These documents and this
4 information shall be made available to prospective purchasers upon
5 written request and copies shall be provided, for a charge not
6 exceeding the reasonable cost of copying or printing, to any person
7 who has contracted to purchase a unit or home within the shared
8 ownership community; and

9 b. make publicly available by means of electronic Internet
10 technology all of the material required pursuant to this section.

11 The Director of the Division of Consumer Affairs shall
12 promulgate such regulations as are necessary to effectuate this
13 section pursuant to the "Administrative Procedure Act," P.L.1968,
14 c.410 (C.52:14B-1 et seq.).
15

16 16. (New section) a. In a shared ownership community, each
17 purchaser of a dwelling unit, or leasehold interest derived through
18 the purchase of shares, in the case of a cooperative housing
19 corporation, shall be deemed to have a proportional ownership
20 interest in the common elements of the shared ownership
21 community, which interests shall arise concomitantly with the
22 purchase of a unit, house, or leasehold unit in the shared ownership
23 community. The ownership interests in the shared property of a
24 shared ownership community for each purchaser of a dwelling unit,
25 house, or cooperative leasehold unit shall be expressed in the
26 association documents as follows:

27 (1) for a condominium, a proportional undivided interest
28 assigned to each unit, as required pursuant to P.L.1969, c. 257 (C.
29 46:8B-1 et seq.);

30 (2) for a cooperative, a proportional interest in the cooperative
31 corporation, expressed in shares; or

32 (3) for a planned development, a proportional interest assigned
33 in the same proportion as the common expense liability for each
34 member; however, title to the common property may be in the name
35 of the association collectively on behalf of all members, or it may
36 be reflected as an interest allocated to each individually-owned
37 property, in the manner as permitted for a condominium pursuant to
38 P.L.1969, c. 257 (C. 46:8B-1 et seq.).

39 b. A developer of a shared ownership community shall be
40 deemed to be the owner of any unsold units, and any common
41 elements interests assigned to such unsold units. During the period
42 of developer control of an association as defined pursuant to section
43 5 of P.L.1993, c.30 (C.45:22A-47), a developer shall be deemed the
44 owner of the interests in the common elements which have not
45 otherwise been assigned to individual owners.

46 c. The provisions of this section shall be deemed to control all
47 declarations, master deeds, and bylaws, regardless of the date of the
48 formation of the shared ownership community.

1 17. (New section) Ownership rights in the common property of
2 a shared ownership community shall be construed broadly to:

3 a. prohibit long-term developer control of an association
4 beyond the time period authorized under section 5 of P.L.1993, c.30
5 (C.45:22A-47);

6 b. prohibit the delegation of powers from a constituent
7 association to a master association in the community whenever the
8 delegation of powers affects property, or the responsibility for
9 property, which is not the common property of all members of the
10 master association or affects services not shared in common by all
11 members of the community; and

12 c. require a vote of approval by at least 67 percent of the
13 members of the association prior to the sale of any common
14 elements or to the construction of any new common elements which
15 were not listed in the association documents to be constructed by
16 the developer or the association, and which are not considered
17 repairs or enhancements to current common elements under the
18 criteria set forth in section 21 of P.L. , c. (C.) (pending
19 before the Legislature as this bill). No action shall lie or be brought
20 by an association to compel the members of the association to vote
21 to approve any of the items in this subsection.
22

23 18. (New section) The governing board and its agents, servants,
24 and employees, shall act in accordance with the properly recorded
25 bylaws of the association. For the purposes of this section, properly
26 recorded means recorded in the official government recording office
27 for such documents in the county in which the real property is
28 located.

29 a. In addition to the provisions of P.L.1969, c.257 (C.46:8B-1
30 et seq.) and P.L.1993, c.30 (C.45:22A-43 et seq.) which provide
31 requirements for bylaws, the bylaws of an association shall include,
32 and, if they do not, shall be deemed to include, the following
33 provisions:

34 (1) The form of administration of the association shall be
35 described, providing for a governing board, specifying the powers,
36 duties, manner of selection and removal, and compensation, if any,
37 of the officers, directors, or trustees of the governing board. Unless
38 otherwise provided in the bylaws, the governing board shall consist
39 of five members. The governing board shall elect from among its
40 members a president, vice president, secretary, and treasurer, who
41 shall perform the duties of those offices customarily performed by
42 officers of nonprofit corporations. On or after the effective date of
43 P.L. , c. (C.) (pending before the Legislature as this bill),
44 these officers shall serve without compensation, unless
45 compensation is authorized by a vote of 67 percent of all members
46 eligible to vote, which shall be effective for a period of no longer
47 than three years. The governing board may appoint and designate
48 other officers and assign them such duties as it deems appropriate.

1 (2) (a) The method for providing notice to members and the
2 holding of meetings of the association; provided that a meeting of
3 the members shall be held at least annually, and a requirement that
4 minutes be kept at every meeting;

5 (b) inclusion in at least one meeting notice annually a disclosure
6 of the fact that owners may file requests for dispute resolution with
7 the Commission on Shared Ownership Communities and a
8 statement made to that effect at that meeting; and

9 (c) a requirement that the minutes of all meetings of the
10 members and of all meetings of the governing board be kept and
11 made available to the members within a reasonable time after the
12 meeting. Minutes shall be kept in a businesslike manner, shall
13 reflect accurately what was discussed at the meeting, but need not
14 be verbatim, and shall be available for inspection by members, or
15 their authorized representatives, and board members at reasonable
16 times. The association shall retain these minutes for a period of not
17 less than seven years. Minutes of closed sessions shall be made
18 available in a redacted form if required pursuant to regulations of
19 the Commission on Shared Ownership Communities.

20 (3) The share or percentage of, and the manner of sharing,
21 common expenses for each member shall be stated. The manner of
22 sharing the common expenses for each member of a planned
23 development constructed on or after the effective date of
24 P.L. , c. (C.) (pending before the Legislature as this bill),
25 containing only single family homes on separate lots shall be on a
26 per unit basis. Members of associations of shared ownership
27 communities constructed prior to the effective date of
28 P.L. , c. (C.) (pending before the Legislature as this bill)
29 shall be permitted to petition their association governing board to
30 call for a meeting to vote to change the method of sharing the
31 common expenses, upon obtaining the signatures of at least five
32 percent of all of the members of the association. The share or
33 percentage of obligation for the common expenses shall not be
34 computed on a different basis than the allocation of interests in the
35 common property among the individual unit or home owners in any
36 community.

37 (4) The manner of collecting from the members their shares of
38 the expenses for the maintenance of the shared ownership
39 community property shall be stated. Assessments shall be made
40 against members not less frequently than quarterly, in amounts not
41 less than are required to provide funds in advance for payments of
42 all of the anticipated current operating expenses and for all of the
43 unpaid operating expenses previously incurred. The Commission
44 on Shared Ownership Communities may vary from the provisions
45 of this subparagraph by regulation.

46 (5) The method by which the bylaws may be amended
47 consistent with the provisions of P.L. , c. (C.) (pending
48 before the Legislature as this bill) shall be stated. If the bylaws fail

1 to provide a method of amendment, the bylaws may be amended if
2 the amendment is approved by no less than two-thirds of the
3 members. No bylaw shall be revised or amended by reference to its
4 title only.

5 (6) The officers and directors or trustees of the association shall
6 have a fiduciary relationship to the members.

7 (7) (a) Any member of the governing board may be recalled and
8 removed from office, with or without cause, by the vote of, or
9 agreement in writing by, a majority of all members of the
10 association, provided that any vote to recall shall be initiated only
11 upon a petition of at least five percent of all owners. A special
12 meeting of the association membership to vote for the recall of a
13 member or members of the governing board shall thereafter be held,
14 giving notice of the meeting as required for a meeting of members,
15 and the notice shall state the purpose of the meeting.

16 (b) Any member of an association shall be permitted to request a
17 hearing before the commission whenever a petition for a recall vote
18 has been presented to a governing board in accordance with this
19 subparagraph, and the board has failed to call for a special meeting
20 of the association within 20 days of the receipt of the petition.
21 Under such circumstances, the governing board shall be barred from
22 expending resources to delay the holding of a special meeting, but
23 shall be permitted to expend such funds as are necessary to confirm
24 the validity of the petition. The commission may consider whether
25 it is necessary to escrow funds of any association pending such a
26 special meeting. Notwithstanding this subparagraph, if there are
27 less than 45 calendar days until the next scheduled election, the
28 holding of a special meeting shall not be required.

29 (8) A procedure for notifying the governing board if a member
30 intends to make an audio or video recording of a meeting; provided
31 that permission to make an audio recording for a member's own use
32 shall not be denied to a member, regardless of whether the
33 governing board arranges to record the same meeting. The board
34 shall announce prior to the start of a meeting whether an audio or
35 video recording is being made.

36 (9) A requirement for maintaining adequate insurance to protect
37 the association and the property comprising the common elements
38 of the shared ownership community. Insurance shall cover
39 replacement costs, and deficits in insurance coverage on common
40 elements shall not be chargeable to any individual unit owner. A
41 copy of each policy of insurance in effect shall be made available
42 for inspection by members at reasonable times.

43 (10) A method of adopting and of amending administrative rules
44 and regulations governing the details of the operation and use of the
45 shared ownership community property; and

46 (11) Restrictions on, and requirements respecting the time, place,
47 and manner of the use of the common community property, so long
48 as such restrictions and requirements are not inconsistent with the

1 association documents, P.L. , c. (C.) (pending before the
2 Legislature as this bill), the regulations of the Commission on
3 Shared Ownership Communities, and any other local, federal, or
4 State law.

5 b. Whether or not incorporated, the association shall be an
6 entity which shall act through its officers and may enter into
7 contracts, bring suit, and be sued. If the association is not
8 incorporated, it may be deemed to be an entity existing pursuant to
9 P.L. , c. (C.) (pending before the Legislature as this bill) and
10 a majority of the members of the governing board or of the
11 association, as the case may be, shall constitute a quorum for the
12 transaction of business. Process may be served upon the association
13 by serving any officer of the association or by serving the agent
14 designated for service of process. Service of process upon the
15 association shall not constitute service of process upon any
16 individual unit owner.

17 c. The Commission on Shared Ownership Communities may
18 promulgate more specific guidelines for bylaw provisions, in
19 accordance with the provisions and purposes of P.L. , c. (C.)
20 (pending before the Legislature as this bill), in order to foster
21 transparent and democratic governance in shared ownership
22 communities. Such guidelines may include bidding procedures,
23 restrictions on conflicts of interests, meeting and minutes
24 requirements, or any matters which the commission deems
25 necessary to minimize disputes and promote transparent and
26 democratic governance within shared ownership communities.

27
28 19. (New section) a. Any management, employment, service or
29 maintenance contract, or contract for the supply of equipment or
30 material which is directly or indirectly made by or on behalf of an
31 association, during the period of developer control pursuant to
32 section 5 of P.L.1993, c.30 (C.45:22A-47), shall not be entered into
33 for a period in excess of two years. Any such contract or lease may
34 not be renewed or extended for periods in excess of two years and
35 at the end of any two-year period, an association may terminate any
36 further renewals or extensions thereof.

37 b. Notwithstanding the above, any management contract or
38 agreement entered into after the effective date of P.L. , c. (C.)
39 (pending before the Legislature as this bill) shall terminate 90 days
40 after the first meeting of a governing board whose decisions are not
41 subject to the voting control of the developer pursuant to section 5
42 of P.L.1993, c.30 (C.45:22A-47), unless the owner-controlled
43 governing board ratifies the contract or agreement.

44
45 20. (New section) a. An association shall maintain all records
46 concerning the business and governance matters of the association,
47 in accordance with generally accepted accounting standards and
48 principles.

1 The records required to be maintained shall include, but not be
2 limited to:

3 (1) records of receipts and expenditures, cancelled checks,
4 general ledgers, and copies of contracts or any other legal
5 documents, including, but not limited to, opinions of the association
6 attorney construing the governing documents, correspondence with
7 any federal, State, or local governmental entity; and

8 (2) An account for each member, designating the name and
9 current mailing address of the member, the amount of each
10 assessment, the dates on which and amounts in which the
11 assessments come due, the amount paid on the account, and the
12 balance due.

13 b. Records shall be open to inspection by association members
14 or their authorized representatives at reasonable times, and written
15 summaries of such records shall be supplied at least annually to the
16 members or their authorized representatives. All records required
17 to be available for inspection by association members shall be
18 maintained by an association for a period of not less than seven
19 years. The records may be permitted to be maintained in a
20 graphically-based form on an easily accessible electronic media,
21 from which copies may be reproduced.

22 (1) An association shall not charge a fee to an owner for
23 viewing or copying association records which exceeds the cost
24 permitted to be charged to a requester under section 6 of P.L.2001,
25 c.404 (C.47:1A-5).

26 (2) A requesting owner who is denied access to an association
27 record by the custodian of the record, at the option of the owner,
28 may:

29 (a) institute a proceeding to challenge the custodian's decision
30 by filing an action in Superior Court which shall be heard in the
31 vicinage where it is filed by a Superior Court Judge who has been
32 designated to hear such cases because of that judge's knowledge and
33 expertise in matters relating to access to records; or

34 (b) in lieu of filing an action in Superior Court, file a request for
35 assistance in obtaining records with the Commission on Shared
36 Ownership Communities established pursuant to section 5 of
37 P.L. , c. (C.) (pending before the Legislature as this bill).

38 In the event a proceeding is instituted under subparagraph (a) of
39 this paragraph, the failure of the association to permit inspection of
40 its accounting records by members or their authorized
41 representatives shall entitle any persons prevailing in an
42 enforcement action to recover reasonable attorney's fees from the
43 person in control of the books and records, if that person, who
44 directly or indirectly, knowingly denied access to the books and
45 records for inspection.

1 21. (New section) Notwithstanding any association document,
2 or any law to the contrary, on or after the effective date of P.L. ,
3 c. (C.) (pending before the Legislature as this bill):

4 a. Construction of any new common element not listed or
5 contemplated on the master deed or declaration shall require an
6 amendment to the declaration. For the purposes of this subsection
7 “construction” shall include construction, reconstruction, or
8 substantial alteration of a common element whenever the
9 construction, reconstruction, or alteration does not involve repair or
10 replacement using substantially the same materials as the original
11 construction to that existing common or limited common element,
12 but shall not mean any construction undertaken pursuant to a
13 governmental or court order. This subsection shall not apply to
14 construction, or financing in conjunction with that construction,
15 undertaken by a developer in accordance with the association
16 documents.

17 b. Except as expressly permitted in this section, an association
18 shall not collect from its members as part of the customary
19 association assessment, or pay from association funds, dues or
20 contributions to any private trade or industry organization
21 concerning community associations, or make contributions for
22 charitable or political purposes. An association may collect dues,
23 or charitable or political contributions if authorized under the
24 bylaws, but such collections shall be stated separately from the
25 billing for customary monthly maintenance charges, shall be clearly
26 designated as voluntary, and if unpaid, may in no case be assessable
27 or collectible as an unpaid common expense against an owner. A
28 contribution to any private trade or industry organization through a
29 property management company or property manager on behalf of an
30 association is prohibited. An association violating this subsection
31 shall be subject to sanctions by the Commission on Shared
32 Ownership Communities, as set forth in P.L. , c. (C.)
33 (pending before the Legislature as this bill). Any member of a
34 governing board who knowingly violates this subsection shall be
35 removed from the governing board by the Commission on Shared
36 Ownership Communities, and a new election ordered for that
37 position.

38 c. Regardless of any governing documents to the contrary, an
39 owner of more than one unit shall not have attributed to him or her
40 more than 50 percent of all of the votes in the association. This
41 subsection shall not apply to shared ownership communities
42 containing less than four dwelling units; provided that this number
43 may be modified by the Commission on Shared Ownership
44 Communities pursuant to regulations.

45
46 22. (New section) a. Unless the members of an association
47 have determined, by a majority vote at a duly called meeting of the
48 members, to provide no reserves or fewer reserves than required by

1 this subsection, in addition to annual operating expenses, the budget
2 of an association shall include individual reserve accounts for
3 capital expenditures and deferred maintenance. These accounts
4 shall include, but are not limited to, roof replacement, building
5 painting, and pavement resurfacing, regardless of the amount of
6 deferred maintenance expense or replacement cost, and for any
7 other item for which the deferred maintenance expense or
8 replacement cost exceeds \$10,000. The amount to be reserved shall
9 be computed by means of a formula which is based upon estimated
10 remaining useful life and estimated replacement cost or deferred
11 maintenance expense of each reserve item. The association may
12 adjust replacement reserve assessments annually to take into
13 account any changes in estimates or extension of the useful life of a
14 reserve item caused by deferred maintenance.

15 b. Reserve funds and any interest accruing thereon shall remain
16 in the individual reserve account or accounts, and shall be used only
17 for authorized individual reserve expenditures unless their use for
18 other purposes is approved in advance by a majority vote of all of
19 the members.

20 c. In a multi-association community, only the voting interests
21 of the units subject to assessment to fund the reserves in question
22 shall be eligible to vote on questions that involve waiving or
23 reducing the funding of reserves, or using existing reserve funds for
24 purposes other than purposes for which the reserves were intended.

25 d. The budget, account balances, and reserve accounts shall be
26 disclosed to owners in an annual financial statement, and to
27 prospective purchasers upon the signing of a contract for sale.
28 Associations shall have audits performed by a certified public
29 accountant at least once every three years. The audit reports shall
30 be filed with the Commission on Shared Ownership Communities,
31 established pursuant to section 5 of P.L. , c. (C.) (pending
32 before the Legislature as this bill). The commission may waive the
33 requirement for an audit for associations with diminutive annual
34 expenditures, and in addition may adopt regulations concerning the
35 frequency and type of audits required.

36

37 23. (New section) a. Unit owners may be subject to reasonable
38 fines or other sanctions, other than liens therefor, imposed by the
39 governing board for failure to comply with the bylaws or rules
40 adopted by the association, which fines or sanctions may be
41 imposed only subsequent to alternative dispute resolution
42 proceedings provided in accordance with the association's properly
43 adopted dispute resolution procedures and compliance with the
44 informational disclosure requirements of P.L. , c. (C.)
45 (pending before the Legislature as this bill).

46 b. An owner individually, a group of owners, or the association
47 may maintain an action for the recovery of damages, or for
48 injunctive relief, or a combination thereof, for the failure to comply

1 with the rules or bylaws, or the failure to uphold the rules or
2 bylaws in the case of an association, provided a request has
3 not been filed with the Commission on Shared Ownership
4 Communities for alternative dispute resolution services pursuant to
5 P.L. , c. (C.) (pending before the Legislature as this bill) by
6 any party named in the action, and the resolution of that request is
7 still pending. The prevailing party on the majority of issues
8 litigated in an action for recovery of damages or injunctive relief,
9 whether a unit owner or owners, or the association, shall be entitled
10 to reasonable expenses, including attorneys fees, that may be
11 incurred by it in connection with such action.

12

13 24. (New section) No lien shall be recorded by an association
14 for a fine imposed after the effective date of P.L. , c. (C.)
15 (pending before the Legislature as this bill) without judicial or
16 administrative review as provided under P.L. , c. (C.)
17 (pending before the Legislature as this bill). No association shall
18 impose a fine after the effective date of P.L. , c. (C.)
19 (pending before the Legislature as this bill), unless such association
20 shall have offered alternative dispute resolution to the member in
21 accordance with P.L. , c. (C.) (pending before the
22 Legislature as this bill) and shall have provided the information to
23 the Commission on Shared Ownership Communities as required by
24 P.L. , c. (C.) (pending before the Legislature as this bill).

25

26 25. (New section) a. There is created in the Division of
27 Consumer Affairs of the Department of Law and Public Safety, a
28 Bureau of Homebuyers Protection. On and after the effective date
29 of P.L. , c. (C.) (pending before the Legislature as this bill),
30 this bureau shall be the State entity responsible for enforcing the
31 consumer protections afforded purchasers in shared ownership
32 communities pursuant to "The Planned Real Estate Development
33 Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.).

34 b. The bureau shall promulgate such rules and regulations as
35 may be necessary to effectuate "The Planned Real Estate
36 Development Full Disclosure Act, P.L.1977, c.419 (C.45:22A-21 et
37 seq.) and any additional regulations which may be necessary to
38 effectuate the provisions of P.L. , c. (C.) (pending before
39 the Legislature as this bill), in accordance with the "Administrative
40 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The bureau
41 may adopt in its entirety or incorporate by reference selected
42 regulations previously promulgated to effectuate "The Planned Real
43 Estate Development Full Disclosure Act, P.L.1977, c.419
44 (C.45:22A-21 et seq.). The bureau shall develop the forms and
45 procedures for the streamlined submission and expedited review
46 process required under P.L. , c. (C.) (pending before the
47 Legislature as this bill), and adopt regulations therefor, within 120

1 days of the enactment of P.L. , c. (C.) (pending before the
2 Legislature as this bill).

3 c. (1) The bureau shall be headed by an attorney-at-law of the
4 State of New Jersey.

5 (2) The bureau shall administer the law in a manner that at all
6 times provides protection to prospective purchasers through clear
7 and understandable disclosures, of the rights of purchasers and
8 owners of homes within shared ownership communities in all
9 phases of the home-buying process.

10
11 26. (New section) a. Notwithstanding any municipal ordinance
12 to the contrary, a municipality shall not require a developer of a
13 planned real estate development as that term is defined in section 3
14 of P.L.1977, c.419 (C.45:22A-23), by ordinance or otherwise, to
15 form a homeowners' association, if the common elements in the
16 community will consist solely of unimproved, unencumbered open
17 space, unless such an association is required to be formed pursuant
18 to section 1 of P.L.1993, c. 30 (C.45:22A-43).

19 b. A municipality shall not require a developer of a planned
20 real estate development to construct certain of the common
21 elements prior to the construction of other elements of the
22 community, common or otherwise; provided, however, that a
23 municipality may prioritize the construction of roads or require
24 such other contributions as allowed pursuant to the "Municipal
25 Land Use Law," P.L.1975, c. 291 (C.40:55D-1 et seq.).

26
27 27. Section 3 of P.L.1989, c.9 (C.2A:62A-14) is amended to
28 read as follows:

29 3. a. No bylaws shall be amended in accordance with section 2
30 of **[this act]** P.L.1989, c.9 unless the amendment is approved by the
31 owners of at least two-thirds of the units held by unit owners other
32 than the developer in the qualified common interest community.

33 b. **[Bylaws]** Certain bylaw provisions which limit the liability
34 of an association in any civil action brought by or on behalf of a
35 unit owner to respond in damages as a result of bodily injury to the
36 unit owner occurring on the premises of the qualified common
37 interest community which were adopted in accordance with section
38 2 of [this act] P.L.1989, c.9 shall apply to actions for injuries
39 sustained on or after the operative date of the bylaws and shall
40 expire on the 91st day next following enactment of P.L. , c.
41 (C.) (pending before the Legislature as this bill); provided,
42 however, that such bylaws may readopted and approved by two-
43 thirds of the current members of the association other than the
44 developer. Any such bylaws readopted shall expire annually unless
45 readopted and approved annually by at least two-thirds of members
46 of the association eligible to vote.

47 (cf: P.L.1989, c.9, s.3)

1 28. Section 1 of P.L.1989, c.299 (C.40:67-23.2) is amended to
2 read as follows:

3 1. For the purposes of this act:

4 a. "Condominium" means the form of real property ownership
5 provided for under the "Condominium Act," P.L.1969, c.257
6 (C.46:8B-1 et seq.);

7 b. "Cooperative" means a housing corporation or association
8 wherein the holder of a share or membership interest in the
9 corporation or association is entitled to possess and occupy, for
10 dwelling purposes, a house, apartment, or other unit of housing
11 owned by the corporation or association, or to purchase a unit of
12 housing constructed or erected by the corporation or association;

13 c. "Fee simple community" means a private community which
14 consists of individually owned lots or units and provides for
15 common or shared elements or interests in real property;

16 d. "Horizontal property regime" means the form of real
17 property ownership provided for under the "Horizontal Property
18 Act," P.L.1963, c.168 (C.46:8A-1 et seq.);

19 e. "Qualified private community" means a residential
20 condominium, cooperative, fee simple community, **[or]** horizontal
21 property regime, or a shared ownership community, provided that
22 no community shall be deemed a qualified private community if its
23 association has not registered with the Commission on Shared
24 Ownership Communities as required pursuant to
25 P.L. , c. (C.) (pending before the Legislature as this bill), the
26 residents of which do not receive any tax abatement or tax
27 exemption related to its construction, comprised of a community
28 trust or other trust device, condominium association, homeowners'
29 association, or council of co owners, wherein the cost of
30 maintaining roads and streets and providing essential services is
31 paid for by a not-for-profit entity consisting exclusively of unit
32 owners within the community. No apartment building or garden
33 apartment complex owned by an individual or entity that receives
34 monthly rental payments from tenants who occupy the premises
35 shall be considered a qualified private community. No "proprietary
36 campground facility," as defined in section 1 of P.L.1993, c.258
37 (C.45:22A-49), shall be considered to be a qualified private
38 community.

39 (cf: P.L.1993, c.258, s.10)

40

41 29. Section 3 of P.L.1977, c.419 (C.45:22A-23) is amended to
42 read as follows:

43 3. As used in this act unless the context clearly indicates
44 otherwise:

45 a. "Disposition" means any sales, contract, lease, assignment,
46 or other transaction concerning a planned real estate development.

- 1 b. "Developer" or "subdivider" means any person who disposes
2 or offers to dispose of any lot, parcel, unit, or interest in a planned
3 real estate development.
- 4 c. "Offer" means any inducement, solicitation, advertisement,
5 or attempt to encourage a person to acquire a unit, parcel, lot, or
6 interest in a planned real estate development.
- 7 d. "Purchaser" or "owner" means any person or persons who
8 acquires a legal or equitable interest in a unit, lot, or parcel in a
9 planned real estate development, and shall be deemed to include a
10 prospective purchaser or owner.
- 11 e. "State" means the State of New Jersey.
- 12 f. "Commissioner" means the Commissioner of Community
13 Affairs, except that after the effective date of P.L. , c. (C.) all
14 references to the commissioner shall mean the Chief of the Bureau
15 of Homebuyers Protection established pursuant to that act.
- 16 g. "Person" shall be defined as in R.S.1:1-2.
- 17 h. "Planned real estate development" or "development" means
18 any real property situated within the State, whether contiguous or
19 not, which consists of or will consist of, separately owned areas,
20 irrespective of form, be it lots, parcels, units, or interest, and which
21 are offered or disposed of pursuant to a common promotional plan,
22 and providing for common or shared elements or interests in real
23 property. This definition shall not apply to any form of
24 timesharing.
- 25 This definition shall specifically include, but shall not be limited
26 to, property subject to the "Condominium Act," P.L.1969, c.257
27 (C.46:8B-1 et seq.), any form of homeowners' association, any
28 housing cooperative or to any community trust or other trust device.
- 29 This definition shall be construed liberally to effectuate the
30 purposes of this act.
- 31 i. "Common promotional plan" means any offer for the
32 disposition of lots, parcels, units or interests of real property by a
33 single person or group of persons acting in concert, where such lots,
34 parcels, units or interests are contiguous, or are known, designated
35 or advertised as a common entity or by a common name.
- 36 j. "Advertising" means and includes the publication or causing
37 to be published of any information offering for disposition or for
38 the purpose of causing or inducing any other person to purchase an
39 interest in a planned real estate development, including the land
40 sales contract to be used and any photographs or drawings or artist's
41 representations of physical conditions or facilities on the property
42 existing or to exist by means of any:
- 43 (1) Newspaper or periodical;
44 (2) Radio or television broadcast;
45 (3) Written or printed or photographic matter;
46 (4) Billboards or signs;
47 (5) Display of model houses or units;

1 (6) Material used in connection with the disposition or offer of
2 the development by radio, television, telephone or any other
3 electronic means; or

4 (7) Material used by developers or their agents to induce
5 prospective purchasers to visit the development, particularly
6 vacation certificates which require the holders of such certificates to
7 attend or submit to a sales presentation by a developer or his agents.

8 "Advertising" does not mean and shall not be deemed to include:
9 Stockholder communications such as annual reports and interim
10 financial reports, proxy materials, registration statements, securities
11 prospectuses, applications for listing securities on stock exchanges,
12 and the like; all communications addressed to and relating to the
13 account of any person who has previously executed a contract for
14 the purchase of the subdivider's lands except when directed to the
15 sale of additional lands.

16 k. "Non-binding reservation agreement" means an agreement
17 between the developer and a purchaser and which may be canceled
18 without penalty by either party upon written notice at any time prior
19 to the formation of a contract for the disposition of any lot, parcel,
20 unit or interest in a planned real estate development.

21 l. "Blanket encumbrance" means a trust deed, mortgage,
22 judgment, or any other lien or encumbrance, including an option or
23 contract to sell or a trust agreement, affecting a development or
24 affecting more than one lot, unit, parcel, or interest therein, but does
25 not include any lien or other encumbrance arising as the result of
26 the imposition of any tax assessment by any public authority.

27 m. "Conversion" means any change with respect to a real estate
28 development or subdivision, apartment complex or other entity
29 concerned with the ownership, use or management of real property
30 which would make such entity a planned real estate development.

31 n. "Association" means an association for the management of
32 common elements and facilities **],** organized pursuant to section 1
33 of P.L.1993, c.30 (C.45:22A-43) **]** in a community containing such
34 common elements and facilities.

35 o. "Executive board" or governing board means the
36 **[executive]** board elected by the members of an association, **[as**
37 **provided for]** in accordance with [section] sections 3 and 5 of
38 P.L.1993, c.30 (C.45:22A- 45) and (C.45:22A-47) and P.L. , c.
39 (C.) (pending before the Legislature as this bill).

40 p. "Unit" means any lot, parcel, unit or interest in a planned
41 real estate development that is, or is intended to be, a separately
42 owned area thereof.

43 q. "Chief" means the Chief of the Bureau of Homebuyers
44 Protection in the Department of Law and Public Safety, established
45 pursuant to section 25 of P.L. , c. (C.) (pending before the
46 Legislature as this bill).

47 (cf: P.L.2006, c.63, s.39)

1 30. Section 4 of P.L.1977, c.419 (C.45:22A-24) is amended to
2 read as follows:

3 4. **【This act】** On and after the effective date of P.L. _____,
4 c. (C. _____) (pending before the Legislature as this bill), P.L.1977,
5 c.419 shall be administered by the **【Division of Housing and**
6 **Development in the State Department of Community Affairs】**
7 Bureau of Homebuyers Protection in the Division of Consumer
8 Affairs in the Department of Law and Public Safety, established
9 pursuant to section 25 of P.L. _____, c. (C. _____) (pending before the
10 Legislature as this bill), hereinafter referred to as the "agency."
11 (cf: P.L.1993, c.258, s.9)

12
13 31. Section 5 of P.L.1977, c.419 (C.45:22A-25) is amended to
14 read as follows:

15 5. a. Unless the method of disposition is adopted for purposes
16 of evasion, the provision of this act shall not apply to offers or
17 dispositions:

18 (1) By an owner for his own account in a single or isolated
19 transaction;

20 (2) Wholly for industrial, commercial, or other nonresidential
21 purposes;

22 (3) Pursuant to court order;

23 (4) By the United States, by this State or any of its agencies or
24 political subdivisions;

25 (5) Of real property located without the State;

26 (6) Of cemetery lots or interests;

27 (7) **【Of less than 100 lots, parcels, units or interests; provided,**
28 **however, that with respect to condominiums and cooperatives, this**
29 **exemption shall not apply, irrespective of the number of lots,**
30 **parcels, units, or interests offered or disposed of】** (Deleted by
31 amendment, P.L. _____, c. (C. _____) (pending before the Legislature
32 as this bill);

33 (8) **【Of developments where the common elements or interests,**
34 **which would otherwise subject the offering to this act, are limited to**
35 **the provision of unimproved, unencumbered open space】** (Deleted
36 by amendment, P.L. _____, c. (C. _____) (pending before the Legislature
37 as this bill);

38 (9) In a development composed wholly of rental units, where the
39 relationship created is one of landlord and tenant ;

40 (10) Of any form of timesharing.

41 b. The agency may from time to time, pursuant to its rules and
42 regulations, exempt from **【any of the provisions】** the registration
43 fees, in part, or from certain detailed disclosure requirements of
44 **【this act】** P.L.1977, c.419, any development, or any lots, units,
45 parcels, or interests in a development, if it finds that the
46 enforcement of **【this act】** P.L.1977, c.419 with respect to such **【,** is
47 not necessary in the public interest or required for the protection of

1 purchasers by reason of the small amount of the purchase price
2 involved, **]** will not be impacted by such reduced fees or streamlined
3 reporting requirements. No registration fees shall be charged in
4 connection with units reserved for occupancy by low or moderate
5 income households. Reduced registration fees may be permitted
6 when the limited character of the offering, or the limited nature of
7 the common or shared elements weighs in favor of such fee
8 reduction.

9 (cf: P.L.2006, c.63, s.40)

10
11 32. Section 6 of P.L.1977, c.419 (C.45:22A-26) is amended to
12 read as follows:

13 6. a. Unless otherwise exempted:

14 (1) No developer may offer or dispose of any interest in a
15 planned real estate development, prior to the registration of such
16 development with the agency.

17 (2) No developer may dispose of any lot, parcel, unit, or interest
18 in a planned real estate development, unless he: delivers to the
19 purchaser a current public offering statement, on or before the date
20 the contract [date of such disposition] is signed.

21 b. Any contract or agreement for the purchase of any parcel,
22 lot, unit, or interest in a planned real estate development may be
23 canceled without cause by the purchaser by sending or delivering
24 written notice of cancellation by midnight of the seventh calendar
25 day following the day on which the purchaser has executed such
26 contract or agreement. Every such contract or agreement shall
27 contain, in writing, the following notice in 10-point bold type or
28 larger, directly above the space provided for the signature of the
29 purchaser:

30 "NOTICE TO THE PURCHASER: you have the right to cancel
31 this contract by sending or delivering written notice of cancellation
32 to the developer by midnight of the seventh calendar day following
33 the day on which it was executed. Such cancellation is without
34 penalty, and any deposit made by you shall be promptly refunded in
35 its entirety."

36 c. Notice as required in subsection b. shall, in addition to all
37 other requirements, be conspicuously located and simply stated in
38 the public offering statement.

39 d. The developer shall make copies of the public offering
40 statement freely available to prospective purchasers prior to the
41 contract date of disposition.

42 (cf: P.L.1977, c. 419, s. 6)

43
44 33. Section 7 of P.L.1977, c.419 (C.45:22A-27) is amended to
45 read as follows:

46 7. a. The application for registration of the development shall
47 be filed as prescribed by the agency's rules and shall contain the
48 following documents and information:

- 1 (1) An irrevocable appointment of the agency to receive service
2 of any lawful process in any noncriminal proceeding arising under
3 this act against the developer or his agents;
- 4 (2) The states or other jurisdictions, including the federal
5 government, in which an application for registration or similar
6 documents have been filed, and any adverse order, judgment or
7 decree entered in connection with the development by the
8 regulatory authorities in each jurisdiction or by any court;
- 9 (3) The name, address, and principal occupation for the past five
10 years of every officer of the applicant or person occupying a similar
11 status, or performing similar management functions; the extent and
12 nature of his interest in the applicant or the development as of a
13 specified date within 30 days of the filing of the application;
- 14 (4) Copies of its articles of incorporation, with all amendments
15 thereto, if the developer is a corporation; copies of all instruments
16 by which the trust is created or declared, if the developer is a trust;
17 copies of its articles of partnership or association and all other
18 papers pertaining to its organization, if the developer is a
19 partnership, unincorporated association, joint stock company, or
20 any other form of organization; and if the purported holder of legal
21 title is a person other than the developer, copies of the above
22 documents from such person;
- 23 (5) A legal description of the lands offered for registration,
24 together with a map showing the subdivision proposed or made, and
25 the dimensions of the lots, parcels, units, or interests, as available,
26 and the relation of such lands to existing streets, roads, and other
27 improvements;
- 28 (6) Copies of the deed or other instrument establishing title to
29 the subdivision in the developer, and a statement in a form
30 acceptable to the agency of the condition of the title to the land
31 comprising the development, including encumbrances as of a
32 specified date within 30 days of the date of application by a title
33 opinion of a licensed attorney, or by other evidence of title
34 acceptable to the agency;
- 35 (7) Copies of the instrument which will be delivered to a
36 purchaser to evidence his interest in the development, and of the
37 contracts and other agreements which a purchaser will be required
38 to agree to or sign;
- 39 (8) Copies of any management agreements, service contracts, or
40 other contracts or agreements affecting the use, maintenance or
41 access of all or a part of the development;
- 42 (9) A statement of the zoning and other government regulations
43 affecting the use of the development including the site plans and
44 building permits and their status, and also of any existing tax and
45 existing or proposed special taxes or assessments which affect the
46 development; and a statement of the existing use of adjoining lands;
- 47 (10) A statement that the lots, parcels, units or interests in the
48 development will be offered to the public, and that responses to

1 applications will be made without regard to marital status, sex, race,
2 creed, or national origin;

3 (11) A statement of the present condition of access to the
4 development, the existence of any unusual conditions relating to
5 noise or safety, which affect the development and are known to the
6 developer, the availability of sewage disposal facilities and other
7 public utilities including water, electricity, gas, and telephone
8 facilities in the development to nearby municipalities, and the
9 nature of any improvements to be installed by the developer and his
10 estimated schedule for completion;

11 (12) In the case of any conversion an engineering survey shall be
12 required, which shall include mechanical, structural, electrical and
13 engineering reports to disclose the condition of the building;

14 (13) In the case of any development or portion thereof against
15 which there exists a blanket encumbrance, a statement of the
16 consequences for an individual purchaser of a failure, by the person
17 or persons bound, to fulfill obligations under the instrument or
18 instruments creating such encumbrances and the steps, if any, taken
19 to protect the purchaser in such eventuality;

20 (14) A narrative description of the promotional plan for the
21 disposition of the lots, parcels, units or interests in the development,
22 together with copies of all advertising material which has been
23 prepared for public distribution, and an indication of their means of
24 communication;

25 (15) The proposed public offering statement;

26 (16) A current financial statement, which shall include such
27 information concerning the developer as the agency deems to be
28 pertinent, including but not limited to, a profit and loss statement
29 certified by an independent public accountant and information
30 concerning any adjudication of bankruptcy during the last five years
31 against the developer, or any principal owning more than 10% of
32 the interest in the development at the time of filing, provided,
33 however, that this shall not extend to limited partners, or others
34 whose interests are solely those of investors;

35 (17) Copies of instruments creating easements or other
36 restrictions;

37 (18) A statement of the status of compliance with the
38 requirements of all laws, ordinances, regulations, and other
39 requirements of governmental agencies having jurisdiction over the
40 premises;

41 (19) Such other information, documentation, or certification as
42 the agency deems necessary in furtherance of the protective
43 purposes of this act.

44 b. The information contained in any application for registration
45 and copies thereof, shall be made available to interested parties at a
46 reasonable charge and under such regulations as the agency may
47 prescribe.

- 1 c. A developer may register additional property pursuant to the
2 same common promotional plan as those previously registered by
3 submitting another application, providing such additional
4 information as may be necessary to register the additional lots,
5 parcels, units or interests, which shall be known as a consolidated
6 filing.
- 7 d. The developer shall immediately report any material changes
8 in the information contained in an application for registration. The
9 term "material changes" shall be further defined by the agency in its
10 regulations.
- 11 e. The application shall be accompanied by a fee in an amount
12 equal to **【\$500.00 plus \$35.00 per lot, parcel, unit, or interest**
13 **contained in the application, which fees may be used by the agency**
14 **to partially defray the cost of rendering services under the act. If**
15 **the fees are insufficient to defray the cost of rendering services**
16 **under P.L.1977, c.419 (C.45:22A-21 et seq.), the agency shall, by**
17 **regulation, establish a revised fee schedule. The revised fee**
18 **schedule shall assure that the fees collected reasonably cover but do**
19 **not exceed the expenses and administration of implementing**
20 **P.L.1977, c.419 (C.45:22A-21 et seq.)】 : the value of each dwelling**
21 **unit proposed to be built as that value will be stated for the purposes**
22 **of the New Home Warranty Program, or the proposed sales price of**
23 **that dwelling unit if the warranty value is undeterminable,**
24 **multiplied by three hundredths of one percent (.0003). All fees**
25 **collected by the agency shall be forwarded to the State Treasurer**
26 **and thereafter maintained in a separate, non-lapsing account, to be**
27 **used solely for the purposes of defraying the State costs of**
28 **rendering services and protections to homebuyers and homeowners**
29 **in shared ownership communities, as required to be provided under**
30 **P.L. , c. (C.) (pending before the Legislature as this bill),**
31 **and “The Planned Real Estate Development Full Disclosure Act,”**
32 **P.L.1977, c. 419 (C.45:22A-21 et seq.), including the supplement to**
33 **that act, P.L.1993, c.30 (C.45:22A-43 et seq.). The Bureau of**
34 **Homebuyers Protection in the Division of Consumer Affairs of the**
35 **Department of Law and Public Safety, and the Commission on**
36 **Shared Ownership Communities shall be authorized to be**
37 **reimbursed from the account required to be established pursuant to**
38 **this section by the State Treasurer.**
- 39 **If the agency determines, upon a review that shall be undertaken**
40 **upon the cessation of developer control of the association pursuant**
41 **to section 5 of P.L.1993, c.30 (C.45:22A-47), that the estimated**
42 **average sales price per housing unit used to calculate the fees varied**
43 **by more than one percent from the actual average sales price of all**
44 **housing units, the agency shall collect from or remit to the**
45 **developer the difference between the two calculations.**
- 46 f. (1) An engineering study required pursuant to paragraph (12)
47 of subsection a. of this section shall be conducted, and the results

1 thereof certified, by a person licensed in this State as a professional
2 engineer pursuant to P.L.1938, c.342 (C.45:8-27 et seq.).

3 (2) The engineer who prepares the survey shall certify to the
4 agency whether, in his judgment, the building is in compliance with
5 the code standards adopted under the "Hotel and Multiple Dwelling
6 Law," P.L.1967, c.76 (C.55:13A-1 et seq.) and the "Uniform Fire
7 Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.) and shall list
8 all outstanding violations then existing in accordance with his
9 observation and judgment. The engineer shall be immune from tort
10 liability with regard to such certification and list in the same
11 manner and to the same extent as if he were a public employee
12 protected by the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

13 (3) If the agency finds there is a significant discrepancy between
14 the engineering survey submitted by the applicant and an
15 engineering survey submitted by any tenant or tenants currently
16 residing in the building, the agency shall investigate the matter in
17 order to determine the true state of facts prior to approving the
18 application. The agency may use its own staff or contract with
19 independent professionals, and may conduct hearings in accordance
20 with the "Administrative Procedure Act," P.L.1968, c.410
21 (C.52:14B-1 et seq.). Any cost to the agency of hiring independent
22 professionals shall be borne by the applicant developer at the
23 discretion of the agency.

24 (cf: P.L.1991, c.509, s.21)

25
26 34. Section 8 of P.L.1977, c.419 (C.45:22A-28) is amended to
27 read as follows:

28 8. a. A public offering statement shall disclose fully and
29 accurately the characteristics of the development, the nature and
30 extent of shared property ownership interests and obligations for
31 those interests, and the lots, parcels, units, or interests therein
32 offered, and shall make known to prospective purchasers all unusual
33 or material circumstances or features affecting the development.
34 The proposed public offering statement submitted to the agency
35 shall be in a form prescribed by its rules and regulations and shall
36 include the following:

37 (1) The name and principal address of the developer;

38 (2) A general narrative description of the development stating
39 the total number of lots, units, parcels, or interests in the offering,
40 and the total number of such interests planned to be sold, leased or
41 otherwise transferred;

42 (3) Copies of any management contract, lease of recreational
43 areas, or similar contract or agreement affecting the use,
44 maintenance, or access of all or any part of the development, with a
45 brief and simple narrative statement of the effect of each such
46 agreement upon a purchaser, and a statement of the relationship, if
47 any, between the developer and the managing agent or firm;

- 1 (4) (a) The significant terms of any encumbrances, easements,
2 liens, and restrictions, including zoning and other regulations,
3 affecting such lands and each unit, lot, parcel, or interest, and a
4 statement of all existing taxes and existing or proposed special taxes
5 or assessments which affect such lands; and
- 6 (b) In the case of a conversion subject to the provisions of the
7 "Tenant Protection Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et
8 al.), the information required pursuant to section 14 of P.L.1991,
9 c.509 (C.2A:18-61.53);
- 10 (5) (a) Relevant community information, including hospitals,
11 health and recreational facilities of any kind, streets, water supply,
12 levees, drainage control systems, irrigation systems, sewage
13 disposal facilities and customary utilities; and
- 14 (b) The estimated cost, size, date of completion, and
15 responsibility for construction and maintenance of existing and
16 proposed amenities which are referred to in connection with the
17 offering or disposition of any interest in the subdivision or
18 subdivided lands;
- 19 (6) A copy of the proposed budget for the operation and
20 maintenance of the common or shared elements or interests;
- 21 (7) Additional information required by the agency to assure full
22 and fair disclosure to prospective purchasers.
- 23 b. The public offering statement shall not be used for any
24 promotional purposes before registration of the development and
25 afterwards only if it is used in its entirety. No person may advertise
26 or represent that the agency approves or recommends the
27 development or dispositions therein. No portion of the public
28 offering statement may be underscored, italicized, or printed in
29 larger or heavier or different color type than the remainder of the
30 statement, unless the agency requires or permits it.
- 31 c. The agency may require the developer to alter or amend the
32 proposed public offering statement in order to assure full and fair
33 disclosure to prospective purchasers, and no change in the
34 substance of the promotional plan or plan of disposition or
35 development of a planned real estate development may be made
36 after registration without the approval of the agency. A public
37 offering statement shall not be current unless all amendments have
38 been incorporated.
- 39 d. The public offering statement shall, to the extent possible,
40 combine simplicity and accuracy of information, in order to
41 facilitate purchaser understanding of the totality of rights,
42 privileges, obligations and restrictions, comprehended under the
43 proposed plan of development. In reviewing such public offering
44 statement, the agency shall pay close attention to the requirements
45 of this subsection, and shall use its discretion to require revision of
46 a public offering statement which is unnecessarily complex,
47 confusing, or is illegible by reason of type size or otherwise.

1 e. On or after the effective date of P.L. , c. (C.)
2 (pending before the Legislature as this bill), the agency shall review
3 its processes for submission of the public offering statement, and
4 shall develop a streamlined process for form submission and
5 expedited review, in accordance with the purposes of
6 P.L. , c. (C.) (pending before the Legislature as this bill).
7 The process shall rely on electronic media submission to the extent
8 practicable, which submission shall have text-searchable properties,
9 and be in a format deemed acceptable by the agency. Salient
10 information shall be indexed, and an executive summary of the
11 salient information contained in the public offering statement, in
12 plain language, shall be placed at the front of the document,
13 including a summary of the rights, liabilities, obligations, and
14 governing form applicable to the association.
15 (cf: P.L.1991, c.509, s.22)

16
17 35. Section 10 of P.L.1977, c.419 (C.45:22A-30) is amended to
18 read as follows:

19 10. a. Upon receipt of the application for registration in proper
20 form, and accompanied by proper fee, the agency shall, within 10
21 business days, issue a notice of filing to the applicant. Within **[90]**
22 **45** days from the date of the notice of filing, the agency shall enter
23 an order registering the development or rejecting the registration,
24 provided that the expedited method of submission has been initiated
25 by the agency and complied with in all aspects by the developer;
26 otherwise the agency shall enter an order registering the
27 development or rejecting the registration within 90 days. If no
28 order of rejection is entered within 45 or 90 days, respectively, from
29 the date of notice of filing, the development shall be deemed
30 registered unless the applicant has consented in writing to a delay.

31 b. If the agency affirmatively determines that the requirements
32 of section 9 of **[this act]** P.L.1977, c.419 (C.45:22A-29) have been
33 met, it shall enter an order registering the development.

34 c. If the agency determines upon inquiry and examination that
35 any of the requirements of section 9 of **[this act]** P.L.1977, c.419
36 (C.45:22A-29) have not been met, the agency shall notify the
37 applicant that the application for registration must be corrected in
38 such particulars, within 30 days, as designated by the agency. If the
39 requirements are not met within the time allowed, the agency may
40 enter an order rejecting the registration which shall include the
41 findings of fact upon which the order is based. The order rejecting
42 the registration shall not become effective until 20 days after the
43 lapse of the aforesaid specified period during which 20-day period
44 the applicant may petition for reconsideration and shall be entitled
45 to a hearing. Such order of rejection shall not take effect, in any
46 event, until such time as the hearing, once requested, has been given
47 to the applicant.

48 (cf: P.L.1977, c.419, s.10)

1 36. Section 1 of P.L.1993, c.30 (C.45:22A-43) is amended to
2 read as follows:

3 1. **【A】** Unless exempted as provided in this section, a
4 developer of a planned development, whether or not subject to the
5 registration requirements of section 6 of P.L.1977, c.419
6 (C.45:22A-26), shall organize or cause to be organized an
7 association whose obligation it shall be to manage the common
8 elements and facilities. The developer may be exempted from
9 forming an association upon a determination by the agency that
10 there will be no expenses in connection with maintenance of any of
11 the proposed common property in the community, and all such
12 common property consists solely of unimproved and unencumbered
13 open space. The association shall be formed on or before the filing
14 of the master deed or declaration of covenants and restrictions, and
15 may be formed as a for-profit corporation only if the development
16 will be a cooperative housing corporation issuing shares, or a
17 nonprofit corporation **【**, unincorporated association, or any other
18 form permitted by law **】** if a condominium or planned development.
19 (cf: P.L.1993, c.30, s.1)
20

21 37. Section 2 of P.L.1993, c.30 (C.45:22A-44) is amended to
22 read as follows:

23 2. a. Subject to the master deed, declaration of covenants and
24 restrictions or other instruments of creation, **【the】** an association as
25 that term is defined under section 3 of P.L. , c. (C.) (pending
26 before the Legislature as this bill), may do all that it is legally
27 entitled to do under the laws applicable to its form of organization.
28 In addition, an association of a shared ownership community shall
29 have the identical powers and obligations to those as set forth in
30 section 15 of P.L.1969, c.257 (C.46:8B-15) for condominium
31 associations.

32 b. **【The】** An association shall exercise its powers and discharge
33 its functions in a manner that protects and furthers the health, safety
34 and general welfare of the residents of the community. The actions
35 of an association concerning governance of its members shall
36 embody standards of due process, open governance, democracy, and
37 fundamental fairness, similar to those to which governmental bodies
38 are held, in all areas of governance, including, but not limited to
39 elections, access to records, open meetings, and alternate dispute
40 resolution, and shall be judged under these standards.

41 Actions of associations in matters not concerning governance
42 over its members shall be subject to the business judgment rule, but
43 implemented in a manner that protects and furthers the health,
44 safety and general welfare of the residents of the community.

45 c. **【The】** An association shall provide a fair and efficient
46 procedure for the resolution of disputes between individual unit
47 owners and the association, and between unit owners, which shall

1 be readily available as an alternative to litigation. Any costs of any
2 procedure provided shall be borne as a common expense by all of
3 the members of the association, and not assessed against any
4 individual owner or owners.

5 d. The association may assert tort claims concerning the
6 common elements and facilities of the development as if the claims
7 were asserted directly by the unit owners individually.
8 (cf: P.L.1993, c.30, s.2)

9
10 38. Section 3 of P.L.1993, c.30 (C.45:22A-45) is amended to
11 read as follows:

12 3. a. **【The form of administration of an】** An association
13 **【organized pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43)】**
14 as defined pursuant to section 3 of P.L. , c. (C.) (pending
15 before the Legislature as this bill) shall provide for the election of
16 **【an executive】** a governing board, elected by and responsible to the
17 members of the association pursuant to section 4 of P.L.1993, c.30
18 (C.45:22A-46), through which the powers of the association shall
19 be exercised and its functions performed. All members of the
20 association shall be permitted to be nominated for and run for
21 elected positions on the governing board. Elections shall be held at
22 least every two years, and shall be conducted with strict adherence
23 to democratic principles and fairness. If an association has had no
24 election which complies with the provisions of this section before
25 the effective date of P.L. , c. (C.) (pending before the
26 Legislature as this bill), other than the initial election required
27 pursuant to section 5 of P.L.1993. c.30 (C.45:22A-47), then an
28 election shall be held, to be monitored by the Commission on
29 Shared Ownership Communities, and in accordance with
30 regulations to be promulgated under P.L. , c. (C.) (pending
31 before the Legislature as this bill).

32 b. Subject to the master deed, declaration of covenants and
33 restrictions, bylaws or other instruments of creation, subsection d.
34 of this section, and the laws of the State, **【the executive】** a
35 governing board may act in all instances on behalf of the
36 association.

37 c. The members of **【the executive】** a governing board
38 appointed by the developer shall be liable as fiduciaries to the
39 owners for their acts or omissions.

40 d. During control of **【the executive】** a governing board by the
41 developer, copies of the annual audit of association funds shall be
42 available for inspection by owners or their authorized representative
43 at the project site.

44 (cf: P.L.1993, c.30, s.3)

45
46 39. Section 4 of P.L.1993, c.30 (C.45:22A-46) is amended to
47 read as follows:

1 4. The bylaws of the association, which shall initially be
2 recorded with the master deed shall include, in addition to any other
3 lawful provisions, the following:

4 a. A requirement that all meetings of the **[executive]**
5 governing board**],** except conference or working sessions at which
6 no binding votes are to be taken,**]** shall be open to attendance by all
7 unit owners, and adequate notice of any such meeting shall be given
8 to all unit owners in such manner as the bylaws shall prescribe;
9 except that the **[executive]** governing board may exclude or restrict
10 attendance at those meetings, or portions of meetings, dealing with
11 (1) any matter the disclosure of which would constitute an
12 unwarranted invasion of individual privacy; (2) any pending or
13 anticipated litigation or contract negotiations; (3) any matters
14 falling within the attorney-client privilege, to the extent that
15 confidentiality is required in order for the attorney to exercise his
16 ethical duties as a lawyer, or (4) any matter involving the
17 employment, promotion, discipline or dismissal of a specific officer
18 or employee of the association. At each meeting required under this
19 subsection to be open to all unit owners, the participation of unit
20 owners in the proceedings or the provision of a public comment
21 session shall be **[at the discretion of the executive board]**
22 permitted, but may be limited in duration in accordance with
23 regulations which may be promulgated by the Commission on
24 Shared Ownership Communities, minutes of the proceedings shall
25 be taken, and copies of those minutes shall be made available to all
26 unit owners before the next open meeting, or within 60 days,
27 whichever is sooner, or shall be in accordance with any regulations
28 promulgated by the Commission on Shared Ownership
29 Communities.

30 b. The method of calling meetings of unit owners, the
31 percentage of unit owners or voting rights required to make
32 decisions and to constitute a quorum. The bylaws may,
33 nevertheless, provide that unit owners may waive notice of
34 meetings or may act by written agreement without meetings.

35 c. The manner of collecting from unit owners their respective
36 shares of common expenses and the method of distribution to the
37 unit owners of their respective shares of common surplus or such
38 other application of common surplus as may be duly authorized by
39 the bylaws.

40 d. The method by which the bylaws may be amended, provided
41 that no amendment shall be effective until recorded in the same
42 office as the then existing bylaws. The bylaws may also provide a
43 method for the adoption, amendment and enforcement of reasonable
44 administrative rules and regulations relating to the operation, use,
45 maintenance and enjoyment of the units and of the common
46 elements, including limited common elements.

1 Notwithstanding any provision of P.L.1993, c.30 (C.45:22A-43
2 et seq.) to the contrary, all bylaws and association documents of an
3 association shall comply with the minimum requirements of
4 sections 16 and 18 of P.L. , c. (C.) (pending before the
5 Legislature as this bill) for such documents, or shall be deemed to
6 include such provisions by incorporation through this section.
7 (cf: P.L.1993, c.30, s.4)

8
9 40. Section 5 of P.L.1993, c.30 (C.45:22A-47) is amended to
10 read as follows:

11 5. a. Upon the sale of 20 percent of the lots, parcels, units or
12 interests to be created in the community, the developer shall arrange
13 for the members of the association to hold an election for an
14 owners' coordinating council, which group shall be comprised of at
15 least three owners other than the developer. The council shall be a
16 steering committee for owners' complaints and to provide guidance
17 to the developer and association on issues of importance to the
18 owners. In addition, the council shall coordinate the elections to the
19 association governing board when owners may be elected to that
20 board in accordance with this section, and shall serve as the owners'
21 finance committee during the period of developer control. All
22 elections to this group shall comply with election guidelines to be
23 promulgated by the Commission on Shared Ownership
24 Communities established pursuant to section 5 of P.L. ,
25 c. (C.) (pending before the Legislature as this bill), provided
26 that only members elected by the unit owners, other than the
27 developer or developer's appointees to the governing board, shall
28 serve on the council, and the council's decisions shall be free of any
29 control by the developer or any member of the governing board
30 appointed by the developer. Any vacancies on the council shall be
31 filled within 30 days by current council members, and in the case of
32 any tie votes by such council members, by the vote of the unit
33 owners other than the developer within 60 days after the vacancy
34 occurs.

35 Irrespective of the time set for developer control of the
36 association provided in the master deed, declaration of covenants
37 and restrictions, or other instruments of creation, control of the
38 voting interests of the governing board of the association shall be
39 surrendered to the owners in the following manner:

40 (1) Sixty days after conveyance of 25 percent of the lots,
41 parcels, units or interests, not fewer than 25 percent of the members
42 of the **[executive]** governing board shall be elected by the owners,
43 in accordance with election procedures to be promulgated by the
44 Commission on Shared Ownership Communities.

45 (2) Sixty days after conveyance of 50 percent of the lots,
46 parcels, units or interests, not fewer than 40 percent of the members
47 of the **[executive]** governing board shall be elected by the owners.

1 (3) Sixty days after conveyance of 75 percent of the lots,
2 parcels, units or interests, the developer's control of the [executive]
3 governing board shall terminate, at which time the owners shall
4 elect the entire [executive] governing board; except that the
5 developer may retain the selection of one [executive] governing
6 board member representing his interests as a unit owner so long as
7 there are any units remaining unsold in the regular course of
8 business. The retention by the developer of one member on the
9 governing board shall cease if no units remain which are being
10 offered for sale to the public. Unsold units converted to rental units
11 by a developer shall create a presumption that the developer has
12 ceased selling, and in that event, any tenant of a developer-owned
13 unit shall be deemed to be a member of the association as if the
14 tenant owns the unit.

15 b. The percentages specified in subsection a. of this section
16 shall be calculated upon the basis of the whole number of units
17 entitled to membership in the association. The bylaws of the
18 association shall specify the number or proportion of votes of all
19 units conveyed to owners that shall be required for the election of
20 board members. Unless the bylaws provide otherwise, each unit
21 conveyed to an owner shall be entitled to one vote. A developer
22 may surrender control of the executive board of the association
23 before the time specified in subsection a. of this section, if the
24 owners agree by a majority vote to assume control.

25 c. Upon assumption by the owners of control of the
26 [executive] voting interests of the governing board of the
27 association, the developer shall forthwith deliver to the association
28 all items and documents pertinent to the association, such as, but
29 not limited to, a copy of the master deed, declaration of covenants
30 and restrictions, documents of creation of the association, bylaws,
31 minute book including all minutes, any rules and regulations,
32 association funds and an accounting therefor, all personal property,
33 insurance policies, government permits, a membership roster and all
34 contracts and agreements relative to the association. In addition, all
35 similar items required to be turned over by a developer of a
36 condominium pursuant to section 2 of P.L.1979, c. 157 (C.46:8B-
37 12.1) shall be required to be turned over by a developer of a shared
38 ownership community to the association.

39 d. The association when controlled by the owners shall not take
40 any action that would be detrimental to the sale of units by the
41 developer, and shall continue the same level of maintenance,
42 operation and services as immediately prior to their assumption of
43 control, until the last unit is sold.

44 e. From the time of conveyance of 75 percent of the lots,
45 parcels, units, or interests, until the last lot, parcel, unit, or interest
46 in the development is conveyed in the ordinary course of business,
47 the master deed, bylaws or declaration of covenants and restrictions
48 shall not require that more than 75 percent of the votes entitled to

1 be cast thereon be cast in the affirmative for a change in the bylaws
2 or regulations of the association.

3 f. The developer shall not be permitted to cast any votes
4 allocated to unsold lots, parcels, units, or interests, in order to
5 amend the master deed, bylaws, or any other document, for the
6 purpose of changing the permitted use of a lot, parcel, unit, or
7 interest, or for the purpose of reducing the common elements or
8 facilities.

9 g. If the council of owners authorized in subsection a. of this
10 section is established and there has been substantial completion of
11 the common elements and public improvements in any phase of the
12 shared ownership community which are not covered by the
13 performance or maintenance guarantees posted with any
14 governmental agencies having jurisdiction, the council shall request
15 the association to cause such common elements and improvements
16 to be inspected and evaluated for compliance with the developer's
17 warranty and construction obligations, with the assistance of
18 qualified independent engineering and legal consultants selected by
19 the council. The fees for such consultants shall be paid from funds
20 contributed by the developer.

21 (1) Public improvements to be dedicated to any governmental
22 entity shall be exempt from any direct warranty or construction
23 defect claims by the association or the unit owners other than the
24 developer. Acceptance of any such public improvements by the
25 governmental entity to which they are to be dedicated shall be
26 deemed conclusive evidence that such improvements have been
27 satisfactorily completed and the developer shall have no further
28 obligation with respect to those improvements, either to the
29 association, to any unit owners other than the developer, or to any
30 governmental agency having jurisdiction.

31 (2) Within 120 days after the association's receipt of any request
32 for inspection of any phase of the completed common elements or
33 other improvements, the council shall require its engineering
34 consultant to inspect the particular completed improvements and
35 render a written evaluation of them to the council. A copy of the
36 final report, following the council's review of the initial evaluation,
37 shall be furnished to the developer within 30 days after the
38 committee's receipt of the report. Thereafter, the council and the
39 developer shall conduct one or more joint inspections of the
40 common elements and other improvements covered by the request
41 and pursue good faith negotiations to resolve any warranty or
42 construction defect claims against the developer. All fees and
43 related expenses incurred by the council for engineering and legal
44 consultants shall be paid promptly by the association from available
45 designated funds.

46 (3) If a settlement agreement is finalized between the council
47 and the developer, the developer-controlled executive board shall
48 have the authority to execute an agreement and to release the

1 declarant from all liability with respect to the completed common
2 elements and improvements, subject to such terms and conditions as
3 may be contained in the agreement. Any such settlement agreement
4 and release shall be legally binding upon the association and the
5 unit owners, provided that its form is approved by the independent
6 legal counsel retained by the council on behalf of the association.

7 (4) If no settlement agreement is approved by the council within
8 180 days after the request for inspection, the parties shall be
9 obligated to proceed to mediation within 30 days thereafter in
10 accordance with section 10 of P.L. , c. (C.) (pending before
11 the Legislature as this bill). If no settlement is reached through
12 mediation within 15 days after commencement of same, then the
13 parties shall promptly proceed to non-binding arbitration of any
14 remaining issues in accordance with rules promulgated by the
15 director. Such mediation and non-binding arbitration shall be
16 conditions precedent to any litigation of the warranty and
17 construction defect claims against the developer. All professional
18 fees and expenses reasonably incurred by the association with
19 regard to the mediation or arbitration, or both, shall be borne by the
20 owners, including the developer, in the same manner as common
21 expenses are allocated and paid by the association promptly upon
22 the receipt of written authorization of the council.

23 (5) In the event that no settlement agreement and releases are
24 executed with respect to any completed common elements or
25 improvements during the period of developer control of the
26 governing board of the association, any statutes of limitation or
27 repose applicable to that association concerning common elements,
28 including, but not limited to statutory warranties, shall be extended
29 for a period of one year after the assumption of control of the
30 governing board by owners other than the developer.

31 (6) The procedures set forth in this section shall also apply to
32 and be binding upon the developer and the association after the unit
33 owners, other than the developer, assume control of the governing
34 board of the association; provided, however, that the governing
35 board after that transition shall not be bound by the
36 recommendations of the council of owners. The governing board
37 controlled by the owners may vote to abolish the council of owners
38 at any time after the owners have assumed control of the governing
39 board.

40 (cf: P.L.1993, c.30, s.5)

41
42 41. Section 6 of P.L.1993, c.30 (C.45:22A-48) is amended to
43 read as follows:

44 6. The **【Commissioner of Community Affairs】** Commission on
45 Shared Ownership Communities shall cause to be prepared and
46 distributed, for the use and guidance of associations, **【executive】**
47 governing boards and **【administrators】** professionals hired by such
48 boards to assist them, explanatory materials and guidelines to assist

1 them in achieving proper and timely compliance with the
2 requirements of P.L.1993, c.30 (C.45:22A-43 et al.) and with the
3 requirements of P.L. , c. (C.) (pending before the
4 Legislature as this bill). Such guidelines may include the text of
5 model bylaw provisions suggested or recommended for adoption.

6 The commission shall also make available, on an Internet web
7 site maintained by it, descriptions of the outcomes of dispute
8 resolution procedures overseen by the commission, indexed by
9 subject matter.

10 The commission shall publish a quarterly newsletter to be
11 furnished to any member of any association requesting it and shall
12 also publish the newsletter electronically for viewing on the
13 Internet.

14 **【Failure or refusal of an association or executive board to make**
15 **proper amendment or supplementation of its bylaws prior to the**
16 **effective date of P.L.1993, c.30 (C.45:22A-43 et al.) shall not,**
17 **however, affect their obligation of compliance therewith on and**
18 **after that effective date.】** Any owner or tenant of an owner in a
19 shared ownership community may seek the assistance of the
20 Commission on Shared Ownership Communities pursuant to section
21 6 of P.L. , c. (C.) (pending before the Legislature as this
22 bill) to address the failure of an association to make proper
23 amendment or supplementation of its bylaws in order to comply
24 with any statutory requirements.

25 (cf: P.L.1993, c.30, s.6)

26
27 42. Section 14 of P.L.1979, c. 157 (C.46:8B-14) is amended to
28 read as follows:

29 14. The association, acting through its officers or governing
30 board, shall be responsible for the performance of the following
31 duties, the costs of which shall be common expenses:

32 (a) The maintenance, repair, replacement, cleaning and
33 sanitation of the common elements.

34 (b) The assessment and collection of funds for common
35 expenses and the payment thereof.

36 (c) The adoption, distribution, amendment and enforcement of
37 rules governing the use and operation of the condominium and the
38 condominium property and the use of the common elements,
39 including but not limited to the imposition of reasonable fines,
40 assessments and late fees upon unit owners, if authorized by the
41 master deed or bylaws, subject to the right of a majority of unit
42 owners to change any such rules.

43 (d) The maintenance of insurance against loss by fire or other
44 casualties normally covered under broad-form fire and extended
45 coverage insurance policies as written in this State, covering all
46 common elements and all structural portions of the condominium
47 property and the application of the proceeds of any such insurance
48 to restoration of such common elements and structural portions【 if

1 such restoration shall otherwise be required under the provisions of
2 this act or the master deed or bylaws].

3 (e) The maintenance of insurance against liability for personal
4 injury and death for accidents occurring within the common
5 elements whether limited or general and the defense of any actions
6 brought by reason of injury or death to person, or damage to
7 property occurring within such common elements and not arising by
8 reason of any act or negligence of any individual unit owner.

9 (f) The master deed or bylaws may require the association to
10 protect blanket mortgages, or unit owners and their mortgagees, as
11 their respective interest may appear, under the policies of insurance
12 provided under clauses (d) and (e) of this section, or against such
13 risks with respect to any or all units, and may permit the assessment
14 and collection from a unit owner of specific charges for insurance
15 coverage applicable to his unit.

16 (g) The maintenance of [accounting] records, in accordance
17 with generally accepted accounting principles, open to inspection at
18 reasonable times by unit owners. Such records shall include:

19 (i) A record of all receipts and expenditures.

20 (ii) An account for each unit setting forth any shares of common
21 expenses or other charges due, the due dates thereof, the present
22 balance due, and any interest in common surplus.

23 (iii) all items required pursuant to section 19 of P.L. _____,
24 c. (C. _____) (pending before the Legislature as this bill).

25 (h) Nothing herein shall preclude any unit owner or other person
26 having an insurable interest from obtaining insurance at his own
27 expense and for his own benefit against any risk whether or not
28 covered by insurance maintained by the association.

29 (i) Such other duties as may be set forth in the master deed or
30 bylaws.

31 (j) An association shall exercise its powers and discharge its
32 functions in a manner that protects and furthers or is not
33 inconsistent with the health, safety and general welfare of the
34 residents of the community.

35 (k) An association shall provide a fair and efficient procedure
36 for the resolution of [housing-related] disputes between individual
37 unit owners and the association, and between unit owners, which
38 shall be readily available as an alternative to litigation. Any costs
39 associated with the procedure shall be borne by the association as a
40 common expense, and no costs shall be assessable against any
41 individual owner or owners. A person other than an officer of the
42 association, a member of the governing board or a unit owner
43 involved in the dispute shall be made available to resolve the
44 dispute. [A unit owner may notify the Commissioner of
45 Community Affairs if an association does not comply with this
46 subsection. The commissioner shall have the power to order the
47 association to provide a fair and efficient procedure for the

1 resolution of disputes】 A unit owner who has availed himself of the
2 dispute resolution procedures provided by his association, but who
3 does not consider the matter resolved, may file a request for dispute
4 resolution services with the Commission on Shared Ownership
5 Communities, established pursuant to section 5 of
6 P.L. , c. (C.) (pending before the Legislature as this bill).
7 (cf: P.L.1996, c.79, s.2)

8
9 43. Section 12 of P.L.1969, c.257 (C.46:8B-12) is amended to
10 read as follows:

11 The association provided for by the master deed shall be
12 responsible for the administration and management of the
13 condominium and condominium property, including but not limited
14 to the conduct of all activities **【of common interest to】** on the
15 common property of the unit owners. The association may be any
16 entity recognized by the laws of New Jersey, including but not
17 limited to a business corporation or a nonprofit corporation.
18 Condominium associations established after the effective date of
19 P.L. , c. (C.) (pending before the Legislature as this bill)
20 shall be incorporated as nonprofit corporations.
21 (cf: P.L.1969, c. 257, s. 12)

22
23 44. Section 2 of P.L.1979, c. 157 (C.46:8B-12.1) is amended to
24 read as follows:

25 2. a. **【When】** For associations formed prior to the effective
26 date of P.L. , c. (C.) (pending before the Legislature as this
27 bill), when unit owners other than the developer own 25% or more
28 of the units in a condominium that will be operated ultimately by an
29 association, the unit owners other than the developer shall be
30 entitled to elect not less than 25% of the members of the governing
31 board or other form of administration of the association. Unit
32 owners other than the developer shall be entitled to elect not less
33 than 40% of the members of the governing board or other form of
34 administration upon the conveyance of 50% of the units in a
35 condominium. Unit owners other than the developer shall be
36 entitled to elect all of the members of the governing board or other
37 form of administration upon the conveyance of 75% of the units in a
38 condominium. However, when some of the units of a condominium
39 have been conveyed to purchasers and none of the others are being
40 constructed or offered for sale by the developer in the ordinary
41 course of business, the unit owners other than the developer shall be
42 entitled to elect all of the members of the governing board or other
43 form of administration.

44 Notwithstanding any of the provisions of subsection a of this
45 section, the developer shall be entitled to elect at least one member
46 of the governing board or other form of administration of an
47 association as long as the developer holds for sale in the ordinary

1 course of business one or more units in a condominium operated by
2 the association.

3 b. Within 30 days after the unit owners other than the
4 developer are entitled to elect a member or members of the
5 governing board or other form of administration of an association,
6 the association shall call, and give not less than 20 days' nor more
7 than 30 days' notice of, a meeting of the unit owners to elect the
8 members of the governing board or other form of administration.
9 The meeting may be called and the notice given by any unit owner
10 if the association fails to do so.

11 c. If a developer holds one or more units for sale in the
12 ordinary course of business, none of the following actions may be
13 taken without approval in writing by the developer:

14 (1) Assessment of the developer as a unit owner for capital
15 improvements.

16 (2) Any action by the association that would be detrimental to
17 the sales of units by the developer. However, an increase in
18 assessments for common expenses without discrimination against
19 the developer shall not be deemed to be detrimental to the sales of
20 units.

21 On or after the after the effective date of P.L. , c. (C.)
22 (pending before the Legislature as this bill), elections for and
23 control of a governing board of an association shall be in
24 accordance with section 5 of P.L.1993, c.30 (C.45:22A-47).

25 d. **【**Prior to, or not more than 60 days after, the time that unit
26 owners other than the developer elect a majority of the members of
27 the governing board or other form of administration of an
28 association, the developer shall relinquish control of the
29 association, and the unit owners shall accept control.
30 **Simultaneously,】** When control of an association is required to be
31 relinquished by a developer pursuant to section 5 of P.L.1993, c.30
32 (C.45:22A-47), the developer shall deliver to the association all
33 property of the unit owners and of the association held or controlled
34 by the developer, including, but not limited to, the following items,
35 if applicable, as to each condominium operated by the association:

36 (1) A photocopy of the master deed and all amendments thereto,
37 certified by affidavit of the developer, or an officer or agent of the
38 developer, as being a complete copy of the actual master deed.

39 (2) A certified copy of the association's articles of incorporation,
40 or if not incorporated, then copies of the documents creating the
41 association.

42 (3) A copy of the bylaws.

43 (4) The minute books, including all minutes, and other books
44 and records of the association, if any.

45 (5) Any house rules and regulations which have been
46 promulgated.

47 (6) Resignations of officers and members of the governing
48 board or other form of administration who are required to resign

1 because the developer is required to relinquish control of the
2 association.

3 (7) An accounting for all association funds, including capital
4 accounts and contributions.

5 (8) Association funds or control thereof.

6 (9) All tangible personal property that is property of the
7 association, represented by the developer to be part of the common
8 elements or ostensibly part of the common elements, and an
9 inventory of that property.

10 (10) A copy of the plans and specifications utilized in the
11 construction or remodeling of improvements and the supplying of
12 equipment to the condominium and in the construction and
13 installation of all mechanical components serving the improvements
14 and the site, with a certificate in affidavit form of the developer, his
15 agent, or an architect or engineer authorized to practice in this State
16 that such plans and specifications represent, to the best of their
17 knowledge and belief, the actual plans and specifications utilized in
18 the construction and improvement of the condominium property and
19 for the construction and installation of the mechanical components
20 serving the improvements. If the condominium property has been
21 declared a condominium more than 3 years after the completion of
22 construction or remodeling of the improvements, the requirements
23 of this paragraph shall not apply.

24 (11) Insurance policies.

25 (12) Copies of any certificates of occupancy which may have
26 been issued for the condominium property.

27 (13) Any other permits issued by governmental bodies applicable
28 to the condominium property in force or issued within 1 year prior
29 to the date the unit owners other than the developer take control of
30 the association.

31 (14) All written warranties of the contractor, subcontractors,
32 suppliers, and manufacturers, if any, that are still effective.

33 (15) A roster of unit owners and their addresses and telephone
34 numbers, if known, as shown on the developer's records.

35 (16) Leases of the common elements and other leases to which
36 the association is a party.

37 (17) Employment contracts, management contracts, maintenance
38 contracts, contracts for the supply of equipment or materials, and
39 service contracts in which the association is one of the contracting
40 parties and maintenance contracts and service contracts in which the
41 association or the unit owners have an obligation or responsibility,
42 directly or indirectly to pay some or all of the fee or charge of the
43 person or persons performing the service.

44 (18) All other contracts to which the association is a party.

45 (cf: P.L.1979, c.157, s.2)

46

47 45. Section 15 of P.L.1979, c.157 (C.46:8B-15) is amended to
48 read as follows:

1 15. Subject to the provisions of the master deed, the bylaws,
2 rules and regulations and the provisions of this act or other
3 applicable law, the association shall have the following powers:

4 (a) Whether or not incorporated, the association shall be an
5 entity which shall act through its officers and may enter into
6 contracts, bring suit and be sued. If the association is not
7 incorporated, it may be deemed to be an entity existing pursuant to
8 this act and a majority of the members of the governing board or of
9 the association, as the case may be, shall constitute a quorum for the
10 transaction of business. Process may be served upon the association
11 by serving any officer of the association or by serving the agent
12 designated for service of process. Service of process upon the
13 association shall not constitute service of process upon any
14 individual unit owner.

15 (b) The association shall have access to each unit from time to
16 time during reasonable hours as may be necessary for the
17 maintenance, repair or replacement of any common elements
18 therein or accessible therefrom or for making emergency repairs
19 necessary to prevent damage to common elements or to any other
20 unit or units. The association may charge the unit owner for the
21 repair of any common element damaged by the unit owner or his
22 tenant.

23 (c) The association may purchase units in the condominium and
24 otherwise acquire, hold, lease, mortgage and convey the same. It
25 may also lease or license the use of common elements in a manner
26 not inconsistent with the rights of unit owners.

27 (d) The association may acquire or enter into agreements
28 whereby it acquires leaseholds, memberships or other possessory or
29 use interests in lands or facilities including, but not limited to
30 country clubs, golf courses, marinas and other recreational
31 facilities, whether or not contiguous to the condominium property,
32 intended to provide for the enjoyment, recreation or other use or
33 benefit of the unit owners. If fully described in the master deed or
34 bylaws, the fees, costs and expenses of acquiring, maintaining,
35 operating, repairing and replacing any such memberships, interests
36 and facilities shall be common expenses. If not so described in the
37 master deed or bylaws as originally recorded, no such membership
38 interest or facility shall be acquired except pursuant to amendment
39 of or supplement to the master deed or bylaws duly adopted as
40 provided therein and in this act. In the absence of such amendment
41 or supplement, if some but not all unit owners desire any such
42 acquisition and agree to assume among themselves all costs of
43 acquisition, maintenance, operation, repair and replacement thereof,
44 the association may acquire or enter into an agreement to acquire
45 the same as limited common elements appurtenant only to the units
46 of those unit owners who have agreed to bear the costs and
47 expenses thereof. Such costs and expenses shall be assessed against
48 and collected from the agreeing unit owners in the proportions in

1 which they share as among themselves in the common expenses in
2 the absence of some other unanimous agreement among themselves.
3 No other unit owner shall be charged with any such cost or expense;
4 provided, however, that nothing herein shall preclude the extension
5 of the interests in such limited common elements to additional unit
6 owners by subsequent agreement with all those unit owners then
7 having an interest in such limited common elements.

8 (e) The association may levy and collect assessments duly made
9 by the association for a share of common expenses **[or otherwise]**,
10 including any other moneys duly owed the association, upon proper
11 notice to the appropriate unit owner, together with interest thereon,
12 late fees and reasonable attorneys' fees, if authorized by the master
13 deed or bylaws.

14 All funds collected by an association shall be maintained
15 separately in the association's name. For investment purposes only,
16 reserve funds may be commingled with operating funds of the
17 association. Commingled operating and reserve funds shall be
18 accounted for separately, and a commingled account shall not, at
19 any time, be less than the amount identified as reserve funds. A
20 manager or business entity managing a condominium, or an agent,
21 employee, officer, or director of an association, shall not
22 commingle any association funds with his or her funds or with the
23 funds of any other condominium association or the funds of another
24 association as defined in section 3 of P.L.1977, c.419 (C.45:22A-
25 23).

26 **[If] Other than during the period of developer control as set**
27 **forth in section 5 of P.L.1993, c.30 (C.45:22A-47), if authorized by**
28 **the master deed or bylaws, the association may levy and collect a**
29 **capital contribution, membership fee or other charge upon the**
30 **[initial sale or subsequent] resale of a unit, which collection shall**
31 **be earmarked for the purpose of maintenance of or improvements to**
32 **common elements to defray common expenses **[or otherwise]**,**
33 **provided that such charge shall not exceed nine times the amount of**
34 **the most recent monthly common expense assessment for that unit.**

35 (f) If authorized by the master deed or bylaws, the association
36 may impose reasonable fines upon unit owners for failure to comply
37 with provisions of the master deed, bylaws or rules and regulations,
38 subject to the following provisions:

39 A fine for a violation or a continuing violation of the master
40 deed, bylaws or rules and regulations shall not exceed **[the**
41 **maximum monetary penalty permitted to be imposed for a violation**
42 **or a continuing violation under section 19 of the "Hotel and**
43 **Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-19)] \$50 per**
44 **violation per day , or a total of \$2,500 for continuing violations.**

45 On roads or streets with respect to which Title 39 of the Revised
46 Statutes is in effect under section 1 of P.L.1945, c.284 (C.39:5A-1),

1 an association may not impose fines for moving automobile
2 violations.

3 A fine shall not be imposed unless the association has filed the
4 required information with the Commission on Shared Ownership
5 Communities pursuant to section 10 of P.L. , c. (C.)
6 (pending before the Legislature as this bill) and the unit owner is
7 given written notice of the action taken and of the alleged basis for
8 the action, and is advised of the right to participate in a dispute
9 resolution procedure in accordance with subsection (k) of section 14
10 of P.L.1969, c.257 (C.46:8B-14), and advised of the further right to
11 file an appeal with the Commission on Shared Ownership
12 Communities. A unit owner who does not believe that the dispute
13 resolution procedure has satisfactorily resolved the matter shall not
14 be prevented from seeking dispute resolution with the Commission
15 on Shared Ownership Communities in the manner provided under
16 section 5 of P.L. , c. (C.) (pending before the Legislature as
17 this bill), or from seeking a judicial remedy in a court of competent
18 jurisdiction, in which case the filing of a lien for any fine imposed
19 shall be postponed until a final determination has been made
20 concerning the fine by either the commission or the court.

21 (g) Such other powers as may be set forth in the master deed or
22 bylaws, if not prohibited by P.L.1969, c.257 (C.46:8B-1 et seq.) or
23 any other law of this State.
24 (cf: P.L.2007, c.165, s.1)

25

26 46. This act shall take effect immediately.

27

28

29

STATEMENT

30

31 It has been more than 30 years since the Legislature enacted
32 "The Planned Real Estate Development Full Disclosure Act,"
33 (PREDFDA), P.L.1977, c.419 (C.45:22A-21 et seq.) to provide
34 State oversight of the marketing of planned developments to
35 prospective purchasers, through a review of documents and
36 advertisements, as well as requiring that certain disclosures be made
37 by a developer to a buyer. Marketing techniques are important
38 because membership in a homeowner association is mandatory for a
39 purchaser of a home in community which has shared property and
40 facilities, such as a condominium, cooperative, or a single family
41 home in a planned development. The shared property of such
42 communities is owned collectively by all of the individual home
43 purchasers. These communities are referred to as "shared
44 ownership communities" in the bill and are often known as common
45 interest communities.

46 It has also been more than 10 years since the Assembly Task
47 Force to Study Homeowners' Associations released its report
48 containing more than 30 recommendations calling for changes in

1 the laws, in order to provide more protections for homeowners.
2 This bill addresses most of those recommendations, as well as
3 updating the laws requiring disclosure by developers and clarifying
4 the powers and obligations of governing boards of associations and
5 the rights of owners living in such communities.

6 The bill revises the manner in which information should be
7 provided prospective purchasers through the Public Offering
8 Statement, (POS) a document required to be provided to prospective
9 purchasers by developers of such communities. Although New
10 Jersey's statutes require certain disclosures by a developer during
11 the sales phase of shared ownership communities, these disclosures
12 have too often been inadequate to properly inform prospective
13 purchasers. Items which are likely to be of extreme importance to a
14 purchaser, such as obligations, governance structures, potential
15 future liabilities, restrictions, or, even in some cases, hidden loans
16 on the part of a developer to the association, may be buried deep
17 within the document, and not disclosed adequately, if at all. The
18 sheer volume of information, which varies widely by developers on
19 matters which could be standardized, also hinders adequate review
20 by the State.

21 The bill requires the POS, and the registration of developments
22 process, to be revised and streamlined. A developer will be
23 required to submit information on standardized forms and in an
24 electronic format. Governance structures will be standardized and
25 developers allowed to highlight variations that they wish to apply.
26 Processing times for registrations of developments will be reduced
27 under the bill from 90 to 45 days for standardized submissions. The
28 information in the Public Offering Statement to be disclosed to a
29 prospective purchaser will be revised to be quickly accessed by the
30 reader, as well as indexed under logical headings, such as pets,
31 parking, restrictions and fees. An executive summary of the
32 offering is required to be made in plain language, explaining the
33 rights, liabilities, obligations and governing form applicable to the
34 association.

35 The bill also addresses the problem that planned communities
36 with fewer than 100 units have been exempted from registration
37 under the act. This has been interpreted by the administering
38 agency as exempting developers from providing a POS, thus
39 providing no protections for purchasers in smaller communities.
40 The exemption has also been extended by regulations to all low and
41 moderate income (*Mount Laurel*) communities of any size.
42 Exemption from the PREDFDA also clouds many other issues, such
43 as when a developer of a planned community must turn over the
44 assets to the homeowners. The bill removes these exemptions, and
45 requires a Public Offering Statement for every prospective
46 purchaser in a planned community. The regressive flat rate
47 development charge currently charged to developers of planned
48 communities is replaced under the bill with a per unit fee of 3/100

1 of one percent (.0003) of the sales price. These fees are currently
2 required to be used to defray the costs of the State's review under
3 the statute, and will continue to be used for that purpose, as well as
4 to offset costs for other homeowner protections added by the bill.
5 The change from a flat rate fee to a per unit fee will result in lower
6 fees on lower priced homes, and in most instances will result in
7 decreased fees being paid per development than is the case now.

8 In addition, the bill addresses problems which arise in what may
9 be termed the "governance" stage of a homeowners' association.
10 After the developer has sold at least 75 percent of the homes
11 planned for the community, total control of the management of the
12 commonly-owned property is transferred from the developer to the
13 home owners in the community. Experience shows that owners are
14 not adequately prepared for this event.

15 The bill allows owners to have earlier exposure to operational
16 issues and input into governance matters, as well as requires boards
17 to adopt principles of democratic and transparent governance. The
18 bill requires the creation of an owners' coordinating council in each
19 association, consisting of at least three owners, during the time
20 period that the developer controls the voting interest of the
21 association governing board. The owners' coordinating council will
22 function as a steering committee for owners, and serve as the
23 election monitor when owners other than the developer are entitled
24 by statute to be elected as voting members of the governing board.
25 In addition, the owners' council will be permitted to bring claims to
26 a commission formed under the bill, on matters affecting
27 construction deficiencies in the common elements during the period
28 of developer control. The inability of owners to file warranty
29 claims concerning defects in common elements was found to be a
30 problem by the State Commission of Investigation in its report of
31 abuses in the new home construction industry.

32 The bill addresses the inconsistency in various statutes affecting
33 owners' rights in different types of shared ownership communities,
34 by amending the laws to eliminate these inconsistencies.

35 The bill creates a commission in, but not of, the Department of
36 Law and Public Safety, to serve as a State resource center, liaison
37 and educational resource to owners and their shared ownership
38 community associations, and to coordinate low cost, reliable
39 alternative dispute resolution (ADR) services to these associations.
40 The commission will also serve as a hearing entity concerning
41 violations of statutory law pertaining to associations. The
42 commission is modeled after a very successful program created by
43 Montgomery County, Maryland for homeowner associations under
44 its jurisdiction.

45 The bill addresses a critical need of the many owners whose
46 associations have not provided any ADR or ADR which is not
47 impartial. Many associations have adopted a process too biased or
48 expensive to serve as a viable alternative to litigation. Because

1 associations can charge each owner the cost of the board's attorney
2 as a common expense, many boards are quick to invite litigation,
3 rather than amicably resolve disputes. In some instances, even
4 when a board's actions blatantly violate bylaws, or are flagrantly
5 illegal, State and local officials are often unwilling or unable to get
6 involved, citing the "private" nature of such communities. This
7 places an undue financial burden on individual owners, many of
8 whom are senior citizens on fixed incomes.

9 The bill also addresses the general lack of information about
10 community associations, and a lack of standards for the manner in
11 which they may operate. The commission created by the bill and
12 the State entity responsible for oversight of marketing of new
13 homes is charged with creating a booklet providing detailed
14 information to owners concerning general information, State and
15 federal laws, resources available, and the standards of governance
16 established for association governing boards. The commission will
17 also be responsible for posting the information to a web site.

18 The commission is also required under the bill to promulgate
19 standards for transparent and democratic governance in the
20 operation of shared ownership communities. The standards may be
21 more specific than the provisions of the bill, but must comport with
22 the Legislature's intent to foster open, democratic processes in such
23 communities.

24 The funding for the activities of the commission and the
25 alternative dispute resolution services will come from fees already
26 collected and earmarked for protections of owners under the "The
27 Planned Real Estate Development Full Disclosure Act." The bill
28 requires that all associations provide certain information annually to
29 the Commission on Shared Ownership Communities. There is no
30 fee to file under the bill, but those associations that do not provide
31 the information will not be eligible as qualified private communities
32 to seek reimbursement from their municipality for services provided
33 to them, such as trash, leaf and snow removal, and, in addition, will
34 not be permitted to impose fines upon members, or to receive
35 approval to file liens based on fines imposed.

36 In order to recognize the governmental nature of homeowners
37 associations, and to provide the best enforcement of statutory
38 protections for prospective homebuyers in shared ownership
39 communities, the bill moves the responsibility for the "The Planned
40 Real Estate Development Act" to a new bureau within the Division
41 of Consumer Affairs in the Department of Law and Public Safety,
42 to be known as the "Bureau of Homebuyers Protection." The
43 Division of Consumer Affairs currently has significant experience
44 in administering consumer protection programs; for example it has
45 the responsibility for overseeing the "Home Improvement
46 Contractor's Registration Act" and "the consumer fraud act." In
47 addition, relocating homebuyer protections will help to minimize
48 conflicts of interests concerning builders under other programs in

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- 1 the Department of Community Affairs, such as its role as the
- 2 enforcer of construction codes, licensing of code inspectors, and
- 3 overseeing the “New Home Warranty Program.”