

ASSEMBLY, No. 476

STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Assemblyman JOE DANIELSEN

District 17 (Middlesex and Somerset)

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

SYNOPSIS

Provides standards for election and recall of officers for associations of planned real estate developments and restricts certain expenditures.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 2/22/2024)

1 AN ACT concerning associations of planned real estate
2 developments, amending and supplementing P.L.1977, c.419,
3 and amending P.L.1993, c.30 and P.L.2017, c.106.
4

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

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

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

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

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

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

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

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

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

32 g. "Person" shall be defined as in R.S.1:1-2.

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

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

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

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

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

- 15 (1) Newspaper or periodical;
- 16 (2) Radio or television broadcast;
- 17 (3) Written or printed or photographic matter;
- 18 (4) Billboards or signs;
- 19 (5) Display of model houses or units;
- 20 (6) Material used in connection with the disposition or offer of
21 the development by radio, television, telephone or any other
22 electronic means; or

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

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

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

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

46 m. "Conversion" means any change with respect to a real estate
47 development or subdivision, apartment complex or other entity

- 1 concerned with the ownership, use or management of real property
2 which would make such entity a planned real estate development.
- 3 n. "Association" means an association for the management of
4 common elements and facilities, organized pursuant to section 1 of
5 P.L.1993, c.30 (C.45:22A-43).
- 6 o. "Executive board" means the executive board of an
7 association, as provided for in section 3 of P.L.1993, c.30
8 (C.45:22A- 45).
- 9 p. "Unit" means any lot, parcel, unit or interest in a planned
10 real estate development that is, or is intended to be, a separately
11 owned area thereof.
- 12 q. "Association member" means the owner of a unit within a
13 planned real estate development, or a unit's tenant to the extent that
14 the governing documents of the planned real estate development
15 permit tenant membership in the association, and the developer to
16 the extent that the development contains unsold lots, parcels, units,
17 or interests pursuant to subsection c. of section 1 of P.L.1993, c.30
18 (C.45:22A-43). This definition shall not be construed to provide
19 the developer a different transition obligation than that required
20 pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47), or to require
21 that the developer is allowed to vote in executive board elections.
- 22 r. "Good standing" means the status - solely with respect to
23 eligibility to (1) vote in executive board elections, (2) vote to
24 amend the bylaws, and (3) nominate or run for any membership
25 position on the executive board - applicable to an association
26 member who is current on the payment of common expenses, late
27 fees, interest on unpaid assessments, legal fees, or other charges
28 lawfully assessed, and which association member has not failed to
29 satisfy a judgment for common expenses, late fees, interest on
30 unpaid assessments, legal fees, or other charges lawfully assessed.
31 An association member is in good standing if he is in full
32 compliance with a settlement agreement with respect to the
33 payments of assessments, legal fees or other charges lawfully
34 assessed, or the association member has a pending, unresolved
35 dispute concerning charges assessed which dispute has been
36 initiated: through a valid alternative to litigation pursuant to
37 subsection c. of section 2 of P.L.1993, c.30 (C.45:22A-44); through
38 subsection (k) of section 14 of the "Condominium Act," P.L.1969,
39 c.257 (C.46:8B-14); or through a pertinent court action.
- 40 s. "Voting-eligible tenant" means a tenant of a unit within a
41 planned real estate development in which:
- 42 (1) the governing documents of the development permit the
43 tenant's participation in executive board elections, and
- 44 (2) either (a) the development has allowed tenant participation
45 in executive board elections as a standard practice prior to the
46 effective date of P.L.2017, c.106 (C.45:22A-45.1 et al.), or (b) the
47 owner has affirmatively acknowledged the right of the tenant to

1 vote through a provision of a written lease agreement or separate
2 document.

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

11 t. "Election committee" means an election committee of
12 association members established pursuant to paragraph (1) of
13 subsection b. of section 6 of P.L.2017, c.106 (C.45:22A-45.2).

14 u. "Non-directed proxy ballot" means a proxy ballot that
15 provides the proxy holder general discretion to decide how the vote
16 is cast on the proxy owner's behalf.

17 v. "Qualifying expenditure" means all association expenses that
18 exceed \$100,000 or any maintenance fee increase in excess of the
19 Consumer Price Index.

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

21

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

24 3. a. The form of administration of an association organized
25 pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43) shall:

26 (1) provide for the election of an executive board, elected by the
27 association members, and voting-eligible tenants where applicable,
28 and responsible to the members of the association pursuant to
29 section 4 of P.L.1993, c.30 (C.45:22A-46), through which the
30 powers of the association shall be exercised and its functions
31 performed; and

32 (2) be described in the governing documents, specifying the
33 powers, duties, manner of selection and removal, and compensation,
34 if any, of the officers, directors, or trustees of the executive board.

35 b. Subject to the master deed, declaration of covenants and
36 restrictions, bylaws or other instruments of creation, subsection d.
37 of this section, and the laws of the State, the executive board may
38 act in all instances on behalf of the association.

39 c. The members of the executive board appointed by the
40 developer shall be liable as fiduciaries to the owners for their acts
41 or omissions.

42 d. During control of the executive board by the developer,
43 copies of the annual audit of association funds shall be available for
44 inspection by owners or their authorized representative at the
45 project site.

46 (cf: P.L.2017, c.106, s.5)

1 3. Section 6 of P.L.2017, c.106 (C.45:22A-45.2) is amended to
2 read as follows:

3 6. a. An association shall hold executive board elections in
4 accordance with the provisions of its governing documents,
5 including validly **[-]** adopted executive board rules**[,]** that do not
6 conflict with the provisions of this section. **[If such documents do**
7 **not set a specific time or interval, the elections]** Unless otherwise
8 provided in the governing documents, the executive board shall
9 consist of five members, but notwithstanding the governing
10 documents, if the number of housing units in the community is less
11 than 11, the executive board shall consist of no more than three
12 members. The executive board shall elect from among its members
13 a president, secretary, treasurer, and, in the case of communities
14 with more than 10 units, a vice president, who shall perform the
15 duties of those offices customarily performed by similar officers of
16 nonprofit corporations. As permitted by the governing documents,
17 the executive board may appoint and designate other officers and
18 assign them such duties as it deems appropriate. Elections shall be
19 held at two-year intervals and shall be conducted with strict
20 adherence to democratic principles and fairness. If an association
21 has not held an election in compliance with its governing
22 documents in two or more years, it shall hold an election within 90
23 days of the submission to any current executive board member of a
24 petition signed by at least 25 **[or more]** percent of association
25 members in good standing, but in no event less than the number of
26 association members required to meet the quorum requirements set
27 forth in the governing documents. If an association has no
28 executive board members and association members fail to act on
29 petition or by majority, any association member or group thereof, at
30 common expense and, upon written notice to all owners, may
31 petition a court of competent jurisdiction for authority to act
32 temporarily in the interests of the association and to organize and
33 hold an election within 90 days of the date of the court order. Any
34 proxies used by an association must contain a prominent notice that
35 use of the proxy is voluntary on the part of the granting owner, that
36 it can be revoked at any time before the proxy holder casts a vote,
37 and that absentee ballots are available. An association may not use
38 proxies for an executive board member election without also
39 making absentee ballots available.

40 b. An association **[of a development with fewer than 50 units]**
41 shall **[ensure]**:

42 (1) Conduct elections under the administration of an election
43 committee of association members, none of the members of which
44 shall be current executive board members or candidates for the
45 executive board. The election committee shall consist of at least
46 three association members, who shall be selected by lot of eligible
47 association members at least 120 days prior to an election, provided

1 that any association member may decline to serve on the election
2 committee after selection and allow for the selection by lot of
3 another association member. The election committee shall function
4 independently of the executive board, and may contract for the
5 services of a qualified, independent individual or an organization
6 that is qualified in election monitoring services. The election
7 committee shall be responsible for determining the eligibility of
8 association members to vote or to be candidates for membership on
9 the executive board, for counting ballots, and for verifying election
10 results; and

11 (2) Ensure an executive board election system that includes:
12 **[(1)]** (a) the provision of election notice, **[(2)]** (b) the provision of
13 the ability to nominate and vote for any association member in good
14 standing, **[(3)]** (c) the provision of an opportunity to review any
15 candidacy qualifications such that the owner is permitted to be a
16 candidate for election to the board, **[(4)]** (d) the provision of ready
17 access to information on when and how to vote, and **[(5)]** (e) the
18 counting of ballots and verification of eligibility to vote, all of
19 which shall be conducted in a non-fraudulent manner. **[Such**
20 **association shall also be subject to the requirements of paragraphs**
21 **(9) and (10) of subsection c. of this section.]**

22 c. In order to ensure open and fair executive board elections,
23 the following provisions of this subsection shall apply to all
24 associations **[of developments with 50 or more units, except for**
25 **paragraphs (9) and (10), which shall apply to associations of all**
26 **developments]**.

27 (1) An association shall not provide for a term of an executive
28 board member to be for more than **[4]** two years, provided that
29 nothing shall prevent an executive board member from continuing
30 to serve until his or her successor is duly qualified and elected.

31 (2) An association shall not prohibit a voting-eligible tenant,
32 where applicable, from casting a vote allocated to a unit if the
33 bylaws otherwise permit tenant participation in an election of
34 executive board members nor prohibit an individual acting pursuant
35 to a valid power of attorney or proxy from casting a vote.

36 (3) An association shall provide the first of two written **[notice]**
37 notices pursuant to paragraph (5) of this subsection, to all
38 association members no later than **[30]** 60 days prior to the **[date**
39 **for the mailing of the notice of the meeting set forth in paragraph**
40 **(5) of this subsection that informs]** election, informing association
41 members of the right to nominate themselves or other association
42 members in good standing for candidacy to serve on the executive
43 board.

44 (4) An association, in accordance with this subsection and
45 paragraph (1) of subsection b. of this section, and subject to the
46 exceptions under subsection f. of this section, shall not prohibit an
47 association member in good standing from nominating himself or

1 herself, or any other association member in good standing as a
2 candidate for any membership position on the executive board, so
3 long as the nomination is made prior to the mailing of ballots or
4 proxies to the association members, which mailing shall occur no
5 earlier than: (a) the day following the expiration of the time period
6 within which candidates must be nominated, or (b) where no
7 expiration date is set forth for nomination of candidates, then the
8 business day prior to the mailing of the second notice of the
9 election, required pursuant to paragraph (5) of this subsection. The
10 period for submitting nominations shall not be less than **【14】 30**
11 days from the mailing of the request for nominations pursuant to
12 paragraph (5) of this subsection.

13 (5) An association shall provide association members with two
14 written **【notice】 notices** of an election by personal delivery, mail, or
15 electronic means**【, no less than 14 nor more than 60】 :**

16 (a) An association shall provide all association members with
17 the first notice at least 60 days prior to the election, which shall
18 include the election rules, to inform association members and allow
19 all eligible persons who might be interested in filing as candidates
20 or nominating an association member in good standing a reasonable
21 opportunity to do so.

22 (b) An association shall provide all association members with
23 the second notice no more than 30 nor less than 14 days prior to the
24 meeting at which an election of executive board members is
25 scheduled. This second notice shall include a proxy ballot and an
26 absentee ballot, unless prohibited by the bylaws, which ballots shall
27 list in alphabetical order by last name the names of all candidates
28 nominated pursuant to paragraph (4) of this subsection. In the case
29 of mailing, the notice shall be effective when deposited in the
30 mailbox with proper postage. The notice may only be sent by
31 electronic means if either (a) the affected association member, or
32 voting-eligible tenant where applicable, has agreed in writing to
33 accept notice by electronic means; or (b) the governing documents
34 permit electronic notices, provided another form of voting by
35 absentee balloting or proxy voting is available.

36 (6) An association shall use ballots, whether paper ballots or
37 electronic ballots, that contain the names of all persons nominated
38 as a candidate for the executive board.

39 (7) An association shall not prohibit any association member in
40 good standing, or voting-eligible tenant where applicable, subject to
41 the exceptions under subsection f. of this section and any limitation
42 on the number of votes per unit permitted under paragraph (9) of
43 this subsection, from voting for any nominated candidate in an
44 executive board election.

45 (8) An association member shall be allowed to cast a ballot
46 anonymously for the election of executive board members. An
47 association shall **【not prevent voting for an executive board**

1 member by electronic means】 allow all eligible association
2 members, or voting-eligible tenants where applicable, to cast a
3 ballot by mail, in person, or, where the executive board determines
4 to employ voting in such manner and an association member, or
5 voting-eligible tenant where applicable, consents to casting a vote
6 in such manner, by electronic means. A mailed ballot or an
7 electronic ballot shall be deemed to be a proxy for purposes of
8 determining a quorum for the meeting at which the election is
9 conducted. A non-directed proxy ballot shall not be counted in an
10 election if the number of executive board positions to be filled at
11 the election exceeds the number of candidates seeking to fill
12 executive board positions.

13 (9) An association shall not provide for an allocation of votes
14 other than one vote for each unit, or such larger number of equal
15 votes per unit as may be set forth in the governing documents of the
16 association, except (a) where the bylaws or other governing
17 document provide for the voting interest to be proportional to a
18 unit's value or size, (b) where the governing documents permit more
19 than one vote to be cast by each unit on an equal basis or a basis
20 consistent with each unit's value or size, or (c) where the governing
21 documents do not set forth the number of votes that may be cast by
22 each unit, then in accordance with a rule adopted by the executive
23 board that allows more than one vote to be cast by each unit,
24 provided such rule assigns an equal number of votes to each unit.

25 (10) Election procedures shall not be established or administered
26 in any way to prohibit participation by the residents of low- or
27 moderate-income housing units.

28 (11) All nominated candidates shall be allowed to observe the
29 entire process of counting and tabulation of the ballots, either in
30 person or through a designated representative, and shall have access
31 to lists of association members who are eligible to vote and, after
32 the voting has started, to any list of association members who have
33 voted that the association may maintain.

34 d. Initial executive board elections in condominium
35 associations, governed under the "Condominium Act," P.L.1969,
36 c.257 (C.46:8B-1 et seq.), shall follow the notice timeline under
37 subsection b. of section 2 of P.L.1979, c.157 (C.46:8B-12.1), and
38 shall not be subject to this section.

39 e. Whether or not formed as a nonprofit corporation,
40 associations 【of developments of 50 or more units】 shall conform
41 to the requirements of the "New Jersey Nonprofit Corporation Act,"
42 P.L.1983, c.127 (N.J.S.15A:1-1 et seq.) regarding the counting of
43 ballots.

44 f. (1) It shall be permissible for the bylaws of the association
45 to provide:

46 (a) for the association members, and voting-eligible tenants
47 where applicable, of a planned real estate development with units of
48 different use types to nominate and vote for some members of the

1 executive board and, pursuant to the mixed-use development's
2 governing documents, have other members of the executive board
3 nominated and elected by association members and voting-eligible
4 tenants of units of a different use type;

5 (b) for the association members, and voting-eligible tenants
6 where applicable, of a planned real estate development to nominate
7 and vote only for some members of the executive board based upon
8 a distribution that allocates votes with approximate proportionality
9 to the number, value, or size of units located in certain geographical
10 areas within the development;

11 (c) for a limitation on the number of executive board members
12 nominated and elected by only certain association members, and
13 voting-eligible tenants where applicable, if that limit is based upon
14 a classification intended to further the election of one or more
15 executive board members by the association members, and voting-
16 eligible tenants where applicable, of affordable housing units that
17 represent a minority of the units in a planned real estate
18 development;

19 (d) for the association members, and voting-eligible tenants
20 where applicable, of a planned real estate development to nominate
21 and vote for some members of the executive board and, pursuant to
22 the governing documents, have other members of the executive
23 board nominated and elected by the association members, and
24 voting-eligible tenants where applicable, of one or more separate
25 developments, so long as each development's voting weight is
26 approximately proportional, based on the number, value, or size of
27 the units; and

28 (e) that, except for executive board members serving as
29 representatives of the developer during the period prior to surrender
30 of control to the owners pursuant to section 5 of P.L.1993, c.30
31 (C.45:22A-47), not more than one owner, entity-owner
32 representative, or voting-eligible tenant where applicable, from a
33 single unit may serve on the governing board simultaneously;

34 (2) The executive board of an umbrella or master association
35 that does not directly contain units need not be elected by
36 individuals who are association members, and voting-eligible
37 tenants where applicable, with units within the geographical area of
38 the umbrella or master association, provided the members of the
39 executive board serve as executive board members of another
40 planned real estate development executive board, and have been
41 nominated and elected by the association members, and voting-
42 eligible tenants where applicable, with units in that planned real
43 estate development, in compliance with this section.

44 (3) Except with regard to **[a planned real estate development**
45 **containing fewer than 50 units, and]** any appointment by the
46 developer permitted pursuant to section 5 of P.L.1993, c.30
47 (C.45:22A-47), an association shall:

1 (a) not allow a person to take an executive board position
2 through appointment, provided that nothing herein shall prevent the
3 executive board members of an association from filling a vacancy in
4 the executive board created by resignation, death, failure to
5 maintain any reasonable qualification, including maintaining good
6 standing, to be an executive board member or by removal following
7 a vote in favor of removal open to all association members in
8 accordance with the terms of the bylaws and subsection j. of this
9 section; and

10 (b) ensure that, in order to serve on the executive board, a
11 person shall be elected through a process that does not conflict with
12 the provisions of this section.

13 g. A challenge to the validity of election results, unless based
14 upon allegations of vote tampering or fraud directly concerning the
15 election committee or its members, shall be submitted to the
16 election committee no less than 30 days following the date on
17 which written notice of the results of the election is given to
18 members of the association. Pending the outcome of any such
19 challenge, the persons declared elected by the election committee
20 shall serve as de facto officers or trustees, as the case may be.

21 h. Ballots, envelopes, registration records, eligibility lists,
22 proofs of mailing, and other voting materials shall be subject to
23 inspection by all association members at the time of the election
24 and shall be kept in the custody of a certified public accountant or
25 the election committee for not less than 30 days following the
26 election, or until such time as any challenge to the election brought
27 within that 30-day period has been resolved and the documents are
28 no longer required. Voting materials and procedures shall at all
29 times be subject to inspection and review by the election committee.
30 The parties to any election dispute shall be allowed the opportunity
31 to be present or to be represented at any such inspection and review.

32 i. The election committee shall have the sole authority to report
33 all substantiated allegations of vote tampering or fraud by the
34 association's management, legal team, candidates, or the election
35 committee to the agency, unless the allegations concern the election
36 committee or its members directly, in which case any aggrieved
37 association member may report to the agency only those allegations
38 that concern the election committee or its members directly. The
39 agency shall have the authority to investigate all reported,
40 substantiated allegations of vote tampering or fraud. If the agency
41 determines that the association's management, legal team,
42 candidates, or the election committee have engaged in vote
43 tampering or fraud, the election results shall be considered void, the
44 violation shall constitute a disorderly persons offense, the election
45 committee shall report the determination to the county prosecutor's
46 office, and the election committee shall conduct a new election
47 pursuant to the procedures set forth in P.L.1977, c.419 (C.45:22A-
48 21 et seq.). If the allegations concern the election committee or its

1 members directly, then a new election committee shall be
2 constituted in accordance with paragraph (1) of subsection b. of this
3 section for the purpose of conducting the new election.

4 j. A member of the executive board may be recalled and
5 removed from office, with or without cause, by the vote of, or
6 agreement in writing by, a majority of the association members
7 present and eligible to vote at a special meeting of association
8 members called for that purpose. The recall and removal process
9 shall only be initiated upon a petition signed by at least 10 percent
10 of association members to call such a special meeting. The
11 association members shall give notice of the meeting as required,
12 and the notice shall state the purpose of the meeting.

13 (cf: P.L.2017, c.106, s.6)

14

15 4. (New Section) The executive board shall report qualifying
16 expenditures to association members no less than 30 days prior to a
17 formal vote on the expenditures. The association or executive
18 board shall only approve the qualifying expenditures if not less than
19 a majority, or greater than a majority if required by the governing
20 documents, of all association members in good standing, vote in
21 favor. The requirements of this subsection shall not apply to
22 qualifying expenditures necessary to:

23 a. respond to an emergency; or

24 b. comply with statutory or regulatory obligations, which shall
25 include but not be limited to, those concerning health, public safety,
26 or the environment, on condition that:

27 (1) there are no other less expensive alternatives available for
28 meeting the statutory or regulatory obligations that receive approval
29 by a majority, or greater than a majority if required by the
30 governing documents, of all association members in good standing;
31 and

32 (2) no less than 10 days prior to remittance or other action to
33 commit to the qualifying expenditures, the association or executive
34 board submits a report of the qualifying expenditures necessary to
35 comply with the statutory or regulatory obligations and results of
36 the votes at which the qualifying expenditures and less-expensive
37 alternatives, failed to receive approval by a majority of all
38 association members in good standing, or greater than a majority if
39 required by the governing documents, to all association members.

40

41 5. This act shall take effect on the first day of the seventh month
42 next following enactment, and shall apply to any vote or election
43 conducted on or after the date of enactment, and any actions in
44 relation to the vote or election taken in anticipation of the vote or
45 election.

STATEMENT

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This bill establishes fair standards for the election and recall of executive board members of common interest communities and requires association member approval for certain expenditures.

The bill would require associations to hold elections at two-year intervals under the administration of an independent election committee of association members who are neither current executive board members nor candidates for the executive board and would restrict the maximum terms of executive board members to two years. The bill would also limit the size of executive boards to three members for communities comprised of less than 11 homes, provide a default size of five members for the executive boards of all other communities unless the bylaws provide otherwise, and extend the election provisions of the "Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.) to include associations with less than 50 units. Further, the bill would clarify an association's election notice obligations by requiring two written notices of an election: the first, to notify members of the election, election rules, and to allow for nominations and interested candidate applications; the second, to provide association members with the official list of candidates, election information, and absentee and proxy ballots. An association would be required to be send the first notice no later than 60 days prior to the election and the second no more than 30 nor less than 14 days prior to the election.

The bill would require associations to permit owners to vote anonymously for executive board members and to cast a ballot by mail, in person, or by electronic means. The election committee would have the exclusive authority to investigate election challenges and to report substantiated allegations of vote tampering or fraud to the Division of Housing and Development in the Department of Community Affairs (agency), unless the allegations involve the election committee or its members directly. In such case, any aggrieved association member could report only those allegations directly concerning the election committee to the agency, which would have discretion to conduct its own investigation. If the agency determines that the association's management, legal team, candidates, or the election committee are guilty of vote tampering or fraud, the election would be considered void, violations constitute a disorderly persons offense, and the election committee would be required to report the determination to the county prosecutor's office.

The bill also establishes standard procedures for the recall and removal of executive board officers or trustees, and provides that any member of the executive board may be recalled and removed from office, with or without cause, by a majority of the association members at a special meeting called for that purpose.

Further, under the bill, any expenditures in excess of \$100,000 or maintenance fee increases exceeding the Consumer Price Index

1 (qualifying expenditures) require 30 days' notice to be provided to
2 all association members prior to a formal vote on the expenditures,
3 which require approval by a majority of association members in
4 good standing, or greater if required by the governing documents.
5 The bill contains an exception that allows an association to make
6 qualifying expenditures to respond to an emergency. The bill
7 contains an additional exception allowing the association to make
8 qualifying expenditures that are necessary to comply with statutory
9 and regulatory obligations, on condition that: (1) there are no other
10 less expensive alternatives that receive approval by a majority of
11 association members, or greater if required by the governing
12 documents, and (2) the association provides a written report to all
13 association members of the qualifying expenditures and votes at
14 which the qualifying expenditures and less expensive alternatives,
15 failed to receive approval by a majority of association members, or
16 greater if required by the governing documents.

17 This bill would take effect on the first day of the seventh month
18 next following enactment, and apply to any vote or election
19 conducted on or after the date of enactment, and any actions in
20 relation to the vote or election taken in anticipation of the vote or
21 election.