SENATE, No. 1009



STATE OF NEW JERSEY

219th LEGISLATURE



INTRODUCED JANUARY 30, 2020

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

SYNOPSIS

Clarifies that conversions of housing cooperatives into condominiums are subject to notice provisions of “The Planned Real Estate Development Full Disclosure Act.”

CURRENT VERSION OF TEXT

As introduced.



An Act clarifying the registration requirements for certain planned developments and amending and supplementing P.L.1977, c.419.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

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

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

a. "Disposition" means any sales, contract, lease, assignment, or other transaction concerning a planned real estate development and includes the conversion of a cooperative housing corporation into a condominium form of ownership of the housing unit .

b. "Developer" or "subdivider" means any person who disposes or offers to dispose of any lot, parcel, unit, or interest in a planned real estate development.

c. "Offer" means any inducement, solicitation, advertisement, or attempt to encourage a person to acquire a unit, parcel, lot, or interest in a planned real estate development.

d. "Purchaser" or "owner" means any person or persons who acquires a legal or equitable interest in a unit, lot, or parcel in a planned real estate development, and shall be deemed to include a prospective purchaser or owner. However, as used in P.L.1993, c.30 (C.45:22A-43 et seq.), "owner" means any person owning a unit, or an "owner" or holder of a "proprietary lease," as those terms are defined under subsections i. and k. of section 3 of "The Cooperative Recording Act of New Jersey," P.L.1987, c.381 (C.46:8D-3), if the development is a cooperative.

e. "State" means the State of New Jersey.

f. "Commissioner" means the Commissioner of Community Affairs.

g. "Person" **[**shall be**]** means the same as defined **[**as**]** in R.S.1:1-2.

h. "Planned real estate development" or "development" means any real property situated within the State, whether contiguous or not, which consists of or will consist of, separately owned areas, irrespective of form, be it lots, parcels, units, or interest, and which are offered or disposed of pursuant to a common promotional plan, and providing for common or shared elements or interests in real property. This definition shall not apply to any form of timesharing.

This definition shall specifically include, but shall not be limited to, property subject to the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), any form of homeowners' association, any housing cooperative or to any community trust or other trust device.

This definition shall be construed liberally to effectuate the purposes of this act.

i. "Common promotional plan" means any offer for the disposition of lots, parcels, units or interests of real property by a single person or group of persons acting in concert, where such lots, parcels, units or interests are contiguous, or are known, designated or advertised as a common entity or by a common name.

j. "Advertising" means and includes the publication or causing to be published of any information offering for disposition or for the purpose of causing or inducing any other person to purchase an interest in a planned real estate development, including the land sales contract to be used and any photographs or drawings or artist's representations of physical conditions or facilities on the property existing or to exist by means of any:

(1) Newspaper or periodical;

(2) Radio or television broadcast;

(3) Written or printed or photographic matter;

(4) Billboards or signs;

(5) Display of model houses or units;

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

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

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

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

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

m. "Conversion" means any change with respect to a real estate development or subdivision, apartment complex , cooperative housing corporation, or other entity concerned with the ownership, use or management of real property which would make such entity a planned real estate development , including a termination and transfer of a cooperative housing corporation into a condominium form of ownership .

n. "Association" means an association for the management of common elements and facilities, organized pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43).

o. "Executive board" means the executive board of an association, as provided for in section 3 of P.L.1993, c.30 (C.45:22A- 45).

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

q. "Association member" means the owner of a unit within a planned real estate development, or a unit's tenant to the extent that the governing documents of the planned real estate development permit tenant membership in the association, and the developer to the extent that the development contains unsold lots, parcels, units, or interests pursuant to subsection c. of section 1 of P.L.1993, c.30 (C.45:22A-43). This definition shall not be construed to provide the developer a different transition obligation than that required pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47), or to require that the developer is allowed to vote in executive board elections.

r. "Good standing" means the status - solely with respect to eligibility to (1) vote in executive board elections, (2) vote to amend the bylaws, and (3) nominate or run for any membership position on the executive board - applicable to an association member who is current on the payment of common expenses, late fees, interest on unpaid assessments, legal fees, or other charges lawfully assessed, and which association member has not failed to satisfy a judgment for common expenses, late fees, interest on unpaid assessments, legal fees, or other charges lawfully assessed. An association member is in good standing if he is in full compliance with a settlement agreement with respect to the payments of assessments, legal fees or other charges lawfully assessed, or the association member has a pending, unresolved dispute concerning charges assessed which dispute has been initiated: through a valid alternative to litigation pursuant to subsection c. of section 2 of P.L.1993, c.30 (C.45:22A-44); through subsection (k) of section 14 of the "Condominium Act," P.L.1969, c.257 (C.46:8B-14); or through a pertinent court action.

s. "Voting-eligible tenant" means a tenant of a unit within a planned real estate development in which:

(1) the governing documents of the development permit the tenant's participation in executive board elections, and

(2) either (a) the development has allowed tenant participation in executive board elections as a standard practice prior to the effective date of P.L.2017, c.106 (C.45:22A-45.1 et al.), or (b) the owner has affirmatively acknowledged the right of the tenant to vote through a provision of a written lease agreement or separate document.

This definition shall not be construed to affect voting as an agent of the owner through a proxy or power of attorney. Pursuant to subsection d. of this section, if the development is a cooperative corporation, then, an "owner" or holder of a "proprietary lease," as those terms are defined under subsections i. and k. of section 3 of "The Cooperative Recording Act of New Jersey," P.L.1987, c.381 (C.46:8D-3), is also an "owner," not a tenant, for the purposes of P.L.1993, c.30 (C.45:22A-43 et seq.).

(cf: P.L.2017, c.106, s.2)

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

6. a. Unless otherwise exempted:

(1) No developer may offer or dispose of any interest in a planned real estate development, including the conversion of a cooperative housing corporation to a condominium form of ownership, prior to the registration of such development with the agency.

(2) No developer may dispose of any lot, parcel, unit, or interest in a planned real estate development, including the conversion of a cooperative housing corporation to a condominium form of ownership, unless **[**he:**]** the developer delivers to the purchaser a current public offering statement, on or before the contract date of such disposition.

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

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

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

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

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

3. (New section) Any vote taken by the shareholders of a cooperative housing corporation concerning a conversion or transfer of the real estate to a condominium form of ownership shall be null and void unless and until the registration and public offering statement requirements of P.L.1977, c.419 (C.45:22A-21 et seq.) have been met. This section shall apply to all pending cooperative housing corporation conversions pending on or before the effective date of P.L. , c. (C ) (pending before the Legislature as this bill).

4. (New section) Notwithstanding any provision of the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.), “The Planned Real Estate Development Full Disclosure Act,” P.L.1977, c.419 (C.45:22A-21 et seq.), or any other law to the contrary, the conversion by a developer of a cooperative housing corporation to a condominium form of ownership shall not require the preparation of an environmental impact statement by the developer.

5. This act shall take effect immediately.

STATEMENT

This bill clarifies that conversions from a housing cooperative to condominiums are subject to the registration and public offering disclosure required by “The Planned Real Estate Development Full Disclosure Act,” P.L.1977, c.419 (C.45:22A-21 et seq.).

In the past, the Department of Community Affairs has not applied the consumer protection provisions of “The Planned Real Estate Development Full Disclosure Act” to units undergoing a conversion from a housing cooperative corporation to a condominium form of planned real estate development. “The Planned Real Estate Development Full Disclosure Act” has been construed by the courts very broadly in its protection of prospective purchasers in planned real estate developments. This bill clarifies that purchasers of condominiums in a conversion from a cooperative housing corporation are within the class of prospective purchasers that the Legislature sought to protect through the enactment of “The Planned Real Estate Development Full Disclosure Act.”

The bill specifies that the change of a cooperative housing corporation into a condominium development will be considered a conversion, and is required to be registered as such under “The Planned Real Estate Full Disclosure Act.” The bill requires that the tenants in a cooperative that is converting to a condominium be entitled to the same protections under the State law that protects tenants under converted ownership.

Section 3 of the bill provides that whenever a vote has been taken to terminate a cooperative in order to convert to a condominium, if the new condominium was not registered with the Department of Community Affairs, and a public offering statement has not been provided to the prospective purchasers, then the vote is nullified, and further specifies that it will apply to all cooperative housing corporation conversions pending on the date the bill is enacted into law, as well as to all future cooperative housing corporation conversions.

Lastly, the bill provides that the change of a cooperative housing corporation into a condominium development will not require the preparation of an environmental impact statement by the developer.