

ASSEMBLY, No. 2554

STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Assemblyman ERIK PETERSON

District 23 (Hunterdon, Somerset and Warren)

SYNOPSIS

Clarifies DCA's authority to ensure planned real estate development builders comply with disclosure requirements.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning persons subject to penalties for violating the
2 "The Planned Real Estate Development Full Disclosure Act" and
3 amending P.L.1977, c.419.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
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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]** P.L.1977, c.419 (C.45:22A-21 et seq.),
11 unless the context clearly indicates 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 , and shall include
33 a builder.

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

42 This definition shall specifically include, but shall not be limited
43 to, property subject to the "Condominium Act," P.L.1969, c.257
44 (C.46:8B-1 et seq.), any form of homeowners' association, any
45 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】** P.L.1977, c.419 (C.45:22A-21 et seq.).

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. "Builder" means any individual, corporation, partnership, or
12 other business organization engaged in the construction of a
13 planned real estate development.

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

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16 2. Section 18 of P.L.1977, c.419 (C.45:22A-38) is amended to
17 read as follows:

18 18. a. Any person, including a builder, who violates any
19 provision of **[this act]** P.L.1977, c.419 (C.45:22A-21 et seq.), or of
20 a rule adopted **[under it]** thereunder, or any person who in an
21 application for registration filed for registration makes any untrue
22 statement of a material fact or omits to state a material fact shall be
23 fined not less than **[\$250.00]** \$250, **[nor]** or more than
24 **[\$50,000.00]** \$50,000 per violation.

25 b. The commissioner, through the agency, may levy and collect
26 the penalties set forth in subsection a. **[hereof]** of this section after
27 affording the person alleged to be in violation of **[this act]**
28 P.L.1977, c.419 (C.45:22A-21 et seq.) an opportunity to appear
29 before the commissioner or **[his]** the commissioner's designee and
30 to be heard personally or through counsel on the alleged violations
31 and a finding by the commissioner that said person is guilty of the
32 violation. When a penalty so levied by the commissioner has not
33 been satisfied within 30 days of the levy, the penalty may be sued
34 for and recovered by and in the name of the commissioner in a
35 summary proceeding pursuant to the **[Penalty]** "Penalty
36 Enforcement Law [(N.J.S. 2A:58-1 et seq.)] of 1999," P.L.1999,
37 c.274 (C.2A-58-10 et seq.).

38 c. The agency may in the interest of justice compromise any
39 civil penalty, if in its determination the gravity of the offense or
40 offenses does not warrant the assessment of the full fine.

41 (cf: P.L.1977, c.419, s.18)

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43 3. This act shall take effect immediately.

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STATEMENT

This bill implements one of the recommendations of the State Commission of Investigation in its report of March, 2005 entitled "The Good, the Bad and the Ugly: New-Home Construction in New Jersey." Specifically, this bill clarifies that the Commissioner of Community Affairs has authority to enforce the provisions of "The Planned Real Estate Development Full Disclosure Act" against planned real estate development builders.