

**ASSEMBLY, No. 798**

---

**STATE OF NEW JERSEY**

**212th LEGISLATURE**

---

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

**Sponsored by:**

**Assemblyman WILFREDO CARABALLO**

**District 29 (Essex and Union)**

**Assemblyman PETER J. BIONDI**

**District 16 (Morris and Somerset)**

**Assemblyman ROBERT M. GORDON**

**District 38 (Bergen)**

**Co-Sponsored by:**

**Assemblymen Wisniewski and Chivukula**

**SYNOPSIS**

"New Jersey Uniform Common Interest Ownership Act."

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



**(Sponsorship Updated As Of: 2/10/2006)**

1   **AN ACT** concerning common interest communities, supplementing  
2       Title 46 of the Revised Statutes and amending various parts of  
3       the statutory law.

4  
5       **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6       *of New Jersey:*

7  
8                                   ARTICLE 1.  
9                                   IN GENERAL

10  
11       1. (New section) This act shall be known and may be cited as  
12       the "New Jersey Uniform Common Interest Ownership Act."

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

15       a. Associations that manage common interest communities  
16       provide business, community and quasi-governmental services. The  
17       corporate model utilized by most common interest community  
18       associations does not fully recognize the quasi-governmental  
19       functions performed by such associations. This issue was addressed  
20       in recommendations made by the Assembly Task Force to Study  
21       Homeowners' Associations in its 1998 report.

22       b. Unit owners in common interest communities are entitled to:  
23       participate in governing the community association by attending  
24       meetings, serving on committees and standing for election; access  
25       appropriate association books and records; live in a community  
26       where the property is maintained according to established  
27       standards; receive fair treatment regarding financial and other  
28       association obligations; and have available and a fair and effective  
29       method of resolving disputes.

30       c. Unit owners within a common interest community are  
31       responsible for maintaining their property according to established  
32       standards; voting in community elections and on other issues;  
33       paying association assessments and charges on time; and ensuring  
34       that those who reside in or visit their dwellings adhere to all rules  
35       and regulations.

36       d. Members of governing boards have a responsibility to fulfill  
37       their fiduciary duties to the community; exercise sound business  
38       judgment; follow established management practices; balance the  
39       needs and obligations of the community as a whole with those of  
40       individual owners and residents; conduct open, fair and well  
41       publicized elections; encourage input from residents on issues  
42       affecting them personally and the community as a whole; conduct  
43       business in a transparent manner when feasible and appropriate;  
44       allow owners access to appropriate community records when  
45       requested; and provide complete and timely disclosure of personal

**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 and financial conflicts of interest related to their actions.

2 e. The laws of the State of New Jersey, as they currently exist,  
3 do not uniformly apply to all forms of common interest ownership  
4 communities, leading to disparate application of the law depending  
5 on the form of ownership.

6 f. Accordingly, the Legislature finds it in the public interest that:  
7 (1) associations and owners be required to comply with standards  
8 and procedures that further the goals set forth above;  
9 (2) a fair and efficient system for resolving disputes between  
10 owners and associations be implemented; and  
11 (3) a uniform framework for association law be established for  
12 all forms of common interest ownership associations.

13

14 3. (New section) As used in P.L. , c. (C. ) (pending before  
15 the Legislature as this bill), unless specifically provided otherwise:  
16 "Affiliate of a declarant" means any person who controls, is  
17 controlled by or is under common control with a declarant.  
18 A person "controls" a declarant if the person,  
19 (1) is general partner, officer, director, or employer of the  
20 declarant,  
21 (2) directly or indirectly, or acting in concert with one or more  
22 other persons or through one or more subsidiaries, owns, controls,  
23 holds with power to vote, or holds proxies representing, more than  
24 10 percent of the voting interest necessary to elect a majority of the  
25 directors of the declarant, or  
26 (3) has contributed more than 10 percent of the capital of the  
27 declarant.  
28 A person "is controlled by" a declarant if the declarant,  
29 (1) is a general partner, officer, director, or employer of the  
30 person,  
31 (2) directly or indirectly or acting in concert with one or more  
32 other persons, or through one or more subsidiaries, owns, controls,  
33 holds with power to vote, or holds proxies representing, more than  
34 10 percent of the voting interest in the person,  
35 (3) controls in any manner the election of a majority of the  
36 directors of the person, or  
37 (4) has contributed more than 10 percent of the capital of the  
38 person.  
39 Control does not exist if the powers described in this definition  
40 are held solely as security for an obligation and are not exercised.  
41 A lender acting primarily to obtain or protect a security interest and  
42 who does not engage in active participation of the management of  
43 the property, as defined in section 52 of P.L. , c. (C. )  
44 (pending before the Legislature as this bill), is not an affiliate of a  
45 declarant.  
46 "Allocated interests" means the following interest allocated to  
47 each unit:  
48 (1) in a condominium, the undivided interest in the common

1 elements, the common expense liability, and votes in the  
2 association;

3 (2) in a cooperative, the common expense liability and the  
4 ownership interest and votes in the association; and

5 (3) in a planned community, the common expense liability and  
6 votes in the association.

7 "Assigns" means any person to whom rights of a unit owner have  
8 been validly transferred by lease, mortgage or otherwise.

9 "Association" or "unit owners' association" means the unit  
10 owners' association organized under section 48 of P.L. , c.  
11 (C. ) (pending before the Legislature as this bill).

12 "Bylaws" means the governing regulations adopted under  
13 P.L. , c. (C. ) (pending before the Legislature as this bill),  
14 or any act repealed by P.L. , c. (C. ) (pending before the  
15 Legislature as this bill), for the regulation or management of an  
16 association.

17 "'Commissioner" means the Commissioner of Community  
18 Affairs unless otherwise specified.

19 "Common elements" means,

20 (1) in the case of a condominium or cooperative, all portions of  
21 the common interest community other than the units;

22 (2) in a planned community, any real estate within a planned  
23 community which is owned or leased by the association, other than  
24 a unit; and

25 (3) in all common interest communities, any other interests in  
26 real estate for the benefit of unit owners which are subject to the  
27 declaration, and all other elements of any improvement necessary to  
28 the existence, management, operation, maintenance, and safety of  
29 the common interest community or normally in common use,  
30 including any equipment or improvements necessary for fire safety,  
31 including, but not limited to, sprinkler and alarm systems.

32 "Common expenses" means expenditures made by, or financial  
33 liabilities of, the association, together with any allocations to  
34 reserves.

35 "Common expense liability" means the liability for common  
36 expenses allocated to each unit pursuant to section 30 of P.L. , c.  
37 (C. ) (pending before the Legislature as this bill).

38 "Common interest community" and "common interest property"  
39 mean real estate with respect to which a person, by virtue of  
40 ownership of a unit, is obligated to pay for real estate taxes,  
41 insurance premiums, maintenance, or improvement of other real  
42 estate described in a declaration. For the purposes of this definition  
43 "ownership of a unit" does not include holding a leasehold interest  
44 of less than 20 years in a unit, including renewal options.

45 "Common receipts" means all income to an association,  
46 including rent or other charges derived from leasing or licensing the  
47 use of the common elements, funds collected from unit owners as  
48 common expenses, fines or late fees, and receipts designated as

1 common by the provisions of the master deed, declaration or  
2 bylaws.

3 "Condominium" means a common interest community in which  
4 portions of the real estate are designated for separate ownership and  
5 the remainder of the real estate is designated for common ownership  
6 solely by the owners of those portions. A common interest  
7 community is not a condominium unless the undivided interests in  
8 the common elements are vested in the unit owners.

9 "Conversion building" means a building that at any time before  
10 creation of the common interest community was occupied wholly or  
11 partially by persons other than purchasers and by persons who  
12 occupied with the consent of purchasers.

13 "Cooperative" means a common interest community in which the  
14 real estate is owned by an association, each of whose members is  
15 entitled by virtue of ownership interest in the association to  
16 exclusive possession of a unit.

17 "Customary association assessment" means an assessment  
18 payable in periodic installments to the association for regular and  
19 usual operating and common area expenses pursuant to the  
20 association's annual budget. The customary association assessment  
21 shall not include any late charges, fines, penalties, interest, or any  
22 fees or costs for the collection or enforcement of the assessment or  
23 any lien arising from the assessment, or any special assessment.  
24 The periodic installments must be due no less frequently than  
25 quarter-annually and the assessment, and any of its component parts  
26 given priority by this subsection must be acceptable to the Federal  
27 National Mortgage Association so as to not disqualify an otherwise  
28 superior mortgage from purchase by the Federal National Mortgage  
29 Association as a first mortgage.

30 "Dealer" means a person in the business of selling units for his  
31 own account.

32 "Declarant" means any person or group of persons acting in  
33 concert who,

34 (1) as part of a common promotional plan, offers to dispose of  
35 his or its interest in a unit not previously disposed of, or

36 (2) reserves or succeeds to any special declarant right.

37 "Declaration" means any instruments, however designated, that  
38 create a common interest community, including any amendments to  
39 those instruments and including, in the case of condominiums, the  
40 master deed creating the condominium.

41 "Department" means the Department of Community Affairs,  
42 unless otherwise specified.

43 "Development rights" means any right or combination of rights  
44 reserved by a declarant in the declaration to,

45 (1) add real estate to a common interest community;

46 (2) create units, common elements, or limited common elements  
47 within a common interest community;

48 (3) subdivide units or convert units into common elements; or

1 (4) withdraw real estate from a common interest community.

2 "Dispose" or "disposition" mean a voluntary transfer to a  
3 purchaser of any legal or equitable interest in a unit, but the terms  
4 do not include the transfer or release of a security interest.

5 "Executive board" means the body, regardless of name,  
6 designated in the declaration to act on behalf of the association.

7 "Identifying number" means a symbol or address that identifies  
8 only one unit in a common interest community.

9 "Leasehold common interest community" means a common  
10 interest community in which all or a portion of the real estate is  
11 subject to a lease, the expiration or termination of which will  
12 terminate the common interest community or reduce its size.

13 "Limited common element" means a portion of the common  
14 elements allocated by the declaration or by operation of subsection  
15 b. or d. of section 25 of P.L. , c. (C. ) (pending before the  
16 Legislature as this bill) for the exclusive use of one or more, but  
17 fewer than all, of the units.

18 "Master association" means an organization described in section  
19 44 of P.L. , c. (C. ) (pending before the Legislature as this  
20 bill), whether or not it is also an association described in section  
21 48 of P.L. , c. (C. ) (pending before the Legislature as this  
22 bill).

23 "Master deed" means a master deed recorded pursuant to law in  
24 effect prior to the effective date of P.L. , c. (C. ) (pending  
25 before the Legislature as this bill) as an instrument to create a  
26 condominium.

27 "Offering" means every inducement, solicitation or attempt to  
28 encourage a person to acquire an interest in a unit if undertaken for  
29 gain or profit.

30 "Person" means an individual, corporation, business trust, estate,  
31 trust, partnership, association, joint venture, government,  
32 governmental subdivision or agency, or other legal or commercial  
33 entity. In the case of a land trust, however, "person" means the  
34 beneficiary of the trust rather than the trust or the trustee.

35 "Planned community" means a common interest community that  
36 is not a condominium or a cooperative. A condominium or  
37 cooperative may be part of a planned community.

38 "Proprietary lease" means an agreement with an association  
39 pursuant to which a member is entitled to exclusive possession of a  
40 unit in a cooperative.

41 "Purchaser" means a person, other than a declarant or a dealer,  
42 who by means of a voluntary transfer acquires a legal or equitable  
43 interest in a unit other than, (1) a leasehold interest, including  
44 renewal options, of less than 20 years, or (2) as security for an  
45 obligation.

46 "Quorum" means the number of persons required to be present at  
47 a meeting of an association or an executing board pursuant to  
48 section 57 of P.L. , c. (C. ) (pending before the Legislature

1 as this bill).

2 "Real estate" means any leasehold or other estate or interest in,  
3 over or under land, including structures, fixtures and other  
4 improvements and interests that by custom, usage or law pass with a  
5 conveyance of land, though not described in the contract of sale or  
6 instrument of conveyance. The term includes parcels with or  
7 without upper or lower boundaries and spaces that may be filled  
8 with air or water.

9 "Residential purposes" means use for dwelling or recreational  
10 purposes, or both.

11 "Rules" means the rules for the regulation or management of a  
12 common interest community as adopted by an association.

13 "Security interest" means an interest in real estate or personal  
14 property, created by contract or conveyance, which secures payment  
15 or performance of an obligation. The term includes a lien created  
16 by a mortgage, deed of trust, trust deed, security deed, contract for  
17 deed, land sales contract, lease intended as security, assignment of  
18 lease or rents intended as security, pledge of an ownership interest  
19 in an association, and any other consensual lien or title retention  
20 contract intended as security for an obligation.

21 "Special declarant rights" means rights reserved for the benefit of  
22 a declarant to:

23 (1) complete improvements indicated on plats and plans filed  
24 with the declaration pursuant to section 32 of P.L. , c. (C. )  
25 (pending before the Legislature as this bill) or, in a cooperative, to  
26 complete improvements described in the public offering statement  
27 pursuant to the requirements of "The Planned Real Estate  
28 Development Full Disclosure Act," P.L.1977 c. 419 (C.45:22A-21  
29 et seq.);

30 (2) exercise any development right pursuant to section 33 of  
31 P.L. , c. (C. ) (pending before the Legislature as this bill);

32 (3) maintain sales offices, management offices, signs advertising  
33 the common interest community, and models pursuant to section 39  
34 of P.L. , c. (C. ) (pending before the Legislature as this  
35 bill);

36 (4) use easements through the common elements for the purpose  
37 of making improvements within the common interest community or  
38 within real estate which may be added to the common interest  
39 community pursuant to section 40 of P.L. , c. (C. )  
40 (pending before the Legislature as this bill);

41 (5) make the common interest community subject to a master  
42 association as defined in section 44 of P.L. , c. (C. )  
43 (pending before the Legislature as this bill);

44 (6) merge or consolidate a common interest community with  
45 another common interest community of the same form of ownership  
46 as defined in section 45 of P.L. , c. (C. ) (pending before the  
47 Legislature as this bill); or

48 (7) appoint or remove any officer of the association or any

1 master association or any executive board member during any  
2 period of declarant control pursuant to subsection d. of section 51 of  
3 P.L. , c. (C. ) (pending before the Legislature as this bill).

4 "Surplus" means the excess of all common receipts over all  
5 common expenses.

6 "Time share" includes both "fee simple" and "right to use" time  
7 share interests and means:

8 (1) an "interval estate" meaning a combination of an estate for  
9 years in a unit, during the term of which title rotates among the time  
10 share owners, coupled with a vested undivided fee simple interest in  
11 the remainder in the unit as established by the declaration creating  
12 the interval estate; or

13 (2) a "time span estate" meaning a combination of an undivided  
14 interest in a present estate in fee simple in a unit established by the  
15 declaration creating the time span estate, coupled with the exclusive  
16 right to possession and occupancy of the unit during a regularly  
17 recurring period.

18 "Unit" means a physical portion of the common interest  
19 community designated for separate ownership or occupancy, the  
20 boundaries of which are described pursuant to paragraph (4) of  
21 subsection a. of section 28 of P.L. , c. (C. ) (pending before  
22 the Legislature as this bill).

23 "Unit owner" means a declarant or other person who owns a unit,  
24 or a lessee of a unit in a leasehold common interest community  
25 whose lease expires simultaneously with any lease the expiration or  
26 termination of which will remove the unit from the common interest  
27 community, but does not include a person having an interest in a  
28 unit solely as security for an obligation. In a condominium or  
29 planned community, the declarant is, as of the date of the recording  
30 of the declaration, the owner of any unit created by the declaration.  
31 In a cooperative, the declarant is treated as the owner of any unit to  
32 which allocated interests have been allocated pursuant to section 30  
33 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
34 until that unit has been conveyed to another person.

35  
36 4. (New section) The provisions of P.L. , c. (C. )  
37 (pending before the Legislature as this bill), except as expressly  
38 provided therein, may not be varied by agreement, and rights  
39 conferred by it may not be waived. A declarant may not act under a  
40 power of attorney, or use any other device, to evade the limitations  
41 or prohibitions of P.L. , c. (C. ) (pending before the  
42 Legislature as this bill) or the declaration. Provisions of any power  
43 of attorney or other device intended to evade the limitations or  
44 prohibitions of P.L. , c. (C. ) (pending before the  
45 Legislature as this bill) or the declaration shall be void as against  
46 public policy.

47  
48 5. (New section) a. In a cooperative, a unit owner's interest in a

1 unit and its allocated interests shall be deemed to be personal  
2 property. The documents creating the ownership rights of a  
3 cooperative unit owner and the bylaws of the cooperative shall be  
4 construed as integrated documents incapable of being separated or  
5 distinguished from each other. The transfer of any interest in a  
6 cooperative shall be by means of a document recorded in the county  
7 in which the cooperative is located. The transfer document shall  
8 contain the following information:

9 (1) name of the cooperative;

10 (2) unit designation;

11 (3) reference to the last prior transfer of the unit, if previously  
12 transferred;

13 (4) full name and address of the transferor and transferee of the  
14 unit;

15 (5) executed and acknowledged consent of the cooperative  
16 executive board authorizing and approving the transfer or  
17 assignment;

18 (6) number of shares transferred;

19 (7) statement of the full consideration paid for the cooperative  
20 unit which includes the purchase price paid plus the amount derived  
21 from application of the percent of ownership held in conjunction  
22 with the unit to the unpaid balance of the fee or leasehold mortgage  
23 encumbering the entire structure as of the date of the transfer or  
24 assignment; and

25 (8) all other matters, consistent with P.L. , c. (C. )  
26 (pending before the Legislature as this bill), which the parties may  
27 deem appropriate.

28 Nothing in this section shall be construed to affect the treatment  
29 of cooperative interests pursuant to the "2004 Homestead Property  
30 Tax Rebate Act," sections 1 through 10 of P.L.1990, c.61 (C.54:4-  
31 8.57 through 54:4-8.66), sections 3, 14 through 16, 18, and 19 of  
32 P.L.1999, c.63 (C.54:4-8.58a and C.54:4-8.66a through C.54:4-  
33 8.66e) and the imposition of realty transfer fees as permitted by  
34 law.

35 b. In a condominium or planned community:

36 (1) If there is any unit owner other than a declarant, each unit  
37 that has been created, together with its interest in the common  
38 elements, constitutes for all purposes a separate parcel of real  
39 estate. A unit shall be deemed created once it has been subjected to  
40 the declaration for the common interest community by the  
41 recordation of either the declaration or an amendment to the  
42 declaration.

43 (2) If there is any unit owner other than a declarant, each unit  
44 shall be separately taxed and assessed, and no separate tax or  
45 assessment may be rendered against any common elements for  
46 which a declarant has reserved no development rights.

47 c. Any portion of the common elements for which the declarant  
48 has reserved any development right shall be separately taxed and

1 assessed against the declarant, and the declarant alone shall be  
2 liable for payment of those taxes.

3 d. If there is no unit owner other than a declarant, the real estate  
4 comprising the common interest community may be taxed and  
5 assessed in any manner provided by law.

6  
7 6. (New section) a. No local housing code, maintenance code  
8 or other local ordinance or regulation, whether adopted prior to or  
9 after the date of P.L. , c. (C. ) (pending before the Legislature  
10 as this bill), shall impose any requirement upon any structure in a  
11 common interest community which would not be imposed upon a  
12 physically identical development under a different form of  
13 ownership.

14 b. The condominium or cooperative form of ownership shall not  
15 be prohibited through any zoning or land use law, or shall any such  
16 law impose a requirement upon a condominium or cooperative  
17 which would not be imposed upon a physically identical  
18 development under a different form of ownership.

19 c. Except as provided in subsections a. and b. of this section, the  
20 provisions of P.L. , c. (C. ) (pending before the Legislature as  
21 this bill) shall not invalidate or modify any provision of any  
22 ordinance, rule or regulation governing the use of real estate in this  
23 State.

24  
25 7. (New section) a. If a unit is acquired by eminent domain or  
26 part of a unit is acquired by eminent domain leaving the unit owner  
27 with a remnant that may not practically or lawfully be used for any  
28 purpose permitted by the declaration, the award shall include  
29 compensation to the unit owner for that unit and its allocated  
30 interests, whether or not any common elements are acquired. Upon  
31 acquisition, unless the decree otherwise provides, that unit's  
32 allocated interests shall be reallocated to the remaining units in  
33 proportion to their allocated interests before the taking, and the  
34 association shall promptly prepare, execute and record an  
35 amendment to the declaration reflecting the reallocations. Any  
36 remnant of a unit remaining after part of a unit is taken under this  
37 subsection shall thereafter be deemed a common element.

38 b. Except as provided in subsection a. of this section, if part of a  
39 unit is acquired by eminent domain, the award shall compensate the  
40 unit owner for the reduction in value of the unit and its interest in  
41 the common elements, whether or not any common elements are  
42 acquired. Upon acquisition, unless the decree otherwise provides,

43 (1) that unit's allocated interests shall be reduced in proportion to  
44 the reduction in the size of the unit, or on any other basis specified  
45 in the declaration, and

46 (2) the portion of the allocated interests divested from the  
47 partially acquired unit shall be reallocated to that unit and to the  
48 remaining units in proportion to their interests before the taking,

1 with the partially-acquired unit participating in the reallocation on  
2 the basis of its reduced allocated interests.

3 c. If part of the common elements is acquired by eminent  
4 domain, the portion of the award attributable to the common  
5 elements taken shall be paid to the association. Unless the  
6 declaration provides otherwise, any portion of the award  
7 attributable to the acquisition of a limited common element shall be  
8 equally divided among the owners of the units to which that limited  
9 common element was allocated at the time of acquisition.

10 d. The executive board of the association, on behalf of the  
11 association and all affected unit owners, shall have the power to  
12 amend the declaration to reallocate interests in accordance with this  
13 section. The executive board shall reallocate the interests by  
14 amending the declaration and recording the amendment together  
15 with the court decree in every county in which any portion of the  
16 common interest community is located.

17  
18 8. (New section) Unless displaced by particular provisions of  
19 P.L. , c. (C. ) (pending before the Legislature as this bill), the  
20 principles of law and equity, including the law of corporations and  
21 unincorporated associations, the law of real property, and the law  
22 relative to capacity to contract, principal and agent, eminent  
23 domain, estoppel, fraud, misrepresentation, duress, coercion,  
24 mistake, receivership, substantial performance, or other validating  
25 or invalidating causes shall supplement the provisions of P.L. ,  
26 c. (C. ) (pending before the Legislature as this bill).

27  
28 9. (New section) P.L. , c. (C. ) (pending before the  
29 Legislature as this bill) is a general act intended as a unified  
30 coverage of its subject matter and so no part of it shall be construed  
31 to be impliedly repealed by subsequent legislation if that  
32 construction can be reasonably avoided.

33  
34 10. (New section) P.L. , c. (C. ) (pending before the  
35 Legislature as this bill) shall be applied and construed to effectuate  
36 its general purpose to make uniform the law with respect to the  
37 subject of P.L. , c. (C. ) (pending before the Legislature as  
38 this bill).

39  
40 11. (New section) a. If any provision of P.L. , c. (C. )  
41 (pending before the Legislature as this bill) or the application  
42 thereof to any person or circumstances is held invalid, the invalidity  
43 shall not affect other provisions or applications of P.L. , c.  
44 (C. ) (pending before the Legislature as this bill) which can be  
45 given effect without the invalid provisions or applications, and to  
46 this end the provisions of P.L. , c. (C. ) (pending before the  
47 Legislature as this bill) are severable.

48 b. In interpreting the terms of P.L. , c. (C. ) (pending

1 before the Legislature as this bill) it is intended that, (1) any action,  
2 power or right of an association, executive board, declarant, or unit  
3 owner which is not expressly prohibited by P.L. , c. (C. )  
4 (pending before the Legislature as this bill) or other law, and (2)  
5 any provision of a declaration which is not in conflict with P.L. , c.  
6 (C. ) (pending before the Legislature as this bill) or other law,  
7 shall be authorized under P.L. , c. (C. ) (pending before the  
8 Legislature as this bill).

9  
10 12. (New section) a. A court, upon finding as a matter of law  
11 that a contract or contract clause relative to real estate owned or to  
12 be owned under a form of common interest ownership was  
13 unconscionable at the time the contract was made, may either refuse  
14 to enforce the contract, enforce the remainder of the contract  
15 without the unconscionable clause, or limit the application of any  
16 unconscionable clause in order to avoid an unconscionable result.

17 Whenever it is claimed, or appears to the court, that a contract or  
18 any contract clause is or may be unconscionable, the parties, in  
19 order to aid the court in making the determination, shall be afforded  
20 a reasonable opportunity to present evidence as to:

21 (1) the commercial setting of the negotiations;

22 (2) whether a party has knowingly taken advantage of the  
23 inability of another party reasonably to protect his interests by  
24 reason of physical or mental infirmity, illiteracy, inability to  
25 understand the language of the agreement, or similar factors; and

26 (3) the effect and purpose of the contract or clause.

27 b. There shall be a rebuttable presumption of unconscionability  
28 with respect to leases involving a common interest community,  
29 including, but not limited to, leases concerning the use by unit  
30 owners of parking, recreational or other common facilities or areas.  
31 The presumption may be rebutted by a lessor through the  
32 presentation of evidence demonstrating the existence of facts and  
33 circumstances sufficient to justify and validate a lease which would  
34 otherwise appear to be unconscionable under the provisions of this  
35 section. A rebuttable presumption of unconscionability shall arise  
36 if one or more of the following elements exist, but the failure of a  
37 lease to contain any of the following elements shall neither preclude  
38 a determination of its unconscionability nor raise a presumption of  
39 its conscionability:

40 (1) None of the persons executing the lease were, at the time of  
41 the lease execution, elected by unit owners other than the declarant;

42 (2) The lease requires either the association or the unit owners to  
43 pay real estate taxes on the real estate described in the lease;

44 (3) The lease requires either the association or the unit owners to  
45 insure buildings or other facilities on the real estate described in the  
46 lease against fire or any other hazard;

47 (4) The lease requires either the association or the unit owners to  
48 perform some or all maintenance obligations pertaining to the real

1 estate or facilities located upon the real estate described in the  
2 lease;

3 (5) The lease requires either the association or the unit owners to  
4 pay rents to the lessor for a period of 10 years or more;

5 (6) The lease provides that failure of the lessee to make  
6 payments of rents due under the lease either creates, establishes or  
7 permits establishment of a lien upon individual units to secure  
8 claims for rent;

9 (7) The lease requires an annual rental which exceeds 20 percent  
10 of the appraised value of the leased real estate as improved;  
11 provided, that for purposes of this paragraph, "annual rental" means  
12 the amount due during the first 12 months of the lease from all units  
13 regardless of whether the units were in fact occupied or sold during  
14 that period, and "appraised value" means the appraised value placed  
15 upon the leased real estate the first tax year after the sale of a unit in  
16 the common interest community;

17 (8) The lease provides for a periodic rental increase based upon  
18 reference to a price index;

19 (9) The lease, declaration or other common interest community  
20 document requires that every transferee of a unit must assume the  
21 obligations under the lease.

22 c. When any parking, recreational or other common facility or  
23 area has been leased for the use of the unit owners for 20 years or  
24 more, the association or the unit owners shall have the option of  
25 renewing the lease for the parking, recreational or other common  
26 facility or area or of buying that facility or area and real estate at a  
27 conscionable price.

28 d. No contract for the sale of a unit executed on or after the  
29 effective date of P.L. , c. (C. ) (pending before the Legislature  
30 as this bill), or any declaration or association bylaws adopted on or  
31 after that effective date, shall contain a clause or provision  
32 affording the declarant or the association the right of first refusal to  
33 buy a unit upon resale, gift or devise by a unit owner. No  
34 declaration or association bylaw, whenever adopted, shall be  
35 amended on or after the effective date of P.L. , c. (C. )  
36 (pending before the Legislature as this bill) to include any such  
37 clause or provision affording the right of first refusal. This section  
38 shall not apply to the State of New Jersey or any political  
39 subdivision of this State, or to any department, division, office,  
40 agency, or bureau thereof, or any authority or instrumentality  
41 created thereby, when a right of first refusal is required by State or  
42 federal law.

43

44 13. (New section) Every contract or duty governed by P.L. , c.  
45 (C. ) (pending before the Legislature as this bill) shall impose an  
46 obligation of good faith in its performance or enforcement.

47

48 14. (New section) a. The remedies provided by P.L. , c.

1 (C. ) (pending before the Legislature as this bill) shall be liberally  
2 administered to the end that the aggrieved party is put in as good a  
3 position as if the other party had fully performed. Consequential,  
4 special or punitive damages, however, shall not be awarded except  
5 as specifically provided in P.L. , c. (C. ) (pending before the  
6 Legislature as this bill) or by other rule of law.

7 b. Any right or obligation declared by P.L. , c. (C. )  
8 (pending before the Legislature as this bill) shall be enforceable by  
9 judicial proceeding.

10  
11 15. (New section) a. As used in this section:

12 "Index" means the changes in the Consumer Price Index  
13 compiled by the Bureau of Labor Statistics, United States  
14 Department of Labor for the following series: Urban Wage Earners  
15 and Clerical Workers (CPI-W); U.S. City Average, All Items and  
16 1982-84 = 100.

17 "Reference base index" means the average index level of the 36-  
18 month period encompassing 1982,1983 and 1984.

19 b. From time to time, the dollar amounts specified in section 18  
20 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
21 section 50 of P.L. , c. (C. ) (pending before the Legislature  
22 as this bill), subsection a. of section 64 of P.L. , c. (C. )  
23 (pending before the Legislature as this bill) , subsections a. and f. of  
24 section 66 of P.L. , c. (C. ) (pending before the Legislature  
25 as this bill) , and subsections c. and d. of section 86 of P.L. , c.  
26 (C. ) (pending before the Legislature as this bill), shall be  
27 adjusted, as provided in subsections c. and d. of this section.

28 c. The dollar amount specified in section 18 of P.L. , c.  
29 (C. ) (pending before the Legislature as this bill) and any  
30 amount stated in the declaration pursuant to that section, and the  
31 dollar amounts specified in subsection c. of section 66 of P.L. , c.  
32 (C. ) (pending before the Legislature as this bill) shall be  
33 adjusted on July 1 of each year if the percentage of change,  
34 calculated to the nearest whole percentage point, between the index  
35 at the end of the preceding year and the reference base index is 10  
36 percent or more; however,

37 (1) that portion of the percentage change in the index in excess  
38 of a multiple of 10 percent shall be disregarded and the dollar  
39 amount shall be adjusted only in multiples of 10 percent of the  
40 dollar amount in effect on the date of enactment;

41 (2) the dollar amount shall not be adjusted if the amount required  
42 by this section is that currently in effect pursuant to P.L. , c.  
43 (C. ) (pending before the Legislature as this bill) as a result of  
44 earlier application of this section; and

45 (3) in no event shall the dollar amount be adjusted below the  
46 amount in effect on the date of enactment.

47 d. If the index is revised after January, 1988, the percentage of  
48 adjustment pursuant to this section shall be calculated on the basis

1 of the revised index. If a revision of the index changes the  
2 reference base index, a revised reference base index shall be  
3 determined by multiplying the reference base index then applicable  
4 by the rebasing factor furnished by the Bureau of Labor Statistics. If  
5 the index is superseded, the index referred to in this section shall be  
6 the one represented by the Bureau of Labor Statistics as reflecting  
7 most accurately the changes in the purchasing power of the dollar  
8 for consumers.

9  
10 16. (New section) a. The provisions of P.L. , c. (C. )  
11 (pending before the Legislature as this bill) shall apply to all  
12 common interest communities created within this State after the  
13 effective date of P.L. , c. (C. ) (pending before the Legislature  
14 as this bill).

15 b. Except as provided in sections 18, 19, and 20 of P.L. , c.  
16 (C. ) (pending before the Legislature as this bill), the provisions of  
17 P.L. , c. (C. ) (pending before the Legislature as this bill) shall  
18 apply to all common interest communities created within this State  
19 prior to the effective date of P.L. , c. (C. ) (pending before the  
20 Legislature as this bill). The applicability of P.L. , c. (C. )  
21 (pending before the Legislature as this bill) to common interest  
22 communities in existence prior to the effective date of P.L. , c.  
23 (C. ) (pending before the Legislature as this bill) shall not affect  
24 the priority of any lien recorded prior to the effective date of  
25 P.L. , c. (C. ) (pending before the Legislature as this bill) or  
26 impair the obligations under any contract made prior to the effective  
27 date of P.L. , c. (C. ) (pending before the Legislature as this  
28 bill). Any action relating to a common interest community that  
29 occurred prior to the effective date of P.L. , c. (C. ) (pending  
30 before the Legislature as this bill) shall be governed by the law in  
31 effect at the time of the action. Notwithstanding any provision of  
32 P.L. , c. (C. ) (pending before the Legislature as this bill)  
33 superseding or repealing any other law, the rights of unit owners  
34 and all other affected parties existing under any prior law are  
35 preserved, and shall be enforceable under P.L. , c. (C. )  
36 (pending before the Legislature as this bill) unless expressly  
37 superseded by P.L. , c. (C. ) (pending before the Legislature as  
38 this bill).

39 c. Pursuant to section 102 of P.L. , c. (C. ) (pending  
40 before the Legislature as this bill), any master declaration filed  
41 under "The Cooperative Recording Act of New Jersey," P.L.1987,  
42 c.381 (C.46:8D-1 et seq.) will be deemed a declaration under  
43 P.L. , c. (C. ) (pending before the Legislature as this bill) and  
44 will be subject to the terms of section 19 of P.L. , c. (C. )  
45 (pending before the Legislature as this bill). All cooperatives  
46 created after the effective date of P.L. , c. (C. ) (pending  
47 before the Legislature as this bill) shall be created in accordance  
48 with section 24 of P.L. , c. (C. ) (pending before the

1 Legislature as this bill).

2

3 17. (New section) Except as provided in section 20 of P.L. , c.  
4 (C. ) (pending before the Legislature as this bill), all cooperatives  
5 shall be subject to the provisions of P.L. , c. (C. ) (pending before  
6 the Legislature as this bill).

7

8 18. (New section) a. If a planned community:

9 (1) contains fewer than 10 units; or

10 (2) provides, in its declaration, that the annual average common  
11 expense liability of all units restricted to residential purposes,  
12 exclusive of optional user fees and any insurance premiums paid by  
13 the association, may not exceed \$300, as adjusted pursuant to  
14 section 15 of P.L. , c. (C. ) (pending before the Legislature as  
15 this bill), the planned community shall be subject only to sections 5,  
16 6, 7, 24 and 65 of P.L. , c. (C. ) (pending before the  
17 Legislature as this bill), unless the declaration provides that the  
18 community shall be subject to P.L. , c. (c. ) (pending before the  
19 Legislature as this bill) in its entirety.

20 b. The exemption provided in paragraph (2) of subsection a. of  
21 this section shall apply only if:

22 (1) The declarant has a reasonable basis for concluding that the  
23 maximum stated assessment will be sufficient to pay the expenses  
24 of the planned community;

25 (2) The declaration provides that the assessment may not be  
26 increased during the period of declarant control without the consent  
27 of all unit owners;

28 (3) The declarant provides to the New Jersey Department of  
29 Community Affairs an itemized budget setting forth the dollar  
30 amount allocable to each category of expense; and

31 (4) The planned community is otherwise qualified to receive an  
32 exemption pursuant to section 5 of "The Planned Real Estate  
33 Development Full Disclosure Act," P.L. 1977, c.419(C.45:22A-25).

34

35 19. (New section) All preexisting common interest  
36 communities shall be controlled by all of the provisions of P.L. , c.  
37 (C. ) (pending before the Legislature as this bill); however, such  
38 associations shall be permitted to maintain existing provisions of a  
39 declaration, bylaws or plats or plans of those common interest  
40 communities to the extent those provisions are not in conflict with  
41 the provisions of P.L. , c. (C. ) (pending before the Legislature  
42 as this bill). For example, a common interest community that has  
43 consistently maintained in its master deed or declaration and bylaws  
44 a definition of common elements which differs from the definition  
45 provided in P.L. , c. (C. ) (pending before the Legislature as this  
46 bill) shall be permitted to maintain such a definition provided that  
47 other provisions of P.L. , c. (C. ) (pending before the  
48 Legislature as this bill) are not violated by maintaining that

1 definition.

2 A common interest community may apply to the commissioner  
3 for an exemption from the provisions of P.L. , c. (C. )  
4 (pending before the Legislature as this bill). The commissioner may  
5 grant the exemption if it appears:

6 a. governing documents, deeds and other information indicate  
7 that the property does not qualify as a common interest community  
8 as defined pursuant to P.L. , c. (C. ) (pending before the  
9 Legislature as this bill); or

10 b. the limited nature of the common or shared elements of the  
11 community are such that inclusion of the community under all of  
12 the provisions of P.L. , c. (C. ) (pending before the Legislature  
13 as this bill) is not warranted. Notwithstanding an exemption  
14 granted by the commissioner under this subsection, an association  
15 shall remain responsible for the maintenance of any common or  
16 shared elements, and the powers and responsibilities granted  
17 pursuant to sections 48 through 72 of P.L. , c. (C. ) (pending  
18 before the Legislature as this bill) shall apply to such an  
19 association.

20

21 20. (New section) If a cooperative or planned community  
22 created within this State before the effective date of P.L. , c.  
23 (C. ) (pending before the Legislature as this bill) contains fewer  
24 than 10 units and is not subject to any development rights, it shall  
25 be subject only to sections 5, 6 and 7 of P.L. , c. (C. )  
26 (pending before the Legislature as this bill), unless the declaration  
27 is amended to provide that the small pre-existing cooperative or  
28 planned community shall be subject to all sections of P.L. , c.  
29 (C. ) (pending before the Legislature as this bill).

30

31 21. (New section) a. Notwithstanding any law or regulation to  
32 the contrary, the declaration, bylaws or plats and plans of any  
33 common interest community created before the effective date of  
34 P.L. , c. (C. ) (pending before the Legislature as this bill) may  
35 be amended to conform to it. Pursuant to section 50 of P.L. , c.  
36 (C. ) (pending before the Legislature as this bill), an executive  
37 board may vote to amend any of the above documents without  
38 obtaining unit owner approval.

39 b. Except as provided in subsection a. of section 21 of P.L. , c.  
40 (C. ) (pending before the Legislature as this bill), an amendment  
41 to the declaration, bylaws or plats and plans authorized by this  
42 section must be adopted in conformity with any procedures and  
43 requirements for amending the instruments specified in those  
44 instruments or, if there are none, in conformity with section 41 of  
45 P.L. , c. (C. ) (pending before the Legislature as this bill). If  
46 an amendment grants to any person any rights, powers or privileges  
47 under P.L. , c. (C. ) (pending before the Legislature as this  
48 bill), all correlative obligations, liabilities and restrictions imposed

1 by P.L. , c. (C. ) (pending before the Legislature as this bill)  
2 shall also apply to that person.

3

4 22. (New section) a. As used in this section, "nonresidential  
5 common interest community" means a common interest community  
6 in which all units are restricted exclusively to nonresidential  
7 purposes.

8 b. A nonresidential common interest community shall not be  
9 subject to the provisions of P.L. , c. (C. ) (pending before the  
10 Legislature as this bill) unless the declaration otherwise provides.

11 c. The declaration of a nonresidential common interest  
12 community may provide that P.L. , c. (C. ) (pending before the  
13 Legislature as this bill) in its entirety applies to the community or  
14 that only sections 5, 6 and 7 of P.L. , c. (C. ) (pending before  
15 the Legislature as this bill) apply.

16 d. If a nonresidential common interest community has opted to  
17 be subject to P.L. , c. (C. ) (pending before the Legislature as  
18 this bill) in its entirety, then the declaration may also require,  
19 subject to section 12 of P.L. , c. (C. ) (pending before the  
20 Legislature as this bill) that:

21 (1) Notwithstanding the provisions of section 52 of P.L. , c.  
22 (C. ) (pending before the Legislature as this bill), any  
23 management contract, employment contract, lease of recreational or  
24 parking areas or facilities, and any other contract or lease between  
25 an association and a declarant or an affiliate of a declarant, shall  
26 continue in force after the declarant turns over control of the  
27 association; and

28 (2) Notwithstanding the provisions of section 4 of P.L. , c.  
29 (C. ) (pending before the Legislature as this bill), purchasers of  
30 units may be required to execute proxies, powers of attorney, or  
31 similar devices in favor of the declarant regarding particular matters  
32 enumerated in those instruments.

33 e. A common interest community that contains units restricted  
34 exclusively to nonresidential purposes and other units which may be  
35 used for residential purposes shall not be subject to the provisions  
36 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
37 unless the units that may be used for residential purposes would  
38 comprise a common interest community in the absence of the  
39 nonresidential units, or the declaration provides that P.L. , c.  
40 (C. ) (pending before the Legislature as this bill) applies as  
41 provided in subsections c. or d. of this section.

42

43 23. (New section) The provisions of P.L. , c. (C. )  
44 (pending before the Legislature as this bill) shall not apply to  
45 common interest communities which are governed by the "Real  
46 Estate Sales Full Disclosure Act," P.L.1989, c.239 (C.45:15-16.27  
47 et seq.).

## ARTICLE 2

CREATION, ALTERATION AND TERMINATION OF  
COMMON INTEREST COMMUNITIES

24. (New section) A common interest community may be created pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association. The declaration shall be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of each person executing the declaration.

25. (New section) Except as provided by the declaration:

a. If walls, floors, or ceilings are designated as boundaries of a unit, then all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof shall be a part of the unit, and all other portions of the walls, floors, or ceilings shall be a part of the common elements.

b. If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, then any portion thereof serving only that unit shall be a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements shall be a part of the common elements.

c. Subject to subsection b., all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit shall be a part of the unit.

d. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors, windows, skylights, or other fixtures designed to serve a single unit, but located outside the unit's boundaries, shall be limited common elements allocated exclusively to that unit.

26. (New section) a. All provisions of the declaration and bylaws shall be severable.

b. The Rule Against Perpetuities shall not apply. Any provision of a declaration or of bylaws, rules, or regulations adopted pursuant to paragraph (2) of subsection a. of section 49 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall not be subject to or held to be in violation of any principle of law against perpetuities or restraints on alienation.

c. In the event of a conflict between the provisions of the

1 declaration and the bylaws, the declaration shall prevail except to  
2 the extent the declaration is inconsistent with P.L. , c. (C. )  
3 (pending before the Legislature as this bill).

4 d. Title to a unit and common elements shall not be rendered  
5 unmarketable or otherwise affected by reason of failure of the  
6 declaration to comply with P.L. , c. (C. ) (pending before the  
7 Legislature as this bill).

8  
9 27. (New section) A description of a unit which sets forth the  
10 name of the common interest community, the recording data for the  
11 declaration, the county and municipality in which the common  
12 interest community is located, and the identifying number of the  
13 unit, shall be a legally sufficient description of that unit and all  
14 rights, obligations, and interests appurtenant to that unit which were  
15 created by the declaration or bylaws.

16  
17 28. (New section) a. The declaration shall contain:

18 (1) The names of the common interest community and the  
19 association and a statement that the common interest community is  
20 either a condominium, cooperative, or planned community;

21 (2) The name of every county in which any part of the common  
22 interest community is situated;

23 (3) A legally sufficient description of the real estate included in  
24 the common interest community;

25 (4) In a condominium or planned community, a description of the  
26 boundaries of each unit created by the declaration, including the  
27 unit's identifying number, its size or number of rooms, and its  
28 location within a building if it is within a building containing more  
29 than one unit;

30 (5) A description of any limited common elements, other than  
31 those specified in subsections b. and d. of section 25 of P.L. , c.  
32 (C. ) (pending before the Legislature as this bill), together with a  
33 statement that they may be so allocated;

34 (6) A description of any real estate, except real estate subject to  
35 development rights, that may be allocated subsequently as limited  
36 common elements, other than limited common elements specified in  
37 subsections b. and d. of section 25 of P.L. , c. (C. ) (pending  
38 before the Legislature as this bill), together with a statement that  
39 they may be so allocated;

40 (7) A description of any development rights and other special  
41 declarant rights reserved by the declarant, together with a legally  
42 sufficient description of the real estate to which each of those rights  
43 applies, and a time limit within which each of those rights must be  
44 exercised;

45 (8) If any development right may be exercised with respect to  
46 different parcels of real estate at different times, a statement to that  
47 effect together with (a) either a statement fixing the boundaries of  
48 those portions and regulating the order in which those portions may

1 be subjected to the exercise of each development right or a  
2 statement that no assurances are made in those regards, and (b) a  
3 statement as to whether, if any development right is exercised in  
4 any portion of the real estate subject to that development right, that  
5 development right must be exercised in all or in any other portion of  
6 the remainder of that real estate;

7 (9) Any other conditions or limitations under which the rights  
8 described in paragraph (8) may be exercised or will lapse;

9 (10) An allocation to each unit of the allocated interests in the  
10 manner described in section 30 of P.L. , c. (C. ) (pending  
11 before the Legislature as this bill) ;

12 (11) Any restrictions (a) on alienation of the units, including any  
13 restrictions on leasing which exceed the restrictions on leasing units  
14 that executive boards may impose pursuant to subsection d. of  
15 section 49 of P.L. , c. (C. ) (pending before the Legislature as  
16 this bill), and (b) on the amount for which a unit may be sold or on  
17 the amount that may be received by a unit owner on sale,  
18 condemnation, or casualty loss to the unit or to the common interest  
19 community, or on termination of the common interest community;

20 (12) The recording data for recorded easements and licenses  
21 appurtenant to or included in the common interest community or to  
22 which any portion of the common interest community is or may  
23 become subject by virtue of a reservation in the declaration; and

24 (13) All matters required by sections 29 through 32 of P.L. , c.  
25 (C. ) (pending before the Legislature as this bill), section 40 of  
26 P.L. , c. (C. ) (pending before the Legislature as this bill), and  
27 subsection d. of section 51 of P.L. , c. (C. ) (pending before  
28 the Legislature as this bill).

29 b. The declaration may contain any other matters the declarant  
30 considers appropriate, including any restrictions on the uses of a  
31 unit or the number or other qualifications of persons who may  
32 occupy units.

33  
34 29. (New section) a. Any lease the expiration or termination of  
35 which may terminate the common interest community or reduce its  
36 size shall be recorded. Every lessor of such leases in a  
37 condominium or planned community shall sign the declaration. The  
38 declaration shall state:

39 (1) The recording data for the lease;

40 (2) The date on which the lease is scheduled to expire;

41 (3) A legally sufficient description of the real estate subject to  
42 the lease;

43 (4) Any right of the unit owners to redeem the reversion and the  
44 manner whereby those rights may be exercised, or a statement that  
45 they do not have those rights;

46 (5) Any right of the unit owners to remove any improvements  
47 within a reasonable time after the expiration or termination of the  
48 lease, or a statement that they do not have those rights; and

1 (6) Any rights of the unit owners to renew the lease and the  
2 conditions of any renewal, or a statement that they do not have  
3 those rights.

4 b. After the declaration for a leasehold condominium or  
5 leasehold planned community is recorded, neither the lessor nor the  
6 lessor's successor in interest may terminate the leasehold interest of  
7 a unit owner who makes timely payment of a unit owner's share of  
8 the rent and otherwise complies with all covenants which, if  
9 violated, would entitle the lessor to terminate the lease. A unit  
10 owner's leasehold interest in a condominium or planned community  
11 shall not be affected by failure of any other person to pay rent or  
12 fulfill any other covenant.

13 c. Acquisition of the leasehold interest of any unit owner by the  
14 owner of the reversion or remainder shall not merge the leasehold  
15 and fee simple interests unless the leasehold interests of all unit  
16 owners subject to that reversion or remainder are acquired.

17 d. If the expiration or termination of a lease decreases the  
18 number of units in a common interest community, the allocated  
19 interests shall be reallocated in accordance with subsection a. of  
20 section 7 of P.L. , c. (C. ) (pending before the Legislature as  
21 this bill) as if those units had been taken by eminent domain.  
22 Reallocations shall be confirmed by an amendment to the  
23 declaration which shall be prepared, executed and recorded by the  
24 association.

25

26 30. (New section) a. The declaration shall allocate to each unit:

27 (1) In a condominium, a fraction or percentage of undivided  
28 interests in the common elements and in the common expenses of  
29 the association as enumerated in subsection c. of section 63 of  
30 P.L. , c. (C. ) (pending before the Legislature as this bill), and  
31 a portion of the votes in the association;

32 (2) In a cooperative, an ownership interest in the association, a  
33 fraction or percentage of the common expenses of the association as  
34 enumerated subsection c. of section 63 of P.L. , c. (C. )  
35 (pending before the Legislature as this bill), and a portion of the  
36 votes in the association; and

37 (3) In a planned community, a fraction or percentage of the  
38 common expenses of the association as enumerated in subsection c.  
39 of section 63 of P.L. , c. (C. ) (pending before the Legislature  
40 as this bill), and a portion of the votes in the association.

41 b. The declaration shall state the formulas used to establish  
42 allocations of interests. Those allocations shall not discriminate in  
43 favor of units owned by the declarant or an affiliate of the declarant.

44 c. If units may be added to or withdrawn from the common  
45 interest community, the declaration shall state the formulas to be  
46 used to reallocate the allocated interests among all units included in  
47 the common interest community after the addition or withdrawal.

48 d. The declaration may provide: (1) that different allocations of

1 votes shall be made to the units on particular matters specified in  
2 the declaration; (2) for cumulative voting only for the purpose of  
3 electing members of the executive board; and (3) for class voting on  
4 specified issues affecting the class if necessary to protect valid  
5 interests of the class. A declarant shall not utilize cumulative or  
6 class voting for the purpose of evading any limitation imposed on  
7 declarants by P.L. , c. (C. ) (pending before the Legislature as  
8 this bill) and units shall not constitute a class because they are  
9 owned by a declarant.

10 e. Except for minor variations due to rounding, the sum of the  
11 common expense liabilities and, in a condominium, the sum of the  
12 undivided interests in the common elements allocated at any time to  
13 all the units shall each equal one, if stated as a fraction, or 100  
14 percent, if stated as a percentage. In the event of a discrepancy  
15 between an allocated interest and the result derived from application  
16 of the pertinent formula, the allocated interest shall prevail.

17 f. In a condominium, the common elements shall not be subject  
18 to partition, and any purported conveyance, encumbrance, judicial  
19 sale, or other voluntary or involuntary transfer of an undivided  
20 interest in the common elements made without the unit to which  
21 that interest is allocated shall be void.

22 g. In a cooperative, any purported conveyance, encumbrance,  
23 judicial sale, or other voluntary or involuntary transfer of an  
24 ownership interest in the association made without the possessory  
25 interest in the unit to which that interest is related shall be void.

26 h. Except to the extent that the declaration provides for limited  
27 common elements, it shall provide that the right of a unit owner to  
28 the use of the common elements is a right in common with all other  
29 unit owners.

30

31 31. (New section) a. Except for the limited common elements  
32 described in subsections b. and d. of section 25 of P.L. , c.  
33 (C. ) (pending before the Legislature as this bill), the declaration  
34 shall specify to which unit or units each limited common element is  
35 allocated. An allocation shall not be altered without the consent of  
36 the unit owners whose units are affected.

37 b. Except as the declaration otherwise provides, a limited  
38 common element shall be reallocated by an amendment to the  
39 declaration executed by the unit owners between or among whose  
40 units the reallocation is made. The persons executing the  
41 amendment shall provide a copy thereof to the association, which  
42 shall record it. The amendment shall be recorded in the names of  
43 the parties and the common interest community.

44 c. A common element not previously allocated as a limited  
45 common element shall be so allocated only pursuant to provisions  
46 in the declaration made in accordance with paragraph (7) of  
47 subsection a. of section 28 of P.L. , c. (C. ) (pending before  
48 the Legislature as this bill). The allocations shall be made by

1 amendments to the declaration.

2

3 32. (New section) a. Plats and plans shall be a part of the  
4 declaration and shall be required for all common interest  
5 communities except cooperatives. Separate plats and plans shall not  
6 be required if all of the information required by this section is  
7 contained in either a plat or plan. Each plat and plan shall be clear  
8 and legible and contain a certification that the plat or plan contains  
9 all of the information required by this section.

10 b. Each plat shall show or project:

11 (1) The name and a survey or general schematic map of the  
12 entire common interest community;

13 (2) The location and dimensions of all real estate not subject to  
14 development rights, or subject only to the development right to  
15 withdraw, and the location and dimensions of all existing  
16 improvements within that real estate;

17 (3) A legally sufficient description of any real estate subject to  
18 development rights, labeled to identify the rights applicable to each  
19 parcel;

20 (4) The extent of any encroachments by or upon any portion of  
21 the common interest community;

22 (5) To the extent feasible, a legally sufficient description of all  
23 easements serving or burdening any portion of the common interest  
24 community;

25 (6) Except as provided in subsection h. of this section, the  
26 approximate location and dimensions of any vertical unit  
27 boundaries not shown or projected on plans recorded pursuant to  
28 subsection d. of this section and that unit's identifying number;

29 (7) The location with reference to an established datum of any  
30 horizontal unit boundaries not shown or projected on plans recorded  
31 pursuant to subsection d. of this section and that unit's identifying  
32 number;

33 (8) A legally sufficient description of any real estate in which the  
34 unit owners will own only an estate for years, labeled as "leasehold  
35 real estate";

36 (9) The distance between non-contiguous parcels of real estate  
37 comprising the common interest community;

38 (10) The approximate location and dimensions of any porches,  
39 decks, balconies, garages, or patios allocated as limited common  
40 elements, and also a narrative description of any other limited  
41 common elements; and

42 (11) In the case of real estate not subject to development rights,  
43 all other matters customarily shown on land surveys.

44 c. A plat also shall show the intended location and dimensions  
45 of any contemplated improvement to be constructed anywhere  
46 within the common interest community. Any contemplated  
47 improvement shown shall be labeled either "MUST BE BUILT" or  
48 "NEED NOT BE BUILT".

1 d. Except as provided in subsection h. of this section, to the  
2 extent not shown or projected on the plats, plans of the units shall  
3 show or project:

4 (1) The approximate location and dimensions of the vertical  
5 boundaries of each unit, and that unit's identifying number;

6 (2) The approximate location of any horizontal unit boundaries,  
7 with reference to an established datum, and that unit's identifying  
8 number; and

9 (3) The approximate location of any units in which the declarant  
10 has reserved the right to create additional units or common elements  
11 as enumerated in subsection c. of section 33 of P.L. , c. (C. )  
12 (pending before the legislature as this bill), identified appropriately.

13 e. Unless the declaration provides otherwise, the horizontal  
14 boundaries of part of a unit located outside a building shall have the  
15 same elevation as the horizontal boundaries of the inside part, and  
16 need not be depicted on the plats and plans.

17 f. Upon exercising any development right, the declarant shall  
18 record either new plats and plans necessary to conform to the  
19 requirements of subsections a., b., and d. of this section, or new  
20 certifications of plats and plans previously recorded if those plats  
21 and plans otherwise conform to the requirements of those  
22 subsections.

23 g. Any certification of a plat or plan required by this section  
24 shall be made by a professional surveyor, architect or engineer who  
25 has been licensed by this State.

26 h. Plats and plans need not show the location and dimensions of  
27 the units' boundaries or their limited common elements if:

28 (1) The plat shows the location and dimensions of all buildings  
29 containing or comprising the units; and

30 (2) The declaration includes other information that shows or  
31 contains a narrative description of the general layout of the units in  
32 those buildings and the limited common elements allocated to those  
33 units.  
34

35 33. (New section) a. To exercise any development right  
36 reserved under paragraph (7) of subsection a. of section 28 of  
37 P.L. , c. (C. ) (pending before the Legislature as this bill), the  
38 declarant shall prepare, execute and record an amendment to the  
39 declaration pursuant to section 40 of P.L. , c. (C. ) (pending  
40 before the Legislature as this bill) and, in a condominium or  
41 planned community, comply with section 32 of P.L. , c. (C. )  
42 (pending before the Legislature as this bill). The declarant shall be  
43 the unit owner of any units thereby created. The amendment to the  
44 declaration shall assign an identifying number to each new unit  
45 created, and, except in the case of subdivision or conversion of  
46 units described in subsection b. of this section, reallocate the  
47 allocated interests among all units. The amendment shall describe  
48 any common elements and any limited common elements thereby

1 created and, in the case of limited common elements, designate the  
2 unit to which each is allocated to the extent required by section 31  
3 of P.L. , c. (C. ) (pending before the Legislature as this bill).

4 b. Development rights may be reserved within any real estate  
5 added to the common interest community if the amendment adding  
6 that real estate includes all matters required by sections 28 or 29 of  
7 P.L. , c. (C. ) (pending before the Legislature as this bill), as  
8 the case may be, and, in a condominium or planned community, the  
9 plats and plans include all matters required by section 32 of P.L. ,  
10 c. (C. ) (pending before the Legislature as this bill). This  
11 provision does not extend the time limit on the exercise of  
12 development rights imposed by the declaration pursuant to  
13 paragraph (8) of subsection a. of section 28 of P.L. , c. (C. )  
14 (pending before the Legislature as this bill).

15 c. Whenever a declarant exercises a development right to  
16 subdivide or convert a unit previously created into additional units,  
17 common elements, or both:

18 (1) If the declarant converts the unit entirely to common  
19 elements, the amendment to the declaration shall reallocate all the  
20 allocated interests of that unit among the other units as if that unit  
21 had been taken by eminent domain pursuant to section 7 of P.L. ,  
22 c. (C. ) (pending before the legislature as this bill); and

23 (2) If the declarant subdivides the unit into two or more units,  
24 whether or not any part of the unit is converted into common  
25 elements, the amendment to the declaration shall reallocate all the  
26 allocated interests of the unit among the units created by the  
27 subdivision in any reasonable manner prescribed by the declarant.

28 d. If the declaration provides, pursuant to paragraph (7) of  
29 subsection a. of section 28 of P.L. , c. (C. ) (pending before  
30 the legislature as this bill), that all or a portion of the real estate is  
31 subject to a right of withdrawal:

32 (1) If all the real estate is subject to withdrawal, and the  
33 declaration does not describe separate portions of real estate subject  
34 to that right, none of the real estate shall be withdrawn after a unit  
35 has been conveyed to a purchaser; and

36 (2) If any portion is subject to withdrawal, it shall not be  
37 withdrawn after a unit in that portion has been conveyed to a  
38 purchaser.

39  
40 34. (New section) Subject to the provisions of the declaration  
41 and other provisions of law, including, but not limited to the code  
42 adopted pursuant to the "State Uniform Construction Code Act,"  
43 P.L.1975, c.217(C.52:27D-119 et seq.), an owner:

44 a. May make any improvements or alterations to his unit that do  
45 not impair the structural integrity or mechanical systems or lessen  
46 the support of any portion of the common interest community;

47 b. Shall not change the appearance of the common elements, or  
48 the exterior appearance of a unit or any other portion of the

1 common interest community, without permission of the association;  
2 or

3 c. After acquiring an adjoining unit or an adjoining part of an  
4 adjoining unit, may remove or alter any intervening partition or  
5 create apertures therein, even if the partition in whole or in part is a  
6 common element, if those acts do not impair the structural integrity  
7 or mechanical systems or lessen the support of any portion of the  
8 common interest community. Removal of partitions or creation of  
9 apertures under this paragraph shall not be an alteration of  
10 boundaries.

11

12 35. (New section) a. Subject to the provisions of the  
13 declaration and other provisions of law, the boundaries between  
14 adjoining units may be relocated by an amendment to the  
15 declaration upon application to the association by the owners of  
16 those units. If the owners of the adjoining units have specified a  
17 reallocation between their units of their allocated interests, the  
18 application shall state the proposed reallocations. Unless the  
19 executive board determines, within 30 days, that the reallocations  
20 are unreasonable, the association shall prepare an amendment that  
21 identifies the units involved and states the reallocations. The  
22 amendment shall be executed by those unit owners, contain words  
23 of conveyance between them, and, on recordation, be indexed in the  
24 name of the grantor and the grantee, and in the grantee's index in  
25 the name of the association.

26 b. Subject to the provisions of the declaration and other  
27 provisions of law, boundaries between units and common elements  
28 may be relocated to incorporate common elements within a unit by  
29 an amendment to the declaration upon application to the association  
30 by the owner of the unit who proposes to relocate a boundary.  
31 Unless the declaration provides otherwise, the amendment shall be  
32 approved only if persons entitled to cast at least 67 percent of the  
33 votes in the association, including 67 percent of the votes allocated  
34 to units not owned by the declarant, agree to the action. The  
35 amendment shall describe any fees or charges payable by the owner  
36 of the affected unit in connection with the boundary relocation and  
37 the fees and charges shall be assets of the association. The  
38 amendment shall be executed by the unit owner of the unit whose  
39 boundary is being relocated and by the association, contain words  
40 of conveyance between them, and on recordation be indexed in the  
41 name of the unit owner and the association as grantor or grantee, as  
42 appropriate.

43 c. The association in a condominium or planned community  
44 shall prepare and record plats or plans as necessary to show the  
45 altered boundaries of affected units, and their dimensions and  
46 identifying numbers. The association in a cooperative shall prepare  
47 and record amendments to the declaration, including any plans, as  
48 necessary to show or describe the altered boundaries of affected

1 units, and their dimensions and identifying numbers.

2

3 36. (New section) If a unit in a cooperative is sold, conveyed,  
4 voluntarily or involuntarily encumbered, or otherwise transferred by  
5 a unit owner, the interest in that unit which is sold, conveyed,  
6 encumbered, or otherwise transferred shall be the right to  
7 possession of that unit under a proprietary lease, coupled with the  
8 allocated interests of that unit, and the association's interest in that  
9 unit shall not be thereby affected.

10

11 37. (New section) a. If the declaration expressly so permits, a  
12 unit may be subdivided into two or more units. Subject to the  
13 provisions of the declaration and other relevant provisions of law,  
14 upon application of a unit owner to subdivide a unit, the association  
15 shall prepare, execute and record an amendment to the declaration,  
16 including in a condominium or planned community the plats and  
17 plans, subdividing that unit.

18 b. The amendment to the declaration shall be executed by the  
19 owner of the unit to be subdivided and shall assign an identifying  
20 number to each unit created and reallocate the allocated interests  
21 formerly allocated to the subdivided unit to the new units in any  
22 reasonable manner prescribed by the owner of the subdivided unit.

23

24 38. (New section) The existing physical boundaries of a unit or  
25 the physical boundaries of a unit reconstructed in substantial  
26 accordance with the description contained in the original  
27 declaration shall be its legal boundaries, rather than the boundaries  
28 derived from the description contained in the original declaration,  
29 regardless of vertical or lateral movement of the building or minor  
30 variance between those boundaries and the boundaries derived from  
31 the description contained in the original declaration. This section  
32 shall not relieve a unit owner of liability in case of his willful  
33 misconduct or relieve a declarant or any other person of liability for  
34 failure to adhere to any plats or plans or, in a cooperative, to any  
35 representation in the public offering statement.

36

37 39. (New section) Unless the declaration provides otherwise, a  
38 declarant may maintain sales offices, management offices, and  
39 models in units or on common elements in the common interest  
40 community. In a cooperative or condominium, any sales office,  
41 management office, or model not designated as a unit by the  
42 declaration shall be a common element. If a declarant ceases to be a  
43 unit owner, he shall cease to have any rights with regard to such  
44 office or model unless it is removed promptly from the common  
45 interest community in accordance with a right to remove which has  
46 been reserved in the declaration. Subject to any limitations in the  
47 declaration, a declarant may maintain signs on the common  
48 elements advertising the common interest community.

1       40. (New section) a. Subject to the provisions of the  
2 declaration, a declarant shall possess an easement through the  
3 common elements as may be reasonably necessary for the purpose  
4 of discharging the declarant's obligations or exercising special  
5 declarant rights, whether arising under P.L. , c. (C. ) (pending  
6 before the Legislature as this bill) or reserved in the declaration.

7       b. In a planned community, subject to the provisions of  
8 paragraph (6) of subsection a. of section 49 of P.L. , c. (C. )  
9 (pending before the Legislature as this bill), and section 60 of  
10 P.L. , c. (C. ) (pending before the Legislature as this bill), unit  
11 owners shall have an easement,

12       (l) in the common elements for purposes of access to their units,  
13 and

14       (2) to use the common elements and all real estate that must  
15 become common elements pursuant to paragraph (6) of subsection  
16 a. of section 28 of P.L. , c. (C. ) (pending before the  
17 Legislature as this bill); for all other purposes.

18  
19       41. (New section) a. Except in cases of amendments that may  
20 be executed by a declarant under subsection f. of section 32 of  
21 P.L. , c. (C. ) (pending before the Legislature as this bill) or  
22 section 33 of P.L. , c. (C. ) (pending before the Legislature as  
23 this bill); or by the association under section 7 of P.L. , c.  
24 (C. ) (pending before the Legislature as this bill), subsection d.  
25 of section 29 of P.L. , c. (C. ) (pending before the  
26 Legislature as this bill), subsection c. of section 31 of P.L. , c.  
27 (C. ) (pending before the Legislature as this bill), subsection a. of  
28 section 35 of P.L. , c. (C. ) (pending before the Legislature as  
29 this bill); or by certain unit owners under subsection b. of section 31  
30 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
31 subsection a. of section 35 of P.L. , c. (C. ) (pending before  
32 the Legislature as this bill), subsection b. of section 37 of P.L. , c.  
33 (C. ) (pending before the Legislature as this bill), or subsection b.  
34 of section 40 of P.L. , c. (C. ) (pending before the Legislature  
35 as this bill); or by the executive board in accordance with  
36 subsection b. of section 51 of P.L. , c. (C. ) (pending before  
37 the Legislature as this bill), and except as limited by subsection d.  
38 of this section, the declaration, including any plats and plans, shall  
39 be amended only by vote or agreement of unit owners of units  
40 representing at least 67 percent of a quorum of the members, which  
41 quorum may not be less than 50 percent of the membership in the  
42 association qualified to vote, provided the proposed amendment  
43 does not seek to prohibit a previously permitted use in a unit. In the  
44 case of an amendment that seeks to prohibit a previously permitted  
45 use in a unit, the amendment must be approved by a vote of at least  
46 67 percent of the total allocated votes in the association. The  
47 declaration may specify a smaller number only if all of the units are  
48 restricted exclusively to non-residential use.

1       b. An action to challenge the validity of an amendment adopted  
2 by an association pursuant to this section, other than an action by a  
3 governmental official or entity authorized to do so by statute or  
4 regulation adopted pursuant to statute, shall not be brought more  
5 than one year after the amendment is recorded.

6       c. Every amendment to a declaration shall be recorded in every  
7 county in which any portion of the common interest community is  
8 located and shall be effective only upon recordation. An  
9 amendment, except an amendment pursuant to subsection a. of  
10 section 35 of P.L. , c. (C. ) (pending before the Legislature as  
11 this bill), shall be indexed in the grantee's index in the name of the  
12 common interest community and the association and in the grantor's  
13 index in the name of the parties executing the amendment.

14       d. Except to the extent expressly permitted or required by other  
15 provisions of P.L. , c. (C. ) (pending before the Legislature as  
16 this bill), an amendment shall not create or increase special  
17 declarant rights, increase the number of units or change the  
18 boundaries of any unit or the allocated interests of a unit in the  
19 absence of unanimous consent of the unit owners.

20       e. Amendments to the declaration required by P.L. , c. (C. )  
21 (pending before the Legislature as this bill) to be recorded by the  
22 association shall be prepared, executed, recorded, and certified on  
23 behalf of the association by any officer of the association  
24 designated for that purpose or, in the absence of designation, by the  
25 president of the association.

26       f. Within 12 months following assumption by the owners of  
27 control of the executive board, and at six-year intervals thereafter,  
28 the executive board shall re-examine the bylaws, declaration and  
29 rules of the association and present such proposed amendments as  
30 the executive board may deem appropriate, as well as any  
31 amendments proposed by initiative signed by persons eligible to  
32 cast at least 20 percent of the votes, for approval by vote of the unit  
33 owners; provided, however, that any such proposed amendment  
34 shall be unambiguous and consistent with applicable law and with  
35 the provisions of the governing documents that are not proposed to  
36 be amended. Notwithstanding the terms of the declaration or  
37 bylaws, an amendment to an existing bylaw, rule or declaration,  
38 except an amendment that proposes to prohibit a previously  
39 permitted use, may be adopted pursuant to this section by the lesser  
40 of: (1) a majority of votes that are entitled to be cast by all unit  
41 owners; or (2) 67 percent of the votes actually cast, where not less  
42 than a majority of the eligible votes have been cast. An amendment  
43 that proposes to prohibit a previously permitted use may be adopted  
44 only in accordance with the terms of subsection a of section 41 of  
45 P.L. , c. (C. ) (pending before the Legislature as this bill). At  
46 least 30 days advance notice of any referendum, including the text  
47 of any new bylaw or amendment or repeal of an existing provision  
48 to be voted on, shall be given to all unit owners by registered or

1 certified mail, or by personal delivery. Changes to declarations,  
2 bylaws and rules shall be applied prospectively and shall not be  
3 construed as depriving any unit owner of a right exercised prior to  
4 the time that the change is made; provided, however, that any right  
5 relating to personal property, a physical improvement or a pet that  
6 was exercised prior to the adoption of any change to the declaration,  
7 bylaws or rules shall apply only to the specific item of personal  
8 property, physical improvement or pet existing or present at the unit  
9 on the effective date of the change. An item of personal property or  
10 a physical improvement that violates the terms of a change to the  
11 declaration, bylaws or rules shall not continue to be maintained  
12 after suffering damage to more than 50 percent of its value.

13 g. The time limits specified in the declaration pursuant to  
14 paragraph (8) of subsection a. of section 28 of P.L. , c. (C. )  
15 (pending before the Legislature as this bill) within which reserved  
16 development rights must be exercised shall be extended, and  
17 additional development rights may be created, if persons entitled to  
18 cast at least 80 percent of the votes in the association, including 80  
19 percent of the votes allocated to units not owned by the declarant,  
20 agree to that action. The agreement shall be effective 30 days after  
21 an amendment to the declaration reflecting the terms of the  
22 agreement is recorded, unless all the persons holding the affected  
23 special declarant rights or security interest in those rights:

24 (1) record a written objection within that 30-day period, in which  
25 case the amendment shall be void; or

26 (2) consent in writing at the time the amendment is recorded, in  
27 which case the amendment shall be effective when recorded.  
28

29 42. (New section) a. Except in the case of a taking of all the  
30 units by eminent domain pursuant to section 7 of P.L. , c.  
31 (C. ) (pending before the Legislature as this bill) or in the case of  
32 foreclosure against a cooperative of a security interest that has  
33 priority over the declaration of that cooperative, a common interest  
34 community may be terminated only by agreement of unit owners of  
35 units to which at least 80 percent of the votes in the association are  
36 allocated, or any larger percentage that the declaration specifies.  
37 The declaration may specify a smaller percentage only if all of the  
38 units are restricted exclusively to nonresidential uses.

39 b. An agreement to terminate shall be evidenced by the  
40 execution of a termination agreement, or ratifications thereof, in the  
41 same manner as a deed, by the requisite number of unit owners. The  
42 termination agreement shall specify a date after which the  
43 agreement will be void unless it is recorded before that date. A  
44 termination agreement and all ratifications thereof shall be recorded  
45 in each county in which a portion of the common interest  
46 community is situated and shall be effective only upon recordation.

47 c. In the case of a condominium or planned community  
48 containing only units having horizontal boundaries described in the

1 declaration, a termination agreement may provide that all of the  
2 common elements and units of the common interest community  
3 shall be sold following termination. If, pursuant to the agreement,  
4 any real estate in the common interest community is to be sold  
5 following termination, the termination agreement shall set forth the  
6 minimum terms of the sale.

7 d. In the case of a condominium or planned community  
8 containing any units not having horizontal boundaries described in  
9 the declaration, a termination agreement may provide for sale of the  
10 common elements, but it shall not require that the units be sold  
11 following termination, unless the declaration as originally recorded  
12 provided otherwise or all the unit owners consent to the sale.

13 e. The association, on behalf of the unit owners, may contract  
14 for the sale of real estate in a common interest community, but the  
15 contract shall not be binding on the unit owners until approved  
16 pursuant to subsections a. and b. of this section. If any real estate is  
17 to be sold following termination, title to that real estate, upon  
18 termination, shall vest in the association as trustee for the holders of  
19 all interests in the units. Thereafter, the association shall have all  
20 powers necessary and appropriate to effect the sale. Until the sale  
21 has been concluded and the proceeds thereof distributed, the  
22 association shall continue in existence with all of the powers it had  
23 before termination. Proceeds of the sale shall be distributed to unit  
24 owners and lien holders as their interests may appear, in accordance  
25 with subsections h., i., and j. of this section. Unless otherwise  
26 specified in the termination agreement, and as long as the  
27 association holds title to the real estate, each unit owner and the unit  
28 owner's successors in interest shall have an exclusive right to  
29 occupancy of the portion of the real estate that formerly constituted  
30 the unit. During the period of that occupancy, each unit owner and  
31 the unit owner's successors in interest shall remain liable for all  
32 assessments and other obligations imposed on unit owners by  
33 P.L. , c. (C. ) (pending before the Legislature as this bill) or  
34 the declaration.

35 f. In a condominium or planned community, if the real estate  
36 constituting the common interest community is not to be sold  
37 following termination, title to the common elements and, in a  
38 common interest community containing only units having  
39 horizontal boundaries described in the declaration, title to all the  
40 real estate in the common interest community shall vest in the unit  
41 owners upon termination as tenants in common in proportion to  
42 their respective interests as provided in subsection j. of this section,  
43 and any liens encumbering those units shall survive and be  
44 applicable to the property so vested. While the tenancy in common  
45 exists, each unit owner and the unit owner's successors in interest  
46 shall have an exclusive right to occupancy of the portion of the real  
47 estate that formerly constituted the unit.

48 g. Following termination of a common interest community, the

1 proceeds of any sale of real estate, together with the assets of the  
2 association, shall be held by the association as trustee for unit  
3 owners and holders of liens on the units as their interests may  
4 appear.

5 h. Following termination of a condominium or planned  
6 community, creditors of the association holding liens on the units,  
7 which were recorded, filed or otherwise perfected according to law,  
8 before termination, may enforce those liens in the same manner as  
9 any lien holder. All other creditors of the association shall be  
10 treated as if they had perfected liens on the units immediately  
11 before termination.

12 i. In a cooperative, the declaration may provide that all creditors  
13 of the association shall have priority over the interests of unit  
14 owners and creditors of unit owners. In that event, following  
15 termination, creditors of the association holding liens on the  
16 cooperative which were recorded, filed or otherwise perfected  
17 according to law before termination, may enforce their liens in the  
18 same manner as any lien holder, and any other creditor of the  
19 association shall be treated as if the creditor had perfected a lien  
20 against the cooperative immediately before termination. Unless the  
21 declaration provides that all creditors of the association have that  
22 priority:

23 (1) The lien of each creditor of the association which was  
24 perfected against the association before termination shall become,  
25 upon termination, a lien against each unit owner's interest in the  
26 unit as of the date the lien was perfected;

27 (2) Any other creditor of the association shall be treated upon  
28 termination as if the creditor had perfected a lien against each unit  
29 owner's interest immediately before termination;

30 (3) The amount of the lien of an association's creditor described  
31 in paragraphs (1) and (2) of this subsection against each of the unit  
32 owners' interest shall be proportionate to the ratio which each unit's  
33 common expense liability bears to the common expense liability of  
34 all of the units;

35 (4) The lien of each creditor of each unit owner which was  
36 perfected before termination shall continue as a lien against that  
37 unit owner's unit as of the date the lien was perfected; and

38 (5) The assets of the association shall be distributed to all unit  
39 owners and all lien holders as their interests may appear in the order  
40 described in this section. Creditors of the association shall not be  
41 entitled to payment from any unit owner in excess of the amount of  
42 the creditor's lien against that unit owner's interest.

43 j. The respective interests of unit owners referred to in  
44 subsections e., f., g., h., and i. of this section shall be as follows:

45 (1) Except as provided in paragraph (2) of this subsection, the  
46 respective interests of unit owners shall be the fair market values of  
47 their units, allocated interests and any limited common elements  
48 immediately before the termination, as determined by one or more

1 independent appraisers selected by the association. The decision of  
2 the independent appraisers shall be distributed to the unit owners  
3 and shall become final unless disapproved, within 30 days after  
4 distribution, by unit owners of units to which 25 percent of the  
5 votes in the association are allocated. The proportion of any unit  
6 owner's interest to that of all unit owners shall be determined by  
7 dividing the fair market value of that unit owner's unit and its  
8 allocated interests by the total fair market values of all the units and  
9 their allocated interests.

10 (2) If any unit or any limited common element is destroyed to the  
11 extent that an appraisal of the fair market value thereof before  
12 destruction cannot be made, the interests of all unit owners shall be:  
13 (a) in a condominium, their respective common element interests  
14 immediately before the termination; (b) in a cooperative, their  
15 respective ownership interests immediately before the termination,  
16 and (c) in a planned community, their respective common expense  
17 liabilities immediately before the termination.

18 k. In a condominium or planned community, except as provided  
19 in subsection l. of this section, foreclosure or enforcement of a lien  
20 or encumbrance against the entire common interest community shall  
21 not, of itself, terminate the common interest community, and  
22 foreclosure or enforcement of a lien or encumbrance against a  
23 portion of the common interest community, other than withdrawable  
24 real estate, shall not withdraw that portion from the common  
25 interest community. Foreclosure or enforcement of a lien or  
26 encumbrance against withdrawable real estate, or against common  
27 elements that have been subjected to a security interest by the  
28 association under section 64 of P.L. , c. (C. ) (pending  
29 before the Legislature as this bill), shall not, of itself, withdraw, that  
30 real estate from the common interest community, but the person  
31 taking title thereto may require from the association, upon request,  
32 an amendment excluding the real estate from the common interest  
33 community.

34 l. In a condominium or planned community, if a lien or  
35 encumbrance against a portion of the real estate comprising the  
36 common interest community has priority over the declaration, and  
37 the lien or encumbrance has not been partially released, then the  
38 parties foreclosing the lien or encumbrance, upon foreclosure, may  
39 record an instrument excluding the real estate subject to that lien or  
40 encumbrance from the common interest community.

41 m. No agreement or governmental action to be taken which will  
42 result in the termination of a common interest community with  
43 common elements to remain after such termination, shall be  
44 effective unless there shall be provision made for the maintenance  
45 of those common elements.

46  
47 43. (New section) a. The declaration may require that all or a  
48 specified number or percentage of the lenders who hold security

1 interests encumbering the units or who have extended credit to the  
2 association approve specified actions of the unit owners or the  
3 association as a condition to the effectiveness of those actions, but  
4 no requirement for approval shall operate to,

5 (1) deny or delegate control over the general administrative  
6 affairs of the association by the unit owners or the executive board,  
7 or

8 (2) prevent the association or the executive board from  
9 commencing, intervening in, or settling any litigation or  
10 proceeding, or

11 (3) prevent any insurance trustee or the association from  
12 receiving and distributing any insurance proceeds except pursuant  
13 to section 61 of P.L. , c. (C. ) (pending before the  
14 Legislature as this bill).

15 b. A lender who has extended credit to an association secured by  
16 an assignment of income pursuant to paragraph (14) of subsection a.  
17 of section 49 P.L. , c. (C. ) (pending before the Legislature  
18 as this bill) or an encumbrance on the common elements pursuant to  
19 section 60 of P.L. , c. (C. ) (pending before the Legislature  
20 as this bill) may enforce its security agreement in accordance with  
21 its terms, subject to the requirements of P.L. , c. (C. ) (pending  
22 before the Legislature as this bill) and other law.

23  
24 44. (New section) a. If the declaration provides that any of the  
25 powers described in section 49 of P.L. , c. (C. ) (pending  
26 before the Legislature as this bill) are to be exercised by, or may be  
27 delegated to, a profit or nonprofit corporation that exercises those or  
28 other powers on behalf of one or more common interest  
29 communities or for the benefit of the unit owners of one or more  
30 common interest communities, all provisions of P.L. , c. (C. )  
31 (pending before the Legislature as this bill) applicable to unit  
32 owners' associations shall apply to any such corporation, except as  
33 modified by this section.

34 b. Unless it is acting in the capacity of an association described  
35 in section 48 of P.L. , c. (C. ) (pending before the  
36 Legislature as this bill), a master association may exercise the  
37 powers set forth in paragraph (2) of subsection a. of section 49 of  
38 P.L. , c. (C. ) (pending before the Legislature as this bill)  
39 only to the extent expressly permitted in the declarations of  
40 common interest communities which are part of the master  
41 association or expressly described in the delegations of power from  
42 those common interest communities to the master association.

43 c. If the declaration of any common interest community  
44 provides that the executive board may delegate certain powers to a  
45 master association, the members of the executive board shall have  
46 no liability for the acts or omissions of the master association with  
47 respect to those powers following delegation.

48 d. The rights and responsibilities of unit owners with respect to

1 the unit owners' association as set forth in sections 49, 50, 51, 56,  
2 57, 58 and 60 of P.L. , c. (C. ) (pending before the  
3 Legislature as this bill) shall apply, in the conduct of the affairs of a  
4 master association, only to persons who elect the board of a master  
5 association, whether or not those persons are otherwise unit owners  
6 within the meaning of P.L. , c. (C. ) (pending before the  
7 Legislature as this bill).

8 e. Regardless of the fact that a master association also may be an  
9 association, as described in section 48 of P.L. , c. (C. )  
10 (pending before the Legislature as this bill), the certificate of  
11 incorporation, or other instrument creating the master association,  
12 and the declaration of each common interest community, the powers  
13 of which are assigned by the declaration or delegated to the master  
14 association, shall provide that the executive board of the master  
15 association shall be elected after the period of declarant control in  
16 any of the following ways:

17 (1) All of the unit owners of each of the common interest  
18 communities subject to the master association may elect all of the  
19 members of the master association's executive board.

20 (2) All of the members of the executive boards of all common  
21 interest communities subject to the master association may elect all  
22 members of the master association's executive board.

23 (3) All of the unit owners of each common interest community  
24 subject to the master association may elect specified members of  
25 the master association's executive board.

26 (4) All of the members of the executive board of each common  
27 interest community subject to the master association may elect  
28 specified members of the master association's executive board.

29  
30 45. (New section) a. Any two or more common interest  
31 communities of the same form of ownership, by agreement of the  
32 unit owners as provided in subsection b. of this section, may be  
33 merged or consolidated into a single common interest community.  
34 In the event of a merger or consolidation, unless the agreement  
35 otherwise provides, the resultant common interest community shall  
36 be the legal successor, for all purposes, of all of the pre-existing  
37 common interest communities, and the operations and activities of  
38 all associations of the pre-existing common interest communities  
39 shall be merged and consolidated into a single association that shall  
40 hold all of the powers, rights, obligations, assets, and liabilities of  
41 the pre-existing associations.

42 b. An agreement of two or more common interest communities  
43 to merge or consolidate pursuant to subsection a. of this section  
44 shall be evidenced by an agreement prepared, executed, recorded,  
45 and certified by the president of the association of each of the pre-  
46 existing common interest communities following approval by the  
47 owners of units to which are allocated the percentage of votes in  
48 each common interest community required to terminate that

1 common interest community. The agreement shall be recorded in  
2 each county in which a portion of the common interest community  
3 is located and shall not be effective until recorded.

4 c. When a merger of two or more common interest communities  
5 involves the merger of two or more nonprofit corporations, the  
6 corporations shall comply with all of the requirements of  
7 N.J.S.15A:10-1.

8 d. Every merger or consolidation agreement shall provide for the  
9 reallocation of the allocated interests in the pre-existing  
10 associations among the units of the resultant common interest  
11 community either (1) by stating the reallocations or the formulas  
12 upon which they are based or

13 (2) by stating the percentage of overall allocated interests of the  
14 new common interest community that shall be allocated to all. All  
15 of the units comprising each of the pre-existing common interest  
16 communities, and providing that the portion of the percentages  
17 allocated to each unit formerly comprising a part of the pre-existing  
18 common interest community shall be equal to the percentages of  
19 allocated interests allocated to that unit by the declaration of the  
20 pre-existing common interest community.

21  
22 46. (New section) In a planned community, if the right is  
23 originally reserved in the declaration, the declarant, in addition to  
24 any other development right, may amend the declaration at any time  
25 during as many years as are specified in the declaration for adding  
26 additional real estate to the planned community without describing  
27 the location of that real estate in the original declaration. The  
28 amount of real estate added to the planned community pursuant to  
29 this section shall not exceed 10 percent of the real estate described  
30 in paragraph (3) of subsection a. of section 28 of P.L. , c.  
31 (C. ) (pending before the Legislature as this bill) and the  
32 declarant shall not in any event increase the number of units in the  
33 planned community beyond the number stated in the original  
34 declaration pursuant to paragraph (4) of subsection a. of section 28  
35 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
36 unless unit owners, other than the declarant, that represent at least  
37 51 percent of the votes in the association, vote to approve: a. the  
38 addition of real estate in excess of 10 percent of the real estate  
39 described in paragraph (3) of subsection a. of section 28 of P.L. ,  
40 c. (C. ) (pending before the Legislature as this bill), or b. a  
41 number of units in excess of the number stated in the original  
42 declaration pursuant to paragraph (4) of subsection a. of section 28  
43 of P.L. , c. (C. ) (pending before the Legislature as this bill).

44  
45 47. (New section) a. The declaration for a common interest  
46 community may state that it is a master planned community if the  
47 declarant has reserved the development right to create at least 300  
48 units that may be used for residential purposes and has obtained

1 preliminary site plan or subdivision approval permitting the  
2 declarant to construct at least 300 residential units pursuant to the  
3 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

4 b. If the requirements of subsection a. of this section are  
5 satisfied, the declaration for the master planned community need  
6 not state a maximum number of units and need not contain any of  
7 the information required by paragraphs (3) through (13) of  
8 subsection a. of section 28 of P.L. , c. (C. ) (pending before  
9 the Legislature as this bill) until the declaration is amended under  
10 subsection c. of this section.

11 c. At the time each unit in a master planned community is  
12 conveyed to a purchaser, the declaration must contain,

13 (1) a sufficient legal description of the unit and all portions of  
14 the master planned community in which any other units have been  
15 conveyed to a purchaser; and

16 (2) all of the information required by paragraphs (3) through  
17 (13) of subsection a. of section 28 of P.L. , c. (C. ) (pending  
18 before the Legislature as this bill) with respect to that real estate.

19 d. Notwithstanding any other provision of P.L. , c. (C. )  
20 (pending before the Legislature as this bill):

21 (1) The only real estate in a master planned community which  
22 shall be subject to P.L. , c. (C. ) (pending before the  
23 Legislature as this bill) is that which comprises:

24 (a) units that have been declared or which are being offered for  
25 sale; and

26 (b) any other real estate described pursuant to subsection c. of  
27 this section;

28 (2) Other real estate that is or may become part of the master  
29 planned community shall be subject only to other applicable laws  
30 and to any other restrictions and limitations that appear of record;  
31 and

32 (3) If the public offering statement conspicuously identifies the  
33 fact that the community is a master planned community, the  
34 disclosure requirements contained in sections 73 through 88 of  
35 P.L. , c. (C. ) (pending before the Legislature as this bill) shall  
36 apply only with respect to units that have been declared or are being  
37 offered for sale in connection with the public offering statement and  
38 to the real estate described in subsection c. of this section.

39 e. The limitations contained in section 46 of P.L. , c.  
40 (C. ) (pending before the Legislature as this bill) shall not apply  
41 to a master planned community.

42 f. Subject to the requirements of unconscionability in section 12  
43 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
44 and good faith in section 13 of P.L. , c. (C. ) (pending  
45 before the Legislature as this bill), the period of declarant control of  
46 the association for a master planned community shall terminate in  
47 the manner set forth in section 51 of P.L. , c. (C. ) (pending  
48 before the Legislature as this bill), at such earlier time as may be

1 specified in the declaration, or as the declarant specifies in a  
2 recorded instrument after delivering written notice to all the unit  
3 owners in the same manner as notice is required for an amendment  
4 to the declaration.

5  
6 ARTICLE 3

7  
8 MANAGEMENT OF THE COMMON INTEREST COMMUNITY  
9

10 48. (New section) A unit owners' association shall be formed on  
11 or before the date of recording of the declaration. The membership  
12 of the association at all times shall consist exclusively of all of the  
13 unit owners or, following termination of the common interest  
14 community, of all of the former unit owners entitled to distributions  
15 of proceeds under section 42 of P.L. , c. (C. ) (pending  
16 before the Legislature as this bill) or their heirs, successors or  
17 assigns. An association shall be organized as a for-profit or  
18 nonprofit corporation, trust, or partnership.

19 Process may be served upon a unit owners' association by  
20 serving the president or chief executive officer of the association or  
21 by serving the agent designated for service of process. Service of  
22 process upon the association shall not constitute service of process  
23 upon any individual unit owner.  
24

25 49. (New section) a. An association, acting through its  
26 executive board, and in addition to any specific requirements  
27 contained in other provisions of P.L. , c. (C. ) (pending before  
28 the Legislature as this bill), shall be responsible for the performance  
29 of the following duties:

30 (1) The maintenance, repair, replacement, cleaning, and  
31 sanitation of the common elements.

32 (2) The adoption, distribution, amendment, and enforcement of  
33 rules governing the use and operation of the common interest  
34 community.

35 (3) Whether or not incorporated, the association shall be an  
36 entity that shall act through its officers and may enter into contracts,  
37 bring suit and be sued. If the association is not incorporated, it may  
38 be deemed to be an entity existing pursuant to P.L. , c. (C. )  
39 (pending before the Legislature as this bill) and a majority of the  
40 members of the executive board or of the association, as the case  
41 may be, shall constitute a quorum for the transaction of business.  
42 Process may be served upon the association by serving any officer  
43 of the association or by serving the agent designated for service of  
44 process. Service of process upon the association shall not constitute  
45 service of process upon any individual unit owner.

46 (4) The association shall have access to each unit from time to  
47 time during reasonable hours, and upon five days' prior written  
48 notice stating the reason that access is required, for,

- 1 (a) the maintenance, repair or replacement of any common
- 2 elements therein or accessible therefrom;
- 3 (b) the repair, replacement or inspection of common elements in
- 4 compliance with an order of a State or local agency having
- 5 jurisdiction;
- 6 (c) for the maintenance of the common elements in accordance
- 7 with a policy that has been approved by the executive board;
- 8 (d) inspection to ensure compliance with requirements of State or
- 9 local code enforcing agencies or insurance carriers or underwriters;
- 10 or
- 11 (e) emergency repairs necessary to prevent damage to common
- 12 elements or to any other unit or units (the foregoing being
- 13 individually or in the aggregate referred to as a "permitted right of
- 14 entry"); provided, however, that the association shall not require a
- 15 unit owner to provide a unit key to any person. Nothing herein
- 16 shall prohibit the association from having immediate access to a
- 17 unit in case of an emergency. A unit owner who refuses to provide
- 18 a unit access key to an association that requests one for a permitted
- 19 right of entry shall be responsible for all reasonable costs of the
- 20 association to obtain access to the unit; provided, however, that the
- 21 association shall secure the unit after the purpose of any entry has
- 22 been satisfied and shall, to that end, utilize the services of a licensed
- 23 locksmith, the cost of which services shall be included in the
- 24 reasonable cost of obtaining access, and further provided that prior
- 25 or concurrent notice of any entry without a key shall be given to the
- 26 police department having jurisdiction. The association may charge
- 27 the unit owner for the repair of any common element damaged by
- 28 the unit owner or his tenant.
- 29 (6) The association may purchase units in the common interest
- 30 community and otherwise acquire, hold, lease, mortgage, and
- 31 convey the same. It may also lease or license the use of common
- 32 elements in a manner not inconsistent with the rights of unit
- 33 owners.
- 34 (7) An executive board of an association and any community
- 35 management personnel contracted by an association, shall be
- 36 responsible for safeguarding and preserving all common elements
- 37 within the common interest community, so as to comply with all
- 38 applicable laws and to protect the investment made by the owners
- 39 of the lots, parcels, units, or interests subject to the jurisdiction of
- 40 the association and also shall enforce rules requiring the proper
- 41 maintenance of such common elements. Executive boards and
- 42 community managers shall comply with all rules that may be
- 43 adopted by the commissioner, including, but not limited to,
- 44 accounting procedures and financial and common property facility
- 45 management requirements, provided such rules shall not include
- 46 substantive requirements not otherwise set forth in P.L. , c. (C. )
- 47 (pending before the Legislature as this bill).
- 48 b. Except as provided in subsection c. of this section, and

1 subject to the provisions of the declaration, the bylaws or other  
2 statute of this State, an association may:

3 (1) adopt and amend bylaws and rules and regulations, provided  
4 that any rules or regulations adopted by resolution of an association  
5 shall be recorded in the same place as the bylaws;

6 (2) adopt and amend budgets for revenues, expenditures and  
7 reserves and may collect assessments for common expenses from  
8 unit owners, provided, that with respect to the adoption of budgets  
9 for revenues, expenditures and reserves in common interest  
10 communities of 100 or more units, a copy of any proposed budget  
11 shall be available at a meeting of the executive board at least one  
12 month prior to the meeting at which the executive board is  
13 scheduled to vote on the budget;

14 (3) hire and discharge managing agents and other employees,  
15 agents and independent contractors;

16 (4) institute, defend or intervene in litigation or administrative  
17 proceedings in its own name on matters affecting the common  
18 interest community;

19 (5) make contracts and incur liabilities, subject to the provisions  
20 of section 71 of P.L. , c. (C. ) (pending before the Legislature  
21 as this bill);

22 (6) regulate the use, maintenance, repair, replacement, cleaning  
23 and modification of common elements, including, if authorized  
24 under the by-laws, the right to suspend the use of the common  
25 elements, including, without limitation, parking spaces or  
26 recreational facilities, whenever a unit owner is delinquent in the  
27 payment of common expenses;

28 (7) cause additional improvements to be made as a part of the  
29 common elements;

30 (8) acquire, hold, encumber and convey in its own name any  
31 right, title or interest to real estate or personal property, but (a)  
32 common elements in a condominium or planned community shall  
33 only be conveyed or subjected to a security interest pursuant to  
34 section 60 of P.L. , c. (C. ) (pending before the Legislature  
35 as this bill), and (b) part of a cooperative shall only be conveyed, or  
36 all or part of a cooperative shall only be subjected to a security  
37 interest, pursuant to section 60 of P.L. , c. (C. ) (pending  
38 before the Legislature as this bill). The association may also  
39 acquire or enter into agreements whereby it acquires leaseholds,  
40 memberships or other possessory or use interests in lands or  
41 facilities including, but not limited to, country clubs, golf courses,  
42 marinas, and other recreational facilities, whether or not contiguous  
43 to the common interest community property, intended to provide for  
44 the enjoyment, recreation or other use or benefit of the unit owners.  
45 If fully described in the declaration or bylaws, the fees, costs and  
46 expenses of acquiring, maintaining, operating, repairing, and  
47 replacing any such memberships, interests and facilities shall be  
48 common expenses. If not so described in the declaration or bylaws

1 as originally recorded, no such membership interest or facility shall  
2 be acquired except pursuant to amendment of, or supplement to, the  
3 declaration or bylaws duly adopted as provided therein and in  
4 P.L. , c. (pending before the Legislature as this bill). In the  
5 absence of such amendment or supplement, if some but not all unit  
6 owners desire any such acquisition and agree to assume among  
7 themselves all costs of acquisition, maintenance, operation, repair,  
8 and replacement thereof, the association may acquire or enter into  
9 an agreement to acquire the same as limited common elements  
10 appurtenant only to the units of those unit owners who have agreed  
11 to bear the costs and expenses thereof. Such costs and expenses  
12 shall be assessed against and collected from the consenting unit  
13 owners in the proportions in which they share as among themselves  
14 in the common expenses in the absence of some other unanimous  
15 agreement among themselves. No other unit owner shall be charged  
16 with any such cost or expense; provided, however, that nothing  
17 herein shall preclude the extension of the interests in such limited  
18 common elements to additional unit owners by subsequent  
19 agreement with all those unit owners then having an interest in such  
20 limited common elements. Thereafter, any such costs or expenses  
21 shall be paid only by the consenting unit owners and their grantees,  
22 heirs and assigns;

23 (9) grant easements, leases, licenses, and concessions through or  
24 over the common elements;

25 (10) impose and receive any payments, fees or charges for the  
26 use, rental or operation of the common elements, other than limited  
27 common elements described in subsections b. or d. of section 25 of  
28 P.L. , c. (C. ) (pending before the Legislature as this bill),  
29 and for services provided to unit owners;

30 (11) levy and collect assessments duly made by the association  
31 for a share of common expenses or any other moneys duly owed the  
32 association, upon proper notice to the appropriate unit owner,  
33 together with interest thereon, late fees and reasonable attorney's  
34 fees, if authorized by the declaration or bylaws, and subject to the  
35 provisions of section 50 of P.L. , c. (C. ) (pending before the  
36 Legislature as this bill). A unit owner may contest the validity of  
37 any assessment levied by an association for the purpose of funding  
38 construction of any improvement by bringing an action in lieu of  
39 prerogative writs in the Superior Court within 45 days after the  
40 association gives notice of the assessment to unit owners;

41 (12) impose reasonable charges for the preparation and  
42 recordation of amendments to the declaration, resale certificates  
43 required by section 77 of P.L. , c. (C. ) (pending before the  
44 Legislature as this bill), or statements of unpaid assessments;

45 (13) provide for the indemnification of its officers and executive  
46 board and maintain directors' and officers' liability insurance;

47 (14) assign its right to future income, including the right to  
48 receive common expense assessments, but only to the extent the

1 declaration expressly so provides;

2 (15) notwithstanding the provisions of the "Prudent Investor  
3 Act," P.L.1997, c.26 (C.3B:20-11.1 et seq.), or any other law to the  
4 contrary, invest the assets of the association and the proceeds  
5 thereof, in good faith and with that degree of diligence, care and  
6 skill which ordinary prudent persons would exercise under similar  
7 circumstances in like positions. In discharging their duties,  
8 members of the executive board shall not be liable if, acting in good  
9 faith, they rely upon the opinion of counsel for the association or  
10 upon written reports setting forth financial data concerning the  
11 association and prepared by an independent public account or  
12 certified public accountant or firm of accountants or upon financial  
13 statements, books of account or reports of the association  
14 represented to them to be correct by the chief executive officer, the  
15 officer of the association having charge of its books of account, or  
16 the persons presiding at a meeting of the executive board;

17 (16) exercise any other powers conferred by the declaration or  
18 bylaws in accordance with P.L. , c. (C. ) (pending before the  
19 Legislature as this bill);

20 (17) exercise all other powers that may be exercised in this State  
21 by legal entities of the same type as the association, if not  
22 prohibited by P.L. , c. (C. ) (pending before the  
23 Legislature as this bill) or any other law of the State; and

24 (18) exercise any other powers necessary and proper for the  
25 governance and operation of the association, if not prohibited by  
26 P.L. , c. (C. ) (pending before the Legislature as this bill) or  
27 any other law of this State.

28 The executive board of every association shall discharge its  
29 powers in a manner that is not inconsistent with furthering the  
30 health, safety and general welfare of the residents of the common  
31 interest community, fostering community values of fairness, mutual  
32 respect and responsibility, and safeguarding the value of the  
33 residents' investment in their properties.

34 c. The declaration shall not impose limitations on the power of  
35 the association to deal with the declarant which are more restrictive  
36 than the limitations imposed on the power of the association to deal  
37 with other persons.

38 d. The association may adopt rules with respect to units that may  
39 be used for residential purposes to:

40 (1) prevent any use of, or behavior in, residential units which  
41 violates the declaration or adversely affects the use and enjoyment  
42 of other units or the common elements by other unit owners; or

43 (2) reasonably restrict the leasing of residential units so long as  
44 the rules are designed to meet the then-current underwriting  
45 requirements adopted by institutional lenders who regularly lend  
46 money secured by first mortgages on units in common interest  
47 communities, or regularly purchase those mortgages. Otherwise, an  
48 association shall not regulate any use of, or behavior in, units unless

1 empowered to do so by the declaration or P.L. , c. (C. )  
2 (pending before the Legislature as this bill).

3 e. If a tenant of a unit owner violates the declaration, bylaws or  
4 rules or regulations of the association, in addition to exercising any  
5 of its powers against the unit owner, an association may:

6 (1) exercise directly against the tenant the powers described in  
7 section 50 of P.L. , c. (C. ) (pending before the Legislature  
8 as this bill);

9 (2) after giving notice to the tenant and the unit owner and an  
10 opportunity to be heard, levy reasonable fines against the tenant for  
11 the violation; and

12 (3) enforce any rights against the tenant for the violation which  
13 the unit owner as landlord might have exercised under the lease in  
14 accordance with State law, or which the association might have  
15 exercised directly against the unit owner, or both.

16 f. The rights granted under paragraph (3) of subsection e. may  
17 be exercised only if the tenant or unit owner fails to cure the  
18 violation within 10 days after the association notifies both the  
19 tenant and unit owner of that violation.

20 g. Unless a lease otherwise provides, this section shall not,

21 (1) affect rights that a unit owner may have to enforce a lease or  
22 that the association has under other law; or

23 (2) permit an association to enforce a lease to which it is not a  
24 party in the absence of a violation of the declaration or bylaws or  
25 the association's rules or regulations.

26  
27 50. (New section) If authorized by the declaration or bylaws,  
28 the association may impose reasonable fines upon unit owners for  
29 failure to comply with provisions of the declaration, bylaws or rules  
30 and regulations, subject to the following provisions:

31 A fine for a violation or a continuing violation of the declaration,  
32 bylaws or rules and regulations shall not exceed \$25 per day for  
33 each violation; \$50 per day for a second violation of the same  
34 nature within a one-year period following the issuance of the notice  
35 of fine for the first violation or, if it is contested, of a final  
36 determination upholding the first fine; and \$100 per day for each  
37 violation of the same nature after the second violation within a one-  
38 year period following the issuance of the notice of fine for the  
39 second violation or, if it is contested, of a final determination  
40 upholding the second fine. An initial fine shall be imposed only  
41 after a warning notice has been issued to notify the owner to cease  
42 or correct the violation and that notice has not been complied with.

43 On roads, streets, parking areas, driveways, or other roadways  
44 with respect to which Title 39 of the Revised Statutes is in effect  
45 under section 1 of P.L.1945, c.284 (C.39:5A-1), an association may  
46 impose fines only for violations not subject to enforcement by State  
47 or local police.

48 A fine shall not be imposed unless the unit owner is given

1 written notice of the action taken and of the alleged basis for the  
2 action, and is advised of the right to participate in an alternative  
3 dispute resolution procedure in accordance with section 86 of  
4 P.L. , c. (C. ) (pending before the Legislature as this bill). A  
5 unit owner who does not believe that the mediation phase of the  
6 alternative dispute resolution procedure has satisfactorily resolved  
7 the matter and who does not agree to continue the procedure as  
8 binding arbitration shall not be prevented from seeking a judicial  
9 remedy in a court of competent jurisdiction. No lien shall be  
10 recorded concerning a fine imposed by an association after the  
11 effective date of P.L. , c. (C. ) (pending before the Legislature  
12 as this bill) unless: (1) the right to the lien has been established  
13 pursuant to a determination by a court of competent jurisdiction, or  
14 (2) the fine imposition has been authorized through alternative  
15 dispute resolution proceedings pursuant to section 86 of P.L. ,  
16 c. (C. ) (pending before the Legislature as this bill), or (3) the  
17 unit owner has been notified by the association, by personal service  
18 or by registered or certified mail, return receipt requested, of the  
19 unit owner's right to have the dispute resolved through alternative  
20 dispute resolution proceedings and has not requested such  
21 proceedings within 30 days of receipt of such notice or has, after  
22 requesting such proceedings, failed or refused to participate in them  
23 or discontinued such participation. If service is made by registered  
24 or certified mail, the date of receipt shall be deemed to be the date  
25 the mail is accepted or three days following the date of mailing,  
26 whichever comes first.

27  
28 51. (New section) a. Except as provided in the declaration, the  
29 bylaws, subsection b. of this section, or other provisions of P.L. ,  
30 c. (C. ) (pending before the Legislature as this bill), an  
31 executive board may act in all instances on behalf of the  
32 association. In the performance of their duties, officers and  
33 members of an executive board shall act in good faith and exercise  
34 honest judgment in lawful and legitimate furtherance of the  
35 association's purposes.

36 Notwithstanding the provisions of P.L. , c. (C. ) (pending  
37 before the Legislature as this bill) or any other law, an individual  
38 convicted of a crime of the first or second degree, or a crime of a  
39 fiduciary nature of any degree while serving as an officer or  
40 member of an executive board shall be deemed to have resigned  
41 that position immediately upon entry of judgment of conviction.  
42 An individual who has been convicted of a crime of the first or  
43 second degree, or a crime of a fiduciary nature of any degree prior  
44 to an election to serve as an officer or member of an executive  
45 board, shall disclose, in writing on the ballot, such a conviction if it  
46 occurred within a three- year period prior to the election. The  
47 election of a person who does not disclose shall be void from its  
48 inception.

- 1       b. An executive board shall not act on behalf of the association  
2 to:
- 3       (1) amend the declaration pursuant to section 41 of P.L.     , c.  
4 (C.     ) (pending before the Legislature as this bill), except when  
5 necessary to render an inconsistent portion of the declaration to be  
6 consistent with applicable law, but only to the extent necessary to  
7 achieve consistency;
- 8       (2) terminate the common interest community under section 42  
9 of P.L.     , c. (C.     ) (pending before the Legislature as this bill);  
10 or
- 11       (3) elect members of the executive board or determine the  
12 qualifications, powers, duties, or terms of office of executive board  
13 members pursuant to subsection f. of this section; however, the  
14 executive board may fill vacancies in its membership until the next  
15 annual meeting of the membership at which a quorum is present, at  
16 which time the membership shall elect a member to fill the vacancy  
17 for the then unexpired portion of the term that was vacated.
- 18       c. Within 30 days after the adoption of a budget for a common  
19 interest community, the executive board shall provide a copy of the  
20 budget to all of the unit owners.
- 21       d. Subject to subsection e. of this section, the declaration may  
22 provide for a period of declarant control of the association, during  
23 which a declarant, or persons designated by him, may appoint and  
24 remove the officers and members of the executive board.  
25 Regardless of the period provided in the declaration, a period of  
26 declarant control of the executive board shall terminate no later than  
27 the earlier of: (1) 60 days after conveyance of 75 percent of the lots,  
28 parcels, units, or interests that may be created to unit owners other  
29 than a declarant;
- 30       (2) two years after all declarants have ceased to offer units for  
31 sale in the ordinary course of business;
- 32       (3) two years after any right to add new units was last exercised;  
33 or       (4) if, at a duly held meeting of the association, the majority  
34 of the unit owners appearing in person or by proxy vote to assume  
35 control, the date the declarant, after giving written notice to unit  
36 owners, records an instrument voluntarily surrendering all rights to  
37 control activities of the association. A declarant may voluntarily  
38 surrender the right to appoint and remove officers and members of  
39 the executive board before termination of that period, but in that  
40 event the declarant may require, for the duration of the period of  
41 declarant control, that specified actions of the association or  
42 executive board, as described in a recorded instrument executed by  
43 the declarant, be approved by the declarant before they become  
44 effective.
- 45       e. Not later than 60 days after conveyance to unit owners, other  
46 than a declarant, of 25 percent of the lots, parcels, units, or interests  
47 that may be created, at least one member and not less than 25  
48 percent of the members of the executive board shall be elected by

1 unit owners other than a declarant. Not later than 60 days after  
2 conveyance to unit owners other than a declarant of 50 percent of  
3 the lots, parcels, units or interests that may be created, not less than  
4 40 percent of the members of the executive board shall be elected  
5 by unit owners other than a declarant. Not later than 60 days after  
6 conveyance of 75 percent of the lots, parcels, units, or interests that  
7 may be created, not less than 60 percent of the members of the  
8 executive board shall be elected by the unit owners other than  
9 declarant; except that the declarant may retain the selection of one  
10 executive board member so long as there are any units remaining  
11 unsold in the regular course of business. The percentages specified  
12 in this section shall be calculated upon the basis of the whole  
13 number of units entitled to membership in the association.

14 f. Except as otherwise provided in subsection e. of section 44 of  
15 P.L. , c. (C. ) (pending before the Legislature as this bill),  
16 but not later than the termination of any period of declarant control,  
17 the unit owners shall elect an executive board of at least three  
18 members, a majority of whom shall be unit owners. The executive  
19 board shall elect the officers. The executive board members and  
20 officers shall take office upon election.

21 g. Upon assumption by the owners of control of the executive  
22 board of the association, the declarant shall forthwith deliver to the  
23 association all property of the unit owners, and all items and  
24 documents pertinent to the association, such as, but not limited to, a  
25 copy of the master declaration, declaration of covenants and  
26 restrictions, documents of creation of the association, bylaws,  
27 minute book including all minutes, any rules and regulations,  
28 association funds and an accounting therefor, that includes capital  
29 accounts and contributions, all personal property, insurance  
30 policies, government permits, a membership roster, all contracts and  
31 agreements relative to the association, resignations of officers and  
32 members of the governing board or other form of administration  
33 who are required to resign because the developer is required to  
34 relinquish control of the association, all tangible personal property  
35 that is property of the association and is either represented by the  
36 developer to be part of the common elements or ostensibly part of  
37 the common elements, and an inventory of that property. Within 60  
38 days of completion of construction or remodeling of improvements,  
39 the declarant shall provide the association with a copy of the plans  
40 and specifications utilized in the construction or remodeling of  
41 improvements and the supplying of equipment to the common  
42 interest community, and utilized in the construction and installation  
43 of all mechanical components serving the improvements and the  
44 site. The declarant also shall provide the association with a  
45 certificate in affidavit form of the developer, his agent, or an  
46 architect or engineer authorized to practice in this State that such  
47 plans and specifications represent, to the best of their knowledge  
48 and belief, the actual plans and specifications utilized in the

- 1 construction and improvement of the common interest property and  
2 for the construction and installation of the mechanical components  
3 serving the improvements.
- 4 h. An association, when controlled by the owners, shall not take  
5 any action that would be detrimental to the sale of units by the  
6 declarant, and shall continue the same level of maintenance,  
7 operation and services as immediately prior to the unit owners'  
8 assumption of control, until the last unit is sold.
- 9 i. Notwithstanding any provision of a declaration or bylaws to  
10 the contrary, the unit owners, by a two-thirds vote of all persons  
11 present and entitled to vote at any meeting of the unit owners at  
12 which a quorum is present, may remove any member of the  
13 executive board with or without cause, other than a member  
14 appointed by the declarant.
- 15 j. The members of the executive board appointed by the  
16 declarant shall be liable as fiduciaries for their acts or omissions.
- 17 k. Not more than 60 days after the time that unit owners, other  
18 than the developer, elect a majority of the members of the executive  
19 board or other form of administration of an association, the  
20 developer shall relinquish control of the association and the unit  
21 owners shall accept control. Simultaneously, the developer shall  
22 deliver to the association all property of the unit owners and of the  
23 association held or controlled by the developer, including, but not  
24 limited to, the following items, if applicable, as to each common  
25 interest community operated by the association:
- 26 (1) A photocopy of the declaration and all amendments thereto,  
27 certified by affidavit of the developer, or by an officer or agent of  
28 the developer, as being a complete copy of the actual declaration.
- 29 (2) A certified copy of the association's articles of incorporation,  
30 or if not incorporated, then copies of the documents creating the  
31 association.
- 32 (3) A copy of the bylaws.
- 33 (4) The minute books, including all minutes, and other books and  
34 records of the association, if any.
- 35 (5) Any rules and regulations which have been promulgated by  
36 the executive board.
- 37 (6) Resignations of officers and members of the executive board  
38 or other form of administration who are required to resign because  
39 the developer is required to relinquish control of the association.
- 40 (7) An accounting for all association funds, including capital  
41 accounts and contributions.
- 42 (8) Association funds or control thereof.
- 43 (9) All tangible personal property that is property of the  
44 association, represented by the developer to be part of the common  
45 elements or ostensibly part of the common elements, and an  
46 inventory of that property.
- 47 (10) A copy of the plans and specifications utilized in the  
48 construction or remodeling of improvements and the supplying of

1 equipment to and in the common interest community and utilized in  
2 the installation of all mechanical components serving the  
3 improvements and the site, along with a certificate in affidavit form  
4 of the developer, his agent or an architect or engineer authorized to  
5 practice in this State, that such plans and specifications represent,  
6 utilized in the construction and improvement of the common  
7 interest community property and for the construction and  
8 installation of the mechanical components serving the  
9 improvements.

10 (11) Insurance policies.

11 (12) Copies of any certificates of occupancy which may have  
12 been issued for the common interest property.

13 (13) Any other permits issued by governmental bodies having  
14 jurisdiction over the common interest property that were issued in  
15 connection with the development of the common interest property.

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

18 (15) A roster of unit owners and their addresses and telephone  
19 numbers as shown on the developer's records.

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

22 (17) Employment contracts, management contracts, maintenance  
23 contracts, contracts for the supply of equipment or materials,  
24 service contracts in which the association is one of the contracting  
25 parties, and maintenance contracts and service contracts in which  
26 the association or the unit owners have an obligation or  
27 responsibility, directly or indirectly to pay some or all of the fee or  
28 charge of the person or persons performing the service.

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

30  
31 52. (New section) a. A special declarant right created or  
32 reserved under P.L. , c. (C. ) (pending before the Legislature  
33 as this bill) shall be transferred only by an instrument evidencing  
34 the transfer and recorded in each county in which any portion of the  
35 common interest community is located. The instrument shall not be  
36 effective unless executed by the transferee.

37 b. Upon the transfer of any special declarant right, the liability  
38 of a transferor declarant shall be as follows:

39 (1) A transferor shall not be relieved of any obligation or liability  
40 arising before the transfer and shall remain liable for warranty  
41 obligations imposed upon him by P.L. , c. (C. ) (pending  
42 before the Legislature as this bill). Lack of privity shall not deprive  
43 any unit owner of standing to maintain an action to enforce any  
44 obligation of the transferor.

45 (2) If a successor to any special declarant right is an affiliate of a  
46 declarant, as that term is defined in section 3 of P.L. , c.  
47 (C. ) (pending before the Legislature as this bill), the transferor  
48 shall be jointly and severally liable with the successor for any

1 obligations or liabilities of the successor relating to the common  
2 interest community.

3 (3) If a transferor retains any special declarant rights, but  
4 transfers other special declarant rights to a successor who is not an  
5 affiliate of the declarant, the transferor shall be liable for any  
6 obligations or liabilities imposed on a declarant by P.L. , c.  
7 (C. ) (pending before the Legislature as this bill) or by the  
8 declaration relating to the retained special declarant rights and  
9 arising after the transfer.

10 (4) A transferor shall have no liability for any act or omission or  
11 any breach of a contractual or warranty obligation arising from the  
12 exercise of a special declarant right by a successor who is not an  
13 affiliate of the transferor.

14 c. Unless otherwise provided in a mortgage instrument, deed of  
15 trust or other agreement creating a security interest, in the case of a  
16 foreclosure of a security interest, sale by a trustee under an  
17 agreement creating a security interest, tax sale, judicial sale, or sale  
18 under federal Bankruptcy Code or receivership proceedings of any  
19 units owned by a declarant or of real estate in a common interest  
20 community subject to development rights, a person acquiring title to  
21 all of the property being foreclosed or sold, upon his request, shall  
22 succeed to all special declarant rights related to that property held  
23 by that declarant or holder of development rights; otherwise the  
24 person acquiring title shall succeed only to those or to any rights  
25 reserved in the declaration pursuant to section 39 of P.L. ,  
26 c. (C. ) (pending before the Legislature as this bill) and held  
27 by that declarant to maintain models, sales offices and signs. The  
28 judgment or instrument conveying title shall provide for transfer of  
29 only those special declarant rights requested.

30 d. Upon foreclosure of a security interest, sale by a trustee under  
31 an agreement creating a security interest, tax sale, judicial sale, or  
32 sale under federal Bankruptcy Code or receivership proceedings of  
33 all interests in a common interest community owned by a declarant:

34 (1) The declarant shall cease to have any special declarant rights,  
35 and

36 (2) The period of declarant control shall terminate unless the  
37 judgment or instrument conveying title provides for the transfer of  
38 all special declarant rights held by that declarant to a successor  
39 declarant.

40 e. The liabilities and obligations of a person who succeeds to  
41 special declarant rights shall be as follows:

42 (1) A successor to any special declarant right who is an affiliate  
43 of a declarant shall be subject to all obligations and liabilities  
44 imposed on the transferor by P.L. , c. (C. )(pending before the  
45 Legislature as this bill) or by the declaration.

46 (2) A successor to a sole right reserved in the declaration to  
47 maintain models, sales offices, and signs under section 39 of  
48 P.L. , c. (C. ) (pending before the Legislature as this bill)

1 shall not exercise any other special declarant right and shall not be  
2 subject to any liability or obligation as a declarant except the  
3 obligation to provide a public offering statement and any liability  
4 arising as a result thereof.

5 (3) A successor to all special declarant rights held by a transferor  
6 who succeeded to those rights pursuant to a deed or other  
7 instrument of conveyance in lieu of foreclosure or a judgment or  
8 instrument conveying title under subsection c. of this section, may  
9 declare in a recorded instrument the intention to hold those rights  
10 solely for transfer to another person. Thereafter, until transferring  
11 all special declarant rights to any person acquiring title to any unit  
12 or real estate subject to development rights owned by the successor,  
13 or until recording an instrument permitting exercise of all those  
14 rights, that successor shall not exercise any of those rights other  
15 than any right held by his transferor to control the executive board  
16 in accordance with subsection d. of section 51 of P.L. , c.  
17 (C. ) (pending before the Legislature as this bill) for the duration  
18 of any period of declarant control, and any attempted exercise of  
19 those rights shall be void. So long as a successor declarant may not  
20 exercise special declarant rights under this subsection, the successor  
21 declarant shall not be subject to any liability or obligation as a  
22 declarant other than liability for his acts and omissions under  
23 subsection d. of section 51 of P.L. , c. (C. ) (pending before  
24 the Legislature as this bill).

25 (4) A successor to any special declarant right, other than a  
26 successor described in paragraphs (1), (2) or (3) of this subsection  
27 shall be subject to the obligations and liabilities imposed by  
28 P.L. , c. (C. ) (pending before the Legislature as this bill) or  
29 the declaration:

30 (a) On a declarant which relate to the successor's exercise or  
31 non-exercise of special declarant rights; or

32 (b) On his transferor, other than:

33 (i) misrepresentations by any previous declarant;

34 (ii) warranty obligations on improvements made by any previous  
35 declarant, or made before the common interest community was  
36 created;

37 (iii) breach of any fiduciary obligation by any previous declarant  
38 or his appointees to the executive board; or

39 (iv) any liability or obligation imposed on the transferor as a  
40 result of the transferor's acts or omissions after the transfer.

41 f. Nothing in this section shall subject any successor to a special  
42 declarant right to any claims against, or other obligations of, a  
43 transferor declarant, other than claims and obligations arising under  
44 P.L. , c. (C. ) (pending before the Legislature as this bill) or  
45 the declaration.

46 g. (1) Notwithstanding any provision of this section or any other  
47 law to the contrary, a lender who makes a loan of money, or who  
48 maintains an indicia of ownership primarily to protect a security

1 interest in property subject to P.L. , c. (C. ) (pending before  
2 the Legislature as this bill) for a loan made by the lender or a  
3 predecessor in interest, the proceeds of which are used or may be  
4 used by the borrower to finance the design, manufacture,  
5 construction, repair, modification, or improvement of real or  
6 personal property for sale or lease to others, shall not as a result of  
7 its actions as a lender be liable for any loss or damage occasioned  
8 by any defect or deficiency in the real or personal property so  
9 designed, manufactured, constructed, repaired, modified, or  
10 improved or for any loss or damage resulting from the failure of the  
11 borrower to use due care in the design, manufacture, construction,  
12 repair, modification, or improvement of such real or personal  
13 property, unless:

14 (a) the lender or holder has knowingly been a party to  
15 misrepresentations with respect to such real or personal property; or

16 (b) the lender or holder of the security interest actively  
17 participates in the management of the property.

18 (2) For the purpose of this section, the following shall apply:

19 (a) (i) "Active participation in the management" or "participation  
20 in the management" means actual participation in the construction  
21 of the property or management or operational affairs of the property  
22 by the lender and shall not include the mere capacity, or ability to  
23 influence, or the unexercised right to control the property or its  
24 management or operations. A holder of security interest shall be  
25 considered to be in active participation in the management, only if  
26 the lender exercises control at a level comparable to that of a  
27 manager of the property, such that the lender has assumed or  
28 manifested responsibility, for the overall management of the  
29 property encompassing the day-to-day decision making with respect  
30 to all, or substantially all, of the operational, as opposed to financial  
31 or administrative, aspects of the property. Operational aspects of the  
32 property shall include functions such as that of community  
33 manager, construction manager, operations manager, chief  
34 operating officer or chief executive officer. Financial or  
35 administrative aspects shall include functions such as that of credit  
36 manager, accounts payable or receivable manager, or both,  
37 personnel manager, controller, chief financial officer or similar  
38 functions.

39 (ii) Unless a lender is otherwise deemed to be an affiliate under  
40 this section, no act or omission prior to the time that indicia of  
41 ownership are held primarily to protect a security interest shall  
42 constitute evidence of participation in management.

43 (iii) Actions that are consistent with holding ownership indicia  
44 primarily to protect a security interest shall not constitute  
45 participation in management for purposes of P.L. , c. (C. )  
46 (pending before the Legislature as this bill). The authority for the  
47 lender to make such actions may, but need not, be contained in  
48 contractual or other documents specifying requirements for

1 financial, environmental, or other warranties, covenants, conditions,  
2 representations or promises from the borrower. Loan policing and  
3 work-out activities shall cover and include all activities up to  
4 foreclosure and its equivalents.

5 (b) "Lender" means a person who maintains indicia of ownership  
6 primarily to protect a security interest. A lender shall include the  
7 initial lender, such as a loan originator, any subsequent holder of  
8 the security interest, such as a successor-in-interest or subsequent  
9 purchaser, a guarantor of an obligation, surety or any other person  
10 who holds ownership indicia primarily to protect a security interest,  
11 or a receiver or other person who acts on behalf of for the benefit of  
12 a lender.

13 (c) "Indicia of ownership" means evidence of a security interest,  
14 evidence of an interest in real or personal property securing a loan  
15 or other obligation, including any legal or equitable title to real or  
16 personal property acquired incident to foreclosure and its  
17 equivalents. Evidence of such interests shall include, but is not  
18 limited to, mortgages, security agreements, deeds of trust, liens,  
19 surety bonds and guarantees of obligations, title held pursuant to  
20 lease financing transaction in which the lessor does not select  
21 initially the leased property, hereinafter "lease financing  
22 transaction," legal or equitable title obtained pursuant to foreclosure  
23 and their equivalents. Evidence of such interests shall also include  
24 assignments, pledges or other rights to or other forms of  
25 encumbrance against property that are held primarily to protect a  
26 security interest. A person is not required to hold title or a security  
27 interest in order to maintain indicia of ownership.

28 (d) "Primarily to protect a security interest" means that the  
29 holder's indicia of ownership are held primarily for the purpose of  
30 securing payment or performance of an obligation, but does not  
31 include indicia of ownership held primarily for investment  
32 purposes, or ownership indicia held primarily for purposes other  
33 than as a protection for a security interest. A holder will be deemed  
34 to maintain indicia of ownership primarily to protect a security  
35 interest even when the holder has secondary reasons for maintaining  
36 indicia of ownership.

37 h. A lender who engages in policing activities prior to  
38 foreclosure shall remain within the exemptions provided in  
39 subsection g. of this section provided that the lender does not, by  
40 such activities, participate in the management of the property, or is  
41 not otherwise determined to be an affiliate of the declarant. Such  
42 policing activities shall include, but are not limited to, requiring the  
43 borrower to comply or come into compliance with applicable  
44 federal, State and local laws, rules and regulations during the term  
45 of the security interest; securing or exercising authority to monitor  
46 or inspect the property during the term of the security interest; or  
47 taking other actions to adequately police the loan or security  
48 interest, such as requiring a borrower to comply with any of its

1 warranties, covenants, conditions, representations or promises.  
2 i. A lender who engages in work-out activities prior to  
3 foreclosure and its equivalents shall remain within the exemption  
4 provided that the lender does not by such action participate in the  
5 management of the property. For the purposes of P.L. , c. (C. )  
6 (pending before the Legislature as this bill), "work-out activities"  
7 means those actions by which a lender, at any time prior to  
8 foreclosure and its equivalents, seeks to: prevent, cure or mitigate a  
9 default by the borrower or obligor; or preserve or prevent the  
10 diminution of the value of the security. Work-out activities include,  
11 but are not limited to: restructuring or renegotiating the terms of the  
12 security interest; requiring payment of the additional rent or  
13 interest; exercising forbearance; requiring or exercising rights  
14 pursuant to an assignment of accounts or other amounts owing to an  
15 obligor; requiring or exercising rights pursuant to an escrow  
16 agreement pertaining to amounts owing to an obligor; providing  
17 specific or general financial or other advice, suggestions,  
18 counseling or guidance; and exercising any right or remedy the  
19 lender is entitled to by law or under any warranties, covenants,  
20 conditions, representations or promises from the borrower.

21  
22 53. (New section) Except as provided in section 22 of P.L. , c.  
23 (C. ) (pending before the Legislature as this bill), any contract  
24 or agreement affecting the use, maintenance, management, or  
25 access of the common elements entered into between the declarant  
26 and itself or a company owned, operated or controlled by the  
27 declarant or in which it has a financial interest prior to non-  
28 declarant unit owners being entitled to elect a majority of the  
29 executive board, shall not be entered into for a period in excess of  
30 one year. The contracts or agreements shall not be renewed for  
31 periods in excess of one year and the association may, at the end of  
32 any one-year period, terminate any further renewals or extensions  
33 thereof.

34 This section shall not apply to:

35 Any lease the termination of which would terminate the common  
36 interest community or reduce its size, unless the real estate subject  
37 to that lease was included in the common interest community for  
38 the purpose of avoiding the right of the association to terminate a  
39 lease under this section, or a proprietary lease.

40

41 54. (New section) a. The bylaws of an association, which shall  
42 initially be recorded with the declaration, shall provide:

43 (1) the number of members of the executive board and the titles  
44 of the officers of the association;

45 (2) election by the executive board of a president, treasurer,  
46 secretary, and any other officers of the association the bylaws may  
47 specify;

48 (3) the qualifications, powers and duties, terms of office, and

1 manner of electing and removing executive board members and  
2 officers and filling vacancies;

3 (4) which, if any, of its powers the executive board or officers  
4 may delegate to other persons or to a managing agent;

5 (5) which of its officers may prepare, execute, certify, and record  
6 amendments to the declaration on behalf of the association;

7 (6) a method for amending the bylaws;

8 (7) for alternative dispute resolution in accordance with the  
9 terms of section 86 of P.L. , c. (C. ) (pending before the  
10 Legislature as this bill); and

11 (8) a method for the adoption, amendment and enforcement of  
12 reasonable administrative rules and regulations relating to the  
13 operation, use, maintenance, and enjoyment of the units and of the  
14 common elements, including limited common elements.

15 b. Subject to the provisions of the declaration, the bylaws may  
16 provide for any other matters the association deems necessary and  
17 appropriate. No amendment to a bylaw shall be effective until  
18 recorded in the same office as existing bylaws.

19

20 55. (New section) a. Except to the extent provided by the  
21 declaration, subsection b. of this section, or subsection h. of section  
22 61 of P.L. , c. (C. ) (pending before the Legislature as this  
23 bill), an association shall be responsible for the maintenance, repair,  
24 cleaning, and replacement of the common elements, and each unit  
25 owner shall be responsible for maintenance, repair and replacement  
26 of the owner's unit. Subject to the terms of paragraph 4 of  
27 subsection a. of section 49 of P.L. , c. (C. ) (pending before  
28 the Legislature as this bill), each unit owner shall afford to the  
29 association and the other unit owners, and to their agents or  
30 employees, such access through the owner's unit as reasonably  
31 necessary for those purposes. If damage is inflicted on the common  
32 elements or on any unit through which access is taken, the entity  
33 responsible for the damage shall be liable for the prompt repair  
34 thereof.

35 b. In addition to the liability that a declarant as a unit owner has  
36 under P.L. , c. (C. )(pending before the Legislature as this  
37 bill), the declarant alone shall be liable for all expenses in  
38 connection with real estate subject to development rights. A unit  
39 owner or owner of another portion of the common interest  
40 community shall not be subject to a claim for payment of  
41 development rights expenses. Unless the declaration provides  
42 otherwise, any income or proceeds from real estate subject to  
43 development rights shall inure to the declarant.

44 c. In a planned community, if all development rights have  
45 expired with respect to any real estate, the declarant shall remain  
46 liable for all expenses of that real estate unless, upon expiration, the  
47 declaration provides that the real estate shall become common  
48 elements or units.

1       56. (New section) a. A meeting of the unit owners' association  
2 shall be held at least annually. Special meetings of an association  
3 may be called by the president, a majority of the executive board, or  
4 by unit owners having 20 percent, or any lower percentage specified  
5 in the bylaws, of the votes in the association. Not less than 10 or  
6 more than 60 days in advance of any unit owners' association  
7 meeting, the secretary or other officer specified in the bylaws shall  
8 cause notice to be hand-delivered or placed in the United States  
9 mail in a prepaid envelope to the proper mailing address of each  
10 unit or to any other mailing address designated in writing by the  
11 unit owner. The notice of any meeting shall state the time and place  
12 of the meeting and the items on the agenda, including the general  
13 nature of any proposed amendment to the declaration or bylaws,  
14 any budget changes, and any proposal to remove an officer or  
15 member of the executive board.

16       b. Meetings of the executive board of an association shall be  
17 held at least once every three months throughout the calendar or  
18 fiscal year, and as often as necessary in order to conduct the  
19 business of the association. Except as otherwise provided in this  
20 section, all meetings of the membership or the executive board of  
21 any association shall be open to all members of the association. The  
22 executive board shall establish an agenda for each meeting. Copies  
23 of the agenda, to the extent known, shall be available at least 48  
24 hours before the meeting for distribution to unit owners, and all unit  
25 owners who attend the meeting shall be given a reasonable  
26 opportunity to comment on matters under consideration by the  
27 executive board or otherwise of concern to unit owners. A board  
28 shall not be obligated to allow the period that is substantially  
29 devoted to the making of comments by unit owners to exceed, in the  
30 aggregate, 45 minutes in any one meeting; provided, however, that  
31 all persons having an interest in a proposed budget, a proposed  
32 amendment to the rules or bylaws, or any proposal to sell or lease  
33 any of the common elements shall be given an opportunity to make  
34 comments, subject to the right of the chair to limit or exclude  
35 comment or testimony that is repetitive or irrelevant.

36 Working sessions of an executive board at which no votes shall be  
37 taken shall be permitted and such meetings shall be open to  
38 attendance by unit owners. An executive board shall not be required  
39 to allow comments from unit owners at working sessions, but shall  
40 be required to arrange for a meeting place large enough to  
41 accommodate the anticipated number of unit owners wishing to  
42 observe a working session, whenever practicable.

43       Audio recordings for personal use by unit owners in attendance  
44 shall be permitted at meetings open to the unit owners; provided,  
45 however, that, in the event that it is not the practice of the  
46 association to record all meetings, a unit owner wishing to record a  
47 meeting shall give at least one business day's prior notice to the  
48 executive board of his or her intention to record the meeting. If

1 such notice has not been given and the executive board has not  
2 made provision for the recording of the meeting, the executive  
3 board may prohibit the unit owner from recording the meeting.

4 c. (1) Notwithstanding the provisions of subsection b. of this  
5 section, the executive board may exclude or restrict attendance at  
6 those meetings, or portions of meetings, dealing with (a) any matter  
7 the disclosure of which would constitute an unwarranted invasion of  
8 individual privacy; (b) any pending or anticipated litigation or  
9 contract negotiations; (c) any matters falling within the attorney-  
10 client privilege, to the extent that confidentiality is required in order  
11 for the attorney to exercise his ethical duties as a lawyer; or (d) any  
12 matter involving the employment, promotion, discipline, or  
13 dismissal of a specific officer or employee of the association.

14 (2) The executive board shall not exclude or restrict attendance  
15 at any meeting or portion thereof to discuss any matter described in  
16 paragraph (1) of this subsection until it shall first adopt, at a  
17 meeting to which all unit owners are permitted to attend, a motion  
18 stating: (a) the general nature of the subject to be discussed; and (b)  
19 as precisely as possible, a time when and the circumstances under  
20 which the discussions conducted in closed session of the executive  
21 board may be disclosed to the unit owners.

22 (3) Minutes shall be taken in any closed session, in the same  
23 manner as provided for in subsection b. of this section, but need not  
24 be made available until the subject matter of the meeting may be  
25 disclosed to the unit owners.

26 (4) A formal or binding vote shall not be taken at any closed  
27 session unless that meeting falls under the exceptions enumerated in  
28 paragraph (1) of this subsection. If a vote is taken in a closed  
29 session, the fact that a vote was taken (without disclosure of  
30 confidential information) shall be confirmed in a public session  
31 which is open to all unit owners.

32 d. Copies of the agenda for an executive board meeting shall be  
33 made available to the unit owners at the beginning of each open  
34 meeting of the executive board.

35 e. All meetings of the unit owners and executive board meetings  
36 shall be held at the community property, or, if there is no suitable  
37 meeting facility at the community, at a suitable meeting facility  
38 elsewhere in the municipality or, if there is no such suitable facility,  
39 in an adjoining municipality, or within 10 miles of the community.

40 f. Adequate notice shall be given to all unit owners of the time  
41 and place of all meetings required to be open to all unit owners. In  
42 order to constitute "adequate notice," such notice shall be in writing  
43 and shall be given at least 48 hours in advance, giving the time,  
44 date, location, and agenda of the meeting. Such notice shall be:

45 (1) prominently posted in at least one location within the  
46 common interest community where it is accessible at all times to all  
47 unit owners;

48 (2) published in the community newsletter, if any, provided the

1 publication schedule of the newsletter permits the notice to be  
2 published in adequate time for the meeting; and

3 (3) filed with the person responsible for administering the  
4 business office of the association. If the business office of the  
5 association is in the common interest community, the notice shall be  
6 posted prominently in that office.

7 In addition to these requirements, notices concerning meetings at  
8 which the budget or a rule or bylaw change will be discussed shall  
9 be mailed or hand delivered to each unit owner at least 48 hours in  
10 advance of the meeting. A unit owner may authorize the association  
11 to forward notices by electronic mail in lieu of receiving notices by  
12 regular mail.

13 At least once each year, within seven days following the annual  
14 meeting of the association, the executive board shall post, and  
15 maintain posted throughout the year at the prominent place  
16 accessible to all unit owners at which notices are posted, publish in  
17 the community newsletter, if any, and file with the person  
18 responsible for administering the business office of the association,  
19 a schedule of the times, dates and locations of all regular meetings  
20 of the executive board that are to be held during the succeeding  
21 year. Notice of any revision of the schedule shall be given in the  
22 same manner as the original notice of the schedule.

23 g. Minutes shall be taken at all meetings. Such minutes shall  
24 completely and accurately reflect all actions taken at the meeting.  
25 Approved copies of minutes shall be made available to unit owners  
26 within five business days after the date of approval of the minutes  
27 upon a request for a copy thereof. A permanent record of all  
28 approved minutes shall be maintained by the association at its  
29 business office, where they shall be available for review by all unit  
30 owners, except that minutes of a closed session may be withheld  
31 from such review for a reasonable period of time when necessitated  
32 by the reason for which the meeting was closed, or may be provided  
33 in redacted form by removing confidential information as  
34 necessary.

35 h. Within 30 days following an open meeting, the executive  
36 board shall provide all unit owners with a notice describing any  
37 adoption or amendment of a rule or bylaw that was approved at the  
38 meeting. No new rule or bylaw, or amendment to an existing rule  
39 or bylaw, shall take effect until such notice has been given to all  
40 unit owners. This notice shall be provided in the same manner as  
41 the "adequate notice" of a meeting required pursuant to subsection  
42 f. above. Additionally, all unit owners shall have the right to  
43 inspect all documents voted upon at a meeting, including  
44 amendments to the rules and bylaws, the annual budget, sale and  
45 lease of common elements, and contracts entered into by the  
46 association prior to any such action taking effect. These provisions  
47 shall not be construed to require that minutes, whether approved or  
48 unapproved, be made available prior to any action taking effect.

1        57. (New section) a. Unless the bylaws provide otherwise, a  
2 quorum shall be deemed to be present throughout any meeting of  
3 the association if persons entitled to cast 20 percent of the votes that  
4 may be cast for election of the executive board are present in person  
5 or by proxy at the beginning of the meeting.

6        b. Unless the bylaws specify a larger percentage, a quorum shall  
7 be deemed to be present throughout any meeting of the executive  
8 board if persons entitled to cast 50 percent of the votes on that  
9 board are present at the beginning of the meeting.

10  
11       58. (New section) a. If only one of several owners of a unit is  
12 present at a meeting of the association, that owner shall be entitled  
13 to cast all the votes allocated to that unit. If more than one of the  
14 owners are present, the votes allocated to that unit shall be cast only  
15 in accordance with the agreement of a majority in interest of the  
16 owners, unless the declaration expressly provides otherwise. It shall  
17 be considered majority agreement if any one of the owners casts the  
18 votes allocated to that unit without protest being made promptly to  
19 the person presiding over the meeting by any of the other owners of  
20 the unit.

21       b. Votes allocated to a unit may be cast pursuant to a proxy duly  
22 executed by a unit owner. A proxy vote in connection with the  
23 election of members to the executive board shall be subject to  
24 section 69 of P.L. , c. (C. ) (pending before the Legislature  
25 as this bill). Unless the declaration or bylaws provide otherwise, in  
26 connection with any other matter to be voted upon by the unit  
27 owners, a proxy may be a general proxy permitting the proxy agent  
28 to cast the vote in the proxy agent's discretion. If a proxy is  
29 permitted to be a general proxy pursuant to the terms of this  
30 subsection b., and is given to an officer of the association who is  
31 identified in the proxy by corporate title, the proxy agent shall cast  
32 the vote given by the proxy as determined by a majority vote of the  
33 executive board. If a unit is owned by more than one person, each  
34 owner of the unit may vote, unless the additional vote would violate  
35 the terms of the declaration, or register protest to the casting of  
36 votes by the other owners of the unit through a duly executed proxy.  
37 A proxy shall be void if it is not dated.

38       c. An association shall provide that those unit owners wishing to  
39 cast anonymous ballots shall be provided a method to do so,  
40 provided that the association may utilize reasonable methods to  
41 verify that ballots are being cast only by unit owners having the  
42 right to do so in accordance with P.L. , c. (C. ) (pending  
43 before the Legislature as this bill), the declaration and the bylaws. If  
44 a unit is owned by more than one person, each owner of the unit  
45 may vote through a duly executed anonymous ballot, unless the  
46 additional ballot would violate the terms of the declaration and  
47 provided that the association adopts procedures to ensure that the  
48 total number of ballots cast for each unit does not exceed the

1 permitted number of ballots under the declaration. A unit owner  
2 may revoke a ballot executed pursuant to this section only by actual  
3 notice of revocation to the person presiding over a meeting of the  
4 association and provided the ballot may be identified as that of the  
5 unit owner seeking to revoke it.

6 d. If the declaration requires that votes on specified matters  
7 affecting the common interest community be cast by lessees rather  
8 than unit owners of leased units:

9 (1) the provisions of subsections a. and b. of this section shall  
10 apply to lessees as if they were unit owners;

11 (2) unit owners who have leased their units to other persons shall  
12 not cast votes on those specified matters; and

13 (3) lessees shall be entitled to notice of meetings, access to  
14 records, and other rights respecting those matters as if they were  
15 unit owners. Unit owners shall also be given notice, in the manner  
16 provided in section 56 of P.L. , c. (C. ) (pending before the  
17 Legislature as this bill), of all meetings at which lessees are entitled  
18 to vote.

19 e. No votes allocated to a unit owned by the association shall be  
20 cast.

21 f. Any vote permitted under P.L. , c. (C. ) (pending before  
22 the Legislature as this bill) may, at the election of the executive  
23 board, be made electronically provided that (1) the association is  
24 able to verify that the vote is cast by a unit owner having the right  
25 to do so, and (2) the ballot may be cast anonymously or, when that  
26 is not reasonably practicable, the identity of the unit owner and  
27 selection indicated on any ballot shall be known only to a person or  
28 persons appointed to count the ballots, which person or persons  
29 shall not be a member of the executive board and who shall  
30 subscribe to an oath not to divulge the identity of, or selection  
31 indicated by, any unit owner. If the anonymity of an electronic  
32 ballot cannot be guaranteed, electronic voting shall be permitted  
33 provided that a unit owner is given the option of casting an  
34 anonymous written ballot. A unit owner voting by electronic means  
35 shall be deemed to be present at a meeting provided that the unit  
36 owner elects a proxy pursuant to subsection b. of this section. In  
37 such event, the proxy may provide that the unit owner's vote will be  
38 as directed in the unit owner's electronic ballot.

39 g. The declarant shall not be permitted to cast any votes  
40 allocated to unsold lots, parcels, units, or interests, in order to  
41 amend the declaration, bylaws or any other document, for the  
42 purpose of changing the permitted use of a lot, parcel, unit, or  
43 interest, or for the purpose of reducing the common elements or  
44 facilities.

45  
46 59. (New section) a. A unit owner, except as an officer of the  
47 association, shall have no authority to act for or bind the  
48 association. An association, however, may assert tort claims

1 concerning the common elements and facilities of the development  
2 as if the claims were asserted directly by the unit owners  
3 individually.

4 b. A unit owner shall not be liable for an injury or damage  
5 arising out of the condition or use of the common elements, other  
6 than as provided elsewhere in P.L. , c. (C. ) (pending  
7 before the Legislature as this bill) concerning a unit owners'  
8 intentional or negligent acts. The association or a unit owner other  
9 than the declarant shall not be liable for that declarant's torts in  
10 connection with any part of the common interest community which  
11 that declarant has the responsibility to maintain.

12 c. An action alleging a wrongful act by an association, including  
13 an action arising out of the condition or use of the common  
14 elements, may be maintained against the association but shall not be  
15 maintained against any unit owner. If the wrongful act occurred  
16 during any period of declarant control and the association has given  
17 the declarant reasonable notice of and an opportunity to defend  
18 against the action, the declarant who then controlled the association  
19 shall be liable to the association or to any unit owner for: (1) all  
20 losses not covered by insurance suffered by the association or that  
21 unit owner arising from that wrongful act, and (2) all costs that the  
22 association would not have incurred but for the wrongful act,  
23 including any breach of contract remedies. Whenever a declarant is  
24 liable to the association under this section, the declarant also shall  
25 be liable for all expenses of litigation, including reasonable  
26 attorney's fees , incurred by the association.

27 d. Any statute of limitations affecting an association's right of  
28 action against a declarant under P.L. , c. (C. ) (pending  
29 before the Legislature as this bill) shall be tolled until the period of  
30 declarant control terminates. A unit owner shall not be precluded  
31 from maintaining an action contemplated by this section because he  
32 is a unit owner or a member or officer of the association. Liens  
33 resulting from judgments against the association shall be governed  
34 by section 64 of P.L. , c. (C. ) (pending before the  
35 Legislature as this bill).

36 e. When the bylaws provide, an association shall not be liable in  
37 any civil action brought by or on behalf of a unit owner to respond  
38 in damages as a result of bodily injury to the unit owner occurring  
39 on the common elements of the association. An association shall not  
40 be liable for the exercise of discretion, when, in the face of  
41 competing demands, it determines whether and how to utilize and  
42 apply existing resources, including those allocated for equipment,  
43 facilities and personnel, unless a court concludes that the  
44 determination of the association was palpably unreasonable. This  
45 subsection shall not grant immunity to any association causing  
46 bodily injury to a unit owner on the association's common elements  
47 by its willful, wanton or grossly negligent act of commission or  
48 omission.

1       60. (New section) a. In a condominium or planned community,  
2 portions of the common elements may be conveyed or subjected to  
3 a security interest by the association if persons entitled to cast at  
4 least 80 percent of the votes in the association, including 80 percent  
5 of the votes allocated to units not owned by a declarant, or any  
6 larger percentage the declaration specifies, agree to that action; but  
7 all owners of units to which any limited common element is  
8 allocated shall agree in order to convey that limited common  
9 element or subject it to a security interest. The declaration may  
10 specify a smaller percentage only if all of the units are restricted  
11 exclusively to non-residential uses. Proceeds of the sale shall be an  
12 asset of the association, but the proceeds of a sale of limited  
13 common elements shall be distributed equitably among the owners  
14 of units to which the limited common elements were allocated.

15       b. Part of a cooperative may be conveyed and all or part of a  
16 cooperative may be subjected to a security interest by the  
17 association if persons entitled to cast at least 80 percent of the votes  
18 in the association, including 80 percent of the votes allocated to  
19 units not owned by a declarant, or any larger percentage the  
20 declaration specifies, agree to that action; but, if fewer than all of  
21 the units or limited common elements are to be conveyed or  
22 subjected to a security interest, then all unit owners of those units,  
23 or the units to which those limited common elements are allocated,  
24 shall agree in order to convey those units or limited common  
25 elements or subject them to a security interest. The declaration may  
26 specify a smaller percentage only if all of the units are restricted  
27 exclusively to nonresidential uses. Proceeds of the sale shall be an  
28 asset of the association. Any purported conveyance or other  
29 voluntary transfer of an entire cooperative, unless made pursuant to  
30 section 42 of P.L. , c. (C. ) (pending before the Legislature  
31 as this bill), shall be void.

32       c. An agreement to convey common elements in a condominium  
33 or planned community, or to subject them to a security interest, or  
34 in a cooperative, an agreement to convey any part of a cooperative  
35 or subject it to a security interest, shall be evidenced by the  
36 execution of an agreement, or ratifications thereof, in the same  
37 manner as a deed, by the requisite number of unit owners. The  
38 agreement shall specify a date after which the agreement will be  
39 void unless recorded. The agreement and all ratifications thereof  
40 shall be recorded in each county in which a portion of the common  
41 interest community is situated, and shall be effective only upon  
42 recordation.

43       d. An association, on behalf of the unit owners, may contract to  
44 convey an interest in a common interest community pursuant to  
45 subsection a. of this section, but the contract shall not be  
46 enforceable against the association until approved pursuant to  
47 subsections a., b., and c. of this section. Thereafter, the association  
48 shall have all of the powers necessary and appropriate to effect the

1 conveyance or encumbrance, including the power to execute deeds  
2 or other instruments.

3 e. Unless made pursuant to this section, any purported  
4 conveyance, encumbrance, judicial sale, or other voluntary transfer  
5 of common elements or of any other part of a cooperative shall be  
6 void.

7 f. A conveyance or encumbrance of common elements or of a  
8 cooperative pursuant to this section shall not deprive any unit of its  
9 rights of access and support.

10 g. Unless the declaration otherwise provides, if the holders of a  
11 first security interest on 80 percent of the units which are subject to  
12 security interests on the day the unit owners' agreement under  
13 subsection c. is recorded, consent in writing:

14 (1) a conveyance of common elements pursuant to this section  
15 shall terminate both the undivided interests in those common  
16 elements allocated to the units and the security interests in those  
17 undivided interests held by all persons holding security interests in  
18 the units; and

19 (2) an encumbrance of common elements pursuant to this section  
20 shall have priority over all preexisting encumbrances on the  
21 undivided interest in those common elements held by all persons  
22 holding security interests in the units.

23 h. The consent by holders of first security interests on units  
24 described in subsection g. of this section, or a certificate of the  
25 secretary affirming that those consents have been received by the  
26 association, may be recorded at any time before the date on which  
27 the agreement under subsection c. becomes void. Consents or  
28 certificates so recorded shall be valid from the date they are  
29 recorded for purposes of calculating the percentage of consenting  
30 first security interest holders, regardless of late sales or  
31 encumbrances on those units. Regardless of the consent of the  
32 required percentage of first security interest holders, a conveyance  
33 or encumbrance of common elements shall not affect interests  
34 having priority over the declaration, or created by the association  
35 after the declaration was recorded.

36 i. In a cooperative, the association may acquire, hold, encumber,  
37 or convey a proprietary lease without complying with this section.

38 j. The effects of foreclosure of security interests granted  
39 pursuant to this section shall be governed by section 42 of P.L. , c.  
40 (C. ) (pending before the Legislature as this bill).

41

42 61. (New section) a. Commencing not later than the date of the  
43 first conveyance of a unit to a person other than a declarant, the  
44 association shall maintain, to the extent reasonably available:

45 (1) property insurance on the common elements and, in a planned  
46 community, also on property that must become common elements  
47 and all structural portions of the common interest community,  
48 insuring against all risks of direct physical loss commonly insured

1 against or, in the case of a conversion building, against fire and  
2 extended coverage perils. Unless the association's declaration  
3 provides otherwise, the coverages under the property insurance  
4 shall be based upon replacement cost. If the declaration or bylaws  
5 do not provide for replacement cost insurance, the total amount of  
6 insurance after application of any deductibles shall not be less than  
7 80 percent of the actual cash value of the insured property at the  
8 time the insurance is purchased and at each renewal date, exclusive  
9 of land, excavations, foundations, and other items normally  
10 excluded from property policies;

11 (2) liability insurance, including medical payments insurance, in  
12 an amount determined by the executive board but not less than any  
13 amount specified in the declaration, covering all occurrences  
14 commonly insured against for death, bodily injury and property  
15 damage arising out of or in connection with the use, ownership or  
16 maintenance of the common elements and, in cooperatives, also of  
17 all units;

18 (3) directors' and officers' insurance; and

19 (4) any other insurance required by the declaration, association's  
20 bylaws or applicable law.

21 b. In the case of a building that is part of a cooperative or that  
22 contains units having horizontal boundaries described in the  
23 declaration, the insurance maintained under paragraph (1) of  
24 subsection a., to the extent reasonably available, shall include  
25 coverage of the units, but need not include improvements and  
26 betterments installed by unit owners.

27 c. If the insurance described in subsections a. and b. of this  
28 section is not reasonably available, the association promptly shall  
29 cause notice of that fact to be hand-delivered or placed in the  
30 United States mail in a prepaid envelope to all unit owners. The  
31 declaration may require the association to carry any other insurance,  
32 and the association in any event may carry any other insurance it  
33 considers appropriate to protect the association or the unit owners.

34 d. Insurance policies carried pursuant to subsections a. and b. of  
35 this section shall provide that:

36 (1) each unit owner is an insured person under the policy with  
37 respect to liability arising out of the owner's interest in the common  
38 elements or membership in the association;

39 (2) the insurer waives its right to subrogation under the policy  
40 against any unit owner or member of the owner's household;

41 (3) no act or omission by any unit owner, unless acting within  
42 the scope of his authority on behalf of the association, will void the  
43 policy or be a condition to recovery under the policy;

44 (4) there is other insurance in the name of a unit owner covering  
45 the same risk covered by the policy; and,

46 (5) the association's policy provides primary insurance.

47 e. Any loss covered by the property policy under paragraph (1)  
48 of subsection a. and under subsection b. of this section shall be

1 adjusted with the association, but the insurance proceeds for that  
2 loss shall be payable, if in excess of \$50,000, to any insurance  
3 trustee designated for that purpose, or otherwise to the association,  
4 and not to any holder of a security interest. The insurance trustee or  
5 the association shall hold any insurance proceeds in trust for the  
6 association, unit owners, and holders of a security interest or any  
7 lien holders as their interests may appear. Subject to the provisions  
8 of subsection h. of this section, the proceeds shall be disbursed first  
9 for the repair or restoration of the damaged property, and the  
10 association, unit owners, and holders of a security interest or any  
11 lien holders shall not be entitled to receive payment of any portion  
12 of the proceeds unless there is a surplus of proceeds after the  
13 property has been completely repaired or restored, or the common  
14 interest community is terminated.

15 f. An insurance policy issued to the association shall not prevent  
16 a unit owner from obtaining insurance for his own benefit.

17 g. An insurer that has issued an insurance policy under this  
18 section shall issue certificates or memoranda of insurance to the  
19 association and, upon written request, to any unit owner or holder  
20 of a security interest. The insurer issuing the policy shall not cancel  
21 or refuse to renew the policy until 30 days after notice of the  
22 proposed cancellation or non-renewal has been mailed to the  
23 association, and to each unit owner and each holder of a security  
24 interest to whom a certificate or memorandum of insurance has  
25 been issued, at their respective last known addresses.

26 h. (1) Any portion of the common interest community for which  
27 insurance is required under this section which is damaged or  
28 destroyed shall be repaired or replaced promptly by the association  
29 unless,

30 (a) the common interest community is terminated, in which case  
31 the provisions of section 42 of P.L. , c. (C. ) (pending before  
32 the Legislature as this bill) apply,

33 (b) repair or replacement would be illegal under any State statute  
34 or local ordinance governing health or safety, or

35 (c) 80 percent of the unit owners, including any owner of a unit  
36 or assigned limited common element that will not be rebuilt, vote  
37 not to rebuild. The cost of repair or replacement in excess of  
38 insurance proceeds and reserves shall be a common expense.

39 (2) If the entire common interest community is not repaired or  
40 replaced,

41 (a) the insurance proceeds attributable to the damaged common  
42 elements shall be used to restore the damaged area to a condition  
43 compatible with the remainder of the common interest community,  
44 and

45 (b) except to the extent that other proceeds will be distributed  
46 under subparagraph (b) of paragraph (11) of subsection a. of section  
47 28 of P.L. , c. (C. ) (pending before the Legislature as this  
48 bill), (i) the insurance proceeds attributable to units and limited

1 common elements that are not rebuilt shall be distributed first to the  
2 holders of a security interest as their interests may appear, unless  
3 the mortgage instrument provides otherwise, and to unit owners  
4 whose units are not encumbered by security interests, and then, if  
5 any surplus remains, first to owners of those units and the owners of  
6 the units to which those limited common elements were allocated as  
7 their interests may appear, and (ii) the remainder of the proceeds  
8 shall be distributed to all other unit owners or lien holders, as their  
9 interests may appear, as follows: in a condominium, in proportion  
10 to the common element interests of all the units and, in a  
11 cooperative or planned community, in proportion to the common  
12 expense liabilities of all the units. If the unit owners vote not to  
13 rebuild any unit, that unit's allocated interests shall be automatically  
14 reallocated upon the vote as if the unit had been condemned under  
15 subsection a. of section 7 of P.L. , c. (C. ) (pending before  
16 the Legislature as this bill), and the association promptly shall  
17 prepare, execute and record an amendment to the declaration  
18 reflecting the reallocations.

19 i. The provisions of this section may be varied or waived in the  
20 case of a common interest community in which all units are  
21 restricted to non-residential use.

22

23 62. (New section) Unless otherwise provided in the declaration,  
24 any surplus funds of an association remaining from common  
25 receipts after payment of or provision for common expenses and  
26 any prepayment of reserves shall be paid to the unit owners in  
27 proportion to their common expense liabilities or credited to them  
28 to reduce their future common expense assessments.

29

30 63. (New section) a. Until an association makes a common  
31 expense assessment, the declarant shall pay all common expenses.  
32 After an assessment has been made by an association, assessments  
33 shall be made at least annually, based on a budget which shall be  
34 adopted at least annually by the association.

35 b. Except for assessments under subsections c., d. and e. of this  
36 section, all common expenses shall be assessed against all the units  
37 in accordance with the allocations set forth in the declaration  
38 pursuant to subsections a. and b. of section 30 of P.L. , c.  
39 (C. ) (pending before the Legislature as this bill). Any past due  
40 common expense assessment or installment thereof shall bear  
41 interest at a rate to be established by the association not exceeding  
42 18 percent per year.

43 c. Unless the declaration provides otherwise:

44 (1) Any common expense associated with the maintenance,  
45 repair or replacement of a limited common element shall be  
46 assessed against the units to which that limited common element is  
47 assigned, equally, or in any other proportion the declaration  
48 provides;

1 (2) Any common expense or portion thereof benefiting fewer  
2 than all of the units shall be assessed exclusively against the units  
3 benefited; provided, however, that expenses to repair, maintain or  
4 replace general common elements shall, in the absence of unit  
5 owner misconduct, be deemed to benefit all units; and

6 (3) The costs of insurance shall be assessed in proportion to risk  
7 and, if separately metered, the costs of utilities shall be assessed in  
8 proportion to usage.

9 d. Assessments to pay a judgment against the association  
10 pursuant to subsection a. of section 65 of P.L. , c. (C. )  
11 (pending before the Legislature as this bill) may be made only  
12 against the units in the common interest community at the time the  
13 judgment was entered, in proportion to their common expense  
14 liabilities.

15 e. If any common expense is caused by the misconduct of any  
16 unit owner, the association may assess that expense exclusively  
17 against that owner's unit, provided that alternate dispute resolution  
18 as required pursuant to section 87 P.L. , c. (C. ) (pending  
19 before the Legislature as this bill) is provided prior to assessment.

20 f. If common expense liabilities are reallocated, common  
21 expense assessments and any installment thereof not yet due shall  
22 be recalculated in accordance with the reallocated common expense  
23 liabilities.

24  
25 64. (New section) a. If a unit owner shall fail to pay any  
26 assessment or other monies duly owed the association, the  
27 association shall have a lien on the unit for the amount of any such  
28 unpaid assessment or other moneys. Upon proper notice to the unit  
29 owner indicating the amount and basis of the lien, the association  
30 may, simultaneously or thereafter, record a notice of the lien in the  
31 amount of the delinquent assessment or other monies duly owed the  
32 association together with interest thereon and, if authorized by the  
33 declaration or bylaws, late fees, those fines authorized pursuant to  
34 section 50 of P.L. , c. (C. ) (pending before the Legislature as  
35 this bill) or pursuant to a determination by a court of competent  
36 jurisdiction and, subject to the provisions of paragraph 11 of  
37 subsection a. of section 49 of P.L. , c. (C. ) (pending before  
38 the Legislature as this bill), reasonable attorney's fees ; provided,  
39 however, that an association shall not record a lien in which the  
40 unpaid assessment consists solely of late fees. A lien for an  
41 assessment shall be effective when due. Any other lien shall be  
42 effective from and after the time of recording, in the public records  
43 of the county in which the unit is located, of a claim of lien stating  
44 the description of the unit, the name of the record owner, the  
45 amount due, and the date when due. Such claim of lien shall include  
46 only sums that are due and payable when the claim of lien is  
47 recorded and shall be signed and verified by an officer or agent of  
48 the association. Upon full payment of all sums secured by the lien,

1 the party making payment shall be entitled to have the lien canceled  
2 or discharged of record by the association, upon payment of the  
3 recording fee and a discharge preparation fee to the association in  
4 an amount not exceeding \$50, and to receive the canceled document  
5 or discharge. Except as set forth in subsection b. of this section, all  
6 such liens shall be subordinate to any lien for past due and unpaid  
7 property taxes, the lien of any first mortgage to which the unit is  
8 subject and to any other lien recorded prior to the time of recording  
9 of the claim of lien.

10 b. A lien recorded under subsection a. of this section, to the  
11 extent it is the result of a customary association assessment that  
12 became due for the six-month period prior to the recording of the  
13 lien and in the absence of any provision permitting the acceleration  
14 of common expense fees, shall have a priority over prior recorded  
15 mortgages and other liens, except for liens for unpaid property taxes  
16 or federal taxes, in accordance with this subsection.

17 (1) Such a lien shall be subordinate to any liens or encumbrances  
18 recorded before the declaration and, in a cooperative, shall be  
19 subordinate to any liens and encumbrances that the association  
20 creates, assumes or takes title to the cooperative property subject to.

21 (2) Such a lien shall be subordinate to a first mortgage recorded  
22 against a condominium unit prior to April 1, 1996, or a first  
23 mortgage against any other type of common interest unit, other than  
24 a cooperative, recorded prior to the effective date of P.L. ,

25 c. (C. ) (pending before the Legislature as this bill).

26 (3) With respect to a particular mortgage, in order to have the  
27 priority set forth in this subsection, the lien of the association shall  
28 have been recorded prior to:

29 (a) the filing with the proper county recording office of a lis  
30 pendens giving notice of an action to foreclose a mortgage on that  
31 unit; or

32 (b) receipt by the association of a summons and complaint in an  
33 action to foreclose a mortgage on that unit, if no lis pendens has  
34 been filed.

35 (4) Whenever more than one association lien has been filed,  
36 either because an association files more than one lien or more than  
37 one association having the right to do so files liens, the total lien  
38 priority for each association shall not be greater than the six-month  
39 priority described in this subsection. Priority between associations,  
40 whenever more than one association files a lien, shall be determined  
41 by the date of recording of the lien, with the earlier recorded lien  
42 having priority over later recorded liens.

43 (5) The priority granted to a lien under this section shall expire  
44 on the first day of the 60th month next following the date of  
45 recording of an association's lien, provided that subsequent lien  
46 filings shall have the priority otherwise set forth in this section  
47 upon the expiration of any prior lien filing, subject to the expiration  
48 period set forth in this subsection.

1       (6) When recording a lien that may be granted priority pursuant  
2 to this subsection, an association shall notify, in writing, any holder  
3 of a first mortgage lien on the property of the filing of the  
4 association lien. An association that exercises a good faith effort,  
5 but which is unable to ascertain the identity of a holder of a prior  
6 recorded mortgage on a unit, shall be deemed in substantial  
7 compliance with this paragraph. The notice required herein shall be  
8 deemed to have been properly made if mailed, by certified mail,  
9 with proper postage prepaid, to the address set forth on the recorded  
10 mortgage or, when the mortgage has been assigned, to the address  
11 indicated on the assignment of mortgage, unless the first mortgage  
12 holder or assignee has, in writing, specified a different address to  
13 the association, whereupon notice shall be deemed adequately made  
14 if mailed, postage prepaid, to such address.

15       (7) Nothing in this section shall prevent the establishment of a  
16 more favorable association assessment lien priority with respect to  
17 any lienholder other than a first mortgage granted by a bank,  
18 savings and loan association or similar institutional lender.

19       c. If a mortgagee of a first mortgage of record or other purchaser  
20 of a unit obtains title to such unit as a result of foreclosure of the  
21 first mortgage, such acquirer of title, his successors and assigns  
22 shall not be liable for the share of common expenses or other  
23 assessments by the association pertaining to such unit or chargeable  
24 to the former unit owner which became due prior to acquisition of  
25 title as a result of the foreclosure. Any remaining unpaid share of  
26 common expenses and other assessments, except assessments  
27 derived from late fees or fines, shall be deemed to be common  
28 expenses collectible from all of the remaining unit owners including  
29 such acquirer, his successors and assigns.

30       d. Liens for unpaid assessments may be foreclosed by suit  
31 brought in the name of the association in the same manner as a  
32 foreclosure of a mortgage on real property. The association shall  
33 have the power, unless prohibited by the declaration or bylaws, to  
34 bid on the unit at foreclosure sale, and to acquire, hold, lease,  
35 mortgage, and convey the same. Suit to recover a money judgment  
36 for unpaid assessments may be maintained without waiving the lien  
37 securing the same. Nothing herein shall alter the status or priority of  
38 municipal liens under R.S.54:5-1 et seq.

39       e. The provisions of this section shall have no effect on the  
40 priority or enforcement of association liens that were recorded prior  
41 to the effective date of P.L.     , c.     (C.     ) (pending before the  
42 Legislature as this bill).

43       f. The recording office of any county shall not accept for filing  
44 any Notice of Fine concerning fines imposed by an association,  
45 unless the lien filing is accompanied by a certification on behalf of  
46 the association, by either its attorney or an officer designated by the  
47 executive board, that the lien filing is in conformity with section 50  
48 of P.L.     , c.     (C.     ) (pending before the Legislature as this bill)

1 or has been authorized pursuant to a determination of a court of  
2 competent jurisdiction. A lien certified by an association, through  
3 its attorney or designated officer, to be based on unpaid fees for  
4 common expenses, late fees, costs of collection, or interest on such  
5 fees or costs shall not be required to be accompanied by such proof.  
6

7 65. (New section) a. In a condominium or planned community:

8 (1) Except as provided in paragraph (2) of this subsection, a  
9 judgment for money against the association if docketed shall not be  
10 a lien on the common elements, but shall be a lien in favor of the  
11 judgment lien holder against all of the units in the common interest  
12 community at the time the judgment was entered. No other property  
13 of a unit owner shall be subject to the claims of creditors of the  
14 association.

15 (2) If the association has granted a security interest in the  
16 common elements to a creditor of the association pursuant to  
17 section 60 of P.L. , c. (C. ) (pending before the Legislature  
18 as this bill), the holder of that security interest shall exercise its  
19 right against the common elements before its judgment lien on any  
20 unit may be enforced.

21 (3) Whether perfected before or after the creation of the common  
22 interest community, if a lien, other than a deed of trust or mortgage,  
23 but including a judgment lien or lien attributable to work performed  
24 or materials supplied before creation of the common interest  
25 community, becomes effective against two or more units, the unit  
26 owner of an affected unit may pay to the lien holder the amount of  
27 the lien attributable to the owner's unit, and the lien holder, upon  
28 receipt of payment, promptly shall deliver a release of the lien  
29 covering that unit. The amount of the payment must be  
30 proportionate to the ratio which that unit owner's common expense  
31 liability bears to the common expense liabilities of all unit owners  
32 whose units are subject to the lien. After payment, the association  
33 may not assess or have a lien against that unit owner's unit for any  
34 portion of the common expenses incurred in connection with the  
35 released lien.

36 (4) A judgment against an association shall be indexed in the  
37 name of the common interest community and the association and,  
38 when so indexed, is notice of the lien against the units.

39 b. In a cooperative:

40 (1) If an association receives notice of an impending foreclosure  
41 on all or any portion of the association's real estate, the association  
42 shall promptly transmit a copy of that notice to each unit owner of a  
43 unit located within the real estate to be foreclosed. Failure of the  
44 association to transmit the notice shall not affect the validity of the  
45 foreclosure.

46 (2) Whether or not a unit owner's unit is subject to the claims of  
47 the association's creditors, no other property of a unit owner shall  
48 be subject to those claims.

1       66. (New section) a. Except as otherwise provided in this  
2 section, all records of the association required to be maintained,  
3 including but not limited to all books, financial notes, contracts, and  
4 financial records, shall be made available for inspection or for  
5 copying to unit owners or to their duly authorized representatives,  
6 upon written request, within seven business days of receipt of the  
7 request and at a charge not to exceed the reasonable cost of  
8 reproduction; provided, in the case of records maintained in printed  
9 form, in no event shall the charge exceed 20 cents per page  
10 reproduced. If a unit owner or duly authorized representative seeks  
11 to inspect records, no charge shall be imposed by the association for  
12 the first hour of inspection occurring in any one-week period. A  
13 reasonable charge based upon actual cost to the association may be  
14 imposed for any longer period of inspection time required;  
15 provided, that where the inspection time is in excess of two hours in  
16 any one-week period, the person maintaining the records on behalf  
17 of the association may decline to continue the inspection for more  
18 than two hours so long as an appointment for additional inspection  
19 time is established for a date within five business days thereafter.  
20 The association shall not require a unit owner to state a reason for a  
21 request to inspect or copy records. In the event that the records are  
22 located off-site or the request involves the production and copying  
23 of a large volume of documents in the estimation of the association,  
24 the association shall have an additional seven business days to  
25 comply. A fee to cover postage may be charged by an association to  
26 the person requesting the documents. Nothing in this subsection  
27 shall be construed as requiring an association to research its  
28 records at the request of a unit owner. The association's obligation  
29 to provide records will be satisfied by providing all records within  
30 the category of documents where the owner's request may be  
31 referenced.

32       b. An association shall not be required to make available any  
33 records the disclosure of which would be an unreasonable violation  
34 of the privacy of any unit owner; provided, however, that unpaid  
35 common expenses which are overdue by more than 120 days shall  
36 not be deemed a private matter. An association shall not be  
37 required to make available any records dealing with pending or  
38 anticipated litigation or contract negotiations, or with any matter  
39 falling within the attorney-client privilege, to the extent that  
40 confidentiality is required for the attorney to discharge his or her  
41 ethical duties as a lawyer, or with respect to any matter involving  
42 the employment, promotion, discipline, or dismissal of a specific  
43 officer or employee of the association; provided, however, that the  
44 amount of wages, salaries and bonuses paid to, and the value of  
45 benefits received by, any such employee or officer, and the  
46 qualifications and credentials of any such employee or officer,  
47 shall be required to be made available. Any record not required to  
48 be made available in accordance with this subsection shall be made

1 available at such time when there shall no longer be a need to  
2 maintain confidentiality.

3 c. Any denial of access to records shall indicate the specific  
4 reasons why allowing inspection of the records would violate the  
5 rights of any unit owner or otherwise be in violation of subsection  
6 b. of this section. A unit owner who is aggrieved by denial of  
7 access to records shall have the right to appeal the denial to the  
8 commissioner.

9 d. An association shall maintain detailed financial and business  
10 records, including a record of all receipts and expenditures, for a  
11 period which complies with customary business standards and  
12 procedures and would allow a full and accurate auditing of all  
13 records, but in any event for not less than seven years, unless the  
14 governing documents of the association require a longer period. All  
15 records required to be made available to a purchaser upon resale of  
16 a unit shall be made available to a unit owner within one business  
17 day upon written request.

18 e. An association shall maintain, and make available to any unit  
19 owner within five business days, a permanent record of all notices  
20 and orders issued by any governmental agency having jurisdiction  
21 over the association or the common interest community. The record  
22 shall also include documentation of all actions taken in response to  
23 any such notice or order and shall identify the persons responsible  
24 for the matter that gave rise to the notice or order.

25 f. Every association having gross annual receipts in excess of  
26 \$75,000 shall have a certified annual audit prepared of its financial  
27 books and records, which audit shall be available within 180 days  
28 of the expiration of the fiscal year for which it is performed. In the  
29 event that the association is unable, for good cause, to make the  
30 audit available to unit owners within 180 days of the expiration of  
31 the fiscal year, a statement setting forth the reason for the delay  
32 shall be issued to the unit owners by the executive board. Every  
33 association having gross annual receipts of at least \$25,000, but not  
34 more than \$75,000, shall have such an audit prepared not less  
35 frequently than once every three years. All audits shall be prepared  
36 by a New Jersey certified public accountant in accordance with  
37 generally accepted accounting principles.

38 g. An association shall provide each unit owner, upon request,  
39 with a copy of the most recent annual financial statement of the  
40 association within seven days of the request and at no cost to the  
41 unit owner.

42 h. A unit owner may notify the Commissioner of Community  
43 Affairs upon the failure of an association to comply with requests  
44 made under subsections a., e. or g. of this section. Upon  
45 investigation, the commissioner shall have the power to order the  
46 compliance of the association with such a request.

47

48 67. (New section) With respect to a third person dealing with

1 the association in the association's capacity as a trustee, the  
2 existence of trust powers and their proper exercise by the  
3 association shall be assumed without inquiry. A third person shall  
4 not be bound to inquire whether the association has power to act as  
5 trustee or is properly exercising trust powers. A third person,  
6 without actual knowledge that the association is exceeding or  
7 improperly exercising its powers, shall be fully protected in dealing  
8 with the association as if it possessed and properly exercised the  
9 powers it purports to exercise. A third person shall not be bound to  
10 assure the proper application of trust assets paid or delivered to the  
11 association in its capacity as trustee.

12

13 68. (New section) a. Subject to the rights of holders of first  
14 security interests, an association may collect, from rent due from a  
15 tenant to a delinquent unit owner, an amount that is not more than  
16 any unpaid common expenses, late fees, interest, and costs of  
17 collection, including reasonable attorney's fees , which have been  
18 duly assessed against the unit owner. "Delinquent unit owner"  
19 means a unit owner who owes common expense fees which are 30  
20 or more days past due.

21 b. Prior to taking any action permitted by this section, an  
22 association shall give written notice, by certified mail, return receipt  
23 requested, to the delinquent unit owner at the unit owner's last  
24 known address of its intent to collect the rent. The notice shall set  
25 forth the exact amount the association claims is due and shall  
26 indicate the intent of the association to collect the amount due from  
27 rent, along with any other amounts which become due in the future  
28 and which remain unpaid for 30 days after becoming due, including  
29 any common expense fees lawfully accelerated pursuant to the  
30 declaration or bylaws. A copy of the notice shall be sent to the  
31 holder of the unit's first security interest of record. Any cost  
32 incurred by the association to ascertain the identity of the holder of  
33 the first security interest, including the cost of the preparation of a  
34 title search, shall constitute additional common expense fees due  
35 with respect to the unit.

36 c. A delinquent unit owner shall have 10 days from receipt of  
37 the notice required to be sent pursuant to subsection b. of this  
38 section to provide proof of payment or a statement of the grounds  
39 upon which the assessment is disputed. Upon the failure of the unit  
40 owner to respond within 10 days after receipt of the notice, or  
41 within 15 days of mailing if no receipt is obtained, and provided  
42 that no notice is received from the holder of the first security  
43 interest that it is exercising its right of assignment of rental  
44 proceeds, the association shall be entitled to notify and direct each  
45 tenant renting a unit from the delinquent unit owner to pay to the  
46 association all or a portion of the rent otherwise due the delinquent  
47 unit owner. The amount to be applied from the rent shall be limited  
48 to the lesser of: (1) the amount as stated in the notice to the

1 delinquent unit owner or, (2) an amount adjusted to reflect any  
2 calculation errors sought to be corrected by the unit owner, as stated  
3 in the response to the association, if timely sent. No offset shall be  
4 allowed for amounts which are unrelated to claims of calculation  
5 errors. The association shall have a continuing right to collect the  
6 rent from the tenant or tenants until the delinquent sum is satisfied  
7 in full.

8 d. Nothing in this section shall prevent a unit owner or  
9 association from seeking a judicial remedy in a court of competent  
10 jurisdiction. If a court determines that a unit owner or association  
11 intentionally misrepresented or misstated a material fact, then the  
12 prevailing party shall be entitled to recover from the other party an  
13 amount equal to: (1) reasonable attorney's fees ; (2) three times the  
14 unpaid assessment alleged by the association to be due; and (3) if  
15 the association is the prevailing party, the common expense fees  
16 accruing and remaining unpaid after the date of filing of the action.

17 e. A holder of a first security interest which is entitled to an  
18 assignment of rents and which has exercised its rights by written  
19 notice recorded at the county recording office in the county in  
20 which the property is located, and by written notice sent by certified  
21 mail to the association from which it received notice pursuant to  
22 subsection b. of this section, may collect such rents in accordance  
23 with an assignment of rents under which it is an assignee.  
24

25 69. (New section) a. An association shall conduct elections  
26 under the auspices of a committee of unit owners, none of whom  
27 shall be current board members or candidates for the board, which  
28 shall function independently of the executive board, or by using the  
29 services of a qualified independent individual or organization taken  
30 from a list provided by the department. The committee or  
31 independent individual or organization, as the case may be, shall be  
32 responsible for determining the eligibility of unit owners to vote or  
33 to run for office, for counting ballots and for verifying results. No  
34 unit owner shall be disqualified from running for office except for  
35 reason of nonpayment of assessments, legal fees, late fees, fines  
36 imposed in accordance with section 50 of P.L. , c. (C. )  
37 (pending before the Legislature as this bill) or of a final  
38 determination of a violation of the declaration, bylaws or rules of  
39 the association, which violation remains uncured at the time of  
40 determination of disqualification. The association shall give all unit  
41 owners at least 60 days advance notice of the election so as to allow  
42 all eligible persons who might be interested in filing as candidates a  
43 reasonable opportunity to do so. No person shall be disqualified  
44 from voting in an election for any reason other than delinquency in  
45 the payment of maintenance charges. Any person who is  
46 disqualified from voting or running for office and wishes to  
47 challenge that disqualification may appeal the disqualification to the  
48 department, which shall investigate and decide the matter. A

1 person who is disqualified and wishes to appeal the disqualification  
2 may cast a ballot that shall be kept apart from the other ballots and  
3 counted only in the event that the disqualification is overruled on  
4 appeal; provided, however, that any such ballot that is kept apart  
5 from the other ballots need only be counted if there is any  
6 possibility that it might affect the outcome of the election. Unit  
7 owners shall be allowed to cast ballots anonymously by mail, in  
8 person, or where the association permits, by electronic ballot. A  
9 mailed ballot or an electronic ballot shall be deemed to be a proxy  
10 for purposes of determining a quorum for the meeting at which the  
11 election is conducted. A non-directed proxy ballot may be counted  
12 only in voting for an office for which there are not as many listed  
13 candidates as there are positions to be filled. All candidates shall be  
14 afforded the opportunity to observe the entire process of counting  
15 and tabulation of the ballots, either in person or through a  
16 designated representative, and shall have access to lists of persons  
17 who are eligible to vote and, after the voting has started, to any list  
18 of persons who have voted that the association may maintain. Any  
19 challenge to the validity of an election shall be submitted to the  
20 executive board and to the department within 30 days following the  
21 date on which written notice of the results of the election is given to  
22 members of the association. Pending the outcome of any such  
23 challenge, the persons declared to be elected by the committee,  
24 individual or organization responsible for conducting the election  
25 shall serve as de facto officers or trustees, as the case may be.  
26 Ballots, envelopes, registration records, eligibility lists, proofs of  
27 mailing, and other voting materials shall be subject to inspection by  
28 all unit owners at the time of the election and shall be sealed after  
29 the election and kept unopened, in the custody of a licensed  
30 certified public accountant or the organization that conducted the  
31 election for not less than 30 days following the election, or until  
32 such later time as any challenge to the election brought within that  
33 30-day period has been resolved and the documents are no longer  
34 required. Voting materials and procedures shall at all times be  
35 subject to inspection and review by the commissioner. The parties  
36 to any dispute shall be allowed the opportunity to be present or be  
37 represented at any such inspection and review.

38 b. Upon the written request of any candidate submitted at least  
39 10 days prior to the scheduled election, the commissioner may  
40 appoint one or more persons to monitor an election to ensure  
41 fairness and accuracy, if previous documented evidence of election  
42 problems within an association exists. A candidate may also request  
43 the commissioner to investigate any allegations of fraud or abuse in  
44 election proceedings. The commissioner shall have power to  
45 invalidate any election in which the commissioner finds there to  
46 have been fraud or any other abuse of the electoral process,  
47 including, but not limited to, denial of equal access to all eligible  
48 voters for all candidates. In the event that any association fails or

1 refuses to conduct a fair and open election at such time as elections  
2 are required for such association, the commissioner shall order that  
3 the election be conducted at such time and under such supervision  
4 as the commissioner shall direct, or the commissioner shall conduct  
5 the election directly.

6 c. If, at the time that all nominations are closed, the number of  
7 candidates for each office does not exceed the number of open  
8 positions for each such office, all candidates may be declared  
9 elected without the necessity for further compliance with the  
10 provisions of this section. If the association has not formed an  
11 election committee or enlisted the services of a qualified  
12 independent individual or organization because, immediately prior  
13 to the election meeting, no positions were contested, but one or  
14 more positions become contested as a result of nominations made at  
15 the meeting, an election committee shall be created to conduct the  
16 election to the contested position or positions that shall be  
17 composed of representatives designated by the candidates.

18  
19 70. (New section) Notwithstanding any term of P.L. , c.  
20 (C. ) (pending before the Legislature as this bill), or of any other  
21 law or the governing documents of an association to the contrary,  
22 an association shall not be required to enforce a violation of a rule,  
23 regulation or restrictive covenant when an association or its  
24 employees or agents cannot, in the ordinary discharge of their  
25 functions, objectively determine that there exists a violation of such  
26 rules, regulations or restrictive covenants. Nothing herein shall  
27 prohibit an association from enforcing a violation that it is not  
28 required to enforce, provided that the association shall undertake  
29 such enforcement pursuant to the terms of P.L. , c. (C. )  
30 (pending before the Legislature as this bill). Any unit owner may  
31 enforce the rules, regulations and restrictive covenants of the  
32 association through an action filed with a court of competent  
33 jurisdiction, or by alternative dispute resolution proceedings in  
34 accordance with section 86 of P.L. , c. (C. ) (pending before  
35 the Legislature as this bill). Any association refusing to enforce an  
36 alleged violation of a rule, regulation or restrictive covenant  
37 pursuant to the terms of this section shall have no liability to any  
38 unit owner or third party for such refusal.

39  
40 71. (New section) a. An association, to the extent practicable,  
41 shall solicit a minimum of three bids for any contract for services or  
42 materials whenever the amount payable by the association in  
43 connection with the services or materials exceeds \$17,500, or such  
44 higher amount as may be established by the Governor as the basic  
45 bid threshold amount for local public contracts, in accordance with  
46 section 3 of P.L.1971, c.198 (C.40A:11-3), in any 12-month period.  
47 An association shall solicit in a uniform manner, containing the  
48 required specifications, a minimum of three sealed bids, to be

1 opened only at a publicly announced meeting open to all unit  
2 owners, which may be either a meeting of the executive board or of  
3 a committee appointed by the executive board. These bidding  
4 requirements shall also apply in any case in which the aggregate  
5 amount that might be paid to a single entity or a group of entities  
6 under common control for different services would exceed the  
7 stated thresholds. The thresholds shall not be applicable, however,  
8 to payments in excess of the threshold amounts that are necessarily  
9 incurred as a result of circumstances not anticipated at the time that  
10 the contract was awarded. The association shall award the contract  
11 to the vendor who provided the lowest bid, unless the board  
12 determines, for good cause that shall be expressly stated at a  
13 meeting open to attendance by the owners, that it would be in the  
14 best interests of the residents of the common interest community to  
15 award the contract to a vendor other than that vendor. The executive  
16 board shall have the right to negotiate with vendors for terms more  
17 favorable to the association after opening all bids and prior to  
18 awarding a contract. The requirements of this section shall not give  
19 rise to a cause of action by a vendor who provides a bid to an  
20 executive board. No member of an executive board or manager or  
21 other person employed by, or acting on behalf of, an association  
22 shall make any disclosure that gives an advantage to any bidder or  
23 otherwise compromises or interferes with the integrity and fairness  
24 of the bidding process.

25 b. The following contracts shall be exempted from the bidding  
26 requirements of this section:

27 (1) purchase of commodities at retail establishments; provided,  
28 however, that at least three prices shall be obtained for all purchases  
29 of a single commodity exceeding \$1,000;

30 (2) renewal of an existing contract for services, unless the  
31 increase in payments would exceed the greater of five percent or the  
32 average increase in the most-recently published Consumer Price  
33 Index for Urban Wage Earners issued by the United States  
34 Department of Labor and applicable to the New York and  
35 Philadelphia regions, or unless the contract had not been bid for at  
36 least four years;

37 (3) professional services of attorneys, accountants, community  
38 managers, engineers, and architects; provided, however, that the  
39 executive board shall in each instance state supporting reasons for  
40 its action in the resolution awarding each contract and shall give  
41 notice, stating the nature, duration, service, and amount of the  
42 contract and that the resolution and contract are on file and  
43 available for inspection by members of the association at the offices  
44 of the association, in a manner that may reasonably be expected to  
45 enable all members of the association to be informed;

46 (4) the printing of documents to be used in any legal proceeding;

47 (5) contracts whenever necessary to prevent or ameliorate an  
48 imminent peril to life or property; provided, however, that this

- 1 exception shall apply only to the extent necessary to eliminate the  
2 imminent peril;
- 3 (6) doing of work by any employee of the association in the  
4 course of such employment;
- 5 (7) purchase of perishable foods as a subsistence supply;
- 6 (8) supplying of any product or the rendering of any service by a  
7 public utility in accordance with tariffs or schedules of charges filed  
8 with the public entity having regulatory jurisdiction;
- 9 (9) equipment repair service of an emergency or exceptional  
10 nature, and necessary parts furnished in connection with such  
11 service, under circumstances that would make competitive bidding  
12 impracticable or otherwise not in the best interest of the association.  
13 A written statement specifying such circumstances shall be  
14 maintained as an association record open to examination by  
15 homeowners;
- 16 (10) the publication of legal s in newspapers;
- 17 (11) the acquisition of artifacts or other items of unique intrinsic,  
18 artistic or historical character;
- 19 (12) goods and services necessary or required to prepare and  
20 conduct an election;
- 21 (13) insurance, including the purchase of insurance coverage and  
22 consultant services, under circumstances that would make  
23 competitive bidding impracticable or otherwise not in the best  
24 interest of the association. A written statement specifying such  
25 circumstances shall be maintained as an association record open to  
26 examination by homeowners;
- 27 (14) library and educational goods and services;
- 28 (15) cooperative or other marketing of recycling materials  
29 recovered through a recycling program;
- 30 (16) vehicle towing and storage contracts at rates and charges  
31 not exceeding those established by the municipality in which the  
32 common interest community is located, pursuant to section 1 of  
33 P.L.1979, c.101 (C.40:48-2.49);
- 34 (17) purchase of steam or electricity;
- 35 (18) wastewater treatment services;
- 36 (19) expenses for travel and conferences; and
- 37 (20) provision or performance of goods or services for the  
38 support or maintenance of proprietary computer hardware and  
39 software.
- 40 c. An association of members in a community having fewer than  
41 30 residential units, through a resolution adopted pursuant to an  
42 open meeting and by a unanimous vote of all of the members, may  
43 waive any or all of the provisions of this section.
- 44 d. Any two or more associations may contract for goods or  
45 services jointly in accordance with the provisions of this section.
- 46 e. The provisions of this section shall not be applicable to any  
47 contract in existence prior to the effective date of P.L. , c.  
48 (C. ) (pending before the Legislature as this bill).

1       72. (New section) a. Except as otherwise provided in this  
2 section, no member of the executive board, or employee or  
3 community manager of an association shall have an interest in a  
4 business organization or engage in any business, transaction or  
5 professional activity, which is in conflict with the proper discharge  
6 of his or her duties on behalf of the association, including, but not  
7 limited to, having a direct or indirect interest in any contracts for  
8 work or materials used by the association, or in any sales, leases or  
9 agreements in connection with any lands owned or managed by the  
10 association, or in any fees or compensation of any kind paid to or  
11 owed to any broker, architect, engineer, vendor or other person  
12 doing business with the association. A member of the executive  
13 board, or employee or community manager of an association, who  
14 has any interest that is actually or potentially in conflict with his or  
15 her duties on behalf of the association, may continue in his or her  
16 capacity with the association provided that he or she promptly  
17 discloses the conflicting relationship at a meeting open to the  
18 members of the association and recuses himself or herself from all  
19 involvement in the transaction on behalf of the executive board,  
20 which recusal shall be duly noted in the minutes of the meeting at  
21 which it occurred; provided, however, that a community manager  
22 who has recused himself or herself from the process of selecting a  
23 vendor with which he or she is affiliated may perform such services  
24 as may be required to fulfill the requirements of the contract once it  
25 has been duly executed. Failure of a member of an executive board,  
26 or an employee or community manager of an association, to comply  
27 with this requirement, or failure of a vendor to disclose any such  
28 conflicting relationship with any person required to recuse himself  
29 or herself who has not done so, shall make the contract voidable by  
30 the association.

31       b. No board member, employee or community manager shall use  
32 his or her position to secure or attempt to secure unwarranted  
33 privileges for any person.

34       c. No board member, employee or community manager shall act  
35 in his or her capacity as a board member or employee or community  
36 manager in any matter in which he or she, a related person, or any  
37 other person residing in his or her household or the household of a  
38 related person, or any business organization in which any of such  
39 persons has an interest, has a direct or indirect financial or personal  
40 involvement that might reasonably be expected to impair the  
41 objectivity or independence of judgment of the board member,  
42 employee or community manager.

43       d. No executive board of an association shall employ or award a  
44 contract to a former member of that executive board until at least  
45 one year shall have expired after the end of the former member's  
46 service as a member of the executive board.

47       e. A community manager who is directly or indirectly affiliated  
48 with any business entity that provides services or otherwise

1 contracts with any common interest community shall file with the  
2 executive board of the association a list of all such affiliated  
3 entities, which list shall be updated at least annually and whenever  
4 any change occurs. It shall be the obligation of the community  
5 manager and of the affiliate to disclose the affiliation relationship at  
6 any time that the affiliate submits a bid to an association employing  
7 the community manager. If any such affiliate submits a bid to an  
8 association, the exemptions set forth in section 71 of P.L. , c.  
9 (C. ) (pending before the Legislature as this bill) shall not apply  
10 and the bids shall be sealed and be opened at an open meeting in  
11 the same manner as any other non-exempt bids. All payments to  
12 any such affiliate shall be made only after at least two members of  
13 the executive board shall have certified that the work was  
14 performed in a satisfactory manner and shall either sign off on the  
15 invoice or sign the check. Failure of either the community manager  
16 or the affiliate to comply with the requirements of this subsection  
17 shall render the contract voidable by the association at its option;  
18 provided, however, that the contract shall not be voidable if  
19 necessary service are rendered, or necessary goods are provided, in  
20 an emergency situation in which it is not possible to get prior  
21 approval of members of the executive board, and any affiliation  
22 relationship that has not previously been disclosed is disclosed as  
23 soon thereafter as possible.

#### ARTICLE 4

#### PROTECTION OF PURCHASERS

28 73. (New section) a. Sections 73 through 88 of P.L. , c.  
29 (C. ) (pending before the Legislature as this bill) shall be  
30 applicable to all units subject to P.L. , c. (C. ) (pending  
31 before the Legislature as this bill), except as provided in subsection  
32 b. of this section.

33 b. A resale certificate need not be prepared or delivered in the  
34 case of a:

- 35 (1) gratuitous disposition of a unit;
- 36 (2) disposition pursuant to court order;
- 37 (3) disposition by a government or governmental agency;
- 38 (4) disposition by foreclosure or deed in lieu of foreclosure;
- 39 (5) disposition to a dealer;
- 40 (6) disposition that may be canceled at any time and for any  
41 reason by the purchaser without penalty; or
- 42 (7) disposition of a unit restricted to nonresidential use, unless a  
43 majority of the voting interests in a common interest community  
44 devoted to nonresidential use determines that sections 73 through  
45 88 of P.L. , c. (C. ) (pending before the Legislature as this  
46 bill) shall apply, in full or part.

47  
48 74. (New section) a. Except as provided in subsection b. of this

1 section, a declarant, before offering any interest in a unit to the  
2 public, shall prepare a public offering statement conforming to the  
3 requirements of section 8 of "The Planned Real Estate Development  
4 Full Disclosure Act," P.L.1977, c.419 (C.45:22A-28).

5 b. A declarant may transfer responsibility for preparation of all  
6 or a part of the public offering statement to a successor declarant  
7 pursuant to section 52 of P.L. , c. (C. ) (pending before the  
8 Legislature as this bill) or to a dealer who intends to offer units in  
9 the common interest community. In the event of any such transfer,  
10 the transferor shall provide the transferee with any information  
11 necessary to enable the transferee to fulfill the requirements of  
12 subsection a. of this section.

13 c. If a unit is part of a common interest community and is part of  
14 another common interest community in connection with the sale of  
15 which the delivery of a public offering statement is required under  
16 the laws of this State, a single public offering statement conforming  
17 to the requirements of "The Planned Real Estate Development Full  
18 Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.) as those  
19 requirements relate to each regime in which the unit is located, and  
20 to any other requirements imposed under the laws of this State, may  
21 be prepared and delivered in lieu of providing two or more public  
22 offering statements.

23  
24 75. (New section) P.L. , c. (C. ) (pending before the  
25 Legislature as this bill) shall not affect or amend the terms or  
26 applicability of "The Planned Real Estate Development Full  
27 Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.), except as  
28 expressly set forth in sections 2, 74 and 76 of P.L. , c. (C. )  
29 (pending before the Legislature as this bill).

30  
31 76. (New section) If the declaration provides that ownership or  
32 occupancy of any units is or may be in time shares, the public  
33 offering statement in addition to the information required by section  
34 8 of "The Planned Real Estate Development Full Disclosure Act,"  
35 P.L.1977, c.419 (C.45:22A-28) shall disclose the:

36 a. number and identity of units in which time shares may be  
37 created;

38 b. total number of time shares that may be created;

39 c. minimum duration of any time shares that may be created;  
40 and

41 d. extent to which the creation of time shares will or may affect  
42 the enforceability of the association's lien for assessments provided  
43 in section 64 of P.L. , c. (C. ) (pending before the  
44 Legislature as this bill).

45  
46 77. (New section) a. Except in the case of a sale in which  
47 delivery of a public offering statement is required pursuant to  
48 section 8 of "The Planned Real Estate Development Full Disclosure

1 Act," P.L.1977, c.419 (C.45:22A-28) or unless exempt under  
2 subsection b. of section 73 of P.L. , c. (C. ) (pending before  
3 the Legislature as this bill), a unit owner shall furnish to a purchaser  
4 before the earlier of the date of conveyance or transfer of the right  
5 to possession of a unit, a copy of the declaration (other than any  
6 plats and plans), the bylaws, the rules or regulations of the  
7 association, and a certificate containing:

8 (1) a statement disclosing the effect on the proposed disposition  
9 of any right of first refusal or other restraint on the free alienability  
10 of the unit held by the association;

11 (2) a statement setting forth the amount of the periodic common  
12 expense assessment currently due and payable from the selling unit  
13 owner;

14 (3) a statement of any other fees payable by the owner of the unit  
15 being sold;

16 (4) a statement of any capital expenditures approved by the  
17 association for the current and two next succeeding fiscal years;

18 (5) a statement of the amount of any reserves for capital  
19 expenditures and of any portions of those reserves designated by the  
20 association for any specified projects;

21 (6) the most recently prepared balance sheet and income and  
22 expense statement, if any, of the association;

23 (7) the current operating budget of the association;

24 (8) a statement of any unsatisfied judgments against the  
25 association and the status of any pending suits in which the  
26 association is a defendant;

27 (9) a statement describing any insurance coverage maintained by  
28 the association;

29 (10) a statement as to whether the executive board has given or  
30 received written that any existing uses, occupancies, alterations, or  
31 improvements in or to the unit or to the limited common elements  
32 assigned thereto violate any provision of the declaration;

33 (11) a statement as to whether the executive board has received  
34 written from a governmental agency of any violation of  
35 environmental, health, or building code with respect to the unit, the  
36 limited common elements assigned thereto, or any other portion of  
37 the common interest community which have not been cured;

38 (12) a statement of the remaining term of any leasehold estate  
39 affecting the common interest community and the provisions  
40 governing any extension or renewal thereof;

41 (13) a statement of any restrictions in the declaration affecting  
42 the amount that may be received by a unit owner upon sale,  
43 condemnation, casualty loss to the unit or the common interest  
44 community, or termination of the common interest community;

45 (14) in a cooperative, an accountant's statement, if any was  
46 prepared, as to the deductibility for federal income tax purposes by  
47 the unit owner of real estate taxes and interest paid by the  
48 association;

- 1 (15) a statement describing any pending sale or encumbrance of
- 2 common elements; and
- 3 (16) a statement disclosing the effect on the unit to be conveyed
- 4 of any restrictions on the owner's right to use or occupy the unit or
- 5 to lease the unit to another person.
- 6 b. The association, within 10 days after a request by a unit
- 7 owner, shall furnish a certificate containing the information
- 8 necessary to enable the unit owner to comply with this section. A
- 9 unit owner providing a certificate pursuant to subsection a. of this
- 10 section, and any real estate broker or sales agent who provides
- 11 brokerage services to the unit owner or purchaser shall not be liable
- 12 to the purchaser for:
- 13 (1) any erroneous information provided by the association and
- 14 included in the certificate, or
- 15 (2) any matter related to the common interest community except,
- 16 with respect to liability between the unit owner and a purchaser, as
- 17 may otherwise be agreed in writing.
- 18 c. A purchaser, other than a purchaser through a foreclosure,
- 19 shall not be liable for any unpaid assessment or fee greater than the
- 20 amount set forth in the certificate prepared by the association. A
- 21 unit owner shall not be liable to a purchaser for the failure or delay
- 22 of the association to provide the certificate in a timely manner, but
- 23 the purchase contract shall be voidable by the purchaser until the
- 24 certificate has been provided and for five days thereafter or until
- 25 conveyance, whichever first occurs.
- 26 d. The seller shall notify the association, not less than 30 days
- 27 prior to the proposed settlement date for the sale, of the names,
- 28 addresses and telephone numbers of the prospective purchasers.
- 29 The association shall, upon notification, alert the seller, in writing,
- 30 to any violations of record that have not been remedied, and shall
- 31 provide a copy of the to the purchaser. The association shall,
- 32 within three business days following receipt of a written request
- 33 from purchaser, mail written notice to the purchaser confirming
- 34 whether the outstanding violation has been cured. If purchaser fails
- 35 to confirm that the violation has been cured prior to settlement, the
- 36 purchaser shall become responsible for curing the violation.
- 37
- 38 78. (New section) a. In the case of a sale of a unit where
- 39 delivery of a public offering statement is required pursuant to "The
- 40 Planned Real Estate Development Full Disclosure Act," P.L.1977,
- 41 c.419 (C.45:22A-21 et seq.), a seller:
- 42 (1) before conveying a unit, shall record or furnish to the
- 43 purchaser releases of all liens, except:
- 44 (a) liens on real estate that a declarant has the right to withdraw
- 45 from the common interest community, or
- 46 (b) that the purchaser expressly agrees to take subject to or
- 47 assume, and that encumber:
- 48 (i) in a condominium, that unit and its common element interest,

1 and

2 (ii) in a cooperative or planned community, that unit and any  
3 limited common elements assigned thereto;

4 (2) shall provide a surety bond or substitute collateral for, or  
5 insurance against, the lien as provided for liens on real estate in the  
6 "Construction Lien Law," P.L.1993, c.318 (C.2A:44A-1 et seq.).

7 b. Before conveying real estate to the association, the declarant  
8 shall have that real estate released from:

9 (1) all liens the foreclosure of which would deprive unit owners  
10 of any right of access to or easement of support of their units, and

11 (2) all other liens on that real estate unless the public offering  
12 statement describes certain real estate that may be conveyed subject  
13 to liens in specified amounts.

14

15 79. (New section) a. A unit may be sold by the sheriff on  
16 execution, free of any claim that is not a lien of record for common  
17 expenses or other assessments by the association, but any funds  
18 derived from that sale remaining after satisfaction of prior liens and  
19 charges, but before distribution to the previous unit owner, shall be  
20 applied to payment of such unpaid common expenses or other  
21 assessments if written notice thereof shall have been given to the  
22 sheriff before distribution. Any such unpaid common expenses  
23 which shall remain uncollectible from the former unit owner for a  
24 period of more than 60 days after such sheriff's sale may be  
25 reassessed by the association as common expenses to be collected  
26 from all unit owners, including the purchaser who acquired title at  
27 the sheriff's sale, his successors and assigns. Unless prohibited by  
28 the master deed, declaration or bylaws, the association may bid in  
29 and purchase the unit at a sheriff's sale, and acquire, hold, lease,  
30 mortgage, and convey the same.

31 b. Notwithstanding any foreclosure, tax sale or other forced sale  
32 of a unit, all applicable provisions of the master deed, declaration  
33 and bylaws shall be binding upon any purchaser at such sale to the  
34 same extent as they would bind a voluntary grantee, except that  
35 such purchaser shall not be liable for the share of common expenses  
36 or other assessments by the association pertaining to such unit or  
37 chargeable to the former owner which became due prior to such sale  
38 except as otherwise provided in subsection a. of this section.

39

40 80. (New section) a. Express warranties made by any seller to a  
41 purchaser of a unit, if relied upon by the purchaser, shall be created  
42 as follows:

43 (1) Any affirmation of fact or promise which relates to the unit,  
44 its use, or rights appurtenant thereto, area improvements to the  
45 common interest community that would directly benefit the unit, or  
46 the right to use or have the benefit of facilities not located in the  
47 common interest community, shall create an express warranty that  
48 the unit and related rights and uses will conform to the affirmation

1 or promise.

2 (2) Any model or description of the physical characteristics of  
3 the common interest community, including plans and specifications  
4 of or for improvements, shall create an express warranty that the  
5 common interest community will conform to the model or  
6 description, unless express disclaimers in language in common  
7 understanding calling the purchaser's attention to the exclusion of  
8 this warranty are displayed on the plans and specifications, or in the  
9 model, and are explicitly referenced in the sales contract.

10 (3) Any description of the quantity or extent of the real estate  
11 comprising the common interest community, including plats or  
12 surveys, shall create an express warranty that the common interest  
13 community will conform to the description, subject to customary  
14 tolerances.

15 (4) A provision that a purchaser may put a unit to a specified use  
16 is an express warranty that the specified use is lawful.

17 b. Neither formal words, such as "warranty" or "guarantee," nor  
18 a specific intention to make a warranty, shall be necessary to create  
19 an express warranty of quality, but a statement purporting to be  
20 merely an opinion or commendation of the real estate or its value  
21 shall not create a warranty.

22 c. Any conveyance of a unit transfers to the purchaser all  
23 express warranties of quality made by previous sellers.

24 d. Nothing in this section shall be construed to impair or negate  
25 any warranties which may have been created pursuant to any other  
26 law or regulation, including those warranties provided pursuant to  
27 "The New Home Warranty and Builders' Registration Act,"  
28 P.L.1977, c.467 (C.46:3B-1 et seq.).

29

30 81. (New section) a. Unless the limitation period is tolled  
31 under section 59 of P.L. , c. (C. ) (pending before the  
32 Legislature as this bill) or affected by subsection d. of this section, a  
33 judicial proceeding for breach of any obligation arising under  
34 section 80 of P.L. , c. (C. ) (pending before the Legislature  
35 as this bill), shall be commenced within six years after the cause of  
36 action accrues.

37 b. Subject to subsection c. of this section, a cause of action for  
38 breach of warranty of quality, regardless of the purchaser's lack of  
39 knowledge of the breach, shall accrue:

40 (1) as to a unit, at the time the purchaser to whom the warranty is  
41 first made enters into possession if a possessory interest was  
42 conveyed, or at the time of acceptance of the instrument of  
43 conveyance if a non-possessory interest was conveyed; and

44 (2) as to each common element, at the time the common element  
45 is completed or, if later, as to (a) a common element that is added to  
46 the common interest community by exercise of development rights,  
47 at the time the first unit which was added to the condominium by  
48 the same exercise of development rights is conveyed to a bona fide

1 purchaser, or (b) a common element within any other portion of the  
2 common interest community, at a time the first unit is conveyed to a  
3 bona fide purchaser.

4 c. If a warranty of quality explicitly extends to future  
5 performance or duration of any improvement or component of the  
6 common interest community, the cause of action shall accrue at the  
7 time the breach is discovered or at the end of the period for which  
8 the warranty explicitly extends, whichever is earlier.

9 d. During the period of declarant control, the association may,  
10 pursuant to section 88 of P.L. , c. (C. ) (pending before the  
11 Legislature as this bill), authorize an independent committee of the  
12 executive board to evaluate and enforce by any lawful means  
13 warranty claims involving the common elements, and to  
14 compromise those claims. If the committee is so created, the  
15 limitation period for claims for these warranties shall begin to run  
16 from the date of the first meeting of the committee, regardless of  
17 when the period of declarant control terminates.

18 e. Nothing in this section shall be construed to impair or negate  
19 any warranties which may have been created pursuant to any other  
20 law or regulation, including those warranties provided pursuant to  
21 "The New Home Warranty and Builders' Registration Act,"  
22 P.L.1977, c.467 (C.46:3B-1 et seq.).

23  
24 82. (New section) a. If a declarant or any other person subject  
25 to P.L. , c. (C. ) (pending before the Legislature as this bill)  
26 fails to comply with any of its provisions or any provision of the  
27 declaration or bylaws, any person or class of persons adversely  
28 affected by the failure to comply shall have a claim for appropriate  
29 relief. Punitive damages may be awarded for a willful failure to  
30 comply with P.L. , c. (C. ) (pending before the Legislature as  
31 this bill). The court, as appropriate, may award court costs and  
32 reasonable attorney's fees .

33 b. Parties to a dispute arising under P.L. , c. (C. ) (pending  
34 before the Legislature as this bill), the declaration, or the bylaws  
35 may agree to resolve the dispute by any form of binding or non-  
36 binding alternative dispute resolution, but;

37 (1) a declarant may agree with the association to do so only after  
38 the period of declarant control passes, unless the agreement is made  
39 with an independent committee of the executive board elected  
40 pursuant to section 88 of P.L. , c. (C. ) (pending before the  
41 Legislature as this bill); and

42 (2) an agreement to submit to alternative dispute resolution  
43 other than that provided under section 86 of P.L. , c. (C. )  
44 (pending before the Legislature as this bill) shall be in a writing  
45 signed by the parties.

46 Nothing in this section shall affect the right of a unit owner to  
47 submit a matter to alternative dispute resolution pursuant to section

1 86 of P.L. , c. (C. ) (pending before the Legislature as this  
2 bill).

3  
4 83. (New section) No promotional material shall be displayed  
5 or delivered to a prospective purchaser which describes or portrays  
6 an improvement that is not in existence unless the description or  
7 portrayal of the improvement in the promotional material is  
8 conspicuously labeled or identified either as "MUST BE BUILT" or  
9 as "NEED NOT BE BUILT."

10  
11 84. (New section) a. Except for improvements labeled "NEED  
12 NOT BE BUILT" the declarant shall complete all recreational and  
13 parking facilities or amenities depicted on any site plan or other  
14 graphic representation, including any plats or plans prepared  
15 pursuant to section 32 of P.L. , c. (C. ) (pending before the  
16 Legislature as this bill), whether or not that site plan or other  
17 graphic representation is contained in the public offering statement  
18 or in any promotional material distributed by or for the declarant.

19 b. The declarant shall be subject to liability for the prompt repair  
20 and restoration, to a condition compatible with the remainder of the  
21 common interest community affected by the exercise of rights  
22 reserved pursuant to or created by sections 33 through 37, 39 and 40  
23 of P.L. , c. (C. ) (pending before the Legislature as this bill).

24  
25 85. (New section) In the case of a sale of a unit in which  
26 delivery of a public offering statement is required, a contract of sale  
27 may be executed, but no interest in that unit may be conveyed until  
28 the declaration is recorded and the unit is substantially completed,  
29 as evidenced by an independent licensed architect, surveyor or  
30 engineer, or by issuance of a certificate of occupancy authorized by  
31 law.

32  
33 86. (New section) a. Every association shall offer an alternative  
34 dispute resolution procedure that shall be readily available as a  
35 cost-effective alternative to litigation for the resolution of qualified  
36 disputes between individual owners and the association, and  
37 between different owners. For the purposes of this section, a  
38 "qualified dispute" shall be construed broadly, and means those  
39 disputes involving the common interest community, the bylaws or  
40 the rules of the association. An association shall not be required to  
41 offer alternative dispute resolution proceedings for a dispute that is  
42 exclusively a personal dispute between two or more parties and  
43 which is unrelated to the common elements, or for a dispute  
44 regarding collection of an unpaid assessment, or for a dispute that  
45 does not involve the actual or prospective imposition of a fine or  
46 loss or denial of privileges. Assessments, late fees, and fines for  
47 nonpayment of assessments or late fees may be challenged in an  
48 alternative dispute resolution proceeding, but only on the grounds

1 that they were not authorized by the governing documents or by law  
2 or that the method utilized for imposing them was not consistent  
3 with the procedure set forth in the declaration, bylaws or law.

4 b. Alternative dispute resolution shall be effectuated through  
5 implementation of a mediation-arbitration procedure utilizing  
6 independent persons trained in both mediation and arbitration. The  
7 persons acting as mediators and arbitrators shall comply with the  
8 procedural rules established by the commissioner, which shall  
9 include sufficient training for mediating and arbitrating disputes in  
10 a common interest community and meeting minimum requirements  
11 concerning knowledge of common interest community practices and  
12 procedures and the statutory and common law affecting common  
13 interest communities. Qualifications for volunteer or professional  
14 dispute resolvers shall include sufficient training for mediating or  
15 arbitrating disputes in a common interest community, requirements  
16 for knowledge of community association issues and any other  
17 requirements necessary to provide such services

18 c. With respect to a qualified dispute in connection with which  
19 the association is a party, reasonable filing fees may be charged by  
20 an association for dispute resolution; provided, however, that such  
21 fees shall not exceed \$75 for each party, which shall be refundable  
22 to a party found to be the prevailing party. With respect to a  
23 qualified dispute in which the association is not a party to the  
24 dispute, all fees charged for alternative dispute resolution shall be  
25 borne by the owners who are parties to the dispute.

26 d. The alternative dispute resolution procedure hereby  
27 established shall be initiated and processed as follows:

28 (1) Upon the written request of any owner for resolution of a  
29 qualified dispute between the owner and the association, or between  
30 owners, the association shall provide dispute resolution in  
31 accordance with the terms of this section, the procedural rules of the  
32 Department of Community Affairs and those rules of the  
33 association that are consistent with this section. Within seven days  
34 following receipt of notice from an owner for dispute resolution, or  
35 prior to commencing suit, the association shall provide the owner  
36 with a list of qualified mediator-arbitrators from the list maintained  
37 by the Office of the Ombudsman, which list shall be maintained by  
38 the Department of Community Affairs and made promptly available  
39 upon request. If any owner who is a necessary party to a dispute  
40 resolution fails to respond in writing, within 14 days following the  
41 posting in the United States mails, postage prepaid, of the  
42 association's notice offering dispute resolution and requesting a  
43 response within such time period, which notice was addressed to the  
44 owner at the address of record in the business office of the  
45 association and at any other address that the owner may have  
46 provided in writing for alternative or emergency notification, the  
47 owner shall be deemed to have waived the right to participate in  
48 dispute resolution and the association shall have no further

1 obligation under this section.

2 (2) If more than one owner is a party to a qualified dispute and  
3 all such owners cannot agree upon the identity of the dispute  
4 resolver, the association shall choose from among any of the dispute  
5 resolvers selected by any of the owners.

6 (3) Upon selection of a dispute resolver, the association shall  
7 notify the dispute resolver so selected, who shall schedule the  
8 mediation-arbitration procedure within 30 days of the dispute  
9 resolver's selection.

10 (4) Dispute resolution shall commence with mediation. If the  
11 mediation results in an agreement between the parties to the  
12 dispute, the agreement shall be set forth in writing and executed by  
13 the parties, and may then be enforced in the Superior Court in the  
14 same manner as a binding arbitration award.

15 (5) If the dispute is not resolved by a written agreement  
16 executed by all parties to the dispute, the alternative dispute  
17 resolution procedure shall proceed to binding arbitration if all  
18 parties so agree in writing. If all parties do not agree in writing that  
19 the arbitration shall be binding, then the dispute shall proceed to  
20 non-binding arbitration. When all parties have agreed to binding  
21 arbitration, it shall be deemed to be an election of remedies and no  
22 party to the dispute may commence litigation with regard to the  
23 subject matter of the dispute, except as permitted by N.J.S.2A:24-1  
24 et seq.

25 (6) Each party to arbitration shall have the right to introduce  
26 evidence and testimony concerning their position, cross-examine  
27 witnesses for the opposing party and present written legal  
28 arguments in support of their position.

29 (7) The dispute resolver shall advise the parties, prior to the  
30 commencement of the dispute resolution procedure, whether the  
31 parties will immediately proceed to arbitration if mediation is  
32 unsuccessful, or whether a separate proceeding will be established  
33 for arbitration if the mediation fails to produce a written agreement.  
34 If the dispute resolver advises the parties that mediation and  
35 arbitration are to be separate proceedings, and the parties do not  
36 reach a written agreement during the mediation phase, the dispute  
37 resolver shall schedule the arbitration hearing to occur within 30  
38 days of the conclusion of mediation. Each party to the arbitration  
39 shall have the right to request one adjournment of the hearing date,  
40 provided the adjournment request is made within 10 days of the  
41 date of the dispute resolver's notice establishing the date of the  
42 hearing. In case of an emergency, and upon good cause shown, the  
43 dispute resolver may honor a request for an adjournment that is  
44 made more than 10 days after the dispute resolver's notice. Upon a  
45 request for an adjournment, the dispute resolver shall reschedule the  
46 hearing within 14 days of the original hearing date unless (a) such  
47 date would cause a material hardship to one or more parties,  
48 whereupon the dispute resolver shall reschedule arbitration for a

1 date certain in the arbitrator's sole discretion, but such date shall  
2 only be more than 30 days after the original date set for the  
3 arbitration hearing in the event of material hardship due to sickness,  
4 injury or death in the immediate family of a party to the dispute; or  
5 (b) the parties mutually consent to an alternate date. If any party  
6 fails to comply with the dispute resolver's scheduling of the  
7 arbitration, the arbitrator shall enter an award in favor of the non-  
8 defaulting party or parties.

9 (8) The dispute resolver shall render a written arbitration award  
10 within 14 days following the conclusion of the arbitration hearing.  
11 If the arbitrator fails to issue a written award within 14 days, the  
12 association shall give notice of such failure to the Department of  
13 Community Affairs and to the arbitrator. If the arbitrator fails to  
14 issue a written award within a further 16-day period, either party  
15 shall have the right to file suit with respect to the subject matter of  
16 the arbitration. Nothing herein shall prevent the association from  
17 filing a lien with respect to the subject matter of the dispute  
18 following the expiration of the 30-day period; provided, however,  
19 that the enforcement of any such lien may be stayed by a court  
20 having jurisdiction and that, in the event of a ruling by the arbitrator  
21 adverse to the association after the end of the 30-day period, the  
22 lien shall be discharged by the association at its sole cost and  
23 expense.

24 (9) In the event that a dispute is not resolved through mediation,  
25 the dispute resolver shall, in the arbitration proceeding, assess costs  
26 against the non-prevailing party; provided, however, that the costs  
27 assessed shall not exceed \$300, which award of costs shall, in  
28 binding and non-binding dispute resolution procedures, be binding.

29 e. The association shall also provide alternative dispute  
30 resolution in any dispute between or among unit owners; provided,  
31 however, that when the association is not a party to the dispute,  
32 such dispute resolution shall be at the sole cost and expense of the  
33 parties.

34 f. If emergency relief is required, a motion to stay the alternative  
35 dispute proceedings may be filed in the Superior Court. The motion  
36 shall be accompanied by a verified petition alleging facts that, if  
37 proven, would support entry of a temporary injunction, and if an  
38 appropriate motion and supporting papers are filed, the alternative  
39 dispute resolution proceedings shall be stayed pending a court  
40 hearing and disposition of a motion for temporary injunction.

41 g. An owner may file a claim with a court of competent  
42 jurisdiction with regard to any matter that would constitute a  
43 qualified dispute; provided, however, that (1) any such court filing  
44 shall be deemed an election of remedies and shall bar the owner  
45 from any further alternative dispute resolution proceedings; (2)  
46 when an owner has initiated a claim with a court of competent  
47 jurisdiction after having been advised by the association of the right  
48 to participate in alternative dispute resolution proceedings, nothing

1 herein shall prohibit the association from immediately filing a  
2 notice of fine or revoking or suspending the owner's privileges, if  
3 otherwise permitted by law and by the governing documents and  
4 subject to the authority of the court to stay any such action; and (3)  
5 where an owner has, in accordance with paragraph (5) of subsection  
6 d. of this section, elected to participate in binding arbitration, the  
7 owner shall not be permitted to file a claim with a court of  
8 competent jurisdiction except as provided in paragraph (5) of  
9 subsection d of this section. No claim may be filed by an owner  
10 while alternative dispute resolution proceedings are ongoing  
11 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
12 this bill), unless such proceedings have been abated pursuant to  
13 subsection f. of this section. No application for alternative dispute  
14 resolution shall be filed with regard to any matter pending before a  
15 court of competent jurisdiction, except upon the order of the court.

16 h. The department, upon a finding that an association has failed  
17 to offer or provide alternative dispute resolution in accordance  
18 with P.L. , c. (C. ) (pending before the Legislature as this  
19 bill) and the procedural rules promulgated pursuant thereto, shall  
20 provide such dispute resolution, in which case any filing fees  
21 charged in accordance with paragraph (3) of subsection b. of this  
22 section shall be payable to the department. The department may, in  
23 its sole discretion, notify the association of such failure and shall  
24 provide it with not less than seven, or more than 14 days in which  
25 to comply with the requirements of P.L. , c. (C. ) (pending  
26 before the Legislature as this bill). If, thereafter, the association  
27 fails to proceed with alternative dispute resolution proceedings in  
28 accordance with P.L. , c. (C. ) (pending before the Legislature  
29 as this bill) and the procedural rules promulgated thereunder, the  
30 department shall provide the alternative dispute resolution  
31 proceedings. Any alternative dispute resolution provided by the  
32 association that is not consistent with this section shall be of no  
33 force or effect. In carrying out its responsibilities under this section,  
34 the department shall refer the dispute to the Office of the  
35 Ombudsman, which shall utilize the Office of Dispute Settlement in  
36 the Office of the Public Defender to provide alternative dispute  
37 resolution services in accordance with this section and the  
38 procedural rules adopted by the commissioner. The department  
39 shall reimburse the Office of Dispute Settlement for the cost of  
40 providing such services. When the department provides alternative  
41 dispute resolution pursuant to this section, the costs shall be paid by  
42 the department with funds from the Homeowners' Association Trust  
43 Fund established pursuant to section 5 of P.L. , c. (C. )  
44 (pending before the Legislature as Assembly bill number 481) and  
45 revenue received from filing fees paid pursuant to subsection c. of  
46 this section.

47

48 87. (New section) Except for applications for emergent relief,

1 prior to the commencement of any form of construction defects  
2 litigation on behalf of an association against a declarant or any  
3 members of the executive board appointed by the declarant, the  
4 following alternative dispute procedure shall be followed:

5 a. The association shall give written notice to the declarant, by  
6 certified mail, return receipt requested, which shall be referred to as  
7 the "notice." The notice shall be accompanied by the association's  
8 statement of all known causes of action, and its version of the facts  
9 involved and copies of any reports or documents supporting the  
10 association's claim.

11 b. Within 30 days of the receipt of the notice from the  
12 association, the declarant or its agent may send a written request to  
13 investigate the association's claim, which shall be referred to as the  
14 "declarant's reply." The declarant's reply shall include a stipulation  
15 by the declarant that all statutes of limitation applicable to any  
16 claim by the association against the declarant shall be tolled for 180  
17 days or such shorter period of time as set forth in the cancellation  
18 notice delivered pursuant to subsection c. of this section. The  
19 tolling of the statutes of limitation shall be effective as of the date  
20 of the declarant's reply. If the declarant fails to send the declarant's  
21 reply within 30 days or fails to stipulate to the required tolling of all  
22 applicable statutes of limitation, then the association may institute  
23 an action without satisfying any other condition of this section.

24 c. Upon receipt of the declarant's reply, the association shall, to  
25 the extent practicable, make available for inspection and testing by  
26 declarant or its agents, all common areas, interiors of applicable  
27 individual units and the documents identified in the notice. All  
28 inspections and testing, including testing that may cause physical  
29 damage to the subject property, shall be at declarant's sole cost and  
30 expense, shall be performed during the business week unless the  
31 association and declarant agree otherwise, and shall be completed  
32 within 60 days from the date of the declarant's reply. The declarant  
33 may conduct destructive testing if the association has conducted  
34 prior destructive testing related to the defects specified in the  
35 association's notice or the parties mutually agree to destructive  
36 testing. "Destructive testing" shall mean any act causing substantial  
37 physical change in the condition of the premises which would  
38 necessitate a repair to restore the premises to the condition that  
39 existed prior to the testing. The testing shall be performed to  
40 determine the existence, type, extent, or cause of a defect in the  
41 design or construction of the development. Acts of repair or  
42 maintenance by the association shall not constitute destructive  
43 testing. Upon completion of any testing, declarant shall restore the  
44 property to the condition that existed immediately prior to the  
45 testing.

46 d. Within 60 days after completion of its inspections and testing,  
47 the declarant shall submit a written statement to the association  
48 setting forth declarant's proposed settlement of the claim, which

1 shall be referred to as the "settlement offer." If the declarant does  
2 not deliver the settlement offer within the 60-day period, the  
3 association may institute an action without satisfying any other  
4 condition of this section.

5 e. Within 30 days of receipt of the settlement offer, the  
6 association shall notify the declarant of two business dates during  
7 the 45-day period following the date of the association's notice, the  
8 first of which will not be earlier than 10 days following the date of  
9 the association's notice, on which a majority of the executive board  
10 will be prepared to meet with the declarant to discuss the  
11 association's claims and the settlement offer. The association and  
12 the declarant may be represented at the meeting by attorneys and  
13 independent consultants.

14 f. If no settlement of the association's claim, or any part thereof,  
15 has been agreed upon, then either the association or the declarant  
16 may deliver a written demand within 15 days from the date of the  
17 meeting held pursuant to subsection e. of this section for arbitration  
18 of the association's claims. The party filing the demand for  
19 arbitration shall be responsible for paying any filing fees or escrow  
20 deposits related thereto. The arbitration shall be undertaken by and  
21 in accordance with the Commercial Arbitration Rules of the  
22 American Arbitration Association then in effect, unless the  
23 declarant and the association agree to another form of alternative  
24 dispute resolution in lieu of the provisions of this subsection. The  
25 arbitration shall be non-binding. Arbitration hearings shall be  
26 conducted in the county in which the property is located unless the  
27 parties agree otherwise. The declarant and the association shall be  
28 responsible for their own costs in connection with presenting their  
29 respective cases. The cost of the arbitrator shall be equally shared  
30 by the parties unless the arbitrator determines otherwise. If neither  
31 the declarant nor the association delivers a written demand for  
32 arbitration as provided herein, compliance with the terms of this  
33 subsection shall not be a precondition to the association's institution  
34 of litigation.

35 g. At any time subsequent to the tolling of the statute of  
36 limitations, as set forth in the declarant's reply, the declarant may  
37 give written notice terminating the tolling of the statute of  
38 limitations. Upon delivery of the termination notice, the association  
39 shall be relieved of its obligation to arbitrate under subsection f. of  
40 this section, but, provided declarant has satisfied its obligations  
41 under subsections b. and d. of this subsection, the association shall  
42 be required to satisfy its obligations under subsections h. and i. of  
43 this section. The tolling of any applicable statutes of limitation shall  
44 terminate 180 days following the commencement of the tolling,  
45 unless extended by mutual written agreement.

46 h. If the association does not accept the declarant's settlement  
47 offer, or if either the association or the declarant does not accept the  
48 arbitrator's determination, then the association may commence any

1 legal action the association deems appropriate, provided that prior  
2 to the filing of any complaint commencing a legal action against the  
3 declarant, a majority of the association's non-declarant members  
4 present, in person or by proxy at a meeting of the association where  
5 a quorum is present, shall approve the commencement of a lawsuit.  
6 The quorum for a meeting of the members of the association for the  
7 purposes set forth in this subsection shall be 33 percent of all  
8 members of the association qualified to vote, unless the declaration  
9 or bylaws shall provide for a lesser quorum requirement. For  
10 purposes of determining a quorum, membership interests allocated  
11 to declarant units will not be considered in determining a quorum.

12 i. The executive board shall, at least 10 days prior to the meeting  
13 referenced in subsection h. of this section, distribute to each  
14 member of the association the following written materials:

15 (1) a statement of the association's claim against the declarant,  
16 specifying all construction defects and other claims which comprise  
17 the cause of action;

18 (2) a copy of the settlement offer and any other written responses  
19 to the claim provided by the declarant;

20 (3) if the declarant and association participated in an arbitration  
21 procedure pursuant to subsection f. of this section, a copy of the  
22 arbitrator's findings along with the association's and declarant's  
23 response to such findings, if any;

24 (4) a statement that the recovery of damages through litigation  
25 may not result in the receipt of sufficient funds to pay all damages  
26 or repair costs as estimated by the association's experts;

27 (5) an estimate of the minimum and maximum costs to the  
28 association to prosecute the litigation and a statement that such  
29 costs may not be recovered in the litigation;

30 (6) a description of the agreement with the attorney whom the  
31 association contemplates retaining to prosecute the litigation; and

32 (7) such other information as the association deems appropriate  
33 or as the declarant may have provided to the association in  
34 connection with its distribution to its members.

35 j. All written materials provided to the association's members  
36 will be privileged communications, unless the association agrees  
37 otherwise, and shall not be admissible in evidence in any action  
38 unless such materials would, notwithstanding their distribution to  
39 the association's members, otherwise be admissible but for their  
40 distribution to the association's members.

41 k. If the association fails to comply with any of the provisions of  
42 this section, such failure may be asserted by declarant as a  
43 procedural deficiency. Upon a judicial determination that the  
44 association failed to comply with the provisions set forth in this  
45 section, the association's complaint shall be stayed for an  
46 appropriate period of time to permit the association to cure any non-  
47 compliance.

48 l. Neither the failure to state a particular cause of action in the

1 notice provided for in subsection a. of this section nor the failure to  
2 state a particular claim under paragraph (1) of subsection i. of this  
3 section shall be deemed a procedural deficiency, nor prevent the  
4 association from stating such other causes of action as it deems  
5 necessary or appropriate in connection with any litigation against  
6 the declarant.

7  
8 88. (New section) a. During the period of declarant control after  
9 the initial election of unit owner board members other than the  
10 declarant, the executive board of the association may, upon the  
11 request of any board member, authorize an independent committee  
12 of at least five unit owners other than the declarant to evaluate,  
13 compromise and enforce by any lawful means as provided in this  
14 section any claims involving the common elements or any other  
15 improvements in the common interest community which the  
16 association is obligated to maintain. Only members of the executive  
17 board elected by the unit owners other than the declarant and other  
18 unit owners appointed by those independent members shall serve on  
19 the committee, and the committee's decisions shall be free of any  
20 control by the declarant or any member of the executive board or  
21 officer appointed by the declarant. Any vacancies on the committee  
22 shall be filled by the independent board members within 30 days,  
23 and in the case of any tie votes by such board members, by the vote  
24 of the unit owners other than the declarant within 60 days after the  
25 vacancy occurs.

26 b. If the committee authorized in subsection a. of this section is  
27 established and there has been substantial completion of the  
28 common elements and public improvements in any phase of the  
29 common interest community which are not covered by the  
30 performance or maintenance guarantees posted with any  
31 governmental agencies having jurisdiction, the committee shall, at  
32 the declarant's request, cause such common elements and  
33 improvements to be inspected and evaluated for compliance with  
34 the declarant's warranty and construction obligations, with the  
35 assistance of qualified independent engineering and legal  
36 consultants selected by the committee. The fees for such consultants  
37 shall be paid from funds contributed at closing for such purposes by  
38 unit owners other than the declarant or by regular or special  
39 common expense assessments, or by both; provided, however, that  
40 the declarant shall have the option to supplement such funds to the  
41 extent that it deems appropriate.

42 c. Public improvements to be dedicated to any governmental  
43 entity shall be exempt from any direct warranty or construction  
44 defect claims by the association or the unit owners other than the  
45 declarant. Acceptance of any such public improvements by the  
46 governmental entity to which they are to be dedicated shall be  
47 deemed conclusive evidence that such improvements have been  
48 satisfactorily completed and the declarant shall have no further

1 obligation with respect to same to the association, to any unit  
2 owners other than the declarant, or to any governmental agency  
3 having jurisdiction.

4 d. Within 120 days after the association's receipt of any request  
5 for inspection of any phase of the completed common elements or  
6 other improvements, the committee shall cause its engineering  
7 consultant to inspect the particular completed improvements and  
8 render a written evaluation of same to the committee. A copy of the  
9 final report, following the committee's review of the initial  
10 evaluation, shall be furnished to the declarant within 30 days after  
11 the committee's receipt of the report. Thereafter, the committee, or  
12 its designated representatives, and the declarant shall conduct one  
13 or more joint inspections of the common elements and other  
14 improvements covered by the declarant's request and pursue good  
15 faith negotiations to resolve any warranty or construction defect  
16 claims against the declarant. All fees and related expenses incurred  
17 by the committee for engineering and legal consultants shall be paid  
18 promptly by the association from available designated funds upon  
19 receipt of the committee's written authorization to make such  
20 payments.

21 e. If a settlement agreement is finalized between the committee  
22 and the declarant, the declarant controlled executive board shall  
23 have the authority to execute such an agreement and to release the  
24 declarant from all liability with respect to the completed common  
25 elements and improvements, subject to such terms and conditions as  
26 may be acceptable to the committee. Any such settlement  
27 agreement and release shall be legally binding upon the association  
28 and the unit owners, provided that its form is approved by the  
29 independent legal counsel retained by the committee on behalf of  
30 the association.

31 f. If no settlement agreement is approved by the committee  
32 within 180 days after the committee's receipt of the declarant's  
33 request for inspection, the parties shall be obligated to proceed to  
34 mediation within 30 days thereafter in accordance with the rules of  
35 the American Arbitration Association. If no settlement is reached  
36 through mediation within 15 days after commencement of same,  
37 then the parties shall promptly proceed to non-binding arbitration of  
38 any remaining issues in accordance with the rules of the American  
39 Arbitration Association, and such mediation and non-binding  
40 arbitration shall be conditions precedent to any litigation of the  
41 warranty and construction defect claims against the declarant,  
42 which shall also require the approval of a majority of the unit  
43 owners other than the declarant. All professional fees and expenses  
44 reasonably incurred by the association with regard to the mediation  
45 or arbitration, or both, shall be borne by the non-declarant unit  
46 owners and paid by the association promptly upon the receipt of  
47 written authorization of the committee.

48 g. In the event that no settlement agreement and releases are

1 executed with respect to any phase of completed common elements  
2 or improvements during the period of declarant control of the  
3 executive board of the association, any statutes of limitation or  
4 repose applicable to such phase shall be extended for a period of  
5 one year after the assumption of control of the executive board by  
6 unit owners other than the declarant. In addition, the declarant  
7 controlled board shall not be obligated to commence suit for any  
8 such claims during its period of control.

9 h. The procedures set forth in this section shall also apply to and  
10 be binding upon the declarant and the association after the unit  
11 owners, other than the declarant, assume control of the executive  
12 board of the association; provided, however, that the independent  
13 unit owner controlled executive board of the association shall not be  
14 bound by the recommendations of the committee.

## 15 ARTICLE 5

### 16 STATE OVERSIGHT OF ASSOCIATIONS

17  
18  
19 89. (New section) The Commissioner of Community Affairs  
20 shall have the following powers with regard to associations:

21 a. To initiate, receive, hear and review complaints, hold hearings  
22 and take such other enforcement actions as may be necessary with  
23 regard to any of the following matters:

24 (1) furnishing of information concerning records required to be  
25 maintained by the association and to be made available to unit  
26 owners;

27 (2) conduct of fair elections for association executive board  
28 members and officers and fair voting on other matters;

29 (3) establishment and implementation of a fair and efficient  
30 procedure for the resolution of disputes between associations and  
31 unit owners and among unit owners;

32 (4) holding of meetings that are open to unit owners and the  
33 conducting of association business in such open meetings, except as  
34 otherwise expressly permitted by statute;

35 (5) enforcement of conflict of interest provisions of section 72 of  
36 P.L. , c. (C. ) (pending before the Legislature as this bill) on  
37 the part of association trustees, officers and employees; and

38 (6) enforcement of standards of due process and open  
39 governance.

40 b. To issue subpoenas for the production of documents and the  
41 attendance of witnesses with respect to the investigation of any  
42 complaint.

43 c. To forward to the appropriate law enforcement officials any  
44 information that may indicate violation of any criminal statute.

45 d. To render advisory opinions as to whether a given state of  
46 facts or circumstances or action would constitute a violation of any  
47 statute or rule applicable to associations.

48 e. To enforce all statutes and rules imposing any duty upon

1 associations.

2 f. (1) If the department determines, after notice, that an  
3 association, or a past or current officer or executive board member  
4 of an association, has: (a) violated any provision of P.L. , c.  
5 (C. ) (pending before the Legislature as this bill), the  
6 "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), "The  
7 Planned Real Estate Development Full Disclosure Act," P.L.1977,  
8 c.419 (C.45:22A-21 et seq.), or any other statute regulating  
9 associations; (b) directly or through an agent or employee  
10 knowingly engaged in any violation of the governing documents of  
11 the association; or (c) violated any lawful order or rule of the  
12 department; the department may issue and enforce an order  
13 requiring the association or past or present executive board member  
14 or officer to cease and desist from the unlawful practice or to take  
15 such other affirmative action as in the judgment of the department  
16 will carry out the purposes of P.L. , c. (C. ) (pending before  
17 the Legislature as this bill).

18 In the event the department has reason to believe that any person  
19 subject to licensing by any agency of State government has  
20 knowingly engaged in any unlawful practice in connection with the  
21 operation of an association, the department shall refer the matter to  
22 the agency having licensing jurisdiction over such person.

23 If the department makes a finding of fact in writing that the  
24 public interest will be irreparably harmed by delay in issuing an  
25 order, it may issue a temporary cease and desist order. Every  
26 temporary cease and desist order shall include in its terms a  
27 provision that upon request a hearing shall be held within 10 days  
28 of such request to determine whether or not it becomes permanent.  
29 Such temporary cease and desist order shall be forwarded by  
30 certified mail.

31 (2) The department shall provide an opportunity for a hearing for  
32 any association, or for any current or former executive board  
33 member or officer, prior to the imposition of any sanction,  
34 including monetary fines. Associations shall be subject to fines only  
35 after they have failed or refused to comply with an order of the  
36 department. The maximum fine that may be levied against an  
37 association or former executive board member or officer for failure  
38 to comply with an order to cease and desist from continuing to  
39 violate an order of the department shall be \$1,000 per order.  
40 Former executive board members or officers shall be not be subject  
41 to fines for violations that occurred while they held board  
42 membership or office. All fines or penalties levied by the  
43 department shall be collected in accordance with the "Penalty  
44 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

45 g. To remove from office, after notice and the opportunity for a  
46 hearing, any executive board member or officer who shall fail to  
47 comply with any order issued by the commissioner to cease and  
48 desist from violating any statute or rule. Following any such

1 removal, the commissioner shall provide such assistance as may be  
2 required by an association in scheduling and holding elections or in  
3 managing the association until such time as the executive board is  
4 able to function properly. Notice of any fine imposed upon the  
5 association or a former board member or of the removal of an  
6 executive board member or officer by the commissioner shall be  
7 given to all unit owners by the executive board within 30 days of  
8 the action and shall be entered upon the minutes of the next meeting  
9 of the executive board or of the association. Current executive  
10 board members and officers shall not be subject to the imposition of  
11 a personal monetary fine or penalty under this subsection, other  
12 than for failure or refusal to comply with an order of removal from  
13 office.

14 h. To select, assign and provide trained and impartial volunteer  
15 dispute resolvers for the purpose of resolving disputes in  
16 conjunction with the Office of Dispute Settlement in accordance  
17 with section 28 of P.L.1994, c.58 (C.52:27E-73).

18 i. To employ or contract, in conjunction with the Office of  
19 Dispute Settlement, with persons who are professionally trained in  
20 dispute resolution, as mediators and as arbitrators, and to establish  
21 ethical and professional standards for such persons.

22

23 90. (New section) a. On or before the first day of the fourth  
24 month next following the effective date of P.L. , c. (C. )  
25 (pending before the Legislature as this bill), and annually on the  
26 same date thereafter, all homeowners associations having three or  
27 more units shall register with the Commissioner of Community  
28 Affairs, on such form as the commissioner shall prescribe, which  
29 form shall include, but not be limited to, information concerning the  
30 names and addresses of the officers and members of the executive  
31 board. Associations formed subsequent to the effective date of  
32 P.L. , c. (C. ) (pending before the Legislature as this bill) shall  
33 register within 30 days of the formation of the association;  
34 provided, however, that any association formed for a planned real  
35 estate development required to be registered with the department  
36 shall be registered not later than the date of registration of the  
37 planned real estate development.

38 b. All penalty monies received by the Department of  
39 Community Affairs pursuant to P.L. , c. (C. ) (pending  
40 before the Legislature as this bill) shall be deposited in an interest-  
41 bearing, non-lapsing revolving fund, entitled the "Homeowners'  
42 Association Trust Fund," to be held by the State Treasurer. Moneys  
43 held in this non-lapsing revolving fund shall be continuously  
44 appropriated to the Department of Community Affairs and to the  
45 Department of Treasury, Office of the Public Defender, Office of  
46 Dispute Settlement for the purposes expressed in P.L. , c. (C. )  
47 (pending before the Legislature as this bill) and shall be dedicated  
48 solely for those purposes. Any claims of transfers made outside of

1 the purposes of this section may be submitted to the Joint Budget  
2 Oversight Committee, or its successor committee.

3  
4 91. (New section) The Department of Community Affairs shall  
5 prepare and publish a booklet, which shall be made available at cost  
6 to the general public, to associations and to unit owners in common  
7 interest communities to serve as a general guide to community  
8 associations. The booklet shall be distributed by the association to  
9 each unit owner free of charge initially, and at cost as required for  
10 distribution to purchasers; it shall be the duty of each selling unit  
11 owner to provide a copy of the booklet to a purchaser of the unit at  
12 or before the time of signing of the sales contract. The booklet shall  
13 include at least the following:

14 a. An explanation of the nature of home ownership in a planned  
15 real estate development and a glossary of relevant terms, including,  
16 but not limited to, "master declaration," "bylaws," "master deed,"  
17 "covenants and restrictions," and "common elements";

18 b. A description of the rights and responsibilities of unit owners,  
19 including reference to applicable statutes and rules;

20 c. A description of the duties and powers of, and restrictions on,  
21 executive boards, including reference to applicable statutes and  
22 rules. The booklet shall include information concerning conflict of  
23 interest requirements applicable to executive board members and  
24 officers and to professionals hired by associations and shall also  
25 include reference to any other sources of information that may be  
26 recommended by the commissioner as being of assistance to  
27 executive board members and officers in the discharge of their  
28 duties and to the public and professional bodies having authority to  
29 investigate allegations of statutory or rule violations by board  
30 members and officers or by managers, attorneys, accountants, or  
31 other professionals;

32 d. A description of the statutory and regulatory requirements for  
33 association bylaws or rules and such other material as the  
34 commissioner shall deem useful; and

35 e. A listing of documents and other information that a potential  
36 purchaser of a unit in a planned real estate development should  
37 obtain before entering into a contract to purchase a unit, including,  
38 but not limited to: copies of the association's governing documents;  
39 a copy of the latest capital reserve study, if any, showing the  
40 condition, life expectancy and replacement costs of major  
41 mechanical systems and other common elements; any litigation  
42 pending against the association; any pending notices or orders  
43 issued by the Department of Community Affairs or any other  
44 governmental entity; the association's procedures for alternate  
45 dispute resolution, adopting rules and regulations, providing access  
46 to records, approval of budgets, and review of unit owners'  
47 applications to do work on their units; delinquency and foreclosure  
48 rates; the association's insurance coverages; and governmental and

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

8  
9 92. (New section) There is hereby established the Office of the  
10 Ombudsman for Homeowners and Associations, which, for  
11 purposes of separation from activities related to the enforcement  
12 powers granted to the commissioner, shall be separate and apart  
13 from any other unit charged with carrying out such enforcement  
14 activities. The office shall be headed by the ombudsman, who shall  
15 be a person qualified by experience in the areas of planned real  
16 estate developments and dispute resolution. No person who shall  
17 have been a unit owner or an employee of, or provider of  
18 professional or business services to, any association or organization  
19 representing associations within the preceding 36-month period  
20 shall be eligible for appointment as ombudsman. The ombudsman  
21 shall have the following duties and functions:

22 a. To develop and maintain, in consultation with the Office of  
23 Dispute Settlement and section 28 of P.L.1994, c.58 (C.52:27E-73),  
24 a pool and list of volunteers throughout the State who have been  
25 trained in dispute resolution and to establish procedures and a  
26 system of training for such volunteers;

27 b. To obtain and compile information concerning alternative  
28 dispute resolution proceedings throughout the State that may serve  
29 as a resource on the methods used to resolve disputes, for the  
30 benefit of associations, unit owners and volunteer dispute resolvers;

31 c. To assist unit owners in understanding their rights and  
32 responsibilities and the remedies available to them;

33 d. To assist executive board members and officers of  
34 associations in receiving appropriate training to allow them to  
35 properly discharge their functions and duties. This assistance shall  
36 include listings of appropriate reference and educational materials  
37 and general budgetary and financial guidance;

38 e. To conduct dispute resolution workshops for executive board  
39 members and unit owners; and

40 f. To assist associations in their dealings with municipalities and  
41 with other State and local regulatory agencies.

42  
43 93. (New section) The commissioner shall review any  
44 complaints received from unit owners' associations concerning  
45 noncompliance with the provisions of P.L.1989, c.299 (C.40:67-  
46 23.2 et seq.). Upon a finding that a municipality is not in  
47 compliance with that act, the commissioner, through the Director of  
48 the Division of Local Government Services, shall provide

1 appropriate direction to the municipality and, in the event of  
2 continued noncompliance, shall take such corrective action as may  
3 be appropriate, including denial of budget certification or  
4 withholding of State aid. A municipality aggrieved by an order of  
5 the commissioner or of the director pursuant to this section shall be  
6 entitled to a hearing in accordance with the "Administrative  
7 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

8  
9 94. (New section) The commissioner shall have authority to  
10 adopt such rules as may be necessary to enforce the provisions of  
11 P.L. , c. (C. ) (pending before the Legislature as this bill),  
12 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
13 (C.52:14B-1 et seq.), provided the commissioner shall not adopt  
14 rules creating substantive rights or obligations other than as set  
15 forth in P.L. , c. (C. ) (pending before the Legislature as  
16 this bill).

17  
18 95. (New section) It is the intent of the Legislature that the  
19 provisions of P.L. , c. (C. ) (pending before the Legislature  
20 as this bill) shall supplement the provisions of the "Horizontal  
21 Property Act," P.L.1963, c.168, (C.46:8A-1 et seq.), the  
22 "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), and all  
23 supplements to that act, as well as the provisions of P.L.1993, c.30  
24 (C.45:22A-43 et seq.) concerning associations; provided, however,  
25 that whenever any conflict or apparent conflict may be read  
26 between the provisions of P.L. , c. (C. ) (pending before the  
27 Legislature as this bill) and the provisions of those acts, the  
28 provisions of P.L. , c. (C. ) (pending before the Legislature as  
29 this bill) shall supersede those acts and be deemed to be the  
30 controlling law.

31  
32 96. Section 1 of P.L.1989, c.299 (C.40:67-23.2) is amended to  
33 read as follows:

34 1. For the purposes of [this act] P.L.1989, c.299 (C.40:67-23.2  
35 et seq.):

36 a. "Condominium" means the form of real property ownership  
37 provided for under the "Condominium Act," P.L.1969, c.257  
38 (C.46:8B-1 et seq.) or any law subsequently enacted providing for  
39 such a form of ownership;

40 b. "Cooperative" means a housing corporation or association  
41 wherein the holder of a share or membership interest in the  
42 corporation or association is entitled to possess and occupy, for  
43 dwelling purposes, a house, apartment, or other unit of housing  
44 owned by the corporation or association, or to purchase a unit of  
45 housing constructed or erected by the corporation or association;

46 c. "Fee simple community" means a private community which  
47 consists of individually owned lots or units and provides for

- 1 common or shared elements or interests in real property;
- 2 d. "Horizontal property regime" means the form of real property
- 3 ownership provided for under the "Horizontal Property Act,"
- 4 P.L.1963, c.168 (C.46:8A-1 et seq.) or any law subsequently
- 5 enacted which provides for such a form of ownership;
- 6 e. "Qualified private community" means a residential
- 7 condominium, cooperative, fee simple community, [or] horizontal
- 8 property regime, or a common interest community as defined
- 9 pursuant to section 3 of P.L. , c. (C. ) (now pending before
- 10 the Legislature as this bill), the residents of which do not receive
- 11 any tax abatement or tax exemption related to its construction,
- 12 comprised of a community trust or other trust device, condominium
- 13 association, homeowners' association, or council of co-owners,
- 14 wherein the cost of maintaining roads and streets and providing
- 15 essential services is paid for by [a not-for-profit entity consisting
- 16 exclusively of unit owners within the community] a unit owners'
- 17 association as defined pursuant to section 3 of P.L. , c. (C. )
- 18 (pending before the Legislature as this bill). No apartment building
- 19 or garden apartment complex owned by an individual or entity that
- 20 receives monthly rental payments from tenants who occupy the
- 21 premises shall be considered a qualified private community. No
- 22 "proprietary campground facility," as defined in section 1 of
- 23 P.L.1993, c.258 (C.45:22A-49), shall be considered to be a
- 24 qualified private community.
- 25 (cf: P.L.1993, c.258, s.10)
- 26
- 27 97. Section 3 of P.L.1977, c.419 (C.45:22A-23) is amended to
- 28 read as follows:
- 29 3. As used in [this act] P.L.1977, c.419 (C.45:22A-1 et seq.)
- 30 unless the context clearly indicates otherwise:
- 31 a. "Disposition" means any sales, contract, lease, assignment, or
- 32 other transaction concerning a planned real estate development.
- 33 b. "Developer" or "subdivider" means any person who disposes
- 34 or offers to dispose of any lot, parcel, unit, or interest in a planned
- 35 real estate development.
- 36 c. "Offer" means any inducement, solicitation, advertisement, or
- 37 attempt to encourage a person to acquire a unit, parcel, lot, or
- 38 interest in a planned real estate development.
- 39 d. "Purchaser" or "owner" means any person or persons who
- 40 acquires a legal or equitable interest in a unit, lot, or parcel in a
- 41 planned real estate development, and shall be deemed to include a
- 42 prospective purchaser or owner.
- 43 e. "State" means the State of New Jersey.
- 44 f. "Commissioner" means the Commissioner of Community
- 45 Affairs.
- 46 g. "Person" shall be defined as in R.S.1:1-2.

1 h. "Planned real estate development" or "development" means  
2 any real property situated within the State, whether contiguous or  
3 not, which consists of or will consist of, separately owned areas,  
4 irrespective of form, be it lots, parcels, units, or interest, and which  
5 are offered or disposed of pursuant to a common promotional plan,  
6 and providing for common or shared elements or interests in real  
7 property. This definition shall specifically include, but shall not be  
8 limited to, property subject at any time to the "Condominium Act,"  
9 P.L.1969, c.257 (C.46:8B-1 et seq.), any form of homeowners'  
10 association, any housing cooperative [or to] any community trust  
11 or other trust device, or any property subject to the "New Jersey  
12 Uniform Common Interest Ownership Act," P.L. ,c. (C. )  
13 (pending before the Legislature as this bill).

14 This definition shall be construed liberally to effectuate the  
15 purposes of [this act] P.L.1977, c.419 (C.45:22A-1 et seq.).

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

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

- 28 (1) Newspaper or periodical;  
29 (2) Radio or television broadcast;  
30 (3) Written or printed or photographic matter;  
31 (4) Billboards or signs;  
32 (5) Display of model houses or units;  
33 (6) Material used in connection with the disposition or offer of  
34 the development by radio, television, telephone or any other  
35 electronic means; or

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

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

1 k. "Nonbinding reservation agreement" means an agreement  
2 between the developer and a purchaser and which may be  
3 [cancelled] canceled without penalty by either party upon written  
4 notice at any time prior to the formation of a contract for the  
5 disposition of any lot, parcel, unit or interest in a planned real estate  
6 development.

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

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

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

20 o. "Executive board" means the [executive board of an  
21 association, as provided for in section 3 of P.L.1993, c.30  
22 (C.45:22A-45)] body, regardless of name, designated in the  
23 declaration to act on behalf of the association.

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

27 q. "Declarant" means any person or group of persons acting in  
28 concert who (1) as a part of a common promotional plan, offers to  
29 dispose of any interest in a unit not previously disposed of, or (2)  
30 reserves or succeeds to any special declarant right.  
31 (cf: P.L.1993, c.30, s.7)  
32

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

35 8. a. A public offering statement shall disclose fully and  
36 accurately the characteristics of the development and the lots,  
37 parcels, units, or interests therein offered, and shall make known to  
38 prospective purchasers all unusual or material circumstances or  
39 features affecting the development. The proposed public offering  
40 statement submitted to the agency shall be in a form prescribed by  
41 its rules and regulations and shall include the following:

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

43 (2) A general narrative description of the development stating the  
44 total number of lots, units, parcels, or interests in the offering, and  
45 the total number of such interests planned to be sold, leased or  
46 otherwise transferred;

- 1 (3) Copies of any management contract, lease of recreational  
2 areas, or similar contract or agreement affecting the use,  
3 maintenance, or access of all or any part of the development, with a  
4 brief and simple narrative statement of the effect of each such  
5 agreement upon a purchaser, and a statement of the relationship, if  
6 any, between the developer and the managing agent or firm;
- 7 (4) (a) The significant terms of any encumbrances, easements, liens,  
8 and restrictions, including zoning and other regulations, affecting  
9 such lands and each unit, lot, parcel, or interest, and a statement of  
10 all existing taxes and existing or proposed special taxes or  
11 assessments which affect such lands; and
- 12 (b) In the case of a conversion subject to the provisions of the  
13 "Tenant Protection Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et  
14 al.), the information required pursuant to section 14 of P.L.1991,  
15 c.509 (C.2A:18-61.53);
- 16 (5) (a) Relevant community information, including hospitals,  
17 health and recreational facilities of any kind, streets, water supply,  
18 levees, drainage control systems, irrigation systems, sewage  
19 disposal facilities and customary utilities; and
- 20 (b) The estimated cost, size, date of completion, and  
21 responsibility for construction and maintenance of existing and  
22 proposed amenities which are referred to in connection with the  
23 offering or disposition of any interest in the subdivision or  
24 subdivided lands;
- 25 (6) A copy of the proposed budget for the operation and  
26 maintenance of the common or shared elements or interests;
- 27 (7) Additional information required by the agency to assure full  
28 and fair disclosure to prospective purchasers.
- 29 (8) If any declaration filed pursuant to P.L. , c. (C. )  
30 (pending before the Legislature as this bill) provides that a common  
31 interest community is subject to any development rights, the public  
32 offering statement shall disclose, subject to the limitations set forth  
33 in section 47 of P.L. , c. (C. ) (pending before the Legislature  
34 as this bill) and, in addition to the information required under  
35 paragraphs (1) through (7) of this subsection, the following:
- 36 (a) the maximum number of units, and the maximum number of  
37 units per acre, that may be created;
- 38 (b) a statement of how many or what percentage of the units that  
39 may be created will be restricted exclusively to residential use, or a  
40 statement that no representations are made regarding use  
41 restrictions;
- 42 (c) if any of the units that may be built within real estate subject  
43 to development rights are not to be restricted exclusively to  
44 residential use, a statement, with respect to each portion of that real  
45 estate, of the maximum percentage of the real estate areas, and the  
46 maximum percentage of the floor areas of all units that may be  
47 created therein, that are not restricted exclusively to residential use;
- 48 (d) a brief narrative description of any development rights

1 reserved by a declarant and of any conditions relating to or  
2 limitations upon the exercise of development rights;

3 (e) a statement of the maximum extent to which each unit's  
4 allocated interests may be changed by the exercise of any  
5 development right described in subsection c. of this section;

6 (f) a statement of the extent to which any buildings or other  
7 improvements that may be erected pursuant to any development  
8 right in any part of the common interest community will be  
9 compatible with existing buildings and improvements in the  
10 common interest community in terms of architectural style, quality  
11 of construction, and size, or a statement that no assurances are made  
12 in those regards;

13 (g) general descriptions of all other improvements that may be  
14 made and limited common elements that may be created within any  
15 part of the common interest community pursuant to any  
16 development right reserved by the declarant, or a statement that no  
17 assurances are made in that regard;

18 (h) a statement of any limitations as to the locations of any  
19 building or other improvement that may be made within any part of  
20 the common interest community pursuant to any development right  
21 reserved by the declarant, or a statement that no assurances are  
22 made in that regard;

23 (i) a statement that any limited common elements created  
24 pursuant to any development right reserved by the declarant will be  
25 of the same general types and sizes as the limited common elements  
26 within other parts of the common interest community, or a  
27 statement of the types and sizes planned, or a statement that no  
28 assurances are made in that regard;

29 (j) a statement that the proportion of limited common elements to  
30 units created pursuant to any development right reserved by the  
31 declarant will be approximately equal to the proportion existing  
32 within other parts of the common interest community, or a  
33 statement of any other assurances in that regard, or a statement that  
34 no assurances are made in that regard;

35 (k) a statement that all restrictions in the declaration affecting  
36 use, occupancy and alienation of units will apply to units created  
37 pursuant to any development right reserved by the declarant, or a  
38 statement of any differentiations that may be made as to those units,  
39 or a statement that no assurances are made in that regard; and

40 (l) a statement of the extent to which any assurances made  
41 pursuant to this section apply or do not apply in the event that any  
42 development right is not exercised by the declarant.

43 b. The public offering statement shall not be used for any  
44 promotional purposes before registration of the development and  
45 afterwards only if it is used in its entirety. No person may advertise  
46 or represent that the agency approves or recommends the  
47 development or dispositions therein. No portion of the public  
48 offering statement may be underscored, italicized, or printed in

1 larger or heavier or different color type than the remainder of the  
2 statement, unless the agency requires or permits it.

3 c. The agency may require the developer to alter or amend the  
4 proposed public offering statement in order to assure full and fair  
5 disclosure to prospective purchasers, and no change in the  
6 substance of the promotional plan or plan of disposition or  
7 development of a planned real estate development may be made  
8 after registration without the approval of the agency. A public  
9 offering statement shall not be current unless all amendments have  
10 been incorporated.

11 d. The public offering statement shall, to the extent possible,  
12 combine simplicity and accuracy of information, in order to  
13 facilitate purchaser understanding of the totality of rights,  
14 privileges, obligations and restrictions, comprehended under the  
15 proposed plan of development. In reviewing such public offering  
16 statement, the agency shall pay close attention to the requirements  
17 of this subsection, and shall use its discretion to require revision of  
18 a public offering statement which is unnecessarily complex,  
19 confusing, or is illegible by reason of type size or otherwise.

20 (cf: P.L.1991, c.509, s.22)

21

22 99. Section 28 of P.L 1994, c.58 (C.52:27E-73) is amended to  
23 read as follows:

24 28. a. The Office of Dispute Settlement may provide, in the  
25 discretion of the Public Defender, mediation, and other third party  
26 neutral services in the resolution of disputes which involve the  
27 public interest and may enter into agreements or contracts to carry  
28 out any of the purposes or functions of this section. The Office of  
29 Dispute Settlement may assist public or private parties in resolving  
30 disputes. The Office of Dispute Settlement is authorized to:

31 (1) Facilitate the resolution of disputes through the provision of  
32 mediation and other neutral dispute resolution services;

33 (2) Establish standards for the selection, assignment, and conduct  
34 of persons acting on behalf of said office in the resolution of  
35 disputes;

36 (3) Conduct educational programs and provide other services  
37 designed to reduce the occurrence, magnitude, or cost of disputes;

38 (4) Design, develop, or operate dispute resolution programs, or  
39 assist in improving or extending existing dispute resolution  
40 programs;

41 (5) Work with the business ombudsman, established by  
42 Executive Order No. 15, and take such other action as will promote  
43 and facilitate dispute resolution in the State; [and]

44 (6) Coordinate and cooperate with the Office of Administrative  
45 Law so as to avoid duplication of effort and to facilitate alternate  
46 resolution of disputes that would otherwise require administrative  
47 hearings; and

1     (7) Work with the Office of the Ombudsman for Homeowners  
2     and Associations, established pursuant to section 92 of P.L. \_\_\_\_\_,  
3     c. (C. \_\_\_\_\_) (pending before the Legislature as this bill), to promote  
4     and facilitate dispute resolution for associations in the State and  
5     provide training programs pursuant to P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_) (pending  
6     before the Legislature as this bill) free of charge to a volunteer, in  
7     exchange for the agreement of the volunteer to offer dispute  
8     resolution services free of charge to associations. Costs of training  
9     incurred under this paragraph shall be reimbursed from the  
10    Homeowners' Association Trust Fund established pursuant to  
11    section 90 of P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_) (pending before the Legislature as  
12    this bill).

13    b. The Public Defender may establish reasonable fees to be  
14    charged to public or private parties for the provision of the  
15    educational, consultation, dispute resolution, or other services  
16    authorized herein and may apply for and accept on behalf of the  
17    State any federal, local, or private grants, bequests, gifts, or  
18    contributions to aid in the financing of any of the programs or  
19    activities of the office. The Public Defender in the name of the State  
20    shall do all that is necessary and proper to receive or to collect all  
21    moneys due to the State, including such fees, grants, bequests, gifts,  
22    or contributions, by or reimbursement for services rendered  
23    pursuant to this section.

24    (cf: P.L.1994, c.58, s.28)

25  
26    100. N.J.S.12A:9-515 is amended to read as follows:

27    12A:9-515. Duration and Effectiveness of Financing Statement;  
28    Effect of Lapsed Financing Statement.

29    (a) Five-year effectiveness. Except as otherwise provided in  
30    subsections (b), (e), (f) and (g), a filed financing statement is  
31    effective for a period of five years after the date of filing.

32    (b) Public-finance or manufactured-home transaction. Except as  
33    otherwise provided in subsections (e), (f) and (g), an initial  
34    financing statement filed in connection with a public-finance  
35    transaction or manufactured-home transaction is effective for a  
36    period of 30 years after the date of filing if it indicates that it is  
37    filed in connection with a public-finance transaction or  
38    manufactured-home transaction.

39    (c) Lapse and continuation of financing statement. The  
40    effectiveness of a filed financing statement lapses on the expiration  
41    of the period of its effectiveness unless before the lapse a  
42    continuation statement is filed pursuant to subsection (d). Upon  
43    lapse, a financing statement ceases to be effective and any security  
44    interest or agricultural lien that was perfected by the financing  
45    statement becomes unperfected, unless the security interest is  
46    perfected otherwise. If the security interest or agricultural lien  
47    becomes unperfected upon lapse, it is deemed never to have been  
48    perfected as against a purchaser of the collateral for value.

1 (d) When continuation statement may be filed. A continuation  
2 statement may be filed only within six months before the expiration  
3 of the five-year period specified in subsection (a) or the 30-year  
4 period specified in subsection (b), whichever is applicable.

5 (e) Effect of filing continuation statement. Except as otherwise  
6 provided in 12A:9-510, upon timely filing of a continuation  
7 statement, the effectiveness of the initial financing statement  
8 continues for a period of five years commencing on the day on  
9 which the financing statement would have become ineffective in the  
10 absence of the filing. Upon the expiration of the five-year period,  
11 the financing statement lapses in the same manner as provided in  
12 subsection (c), unless, before the lapse, another continuation  
13 statement is filed pursuant to subsection (d). Succeeding  
14 continuation statements may be filed in the same manner to  
15 continue the effectiveness of the initial financing statement.

16 (f) Transmitting utility financing statement. If a debtor is a  
17 transmitting utility and a filed financing statement so indicates, the  
18 financing statement is effective until a termination statement is  
19 filed.

20 (g) Record of mortgage as financing statement. A record of  
21 mortgage that is effective as a financing statement filed as a fixture  
22 filing under 12A:9-502 (c) remains effective as a financing  
23 statement filed as a fixture filing until the mortgage is released or  
24 satisfied of record or its effectiveness otherwise terminates as to the  
25 real property.

26 (h) Bondable transition property. If a filed financing statement  
27 relates to a security interest in bondable transition property and the  
28 financing statement so states, it is effective until a termination  
29 statement is filed.

30 (i) When a financing statement covers shares or ownership  
31 interests evidenced by stock certificates or other instruments, and a  
32 leasehold evidenced by a proprietary lease or either of the foregoing  
33 issued by an entity formed for the purpose of cooperative ownership  
34 of real estate and the financing statement so states, it shall be  
35 effective until a termination statement is filed.

36 (cf: P.L.2001, c.386, s.80)

37

38 101. Section 20 of P.L.1987, c.381 is amended to read as  
39 follows:

40 20. [This act] P.L.1987, c.381 applies to all cooperatives created  
41 within this State [after the effective date of this act] prior to the  
42 effective date of P.L. , c. (C. ) (now before the Legislature  
43 as this bill). On or after the effective date of P.L. , c. (C. )  
44 (now before the Legislature as this bill), the provisions of P.L. ,  
45 c. (C. ) (now before the Legislature as this bill) shall apply to  
46 all cooperatives, regardless of the date of creation, and the  
47 provisions of P.L.1987, c.381 (C.46:8D-1 et al) shall only apply to

- 1 the extent they are not expressly overridden or repealed by P.L. \_\_\_\_\_,
- 2 c. \_\_\_\_\_ (C. \_\_\_\_\_) (now before the Legislature as this bill).
- 3 (cf: P.L.1987, c.381, s.20)

19 Sections 1 through 28 of P.L.1963, c.168 (C.46:8A-1 et seq.);  
20 Section 11 of P.L.1978, c.124 (C.46:8A-3.1);  
21 Sections 1 through 30 of P.L.1969, c.257 (C.46:8B-1 et seq.);  
22 Section 3 of P.L.1973, c.216 (C.46:8B-8.1);  
23 Sections 2 and 3 of P.L.1979, c.157 (C.46:8B-12.1 and 46:8B-12.2)  
24 Section 2 of P.L.1991, c.48 (C.46:8B-13.1);  
25 Sections 1 through 8 of P.L.1979, c.297 (C.46:8B-31 et seq.);  
26 Section 3 of P.L.1980, c.103 (C.46:8B-38); and  
27 Sections 1 through 12 and 14 through 20 of P.L.1987, c.381  
28 (C.46:8D-1 through 46:8D-12 and C.46:8D-13 through 46:8D-18).

103. This act shall take effect on the first day of the sixth month after enactment, except that the Commissioner of Community Affairs shall immediately take such administrative action as necessary to effectuate the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill).

39 This bill seeks to consolidate all of the laws applicable to all  
40 types of homeowner's associations, provide for certain homeowner  
41 protections, clarify the powers of homeowners' associations and is  
42 based, in part, on the recommendations of the Task Force of the  
43 Assembly to Study Homeowners' Associations, which issued its  
44 report to the Legislature on January 8, 1998.

45 The bill is a New Jersey version of the Uniform Common  
46 Interest Ownership Act (UCIOA) which has been adopted, in full or  
47 substantial part, by approximately 16 states. The UCIOA itself is an  
48 act of the National Conference of Commissioners on Uniform State

1 Laws. It provides uniform guidelines for all forms of residential  
2 community associations and is applicable to condominiums, fee  
3 simple multifamily projects, home owner associations and  
4 cooperatives. The model act was modified for New Jersey by a  
5 Statewide drafting committee. The bill further combines with the  
6 model act many of the recommendations of the Task Force of the  
7 Assembly to Study Homeowners' Associations. One major  
8 recommendation of the Task Force was that the law on community  
9 associations be consolidated and applied evenly to all types of  
10 homeowners' associations. Therefore, the bill replaces many of the  
11 laws dealing with these associations, including the "Horizontal  
12 Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.), the  
13 "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), as well  
14 as the "Cooperative Recording Act of New Jersey," P.L.1987, c.381  
15 (C.46:8D-1 et seq.).

16 The bill consists of five separate articles, each addressing various  
17 aspects of common interest property ownership. Article 1 of the bill  
18 deals with the applicability of the act in general. Article 2 deals  
19 with the creation, alteration and termination of common interest  
20 communities. Article 3 provides the framework for the management  
21 of a common interest community, including the creation and grant  
22 of powers and duties to an executive board formed to manage the  
23 common elements of a common interest community. Article 4  
24 concerns the protection of purchasers, and Article 5 deals with the  
25 oversight of the executive boards by the State Department of  
26 Community Affairs.

27 Certain provisions of the bill address the problems inherent in  
28 phased developments by allowing developers more flexibility in the  
29 planning process to meet changed conditions in the marketplace. At  
30 the same time, unit purchasers in phased developments must be  
31 specifically informed of the potential risks and consequences if  
32 there is modification of the development plan.

33 The bill clarifies that associations have, among other powers, the  
34 power to grant easements over common property and pledge  
35 assessment income in connection with loans.

36 In addition, the bill clarifies that all associations have the  
37 authority to impose fines and late charges against delinquent unit  
38 owners, provided that notice is provided and due process in the  
39 form of alternative dispute resolution proceedings are afforded to  
40 the unit owner. Although the Legislature granted that power to  
41 condominium associations through the passage of P.L.1996, c.79,  
42 that law did not include other types of homeowners' associations.

43 The bill seeks to provide various protections to homeowners who  
44 reside in common interest communities overseen by community  
45 associations.

46 The bill retains the requirement under current law that an  
47 association provide a fair and efficient procedure for the resolution  
48 of disputes between individual unit owners and the association, and

1 between unit owners, which shall be readily available as an  
2 alternative to litigation. It adds significant detail currently absent  
3 from the law with respect to the procedures to be followed to  
4 provide for a fair and efficient alternative to litigation. The  
5 Commissioner of Community Affairs retains oversight over the  
6 implementation of these procedures.

7 In addition, the bill provides specific requirements for open  
8 meetings for boards, including working sessions open to unit  
9 owners, and specifies comment periods which must be set aside for  
10 unit owners wishing to participate in meetings. The bill also  
11 provides new guidelines for access to records and for the imposition  
12 of fines by an association, including a maximum fine amount that  
13 may be imposed by an association. Among the homeowner  
14 protections, it also provides for bidding for certain contracts;  
15 procedures to insure fair and open governing board elections;  
16 procedures when associations require access to individual units;  
17 limitations on leasing restrictions; and disclosure of essential  
18 information to buyers of resale units within community  
19 associations. It further clarifies the responsibility of successor  
20 developers who complete a project commenced by a prior  
21 developer.

22 The bill provides governmental oversight of common interest  
23 community associations in several areas, in recognition of the  
24 quasi-governmental powers granted to them. The bill requires  
25 registration of all such associations with the Commissioner of  
26 Community Affairs.

27 The bill creates an Office of the Ombudsman, within the  
28 Department of Community Affairs, for common interest community  
29 unit owners' associations. The Ombudsman is to provide assistance  
30 to board members or officers of an association in receiving  
31 appropriate training to enable them to execute their duties in an  
32 independent, efficient and productive manner, including the  
33 provision of a list of reference and educational materials  
34 appropriate for board members of homeowners' associations. The  
35 Ombudsman would also be a source for general budgetary guidance  
36 and could function as a liaison between associations and any entity  
37 concerning disputes regarding code compliance or inspections.

38 The bill amends the law commonly known as the Condominium  
39 Services Law, P.L.1989, c.299 (C.40:67-23.2 et seq.), to clarify the  
40 types of communities that are eligible for reimbursement from a  
41 municipality for services provided to residents of the community.  
42 The act defines a qualified community as one which has certain  
43 expenses paid by a not-for-profit entity consisting exclusively of  
44 unit owners within the community. Some municipalities have not  
45 provided services or reimbursed communities for services provided  
46 based on their determination that a homeowner's association  
47 executive board that is still controlled by a developer is not an  
48 association comprised exclusively of unit owners. The bill clarifies

1   that transition of control to the unit owners of a community is not a  
2   factor for eligibility for reimbursement under the Condominium  
3   Services Law. The bill also requires the Commissioner of  
4   Community Affairs to track compliance by municipalities with the  
5   Condominium Services Law, and offer budgetary guidance, if  
6   necessary.

7   The bill grants to the Commissioner of Community Affairs  
8   increased authority in the oversight of community associations in  
9   recognition of their quasi-governmental functions, regardless of  
10   whether "transition" (control of the board by the unit owners) has  
11   occurred. The commissioner is specifically authorized to hear  
12   complaints and make final determinations in reported cases of  
13   violations of statutory or regulatory requirements by community  
14   associations or board members of an association. The commissioner  
15   is empowered under the bill to remove a board member for flagrant,  
16   continuing violations of statutes or regulations.