

SENATE, No. 805

STATE OF NEW JERSEY 212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

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District 31 (Hudson)

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SYNOPSIS

"New Jersey Uniform Common Interest Ownership Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 6/20/2006)

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

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 requested; and provide complete and timely disclosure of personal
2 and financial conflicts of interest related to their actions.

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

7 f. Accordingly, the Legislature finds it in the public interest that:

8 (1) associations and owners be required to comply with standards
9 and procedures that further the goals set forth above;

10 (2) a fair and efficient system for resolving disputes between
11 owners and associations be implemented; and

12 (3) a uniform framework for association law be established for
13 all forms of common interest ownership associations.

14

15 3. (New section) As used in P.L. , c. (C.) (pending before
16 the Legislature as this bill), unless specifically provided otherwise:

17 "Affiliate of a declarant" means any person who controls, is
18 controlled by or is under common control with a declarant.

19 A person "controls" a declarant if the person,

20 (1) is general partner, officer, director, or employer of the
21 declarant,

22 (2) directly or indirectly, or acting in concert with one or more
23 other persons or through one or more subsidiaries, owns, controls,
24 holds with power to vote, or holds proxies representing, more than
25 10 percent of the voting interest necessary to elect a majority of the
26 directors of the declarant, or

27 (3) has contributed more than 10 percent of the capital of the
28 declarant.

29 A person "is controlled by" a declarant if the declarant,

30 (1) is a general partner, officer, director, or employer of the
31 person,

32 (2) directly or indirectly or acting in concert with one or more
33 other persons, or through one or more subsidiaries, owns, controls,
34 holds with power to vote, or holds proxies representing, more than
35 10 percent of the voting interest in the person,

36 (3) controls in any manner the election of a majority of the
37 directors of the person, or

38 (4) has contributed more than 10 percent of the capital of the
39 person.

40 Control does not exist if the powers described in this definition
41 are held solely as security for an obligation and are not exercised.
42 A lender acting primarily to obtain or protect a security interest and
43 who does not engage in active participation of the management of
44 the property, as defined in section 52 of P.L. , c. (C.)
45 (pending before the Legislature as this bill), is not an affiliate of a
46 declarant.

47 "Allocated interests" means the following interest allocated to
48 each unit:

1 (1) in a condominium, the undivided interest in the common
2 elements, the common expense liability, and votes in the
3 association;
4 (2) in a cooperative, the common expense liability and the
5 ownership interest and votes in the association; and
6 (3) in a planned community, the common expense liability and
7 votes in the association.
8 "Assigns" means any person to whom rights of a unit owner have
9 been validly transferred by lease, mortgage or otherwise.
10 "Association" or "unit owners' association" means the unit
11 owners' association organized under section 48 of P.L. ,
12 c. (C.) (pending before the Legislature as this bill).
13 "Bylaws" means the governing regulations adopted under
14 P.L. , c. (C.) (pending before the Legislature as this bill),
15 or any act repealed by P.L. , c. (C.) (pending before the
16 Legislature as this bill), for the regulation or management of an
17 association.
18 ""Commissioner" means the Commissioner of Community
19 Affairs unless otherwise specified.
20 "Common elements" means,
21 (1) in the case of a condominium or cooperative, all portions of
22 the common interest community other than the units;
23 (2) in a planned community, any real estate within a planned
24 community which is owned or leased by the association, other than
25 a unit; and
26 (3) in all common interest communities, any other interests in
27 real estate for the benefit of unit owners which are subject to the
28 declaration, and all other elements of any improvement necessary to
29 the existence, management, operation, maintenance, and safety of
30 the common interest community or normally in common use,
31 including any equipment or improvements necessary for fire safety,
32 including, but not limited to, sprinkler and alarm systems.
33 "Common expenses" means expenditures made by, or financial
34 liabilities of, the association, together with any allocations to
35 reserves.
36 "Common expense liability" means the liability for common
37 expenses allocated to each unit pursuant to section 30 of P.L. ,
38 c. (C.) (pending before the Legislature as this bill).
39 "Common interest community" and "common interest property"
40 mean real estate with respect to which a person, by virtue of
41 ownership of a unit, is obligated to pay for real estate taxes,
42 insurance premiums, maintenance, or improvement of other real
43 estate described in a declaration. For the purposes of this definition
44 "ownership of a unit" does not include holding a leasehold interest
45 of less than 20 years in a unit, including renewal options.
46 "Common receipts" means all income to an association,
47 including rent or other charges derived from leasing or licensing the
48 use of the common elements, funds collected from unit owners as

1 common expenses, fines or late fees, and receipts designated as
2 common by the provisions of the master deed, declaration or
3 bylaws.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 "Quorum" means the number of persons required to be present at
48 a meeting of an association or an executing board pursuant to

1 section 57 of P.L. , c. (C.) (pending before the Legislature
2 as this bill).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (1) name of the cooperative;

11 (2) unit designation;

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

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

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

19 (6) number of shares transferred;

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

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

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

36 b. In a condominium or planned community:

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

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

1 c. Any portion of the common elements for which the declarant
2 has reserved any development right shall be separately taxed and
3 assessed against the declarant, and the declarant alone shall be
4 liable for payment of those taxes.

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

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

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

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

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

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

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

1 (2) the portion of the allocated interests divested from the
2 partially acquired unit shall be reallocated to that unit and to the
3 remaining units in proportion to their interests before the taking,
4 with the partially-acquired unit participating in the reallocation on
5 the basis of its reduced allocated interests.

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

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

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

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

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

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

1 this end the provisions of P.L. , c. (C.) (pending before the
2 Legislature as this bill) are severable.

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

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

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

24 (1) the commercial setting of the negotiations;

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

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

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

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

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

- 1 (3) The lease requires either the association or the unit owners to
2 insure buildings or other facilities on the real estate described in the
3 lease against fire or any other hazard;
- 4 (4) The lease requires either the association or the unit owners to
5 perform some or all maintenance obligations pertaining to the real
6 estate or facilities located upon the real estate described in the
7 lease;
- 8 (5) The lease requires either the association or the unit owners to
9 pay rents to the lessor for a period of 10 years or more;
- 10 (6) The lease provides that failure of the lessee to make
11 payments of rents due under the lease either creates, establishes or
12 permits establishment of a lien upon individual units to secure
13 claims for rent;
- 14 (7) The lease requires an annual rental which exceeds 20 percent
15 of the appraised value of the leased real estate as improved;
16 provided, that for purposes of this paragraph, "annual rental" means
17 the amount due during the first 12 months of the lease from all units
18 regardless of whether the units were in fact occupied or sold during
19 that period, and "appraised value" means the appraised value placed
20 upon the leased real estate the first tax year after the sale of a unit in
21 the common interest community;
- 22 (8) The lease provides for a periodic rental increase based upon
23 reference to a price index;
- 24 (9) The lease, declaration or other common interest community
25 document requires that every transferee of a unit must assume the
26 obligations under the lease.
- 27 c. When any parking, recreational or other common facility or
28 area has been leased for the use of the unit owners for 20 years or
29 more, the association or the unit owners shall have the option of
30 renewing the lease for the parking, recreational or other common
31 facility or area or of buying that facility or area and real estate at a
32 conscionable price.
- 33 d. No contract for the sale of a unit executed on or after the
34 effective date of P.L. , c. (C.) (pending before the
35 Legislature as this bill), or any declaration or association bylaws
36 adopted on or after that effective date, shall contain a clause or
37 provision affording the declarant or the association the right of first
38 refusal to buy a unit upon resale, gift or devise by a unit owner. No
39 declaration or association bylaw, whenever adopted, shall be
40 amended on or after the effective date of P.L. , c. (C.)
41 (pending before the Legislature as this bill) to include any such
42 clause or provision affording the right of first refusal. This section
43 shall not apply to the State of New Jersey or any political
44 subdivision of this State, or to any department, division, office,
45 agency, or bureau thereof, or any authority or instrumentality
46 created thereby, when a right of first refusal is required by State or
47 federal law.

1 13. (New section) Every contract or duty governed by P.L. ,
2 c. (C.) (pending before the Legislature as this bill) shall impose
3 an obligation of good faith in its performance or enforcement.
4

5 14. (New section) a. The remedies provided by P.L. ,
6 c. (C.) (pending before the Legislature as this bill) shall be
7 liberally administered to the end that the aggrieved party is put in as
8 good a position as if the other party had fully performed.
9 Consequential, special or punitive damages, however, shall not be
10 awarded except as specifically provided in P.L. , c. (C.)
11 (pending before the Legislature as this bill) or by other rule of law.
12 b. Any right or obligation declared by P.L. , c. (C.)
13 (pending before the Legislature as this bill) shall be enforceable by
14 judicial proceeding.
15

16 15. (New section) a. As used in this section:
17 "Index" means the changes in the Consumer Price Index
18 compiled by the Bureau of Labor Statistics, United States
19 Department of Labor for the following series: Urban Wage Earners
20 and Clerical Workers (CPI-W); U.S. City Average, All Items and
21 1982-84 = 100.
22

23 "Reference base index" means the average index level of the 36-
24 month period encompassing 1982,1983 and 1984.
25

26 b. From time to time, the dollar amounts specified in section 18
27 of P.L. , c. (C.) (pending before the Legislature as this bill),
28 section 50 of P.L. , c. (C.) (pending before the Legislature
29 as this bill), subsection a. of section 64 of P.L. , c. (C.)
30 (pending before the Legislature as this bill) , subsections a. and f. of
31 section 66 of P.L. , c. (C.) (pending before the Legislature
32 as this bill) , and subsections c. and d. of section 86 of P.L. ,
33 c. (C.) (pending before the Legislature as this bill), shall be
34 adjusted, as provided in subsections c. and d. of this section.
35

36 c. The dollar amount specified in section 18 of P.L. ,
37 c. (C.) (pending before the Legislature as this bill) and any
38 amount stated in the declaration pursuant to that section, and the
39 dollar amounts specified in subsection c. of section 66 of
40 P.L. , c. (C.) (pending before the Legislature as this bill)
41 shall be adjusted on July 1 of each year if the percentage of change,
42 calculated to the nearest whole percentage point, between the index
43 at the end of the preceding year and the reference base index is 10
44 percent or more; however,
45

46 (1) that portion of the percentage change in the index in excess
47 of a multiple of 10 percent shall be disregarded and the dollar
48 amount shall be adjusted only in multiples of 10 percent of the
49 dollar amount in effect on the date of enactment;
50

51 (2) the dollar amount shall not be adjusted if the amount required
52 by this section is that currently in effect pursuant to P.L. ,
53

1 c. (C.) (pending before the Legislature as this bill) as a result of
2 earlier application of this section; and

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

5 d. If the index is revised after January, 1988, the percentage of
6 adjustment pursuant to this section shall be calculated on the basis
7 of the revised index. If a revision of the index changes the
8 reference base index, a revised reference base index shall be
9 determined by multiplying the reference base index then applicable
10 by the rebasing factor furnished by the Bureau of Labor Statistics. If
11 the index is superseded, the index referred to in this section shall be
12 the one represented by the Bureau of Labor Statistics as reflecting
13 most accurately the changes in the purchasing power of the dollar
14 for consumers.

15
16 16. (New section) a. The provisions of P.L. , c. (C.)
17 (pending before the Legislature as this bill) shall apply to all
18 common interest communities created within this State after the
19 effective date of P.L. , c. (C.) (pending before the Legislature
20 as this bill).

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

45 c. Pursuant to section 102 of P.L. , c. (C.) (pending
46 before the Legislature as this bill), any master declaration filed
47 under "The Cooperative Recording Act of New Jersey," P.L.1987,
48 c.381 (C.46:8D-1 et seq.) will be deemed a declaration under

1 P.L. , c. (C.) (pending before the Legislature as this bill) and
2 will be subject to the terms of section 19 of P.L. , c. (C.)
3 (pending before the Legislature as this bill). All cooperatives
4 created after the effective date of P.L. , c. (C.) (pending
5 before the Legislature as this bill) shall be created in accordance
6 with section 24 of P.L. , c. (C.) (pending before the
7 Legislature as this bill).

8
9 17. (New section) Except as provided in section 20 of P.L. ,
10 c. (C.) (pending before the Legislature as this bill), all
11 cooperatives shall be subject to the provisions of P.L. , c. (C.)
12 (pending before the Legislature as this bill).

13
14 18. (New section) a. If a planned community:
15 (1) contains fewer than 10 units; or
16 (2) provides, in its declaration, that the annual average common
17 expense liability of all units restricted to residential purposes,
18 exclusive of optional user fees and any insurance premiums paid by
19 the association, may not exceed \$300, as adjusted pursuant to
20 section 15 of P.L. , c. (C.) (pending before the Legislature as
21 this bill), the planned community shall be subject only to sections 5,
22 6, 7, 24 and 65 of P.L. , c. (C.) (pending before the
23 Legislature as this bill), unless the declaration provides that the
24 community shall be subject to P.L. , c. (C.) (pending before the
25 Legislature as this bill) in its entirety.

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

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

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

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

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

40
41 19. (New section) All preexisting common interest
42 communities shall be controlled by all of the provisions of P.L. ,
43 c. (C.) (pending before the Legislature as this bill); however,
44 such associations shall be permitted to maintain existing provisions
45 of a declaration, bylaws or plats or plans of those common interest
46 communities to the extent those provisions are not in conflict with
47 the provisions of P.L. , c. (C.) (pending before the Legislature
48 as this bill). For example, a common interest community that has

1 consistently maintained in its master deed or declaration and bylaws
2 a definition of common elements which differs from the definition
3 provided in P.L. , c. (C.) (pending before the Legislature as
4 this bill) shall be permitted to maintain such a definition provided
5 that other provisions of P.L. , c. (C.) (pending before the
6 Legislature as this bill) are not violated by maintaining that
7 definition.

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

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

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

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

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

45 b. Except as provided in subsection a. of section 21 of P.L. ,
46 c. (C.) (pending before the Legislature as this bill), an
47 amendment to the declaration, bylaws or plats and plans authorized
48 by this section must be adopted in conformity with any procedures

1 and requirements for amending the instruments specified in those
2 instruments or, if there are none, in conformity with section 41 of
3 P.L. , c. (C.) (pending before the Legislature as this bill). If
4 an amendment grants to any person any rights, powers or privileges
5 under P.L. , c. (C.) (pending before the Legislature as this
6 bill), all correlative obligations, liabilities and restrictions imposed
7 by P.L. , c. (C.) (pending before the Legislature as this bill)
8 shall also apply to that person.

9
10 22. (New section) a. As used in this section, "nonresidential
11 common interest community" means a common interest community
12 in which all units are restricted exclusively to nonresidential
13 purposes.

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

17 c. The declaration of a nonresidential common interest
18 community may provide that P.L. , c. (C.) (pending before
19 the Legislature as this bill) in its entirety applies to the community
20 or that only sections 5, 6 and 7 of P.L. , c. (C.) (pending
21 before the Legislature as this bill) apply.

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

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

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

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

1 23. (New section) The provisions of P.L. , c. (C.)
2 (pending before the Legislature as this bill) shall not apply to
3 common interest communities which are governed by the "Real
4 Estate Sales Full Disclosure Act," P.L.1989, c.239 (C.45:15-16.27
5 et seq.).
6

7 ARTICLE 2
8

9 CREATION, ALTERATION AND TERMINATION OF
10 COMMON INTEREST COMMUNITIES
11

12 24. (New section) A common interest community may be
13 created pursuant to P.L. , c. (C.) (pending before the
14 Legislature as this bill) only by recording a declaration executed in
15 the same manner as a deed and, in a cooperative, by conveying the
16 real estate subject to that declaration to the association. The
17 declaration shall be recorded in every county in which any portion
18 of the common interest community is located and must be indexed
19 in the grantee's index in the name of the common interest
20 community and the association and in the grantor's index in the
21 name of each person executing the declaration.
22

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

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

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

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

40 d. Any shutters, awnings, window boxes, doorsteps, stoops,
41 porches, balconies, patios, and all exterior doors, windows,
42 skylights, or other fixtures designed to serve a single unit, but
43 located outside the unit's boundaries, shall be limited common
44 elements allocated exclusively to that unit.
45

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

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

7 c. In the event of a conflict between the provisions of the
8 declaration and the bylaws, the declaration shall prevail except to
9 the extent the declaration is inconsistent with P.L. , c. (C.)(pending
10 before the Legislature as this bill).

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

15
16 27. (New section) A description of a unit which sets forth the
17 name of the common interest community, the recording data for the
18 declaration, the county and municipality in which the common
19 interest community is located, and the identifying number of the
20 unit, shall be a legally sufficient description of that unit and all
21 rights, obligations, and interests appurtenant to that unit which were
22 created by the declaration or bylaws.

23
24 28. (New section) a. The declaration shall contain:

25 (1) The names of the common interest community and the
26 association and a statement that the common interest community is
27 either a condominium, cooperative, or planned community;

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

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

32 (4) In a condominium or planned community, a description of the
33 boundaries of each unit created by the declaration, including the
34 unit's identifying number, its size or number of rooms, and its
35 location within a building if it is within a building containing more
36 than one unit;

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

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

47 (7) A description of any development rights and other special
48 declarant rights reserved by the declarant, together with a legally

1 sufficient description of the real estate to which each of those rights
2 applies, and a time limit within which each of those rights must be
3 exercised;

4 (8) If any development right may be exercised with respect to
5 different parcels of real estate at different times, a statement to that
6 effect together with (a) either a statement fixing the boundaries of
7 those portions and regulating the order in which those portions may
8 be subjected to the exercise of each development right or a
9 statement that no assurances are made in those regards, and (b) a
10 statement as to whether, if any development right is exercised in
11 any portion of the real estate subject to that development right, that
12 development right must be exercised in all or in any other portion of
13 the remainder of that real estate;

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

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

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

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

31 (13) All matters required by sections 29 through 32 of P.L. ,
32 c. (C.) (pending before the Legislature as this bill), section 40
33 of P.L. , c. (C.) (pending before the Legislature as this bill),
34 and subsection d. of section 51 of P.L. , c. (C.) (pending
35 before the Legislature as this bill).

36 b. The declaration may contain any other matters the declarant
37 considers appropriate, including any restrictions on the uses of a
38 unit or the number or other qualifications of persons who may
39 occupy units.

40

41 29. (New section) a. Any lease the expiration or termination of
42 which may terminate the common interest community or reduce its
43 size shall be recorded. Every lessor of such leases in a
44 condominium or planned community shall sign the declaration. The
45 declaration shall state:

46 (1) The recording data for the lease;

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

- 1 (3) A legally sufficient description of the real estate subject to
2 the lease;
- 3 (4) Any right of the unit owners to redeem the reversion and the
4 manner whereby those rights may be exercised, or a statement that
5 they do not have those rights;
- 6 (5) Any right of the unit owners to remove any improvements
7 within a reasonable time after the expiration or termination of the
8 lease, or a statement that they do not have those rights; and
- 9 (6) Any rights of the unit owners to renew the lease and the
10 conditions of any renewal, or a statement that they do not have
11 those rights.
- 12 b. After the declaration for a leasehold condominium or
13 leasehold planned community is recorded, neither the lessor nor the
14 lessor's successor in interest may terminate the leasehold interest of
15 a unit owner who makes timely payment of a unit owner's share of
16 the rent and otherwise complies with all covenants which, if
17 violated, would entitle the lessor to terminate the lease. A unit
18 owner's leasehold interest in a condominium or planned community
19 shall not be affected by failure of any other person to pay rent or
20 fulfill any other covenant.
- 21 c. Acquisition of the leasehold interest of any unit owner by the
22 owner of the reversion or remainder shall not merge the leasehold
23 and fee simple interests unless the leasehold interests of all unit
24 owners subject to that reversion or remainder are acquired.
- 25 d. If the expiration or termination of a lease decreases the
26 number of units in a common interest community, the allocated
27 interests shall be reallocated in accordance with subsection a. of
28 section 7 of P.L. , c. (C.) (pending before the Legislature as
29 this bill) as if those units had been taken by eminent domain.
30 Reallocations shall be confirmed by an amendment to the
31 declaration which shall be prepared, executed and recorded by the
32 association.
- 33
- 34 30. (New section) a. The declaration shall allocate to each unit:
- 35 (1) In a condominium, a fraction or percentage of undivided
36 interests in the common elements and in the common expenses of
37 the association as enumerated in subsection c. of section 63 of
38 P.L. , c. (C.) (pending before the Legislature as this bill), and
39 a portion of the votes in the association;
- 40 (2) In a cooperative, an ownership interest in the association, a
41 fraction or percentage of the common expenses of the association as
42 enumerated subsection c. of section 63 of P.L. , c. (C.)
43 (pending before the Legislature as this bill), and a portion of the
44 votes in the association; and
- 45 (3) In a planned community, a fraction or percentage of the
46 common expenses of the association as enumerated in subsection c.
47 of section 63 of P.L. , c. (C.) (pending before the Legislature
48 as this bill), and a portion of the votes in the association.

- 1 b. The declaration shall state the formulas used to establish
2 allocations of interests. Those allocations shall not discriminate in
3 favor of units owned by the declarant or an affiliate of the declarant.
- 4 c. If units may be added to or withdrawn from the common
5 interest community, the declaration shall state the formulas to be
6 used to reallocate the allocated interests among all units included in
7 the common interest community after the addition or withdrawal.
- 8 d. The declaration may provide: (1) that different allocations of
9 votes shall be made to the units on particular matters specified in
10 the declaration; (2) for cumulative voting only for the purpose of
11 electing members of the executive board; and (3) for class voting on
12 specified issues affecting the class if necessary to protect valid
13 interests of the class. A declarant shall not utilize cumulative or
14 class voting for the purpose of evading any limitation imposed on
15 declarants by P.L. , c. (C.) (pending before the Legislature as
16 this bill) and units shall not constitute a class because they are
17 owned by a declarant.
- 18 e. Except for minor variations due to rounding, the sum of the
19 common expense liabilities and, in a condominium, the sum of the
20 undivided interests in the common elements allocated at any time to
21 all the units shall each equal one, if stated as a fraction, or 100
22 percent, if stated as a percentage. In the event of a discrepancy
23 between an allocated interest and the result derived from application
24 of the pertinent formula, the allocated interest shall prevail.
- 25 f. In a condominium, the common elements shall not be subject
26 to partition, and any purported conveyance, encumbrance, judicial
27 sale, or other voluntary or involuntary transfer of an undivided
28 interest in the common elements made without the unit to which
29 that interest is allocated shall be void.
- 30 g. In a cooperative, any purported conveyance, encumbrance,
31 judicial sale, or other voluntary or involuntary transfer of an
32 ownership interest in the association made without the possessory
33 interest in the unit to which that interest is related shall be void.
- 34 h. Except to the extent that the declaration provides for limited
35 common elements, it shall provide that the right of a unit owner to
36 the use of the common elements is a right in common with all other
37 unit owners.
- 38
- 39 31. (New section) a. Except for the limited common elements
40 described in subsections b. and d. of section 25 of P.L. ,
41 c. (C.) (pending before the Legislature as this bill), the
42 declaration shall specify to which unit or units each limited
43 common element is allocated. An allocation shall not be altered
44 without the consent of the unit owners whose units are affected.
- 45 b. Except as the declaration otherwise provides, a limited
46 common element shall be reallocated by an amendment to the
47 declaration executed by the unit owners between or among whose
48 units the reallocation is made. The persons executing the

1 amendment shall provide a copy thereof to the association, which
2 shall record it. The amendment shall be recorded in the names of
3 the parties and the common interest community.

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

10
11 32. (New section) a. Plats and plans shall be a part of the
12 declaration and shall be required for all common interest
13 communities except cooperatives. Separate plats and plans shall not
14 be required if all of the information required by this section is
15 contained in either a plat or plan. Each plat and plan shall be clear
16 and legible and contain a certification that the plat or plan contains
17 all of the information required by this section.

18 b. Each plat shall show or project:

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

21 (2) The location and dimensions of all real estate not subject to
22 development rights, or subject only to the development right to
23 withdraw, and the location and dimensions of all existing
24 improvements within that real estate;

25 (3) A legally sufficient description of any real estate subject to
26 development rights, labeled to identify the rights applicable to each
27 parcel;

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

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

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

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

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

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

46 (10) The approximate location and dimensions of any porches,
47 decks, balconies, garages, or patios allocated as limited common

1 elements, and also a narrative description of any other limited
2 common elements; and

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

5 c. A plat also shall show the intended location and dimensions
6 of any contemplated improvement to be constructed anywhere
7 within the common interest community. Any contemplated
8 improvement shown shall be labeled either "MUST BE BUILT" or
9 "NEED NOT BE BUILT".

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

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

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

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

22 e. Unless the declaration provides otherwise, the horizontal
23 boundaries of part of a unit located outside a building shall have the
24 same elevation as the horizontal boundaries of the inside part, and
25 need not be depicted on the plats and plans.

26 f. Upon exercising any development right, the declarant shall
27 record either new plats and plans necessary to conform to the
28 requirements of subsections a., b., and d. of this section, or new
29 certifications of plats and plans previously recorded if those plats
30 and plans otherwise conform to the requirements of those
31 subsections.

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

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

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

39 (2) The declaration includes other information that shows or
40 contains a narrative description of the general layout of the units in
41 those buildings and the limited common elements allocated to those
42 units.

43

44 33. (New section) a. To exercise any development right
45 reserved under paragraph (7) of subsection a. of section 28 of
46 P.L. , c. (C.) (pending before the Legislature as this bill), the
47 declarant shall prepare, execute and record an amendment to the
48 declaration pursuant to section 40 of P.L. , c. (C.) (pending

1 before the Legislature as this bill) and, in a condominium or
2 planned community, comply with section 32 of P.L. , c. (C.)
3 (pending before the Legislature as this bill). The declarant shall be
4 the unit owner of any units thereby created. The amendment to the
5 declaration shall assign an identifying number to each new unit
6 created, and, except in the case of subdivision or conversion of
7 units described in subsection b. of this section, reallocate the
8 allocated interests among all units. The amendment shall describe
9 any common elements and any limited common elements thereby
10 created and, in the case of limited common elements, designate the
11 unit to which each is allocated to the extent required by section 31
12 of P.L. , c. (C.) (pending before the Legislature as this bill).

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

24 c. Whenever a declarant exercises a development right to
25 subdivide or convert a unit previously created into additional units,
26 common elements, or both:

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

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

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

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

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

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

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

8 b. Shall not change the appearance of the common elements, or
9 the exterior appearance of a unit or any other portion of the
10 common interest community, without permission of the association;
11 or

12 c. After acquiring an adjoining unit or an adjoining part of an
13 adjoining unit, may remove or alter any intervening partition or
14 create apertures therein, even if the partition in whole or in part is a
15 common element, if those acts do not impair the structural integrity
16 or mechanical systems or lessen the support of any portion of the
17 common interest community. Removal of partitions or creation of
18 apertures under this paragraph shall not be an alteration of
19 boundaries.
20

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

35 b. Subject to the provisions of the declaration and other
36 provisions of law, boundaries between units and common elements
37 may be relocated to incorporate common elements within a unit by
38 an amendment to the declaration upon application to the association
39 by the owner of the unit who proposes to relocate a boundary.
40 Unless the declaration provides otherwise, the amendment shall be
41 approved only if persons entitled to cast at least 67 percent of the
42 votes in the association, including 67 percent of the votes allocated
43 to units not owned by the declarant, agree to the action. The
44 amendment shall describe any fees or charges payable by the owner
45 of the affected unit in connection with the boundary relocation and
46 the fees and charges shall be assets of the association. The
47 amendment shall be executed by the unit owner of the unit whose
48 boundary is being relocated and by the association, contain words

1 of conveyance between them, and on recordation be indexed in the
2 name of the unit owner and the association as grantor or grantee, as
3 appropriate.

4 c. The association in a condominium or planned community
5 shall prepare and record plats or plans as necessary to show the
6 altered boundaries of affected units, and their dimensions and
7 identifying numbers. The association in a cooperative shall prepare
8 and record amendments to the declaration, including any plans, as
9 necessary to show or describe the altered boundaries of affected
10 units, and their dimensions and identifying numbers.

11
12 36. (New section) If a unit in a cooperative is sold, conveyed,
13 voluntarily or involuntarily encumbered, or otherwise transferred by
14 a unit owner, the interest in that unit which is sold, conveyed,
15 encumbered, or otherwise transferred shall be the right to
16 possession of that unit under a proprietary lease, coupled with the
17 allocated interests of that unit, and the association's interest in that
18 unit shall not be thereby affected.

19
20 37. (New section) a. If the declaration expressly so permits, a
21 unit may be subdivided into two or more units. Subject to the
22 provisions of the declaration and other relevant provisions of law,
23 upon application of a unit owner to subdivide a unit, the association
24 shall prepare, execute and record an amendment to the declaration,
25 including in a condominium or planned community the plats and
26 plans, subdividing that unit.

27 b. The amendment to the declaration shall be executed by the
28 owner of the unit to be subdivided and shall assign an identifying
29 number to each unit created and reallocate the allocated interests
30 formerly allocated to the subdivided unit to the new units in any
31 reasonable manner prescribed by the owner of the subdivided unit.

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

45
46 39. (New section) Unless the declaration provides otherwise, a
47 declarant may maintain sales offices, management offices, and
48 models in units or on common elements in the common interest

1 community. In a cooperative or condominium, any sales office,
2 management office, or model not designated as a unit by the
3 declaration shall be a common element. If a declarant ceases to be a
4 unit owner, he shall cease to have any rights with regard to such
5 office or model unless it is removed promptly from the common
6 interest community in accordance with a right to remove which has
7 been reserved in the declaration. Subject to any limitations in the
8 declaration, a declarant may maintain signs on the common
9 elements advertising the common interest community.

10
11 40. (New section) a. Subject to the provisions of the
12 declaration, a declarant shall possess an easement through the
13 common elements as may be reasonably necessary for the purpose
14 of discharging the declarant's obligations or exercising special
15 declarant rights, whether arising under P.L. , c. (C.)
16 (pending before the Legislature as this bill) or reserved in the
17 declaration.

18 b. In a planned community, subject to the provisions of
19 paragraph (6) of subsection a. of section 49 of P.L. , c. (C.)
20 (pending before the Legislature as this bill), and section 60 of
21 P.L. , c. (C.) (pending before the Legislature as this bill), unit
22 owners shall have an easement,

23 (1) in the common elements for purposes of access to their units,
24 and

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

29
30 41. (New section) a. Except in cases of amendments that may
31 be executed by a declarant under subsection f. of section 32 of
32 P.L. , c. (C.) (pending before the Legislature as this bill) or
33 section 33 of P.L. , c. (C.) (pending before the Legislature
34 as this bill); or by the association under section 7 of P.L. ,
35 c. (C.) (pending before the Legislature as this bill), subsection
36 d. of section 29 of P.L. , c. (C.) (pending before the
37 Legislature as this bill), subsection c. of section 31 of P.L. ,
38 c. (C.) (pending before the Legislature as this bill), subsection
39 a. of section 35 of P.L. , c. (C.) (pending before the
40 Legislature as this bill); or by certain unit owners under subsection
41 b. of section 31 of P.L. , c. (C.) (pending before the
42 Legislature as this bill), subsection a. of section 35 of P.L. ,
43 c. (C.) (pending before the Legislature as this bill), subsection
44 b. of section 37 of P.L. , c. (C.) (pending before the
45 Legislature as this bill), or subsection b. of section 40 of P.L. ,
46 c. (C.) (pending before the Legislature as this bill); or by the
47 executive board in accordance with subsection b. of section 51 of
48 P.L. , c. (C.) (pending before the Legislature as this bill), and

1 except as limited by subsection d. of this section, the declaration,
2 including any plats and plans, shall be amended only by vote or
3 agreement of unit owners of units representing at least 67 percent of
4 a quorum of the members, which quorum may not be less than 50
5 percent of the membership in the association qualified to vote,
6 provided the proposed amendment does not seek to prohibit a
7 previously permitted use in a unit. In the case of an amendment
8 that seeks to prohibit a previously permitted use in a unit, the
9 amendment must be approved by a vote of at least 67 percent of the
10 total allocated votes in the association. The declaration may specify
11 a smaller number only if all of the units are restricted exclusively to
12 non-residential use.

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

18 c. Every amendment to a declaration shall be recorded in every
19 county in which any portion of the common interest community is
20 located and shall be effective only upon recordation. An
21 amendment, except an amendment pursuant to subsection a. of
22 section 35 of P.L. , c. (C.) (pending before the Legislature as
23 this bill), shall be indexed in the grantee's index in the name of the
24 common interest community and the association and in the grantor's
25 index in the name of the parties executing the amendment.

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

32 e. Amendments to the declaration required by P.L. , c. (C.)
33 (pending before the Legislature as this bill) to be recorded by the
34 association shall be prepared, executed, recorded, and certified on
35 behalf of the association by any officer of the association
36 designated for that purpose or, in the absence of designation, by the
37 president of the association.

38 f. Within 12 months following assumption by the owners of
39 control of the executive board, and at six-year intervals thereafter,
40 the executive board shall re-examine the bylaws, declaration and
41 rules of the association and present such proposed amendments as
42 the executive board may deem appropriate, as well as any
43 amendments proposed by initiative signed by persons eligible to
44 cast at least 20 percent of the votes, for approval by vote of the unit
45 owners; provided, however, that any such proposed amendment
46 shall be unambiguous and consistent with applicable law and with
47 the provisions of the governing documents that are not proposed to
48 be amended. Notwithstanding the terms of the declaration or

1 bylaws, an amendment to an existing bylaw, rule or declaration,
2 except an amendment that proposes to prohibit a previously
3 permitted use, may be adopted pursuant to this section by the lesser
4 of: (1) a majority of votes that are entitled to be cast by all unit
5 owners; or (2) 67 percent of the votes actually cast, where not less
6 than a majority of the eligible votes have been cast. An amendment
7 that proposes to prohibit a previously permitted use may be adopted
8 only in accordance with the terms of subsection a of section 41 of
9 P.L. , c. (C.) (pending before the Legislature as this bill). At
10 least 30 days advance notice of any referendum, including the text
11 of any new bylaw or amendment or repeal of an existing provision
12 to be voted on, shall be given to all unit owners by registered or
13 certified mail, or by personal delivery. Changes to declarations,
14 bylaws and rules shall be applied prospectively and shall not be
15 construed as depriving any unit owner of a right exercised prior to
16 the time that the change is made; provided, however, that any right
17 relating to personal property, a physical improvement or a pet that
18 was exercised prior to the adoption of any change to the declaration,
19 bylaws or rules shall apply only to the specific item of personal
20 property, physical improvement or pet existing or present at the unit
21 on the effective date of the change. An item of personal property or
22 a physical improvement that violates the terms of a change to the
23 declaration, bylaws or rules shall not continue to be maintained
24 after suffering damage to more than 50 percent of its value.

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

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

38 (2) consent in writing at the time the amendment is recorded, in
39 which case the amendment shall be effective when recorded.
40

41 42. (New section) a. Except in the case of a taking of all the
42 units by eminent domain pursuant to section 7 of P.L. ,
43 c. (C.) (pending before the Legislature as this bill) or in the
44 case of foreclosure against a cooperative of a security interest that
45 has priority over the declaration of that cooperative, a common
46 interest community may be terminated only by agreement of unit
47 owners of units to which at least 80 percent of the votes in the
48 association are allocated, or any larger percentage that the

1 declaration specifies. The declaration may specify a smaller
2 percentage only if all of the units are restricted exclusively to
3 nonresidential uses.

4 b. An agreement to terminate shall be evidenced by the
5 execution of a termination agreement, or ratifications thereof, in the
6 same manner as a deed, by the requisite number of unit owners. The
7 termination agreement shall specify a date after which the
8 agreement will be void unless it is recorded before that date. A
9 termination agreement and all ratifications thereof shall be recorded
10 in each county in which a portion of the common interest
11 community is situated and shall be effective only upon recordation.

12 c. In the case of a condominium or planned community
13 containing only units having horizontal boundaries described in the
14 declaration, a termination agreement may provide that all of the
15 common elements and units of the common interest community
16 shall be sold following termination. If, pursuant to the agreement,
17 any real estate in the common interest community is to be sold
18 following termination, the termination agreement shall set forth the
19 minimum terms of the sale.

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

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

1 f. In a condominium or planned community, if the real estate
2 constituting the common interest community is not to be sold
3 following termination, title to the common elements and, in a
4 common interest community containing only units having
5 horizontal boundaries described in the declaration, title to all the
6 real estate in the common interest community shall vest in the unit
7 owners upon termination as tenants in common in proportion to
8 their respective interests as provided in subsection j. of this section,
9 and any liens encumbering those units shall survive and be
10 applicable to the property so vested. While the tenancy in common
11 exists, each unit owner and the unit owner's successors in interest
12 shall have an exclusive right to occupancy of the portion of the real
13 estate that formerly constituted the unit.

14 g. Following termination of a common interest community, the
15 proceeds of any sale of real estate, together with the assets of the
16 association, shall be held by the association as trustee for unit
17 owners and holders of liens on the units as their interests may
18 appear.

19 h. Following termination of a condominium or planned
20 community, creditors of the association holding liens on the units,
21 which were recorded, filed or otherwise perfected according to law,
22 before termination, may enforce those liens in the same manner as
23 any lien holder. All other creditors of the association shall be
24 treated as if they had perfected liens on the units immediately
25 before termination.

26 i. In a cooperative, the declaration may provide that all creditors
27 of the association shall have priority over the interests of unit
28 owners and creditors of unit owners. In that event, following
29 termination, creditors of the association holding liens on the
30 cooperative which were recorded, filed or otherwise perfected
31 according to law before termination, may enforce their liens in the
32 same manner as any lien holder, and any other creditor of the
33 association shall be treated as if the creditor had perfected a lien
34 against the cooperative immediately before termination. Unless the
35 declaration provides that all creditors of the association have that
36 priority:

37 (1) The lien of each creditor of the association which was
38 perfected against the association before termination shall become,
39 upon termination, a lien against each unit owner's interest in the
40 unit as of the date the lien was perfected;

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

44 (3) The amount of the lien of an association's creditor described
45 in paragraphs (1) and (2) of this subsection against each of the unit
46 owners' interest shall be proportionate to the ratio which each unit's
47 common expense liability bears to the common expense liability of
48 all of the units;

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

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

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

11 (1) Except as provided in paragraph (2) of this subsection, the
12 respective interests of unit owners shall be the fair market values of
13 their units, allocated interests and any limited common elements
14 immediately before the termination, as determined by one or more
15 independent appraisers selected by the association. The decision of
16 the independent appraisers shall be distributed to the unit owners
17 and shall become final unless disapproved, within 30 days after
18 distribution, by unit owners of units to which 25 percent of the
19 votes in the association are allocated. The proportion of any unit
20 owner's interest to that of all unit owners shall be determined by
21 dividing the fair market value of that unit owner's unit and its
22 allocated interests by the total fair market values of all the units and
23 their allocated interests.

24 (2) If any unit or any limited common element is destroyed to the
25 extent that an appraisal of the fair market value thereof before
26 destruction cannot be made, the interests of all unit owners shall be:
27 (a) in a condominium, their respective common element interests
28 immediately before the termination; (b) in a cooperative, their
29 respective ownership interests immediately before the termination,
30 and (c) in a planned community, their respective common expense
31 liabilities immediately before the termination.

32 k. In a condominium or planned community, except as provided
33 in subsection l. of this section, foreclosure or enforcement of a lien
34 or encumbrance against the entire common interest community shall
35 not, of itself, terminate the common interest community, and
36 foreclosure or enforcement of a lien or encumbrance against a
37 portion of the common interest community, other than withdrawable
38 real estate, shall not withdraw that portion from the common
39 interest community. Foreclosure or enforcement of a lien or
40 encumbrance against withdrawable real estate, or against common
41 elements that have been subjected to a security interest by the
42 association under section 64 of P.L. , c. (C.) (pending
43 before the Legislature as this bill), shall not, of itself, withdraw, that
44 real estate from the common interest community, but the person
45 taking title thereto may require from the association, upon request,
46 an amendment excluding the real estate from the common interest
47 community.

1 l. In a condominium or planned community, if a lien or
2 encumbrance against a portion of the real estate comprising the
3 common interest community has priority over the declaration, and
4 the lien or encumbrance has not been partially released, then the
5 parties foreclosing the lien or encumbrance, upon foreclosure, may
6 record an instrument excluding the real estate subject to that lien or
7 encumbrance from the common interest community.

8 m. No agreement or governmental action to be taken which will
9 result in the termination of a common interest community with
10 common elements to remain after such termination, shall be
11 effective unless there shall be provision made for the maintenance
12 of those common elements.

13
14 43. (New section) a. The declaration may require that all or a
15 specified number or percentage of the lenders who hold security
16 interests encumbering the units or who have extended credit to the
17 association approve specified actions of the unit owners or the
18 association as a condition to the effectiveness of those actions, but
19 no requirement for approval shall operate to,

20 (1) deny or delegate control over the general administrative
21 affairs of the association by the unit owners or the executive board,
22 or

23 (2) prevent the association or the executive board from
24 commencing, intervening in, or settling any litigation or
25 proceeding, or

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

30 b. A lender who has extended credit to an association secured by
31 an assignment of income pursuant to paragraph (14) of subsection a.
32 of section 49 P.L. , c. (C.) (pending before the Legislature
33 as this bill) or an encumbrance on the common elements pursuant to
34 section 60 of P.L. , c. (C.) (pending before the Legislature
35 as this bill) may enforce its security agreement in accordance with
36 its terms, subject to the requirements of P.L. , c. (C.) (pending
37 before the Legislature as this bill) and other law.

38
39 44. (New section) a. If the declaration provides that any of the
40 powers described in section 49 of P.L. , c. (C.) (pending
41 before the Legislature as this bill) are to be exercised by, or may be
42 delegated to, a profit or nonprofit corporation that exercises those or
43 other powers on behalf of one or more common interest
44 communities or for the benefit of the unit owners of one or more
45 common interest communities, all provisions of P.L. , c. (C.)
46 (pending before the Legislature as this bill) applicable to unit
47 owners' associations shall apply to any such corporation, except as
48 modified by this section.

1 b. Unless it is acting in the capacity of an association described
2 in section 48 of P.L. , c. (C.) (pending before the
3 Legislature as this bill), a master association may exercise the
4 powers set forth in paragraph (2) of subsection a. of section 49 of
5 P.L. , c. (C.) (pending before the Legislature as this bill)
6 only to the extent expressly permitted in the declarations of
7 common interest communities which are part of the master
8 association or expressly described in the delegations of power from
9 those common interest communities to the master association.

10 c. If the declaration of any common interest community
11 provides that the executive board may delegate certain powers to a
12 master association, the members of the executive board shall have
13 no liability for the acts or omissions of the master association with
14 respect to those powers following delegation.

15 d. The rights and responsibilities of unit owners with respect to
16 the unit owners' association as set forth in sections 49, 50, 51, 56,
17 57, 58 and 60 of P.L. , c. (C.) (pending before the
18 Legislature as this bill) shall apply, in the conduct of the affairs of a
19 master association, only to persons who elect the board of a master
20 association, whether or not those persons are otherwise unit owners
21 within the meaning of P.L. , c. (C.) (pending before the
22 Legislature as this bill).

23 e. Regardless of the fact that a master association also may be an
24 association, as described in section 48 of P.L. , c. (C.)
25 (pending before the Legislature as this bill), the certificate of
26 incorporation, or other instrument creating the master association,
27 and the declaration of each common interest community, the powers
28 of which are assigned by the declaration or delegated to the master
29 association, shall provide that the executive board of the master
30 association shall be elected after the period of declarant control in
31 any of the following ways:

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

35 (2) All of the members of the executive boards of all common
36 interest communities subject to the master association may elect all
37 members of the master association's executive board.

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

41 (4) All of the members of the executive board of each common
42 interest community subject to the master association may elect
43 specified members of the master association's executive board.

44
45 45. (New section) a. Any two or more common interest
46 communities of the same form of ownership, by agreement of the
47 unit owners as provided in subsection b. of this section, may be
48 merged or consolidated into a single common interest community.

1 In the event of a merger or consolidation, unless the agreement
2 otherwise provides, the resultant common interest community shall
3 be the legal successor, for all purposes, of all of the pre-existing
4 common interest communities, and the operations and activities of
5 all associations of the pre-existing common interest communities
6 shall be merged and consolidated into a single association that shall
7 hold all of the powers, rights, obligations, assets, and liabilities of
8 the pre-existing associations.

9 b. An agreement of two or more common interest communities
10 to merge or consolidate pursuant to subsection a. of this section
11 shall be evidenced by an agreement prepared, executed, recorded,
12 and certified by the president of the association of each of the pre-
13 existing common interest communities following approval by the
14 owners of units to which are allocated the percentage of votes in
15 each common interest community required to terminate that
16 common interest community. The agreement shall be recorded in
17 each county in which a portion of the common interest community
18 is located and shall not be effective until recorded.

19 c. When a merger of two or more common interest communities
20 involves the merger of two or more nonprofit corporations, the
21 corporations shall comply with all of the requirements of
22 N.J.S.15A:10-1.

23 d. Every merger or consolidation agreement shall provide for the
24 reallocation of the allocated interests in the pre-existing
25 associations among the units of the resultant common interest
26 community either

27 (1) by stating the reallocations or the formulas upon which they
28 are based or

29 (2) by stating the percentage of overall allocated interests of the
30 new common interest community that shall be allocated to all. All
31 of the units comprising each of the pre-existing common interest
32 communities, and providing that the portion of the percentages
33 allocated to each unit formerly comprising a part of the pre-existing
34 common interest community shall be equal to the percentages of
35 allocated interests allocated to that unit by the declaration of the
36 pre-existing common interest community.

37

38 46. (New section) In a planned community, if the right is
39 originally reserved in the declaration, the declarant, in addition to
40 any other development right, may amend the declaration at any time
41 during as many years as are specified in the declaration for adding
42 additional real estate to the planned community without describing
43 the location of that real estate in the original declaration. The
44 amount of real estate added to the planned community pursuant to
45 this section shall not exceed 10 percent of the real estate described
46 in paragraph (3) of subsection a. of section 28 of P.L. ,

47 c. (C.) (pending before the Legislature as this bill) and the
48 declarant shall not in any event increase the number of units in the

1 planned community beyond the number stated in the original
2 declaration pursuant to paragraph (4) of subsection a. of section 28
3 of P.L. , c. (C.) (pending before the Legislature as this bill),
4 unless unit owners, other than the declarant, that represent at least
5 51 percent of the votes in the association, vote to approve: a. the
6 addition of real estate in excess of 10 percent of the real estate
7 described in paragraph (3) of subsection a. of section 28 of P.L. ,
8 c. (C.) (pending before the Legislature as this bill), or b. a
9 number of units in excess of the number stated in the original
10 declaration pursuant to paragraph (4) of subsection a. of section 28
11 of P.L. , c. (C.) (pending before the Legislature as this bill).
12

13 47. (New section) a. The declaration for a common interest
14 community may state that it is a master planned community if the
15 declarant has reserved the development right to create at least 300
16 units that may be used for residential purposes and has obtained
17 preliminary site plan or subdivision approval permitting the
18 declarant to construct at least 300 residential units pursuant to the
19 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

20 b. If the requirements of subsection a. of this section are
21 satisfied, the declaration for the master planned community need
22 not state a maximum number of units and need not contain any of
23 the information required by paragraphs (3) through (13) of
24 subsection a. of section 28 of P.L. , c. (C.) (pending before
25 the Legislature as this bill) until the declaration is amended under
26 subsection c. of this section.

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

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

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

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

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

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

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

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

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

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

f. Subject to the requirements of unconscionability in section 12 of P.L. , c. (C.) (pending before the Legislature as this bill) and good faith in section 13 of P.L. , c. (C.) (pending before the Legislature as this bill), the period of declarant control of the association for a master planned community shall terminate in the manner set forth in section 51 of P.L. , c. (C.) (pending before the Legislature as this bill), at such earlier time as may be specified in the declaration, or as the declarant specifies in a recorded instrument after delivering written notice to all the unit owners in the same manner as notice is required for an amendment to the declaration.

ARTICLE 3

MANAGEMENT OF THE COMMON INTEREST COMMUNITY

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

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

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

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

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

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

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

18 (a) the maintenance, repair or replacement of any common
19 elements therein or accessible therefrom;

20 (b) the repair, replacement or inspection of common elements in
21 compliance with an order of a State or local agency having
22 jurisdiction;

23 (c) for the maintenance of the common elements in accordance
24 with a policy that has been approved by the executive board;

25 (d) inspection to ensure compliance with requirements of State or
26 local code enforcing agencies or insurance carriers or underwriters;
27 or

28 (e) emergency repairs necessary to prevent damage to common
29 elements or to any other unit or units (the foregoing being
30 individually or in the aggregate referred to as a "permitted right of
31 entry"); provided, however, that the association shall not require a
32 unit owner to provide a unit key to any person. Nothing herein
33 shall prohibit the association from having immediate access to a
34 unit in case of an emergency. A unit owner who refuses to provide
35 a unit access key to an association that requests one for a permitted
36 right of entry shall be responsible for all reasonable costs of the
37 association to obtain access to the unit; provided, however, that the
38 association shall secure the unit after the purpose of any entry has
39 been satisfied and shall, to that end, utilize the services of a licensed
40 locksmith, the cost of which services shall be included in the
41 reasonable cost of obtaining access, and further provided that prior
42 or concurrent notice of any entry without a key shall be given to the
43 police department having jurisdiction. The association may charge
44 the unit owner for the repair of any common element damaged by
45 the unit owner or his tenant.

46 (6) The association may purchase units in the common interest
47 community and otherwise acquire, hold, lease, mortgage, and
48 convey the same. It may also lease or license the use of common

1 elements in a manner not inconsistent with the rights of unit
2 owners.

3 (7) An executive board of an association and any community
4 management personnel contracted by an association, shall be
5 responsible for safeguarding and preserving all common elements
6 within the common interest community, so as to comply with all
7 applicable laws and to protect the investment made by the owners
8 of the lots, parcels, units, or interests subject to the jurisdiction of
9 the association and also shall enforce rules requiring the proper
10 maintenance of such common elements. Executive boards and
11 community managers shall comply with all rules that may be
12 adopted by the commissioner, including, but not limited to,
13 accounting procedures and financial and common property facility
14 management requirements, provided such rules shall not include
15 substantive requirements not otherwise set forth in P.L. ,

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

17 b. Except as provided in subsection c. of this section, and
18 subject to the provisions of the declaration, the bylaws or other
19 statute of this State, an association may:

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

23 (2) adopt and amend budgets for revenues, expenditures and
24 reserves and may collect assessments for common expenses from
25 unit owners, provided, that with respect to the adoption of budgets
26 for revenues, expenditures and reserves in common interest
27 communities of 100 or more units, a copy of any proposed budget
28 shall be available at a meeting of the executive board at least one
29 month prior to the meeting at which the executive board is
30 scheduled to vote on the budget;

31 (3) hire and discharge managing agents and other employees,
32 agents and independent contractors;

33 (4) institute, defend or intervene in litigation or administrative
34 proceedings in its own name on matters affecting the common
35 interest community;

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

39 (6) regulate the use, maintenance, repair, replacement, cleaning
40 and modification of common elements, including, if authorized
41 under the by-laws, the right to suspend the use of the common
42 elements, including, without limitation, parking spaces or
43 recreational facilities, whenever a unit owner is delinquent in the
44 payment of common expenses;

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

47 (8) acquire, hold, encumber and convey in its own name any
48 right, title or interest to real estate or personal property, but (a)

1 common elements in a condominium or planned community shall
2 only be conveyed or subjected to a security interest pursuant to
3 section 60 of P.L. , c. (C.) (pending before the Legislature
4 as this bill), and (b) part of a cooperative shall only be conveyed, or
5 all or part of a cooperative shall only be subjected to a security
6 interest, pursuant to section 60 of P.L. , c. (C.) (pending
7 before the Legislature as this bill). The association may also
8 acquire or enter into agreements whereby it acquires leaseholds,
9 memberships or other possessory or use interests in lands or
10 facilities including, but not limited to, country clubs, golf courses,
11 marinas, and other recreational facilities, whether or not contiguous
12 to the common interest community property, intended to provide for
13 the enjoyment, recreation or other use or benefit of the unit owners.
14 If fully described in the declaration or bylaws, the fees, costs and
15 expenses of acquiring, maintaining, operating, repairing, and
16 replacing any such memberships, interests and facilities shall be
17 common expenses. If not so described in the declaration or bylaws
18 as originally recorded, no such membership interest or facility shall
19 be acquired except pursuant to amendment of, or supplement to, the
20 declaration or bylaws duly adopted as provided therein and in P.L. ,
21 c. (pending before the Legislature as this bill). In the absence of
22 such amendment or supplement, if some but not all unit owners
23 desire any such acquisition and agree to assume among themselves
24 all costs of acquisition, maintenance, operation, repair, and
25 replacement thereof, the association may acquire or enter into an
26 agreement to acquire the same as limited common elements
27 appurtenant only to the units of those unit owners who have agreed
28 to bear the costs and expenses thereof. Such costs and expenses
29 shall be assessed against and collected from the consenting unit
30 owners in the proportions in which they share as among themselves
31 in the common expenses in the absence of some other unanimous
32 agreement among themselves. No other unit owner shall be charged
33 with any such cost or expense; provided, however, that nothing
34 herein shall preclude the extension of the interests in such limited
35 common elements to additional unit owners by subsequent
36 agreement with all those unit owners then having an interest in such
37 limited common elements. Thereafter, any such costs or expenses
38 shall be paid only by the consenting unit owners and their grantees,
39 heirs and assigns;

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

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

47 (11) levy and collect assessments duly made by the association
48 for a share of common expenses or any other moneys duly owed the

1 association, upon proper notice to the appropriate unit owner,
2 together with interest thereon, late fees and reasonable attorney's
3 fees, if authorized by the declaration or bylaws, and subject to the
4 provisions of section 50 of P.L. , c. (C.) (pending before the
5 Legislature as this bill). A unit owner may contest the validity of
6 any assessment levied by an association for the purpose of funding
7 construction of any improvement by bringing an action in lieu of
8 prerogative writs in the Superior Court within 45 days after the
9 association gives notice of the assessment to unit owners;

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

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

16 (14) assign its right to future income, including the right to
17 receive common expense assessments, but only to the extent the
18 declaration expressly so provides;

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

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

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

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

45 The executive board of every association shall discharge its
46 powers in a manner that is not inconsistent with furthering the
47 health, safety and general welfare of the residents of the common
48 interest community, fostering community values of fairness, mutual

1 respect and responsibility, and safeguarding the value of the
2 residents' investment in their properties.

3 c. The declaration shall not impose limitations on the power of
4 the association to deal with the declarant which are more restrictive
5 than the limitations imposed on the power of the association to deal
6 with other persons.

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

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

12 (2) reasonably restrict the leasing of residential units so long as
13 the rules are designed to meet the then-current underwriting
14 requirements adopted by institutional lenders who regularly lend
15 money secured by first mortgages on units in common interest
16 communities, or regularly purchase those mortgages.

17 Otherwise, an association shall not regulate any use of, or behavior
18 in, units unless empowered to do so by the declaration or P.L. ,

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

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

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

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

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

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

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

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

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

43

44 50. (New section) If authorized by the declaration or bylaws,
45 the association may impose reasonable fines upon unit owners for
46 failure to comply with provisions of the declaration, bylaws or rules
47 and regulations, subject to the following provisions:

1 A fine for a violation or a continuing violation of the declaration,
2 bylaws or rules and regulations shall not exceed \$25 per day for
3 each violation; \$50 per day for a second violation of the same
4 nature within a one-year period following the issuance of the notice
5 of fine for the first violation or, if it is contested, of a final
6 determination upholding the first fine; and \$100 per day for each
7 violation of the same nature after the second violation within a one-
8 year period following the issuance of the notice of fine for the
9 second violation or, if it is contested, of a final determination
10 upholding the second fine. An initial fine shall be imposed only
11 after a warning notice has been issued to notify the owner to cease
12 or correct the violation and that notice has not been complied with.

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

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

45
46 51. (New section) a. Except as provided in the declaration, the
47 bylaws, subsection b. of this section, or other provisions of P.L. ,
48 c. (C.) (pending before the Legislature as this bill), an

1 executive board may act in all instances on behalf of the
2 association. In the performance of their duties, officers and
3 members of an executive board shall act in good faith and exercise
4 honest judgment in lawful and legitimate furtherance of the
5 association's purposes.

6 Notwithstanding the provisions of P.L. , c. (C.) (pending
7 before the Legislature as this bill) or any other law, an individual
8 convicted of a crime of the first or second degree, or a crime of a
9 fiduciary nature of any degree while serving as an officer or
10 member of an executive board shall be deemed to have resigned
11 that position immediately upon entry of judgment of conviction.
12 An individual who has been convicted of a crime of the first or
13 second degree, or a crime of a fiduciary nature of any degree prior
14 to an election to serve as an officer or member of an executive
15 board, shall disclose, in writing on the ballot, such a conviction if it
16 occurred within a three- year period prior to the election. The
17 election of a person who does not disclose shall be void from its
18 inception.

19 b. An executive board shall not act on behalf of the association
20 to:

21 (1) amend the declaration pursuant to section 41 of P.L. ,
22 c. (C.) (pending before the Legislature as this bill), except
23 when necessary to render an inconsistent portion of the declaration
24 to be consistent with applicable law, but only to the extent
25 necessary to achieve consistency;

26 (2) terminate the common interest community under section 42
27 of P.L. , c. (C.) (pending before the Legislature as this bill);
28 or

29 (3) elect members of the executive board or determine the
30 qualifications, powers, duties, or terms of office of executive board
31 members pursuant to subsection f. of this section; however, the
32 executive board may fill vacancies in its membership until the next
33 annual meeting of the membership at which a quorum is present, at
34 which time the membership shall elect a member to fill the vacancy
35 for the then unexpired portion of the term that was vacated.

36 c. Within 30 days after the adoption of a budget for a common
37 interest community, the executive board shall provide a copy of the
38 budget to all of the unit owners.

39 d. Subject to subsection e. of this section, the declaration may
40 provide for a period of declarant control of the association, during
41 which a declarant, or persons designated by him, may appoint and
42 remove the officers and members of the executive board.
43 Regardless of the period provided in the declaration, a period of
44 declarant control of the executive board shall terminate no later than
45 the earlier of:

46 (1) 60 days after conveyance of 75 percent of the lots, parcels,
47 units, or interests that may be created to unit owners other than a
48 declarant;

- 1 (2) two years after all declarants have ceased to offer units for
2 sale in the ordinary course of business;
- 3 (3) two years after any right to add new units was last exercised;
4 or
- 5 (4) if, at a duly held meeting of the association, the majority of
6 the unit owners appearing in person or by proxy vote to assume
7 control, the date the declarant, after giving written notice to unit
8 owners, records an instrument voluntarily surrendering all rights to
9 control activities of the association. A declarant may voluntarily
10 surrender the right to appoint and remove officers and members of
11 the executive board before termination of that period, but in that
12 event the declarant may require, for the duration of the period of
13 declarant control, that specified actions of the association or
14 executive board, as described in a recorded instrument executed by
15 the declarant, be approved by the declarant before they become
16 effective.
- 17 e. Not later than 60 days after conveyance to unit owners, other
18 than a declarant, of 25 percent of the lots, parcels, units, or interests
19 that may be created, at least one member and not less than 25
20 percent of the members of the executive board shall be elected by
21 unit owners other than a declarant. Not later than 60 days after
22 conveyance to unit owners other than a declarant of 50 percent of
23 the lots, parcels, units or interests that may be created, not less than
24 40 percent of the members of the executive board shall be elected
25 by unit owners other than a declarant. Not later than 60 days after
26 conveyance of 75 percent of the lots, parcels, units, or interests that
27 may be created, not less than 60 percent of the members of the
28 executive board shall be elected by the unit owners other than
29 declarant; except that the declarant may retain the selection of one
30 executive board member so long as there are any units remaining
31 unsold in the regular course of business. The percentages specified
32 in this section shall be calculated upon the basis of the whole
33 number of units entitled to membership in the association.
- 34 f. Except as otherwise provided in subsection e. of section 44 of
35 P.L. , c. (C.) (pending before the Legislature as this bill),
36 but not later than the termination of any period of declarant control,
37 the unit owners shall elect an executive board of at least three
38 members, a majority of whom shall be unit owners. The executive
39 board shall elect the officers. The executive board members and
40 officers shall take office upon election.
- 41 g. Upon assumption by the owners of control of the executive
42 board of the association, the declarant shall forthwith deliver to the
43 association all property of the unit owners, and all items and
44 documents pertinent to the association, such as, but not limited to, a
45 copy of the master declaration, declaration of covenants and
46 restrictions, documents of creation of the association, bylaws,
47 minute book including all minutes, any rules and regulations,
48 association funds and an accounting therefor, that includes capital

1 accounts and contributions, all personal property, insurance
2 policies, government permits, a membership roster, all contracts and
3 agreements relative to the association, resignations of officers and
4 members of the governing board or other form of administration
5 who are required to resign because the developer is required to
6 relinquish control of the association, all tangible personal property
7 that is property of the association and is either represented by the
8 developer to be part of the common elements or ostensibly part of
9 the common elements, and an inventory of that property. Within 60
10 days of completion of construction or remodeling of improvements,
11 the declarant shall provide the association with a copy of the plans
12 and specifications utilized in the construction or remodeling of
13 improvements and the supplying of equipment to the common
14 interest community, and utilized in the construction and installation
15 of all mechanical components serving the improvements and the
16 site. The declarant also shall provide the association with a
17 certificate in affidavit form of the developer, his agent, or an
18 architect or engineer authorized to practice in this State that such
19 plans and specifications represent, to the best of their knowledge
20 and belief, the actual plans and specifications utilized in the
21 construction and improvement of the common interest property and
22 for the construction and installation of the mechanical components
23 serving the improvements.

24 h. An association, when controlled by the owners, shall not take
25 any action that would be detrimental to the sale of units by the
26 declarant, and shall continue the same level of maintenance,
27 operation and services as immediately prior to the unit owners'
28 assumption of control, until the last unit is sold.

29 i. Notwithstanding any provision of a declaration or bylaws to
30 the contrary, the unit owners, by a two-thirds vote of all persons
31 present and entitled to vote at any meeting of the unit owners at
32 which a quorum is present, may remove any member of the
33 executive board with or without cause, other than a member
34 appointed by the declarant.

35 j. The members of the executive board appointed by the
36 declarant shall be liable as fiduciaries for their acts or omissions.

37 k. Not more than 60 days after the time that unit owners, other
38 than the developer, elect a majority of the members of the executive
39 board or other form of administration of an association, the
40 developer shall relinquish control of the association and the unit
41 owners shall accept control. Simultaneously, the developer shall
42 deliver to the association all property of the unit owners and of the
43 association held or controlled by the developer, including, but not
44 limited to, the following items, if applicable, as to each common
45 interest community operated by the association:

46 (1) A photocopy of the declaration and all amendments thereto,
47 certified by affidavit of the developer, or by an officer or agent of
48 the developer, as being a complete copy of the actual declaration.

- 1 (2) A certified copy of the association's articles of incorporation,
2 or if not incorporated, then copies of the documents creating the
3 association.
- 4 (3) A copy of the bylaws.
- 5 (4) The minute books, including all minutes, and other books and
6 records of the association, if any.
- 7 (5) Any rules and regulations which have been promulgated by
8 the executive board.
- 9 (6) Resignations of officers and members of the executive board
10 or other form of administration who are required to resign because
11 the developer is required to relinquish control of the association.
- 12 (7) An accounting for all association funds, including capital
13 accounts and contributions.
- 14 (8) Association funds or control thereof.
- 15 (9) All tangible personal property that is property of the
16 association, represented by the developer to be part of the common
17 elements or ostensibly part of the common elements, and an
18 inventory of that property.
- 19 (10) A copy of the plans and specifications utilized in the
20 construction or remodeling of improvements and the supplying of
21 equipment to and in the common interest community and utilized in
22 the installation of all mechanical components serving the
23 improvements and the site, along with a certificate in affidavit form
24 of the developer, his agent or an architect or engineer authorized to
25 practice in this State, that such plans and specifications represent,
26 utilized in the construction and improvement of the common
27 interest community property and for the construction and
28 installation of the mechanical components serving the
29 improvements.
- 30 (11) Insurance policies.
- 31 (12) Copies of any certificates of occupancy which may have
32 been issued for the common interest property.
- 33 (13) Any other permits issued by governmental bodies having
34 jurisdiction over the common interest property that were issued in
35 connection with the development of the common interest property.
- 36 (14) All written warranties of the contractor, subcontractors,
37 suppliers, and manufacturers, if any, that are still effective.
- 38 (15) A roster of unit owners and their addresses and telephone
39 numbers as shown on the developer's records.
- 40 (16) Leases of the common elements and other leases to which
41 the association is a party.
- 42 (17) Employment contracts, management contracts, maintenance
43 contracts, contracts for the supply of equipment or materials,
44 service contracts in which the association is one of the contracting
45 parties, and maintenance contracts and service contracts in which
46 the association or the unit owners have an obligation or
47 responsibility, directly or indirectly to pay some or all of the fee or
48 charge of the person or persons performing the service.

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

2

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

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

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

17 (2) If a successor to any special declarant right is an affiliate of a
18 declarant, as that term is defined in section 3 of P.L. ,
19 c. (C.) (pending before the Legislature as this bill), the
20 transferor shall be jointly and severally liable with the successor for
21 any obligations or liabilities of the successor relating to the
22 common interest community.

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

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

34 c. Unless otherwise provided in a mortgage instrument, deed of
35 trust or other agreement creating a security interest, in the case of a
36 foreclosure of a security interest, sale by a trustee under an
37 agreement creating a security interest, tax sale, judicial sale, or sale
38 under federal Bankruptcy Code or receivership proceedings of any
39 units owned by a declarant or of real estate in a common interest
40 community subject to development rights, a person acquiring title to
41 all of the property being foreclosed or sold, upon his request, shall
42 succeed to all special declarant rights related to that property held
43 by that declarant or holder of development rights; otherwise the
44 person acquiring title shall succeed only to those or to any rights
45 reserved in the declaration pursuant to section 39 of P.L. ,
46 c. (C.) (pending before the Legislature as this bill) and held
47 by that declarant to maintain models, sales offices and signs. The

1 judgment or instrument conveying title shall provide for transfer of
2 only those special declarant rights requested.

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

7 (1) The declarant shall cease to have any special declarant rights,
8 and

9 (2) The period of declarant control shall terminate unless the
10 judgment or instrument conveying title provides for the transfer of
11 all special declarant rights held by that declarant to a successor
12 declarant.

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

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

19 (2) A successor to a sole right reserved in the declaration to
20 maintain models, sales offices, and signs under section 39 of
21 P.L. , c. (C.) (pending before the Legislature as this bill)
22 shall not exercise any other special declarant right and shall not be
23 subject to any liability or obligation as a declarant except the
24 obligation to provide a public offering statement and any liability
25 arising as a result thereof.

26 (3) A successor to all special declarant rights held by a transferor
27 who succeeded to those rights pursuant to a deed or other
28 instrument of conveyance in lieu of foreclosure or a judgment or
29 instrument conveying title under subsection c. of this section, may
30 declare in a recorded instrument the intention to hold those rights
31 solely for transfer to another person. Thereafter, until transferring
32 all special declarant rights to any person acquiring title to any unit
33 or real estate subject to development rights owned by the successor,
34 or until recording an instrument permitting exercise of all those
35 rights, that successor shall not exercise any of those rights other
36 than any right held by his transferor to control the executive board
37 in accordance with subsection d. of section 51 of P.L. ,
38 c. (C.) (pending before the Legislature as this bill) for the
39 duration of any period of declarant control, and any attempted
40 exercise of those rights shall be void. So long as a successor
41 declarant may not exercise special declarant rights under this
42 subsection, the successor declarant shall not be subject to any
43 liability or obligation as a declarant other than liability for his acts
44 and omissions under subsection d. of section 51 of P.L. ,
45 c. (C.) (pending before the Legislature as this bill).

46 (4) A successor to any special declarant right, other than a
47 successor described in paragraphs (1), (2) or (3) of this subsection
48 shall be subject to the obligations and liabilities imposed by

- 1 P.L. , c. (C.) (pending before the Legislature as this bill) or
2 the declaration:
- 3 (a) On a declarant which relate to the successor's exercise or
4 non-exercise of special declarant rights; or
- 5 (b) On his transferor, other than:
- 6 (i) misrepresentations by any previous declarant;
- 7 (ii) warranty obligations on improvements made by any previous
8 declarant, or made before the common interest community was
9 created;
- 10 (iii) breach of any fiduciary obligation by any previous declarant
11 or his appointees to the executive board; or
- 12 (iv) any liability or obligation imposed on the transferor as a
13 result of the transferor's acts or omissions after the transfer.
- 14 f. Nothing in this section shall subject any successor to a special
15 declarant right to any claims against, or other obligations of, a
16 transferor declarant, other than claims and obligations arising under
17 P.L. , c. (C.) (pending before the Legislature as this bill) or
18 the declaration.
- 19 g. (1) Notwithstanding any provision of this section or any other
20 law to the contrary, a lender who makes a loan of money, or who
21 maintains an indicia of ownership primarily to protect a security
22 interest in property subject to P.L. , c. (C.) (pending before
23 the Legislature as this bill) for a loan made by the lender or a
24 predecessor in interest, the proceeds of which are used or may be
25 used by the borrower to finance the design, manufacture,
26 construction, repair, modification, or improvement of real or
27 personal property for sale or lease to others, shall not as a result of
28 its actions as a lender be liable for any loss or damage occasioned
29 by any defect or deficiency in the real or personal property so
30 designed, manufactured, constructed, repaired, modified, or
31 improved or for any loss or damage resulting from the failure of the
32 borrower to use due care in the design, manufacture, construction,
33 repair, modification, or improvement of such real or personal
34 property, unless:
- 35 (a) the lender or holder has knowingly been a party to
36 misrepresentations with respect to such real or personal property; or
- 37 (b) the lender or holder of the security interest actively
38 participates in the management of the property.
- 39 (2) For the purpose of this section, the following shall apply:
- 40 (a) (i) "Active participation in the management" or "participation
41 in the management" means actual participation in the construction
42 of the property or management or operational affairs of the property
43 by the lender and shall not include the mere capacity, or ability to
44 influence, or the unexercised right to control the property or its
45 management or operations. A holder of security interest shall be
46 considered to be in active participation in the management, only if
47 the lender exercises control at a level comparable to that of a
48 manager of the property, such that the lender has assumed or

1 manifested responsibility, for the overall management of the
2 property encompassing the day-to-day decision making with respect
3 to all, or substantially all, of the operational, as opposed to financial
4 or administrative, aspects of the property. Operational aspects of the
5 property shall include functions such as that of community
6 manager, construction manager, operations manager, chief
7 operating officer or chief executive officer. Financial or
8 administrative aspects shall include functions such as that of credit
9 manager, accounts payable or receivable manager, or both,
10 personnel manager, controller, chief financial officer or similar
11 functions.

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

16 (iii) Actions that are consistent with holding ownership indicia
17 primarily to protect a security interest shall not constitute
18 participation in management for purposes of P.L. , c. (C.)
19 (pending before the Legislature as this bill). The authority for the
20 lender to make such actions may, but need not, be contained in
21 contractual or other documents specifying requirements for
22 financial, environmental, or other warranties, covenants, conditions,
23 representations or promises from the borrower. Loan policing and
24 work-out activities shall cover and include all activities up to
25 foreclosure and its equivalents.

26 (b) "Lender" means a person who maintains indicia of ownership
27 primarily to protect a security interest. A lender shall include the
28 initial lender, such as a loan originator, any subsequent holder of
29 the security interest, such as a successor-in-interest or subsequent
30 purchaser, a guarantor of an obligation, surety or any other person
31 who holds ownership indicia primarily to protect a security interest,
32 or a receiver or other person who acts on behalf of for the benefit of
33 a lender.

34 (c) "Indicia of ownership" means evidence of a security interest,
35 evidence of an interest in real or personal property securing a loan
36 or other obligation, including any legal or equitable title to real or
37 personal property acquired incident to foreclosure and its
38 equivalents. Evidence of such interests shall include, but is not
39 limited to, mortgages, security agreements, deeds of trust, liens,
40 surety bonds and guarantees of obligations, title held pursuant to
41 lease financing transaction in which the lessor does not select
42 initially the leased property, hereinafter "lease financing
43 transaction," legal or equitable title obtained pursuant to foreclosure
44 and their equivalents. Evidence of such interests shall also include
45 assignments, pledges or other rights to or other forms of
46 encumbrance against property that are held primarily to protect a
47 security interest. A person is not required to hold title or a security
48 interest in order to maintain indicia of ownership.

1 (d) "Primarily to protect a security interest" means that the
2 holder's indicia of ownership are held primarily for the purpose of
3 securing payment or performance of an obligation, but does not
4 include indicia of ownership held primarily for investment
5 purposes, or ownership indicia held primarily for purposes other
6 than as a protection for a security interest. A holder will be deemed
7 to maintain indicia of ownership primarily to protect a security
8 interest even when the holder has secondary reasons for maintaining
9 indicia of ownership.

10 h. A lender who engages in policing activities prior to
11 foreclosure shall remain within the exemptions provided in
12 subsection g. of this section provided that the lender does not, by
13 such activities, participate in the management of the property, or is
14 not otherwise determined to be an affiliate of the declarant. Such
15 policing activities shall include, but are not limited to, requiring the
16 borrower to comply or come into compliance with applicable
17 federal, State and local laws, rules and regulations during the term
18 of the security interest; securing or exercising authority to monitor
19 or inspect the property during the term of the security interest; or
20 taking other actions to adequately police the loan or security
21 interest, such as requiring a borrower to comply with any of its
22 warranties, covenants, conditions, representations or promises.

23 i. A lender who engages in work-out activities prior to
24 foreclosure and its equivalents shall remain within the exemption
25 provided that the lender does not by such action participate in the
26 management of the property. For the purposes of P.L. , c. (C.)
27 (pending before the Legislature as this bill), "work-out activities"
28 means those actions by which a lender, at any time prior to
29 foreclosure and its equivalents, seeks to: prevent, cure or mitigate a
30 default by the borrower or obligor; or preserve or prevent the
31 diminution of the value of the security. Work-out activities include,
32 but are not limited to: restructuring or renegotiating the terms of the
33 security interest; requiring payment of the additional rent or
34 interest; exercising forbearance; requiring or exercising rights
35 pursuant to an assignment of accounts or other amounts owing to an
36 obligor; requiring or exercising rights pursuant to an escrow
37 agreement pertaining to amounts owing to an obligor; providing
38 specific or general financial or other advice, suggestions,
39 counseling or guidance; and exercising any right or remedy the
40 lender is entitled to by law or under any warranties, covenants,
41 conditions, representations or promises from the borrower.

42

43 53. (New section) Except as provided in section 22 of P.L. ,
44 c. (C.) (pending before the Legislature as this bill), any
45 contract or agreement affecting the use, maintenance, management,
46 or access of the common elements entered into between the
47 declarant and itself or a company owned, operated or controlled by
48 the declarant or in which it has a financial interest prior to non-

1 declarant unit owners being entitled to elect a majority of the
2 executive board, shall not be entered into for a period in excess of
3 one year. The contracts or agreements shall not be renewed for
4 periods in excess of one year and the association may, at the end of
5 any one-year period, terminate any further renewals or extensions
6 thereof.

7 This section shall not apply to:

8 Any lease the termination of which would terminate the common
9 interest community or reduce its size, unless the real estate subject
10 to that lease was included in the common interest community for
11 the purpose of avoiding the right of the association to terminate a
12 lease under this section, or a proprietary lease.

13
14 54. (New section) a. The bylaws of an association, which shall
15 initially be recorded with the declaration, shall provide:

16 (1) the number of members of the executive board and the titles
17 of the officers of the association;

18 (2) election by the executive board of a president, treasurer,
19 secretary, and any other officers of the association the bylaws may
20 specify;

21 (3) the qualifications, powers and duties, terms of office, and
22 manner of electing and removing executive board members and
23 officers and filling vacancies;

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

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

28 (6) a method for amending the bylaws;

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

32 (8) a method for the adoption, amendment and enforcement of
33 reasonable administrative rules and regulations relating to the
34 operation, use, maintenance, and enjoyment of the units and of the
35 common elements, including limited common elements.

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

40
41 55. (New section) a. Except to the extent provided by the
42 declaration, subsection b. of this section, or subsection h. of section
43 61 of P.L. , c. (C.) (pending before the Legislature as this
44 bill), an association shall be responsible for the maintenance, repair,
45 cleaning, and replacement of the common elements, and each unit
46 owner shall be responsible for maintenance, repair and replacement
47 of the owner's unit. Subject to the terms of paragraph 4 of
48 subsection a. of section 49 of P.L. , c. (C.) (pending before

1 the Legislature as this bill), each unit owner shall afford to the
2 association and the other unit owners, and to their agents or
3 employees, such access through the owner's unit as reasonably
4 necessary for those purposes. If damage is inflicted on the common
5 elements or on any unit through which access is taken, the entity
6 responsible for the damage shall be liable for the prompt repair
7 thereof.

8 b. In addition to the liability that a declarant as a unit owner has
9 under P.L. , c. (C.)(pending before the Legislature as this bill), the
10 declarant alone shall be liable for all expenses in connection with
11 real estate subject to development rights. A unit owner or owner of
12 another portion of the common interest community shall not be
13 subject to a claim for payment of development rights expenses.
14 Unless the declaration provides otherwise, any income or proceeds
15 from real estate subject to development rights shall inure to the
16 declarant.

17 c. In a planned community, if all development rights have
18 expired with respect to any real estate, the declarant shall remain
19 liable for all expenses of that real estate unless, upon expiration, the
20 declaration provides that the real estate shall become common
21 elements or units.

22

23 56. (New section) a. A meeting of the unit owners' association
24 shall be held at least annually. Special meetings of an association
25 may be called by the president, a majority of the executive board, or
26 by unit owners having 20 percent, or any lower percentage specified
27 in the bylaws, of the votes in the association. Not less than 10 or
28 more than 60 days in advance of any unit owners' association
29 meeting, the secretary or other officer specified in the bylaws shall
30 cause notice to be hand-delivered or placed in the United States
31 mail in a prepaid envelope to the proper mailing address of each
32 unit or to any other mailing address designated in writing by the
33 unit owner. The notice of any meeting shall state the time and place
34 of the meeting and the items on the agenda, including the general
35 nature of any proposed amendment to the declaration or bylaws,
36 any budget changes, and any proposal to remove an officer or
37 member of the executive board.

38 b. Meetings of the executive board of an association shall be
39 held at least once every three months throughout the calendar or
40 fiscal year, and as often as necessary in order to conduct the
41 business of the association. Except as otherwise provided in this
42 section, all meetings of the membership or the executive board of
43 any association shall be open to all members of the association. The
44 executive board shall establish an agenda for each meeting. Copies
45 of the agenda, to the extent known, shall be available at least 48
46 hours before the meeting for distribution to unit owners, and all unit
47 owners who attend the meeting shall be given a reasonable
48 opportunity to comment on matters under consideration by the

1 executive board or otherwise of concern to unit owners. A board
2 shall not be obligated to allow the period that is substantially
3 devoted to the making of comments by unit owners to exceed, in the
4 aggregate, 45 minutes in any one meeting; provided, however, that
5 all persons having an interest in a proposed budget, a proposed
6 amendment to the rules or bylaws, or any proposal to sell or lease
7 any of the common elements shall be given an opportunity to make
8 comments, subject to the right of the chair to limit or exclude
9 comment or testimony that is repetitive or irrelevant. Working
10 sessions of an executive board at which no votes shall be taken shall
11 be permitted and such meetings shall be open to attendance by unit
12 owners. An executive board shall not be required to allow
13 comments from unit owners at working sessions, but shall be
14 required to arrange for a meeting place large enough to
15 accommodate the anticipated number of unit owners wishing to
16 observe a working session, whenever practicable.

17 Audio recordings for personal use by unit owners in attendance
18 shall be permitted at meetings open to the unit owners; provided,
19 however, that, in the event that it is not the practice of the
20 association to record all meetings, a unit owner wishing to record a
21 meeting shall give at least one business day's prior notice to the
22 executive board of his or her intention to record the meeting. If
23 such notice has not been given and the executive board has not
24 made provision for the recording of the meeting, the executive
25 board may prohibit the unit owner from recording the meeting.

26 c. (1) Notwithstanding the provisions of subsection b. of this
27 section, the executive board may exclude or restrict attendance at
28 those meetings, or portions of meetings, dealing with (a) any matter
29 the disclosure of which would constitute an unwarranted invasion of
30 individual privacy; (b) any pending or anticipated litigation or
31 contract negotiations; (c) any matters falling within the attorney-
32 client privilege, to the extent that confidentiality is required in order
33 for the attorney to exercise his ethical duties as a lawyer; or (d) any
34 matter involving the employment, promotion, discipline, or
35 dismissal of a specific officer or employee of the association.

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

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

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

7 d. Copies of the agenda for an executive board meeting shall be
8 made available to the unit owners at the beginning of each open
9 meeting of the executive board.

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

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

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

23 (2) published in the community newsletter, if any, provided the
24 publication schedule of the newsletter permits the notice to be
25 published in adequate time for the meeting; and

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

30 In addition to these requirements, notices concerning meetings at
31 which the budget or a rule or bylaw change will be discussed shall
32 be mailed or hand delivered to each unit owner at least 48 hours in
33 advance of the meeting. A unit owner may authorize the association
34 to forward notices by electronic mail in lieu of receiving notices by
35 regular mail.

36 At least once each year, within seven days following the annual
37 meeting of the association, the executive board shall post, and
38 maintain posted throughout the year at the prominent place
39 accessible to all unit owners at which notices are posted, publish in
40 the community newsletter, if any, and file with the person
41 responsible for administering the business office of the association,
42 a schedule of the times, dates and locations of all regular meetings
43 of the executive board that are to be held during the succeeding
44 year. Notice of any revision of the schedule shall be given in the
45 same manner as the original notice of the schedule.

46 g. Minutes shall be taken at all meetings. Such minutes shall
47 completely and accurately reflect all actions taken at the meeting.
48 Approved copies of minutes shall be made available to unit owners

1 within five business days after the date of approval of the minutes
2 upon a request for a copy thereof. A permanent record of all
3 approved minutes shall be maintained by the association at its
4 business office, where they shall be available for review by all unit
5 owners, except that minutes of a closed session may be withheld
6 from such review for a reasonable period of time when necessitated
7 by the reason for which the meeting was closed, or may be provided
8 in redacted form by removing confidential information as
9 necessary.

10 h. Within 30 days following an open meeting, the executive
11 board shall provide all unit owners with a notice describing any
12 adoption or amendment of a rule or bylaw that was approved at the
13 meeting. No new rule or bylaw, or amendment to an existing rule
14 or bylaw, shall take effect until such notice has been given to all
15 unit owners. This notice shall be provided in the same manner as
16 the "adequate notice" of a meeting required pursuant to subsection
17 f. above. Additionally, all unit owners shall have the right to
18 inspect all documents voted upon at a meeting, including
19 amendments to the rules and bylaws, the annual budget, sale and
20 lease of common elements, and contracts entered into by the
21 association prior to any such action taking effect. These provisions
22 shall not be construed to require that minutes, whether approved or
23 unapproved, be made available prior to any action taking effect.

24

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

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

34

35 58. (New section) a. If only one of several owners of a unit is
36 present at a meeting of the association, that owner shall be entitled
37 to cast all the votes allocated to that unit. If more than one of the
38 owners are present, the votes allocated to that unit shall be cast only
39 in accordance with the agreement of a majority in interest of the
40 owners, unless the declaration expressly provides otherwise. It shall
41 be considered majority agreement if any one of the owners casts the
42 votes allocated to that unit without protest being made promptly to
43 the person presiding over the meeting by any of the other owners of
44 the unit.

45 b. Votes allocated to a unit may be cast pursuant to a proxy duly
46 executed by a unit owner. A proxy vote in connection with the
47 election of members to the executive board shall be subject to
48 section 69 of P.L. , c. (C.) (pending before the Legislature

1 as this bill). Unless the declaration or bylaws provide otherwise, in
2 connection with any other matter to be voted upon by the unit
3 owners, a proxy may be a general proxy permitting the proxy agent
4 to cast the vote in the proxy agent's discretion. If a proxy is
5 permitted to be a general proxy pursuant to the terms of this
6 subsection b., and is given to an officer of the association who is
7 identified in the proxy by corporate title, the proxy agent shall cast
8 the vote given by the proxy as determined by a majority vote of the
9 executive board. If a unit is owned by more than one person, each
10 owner of the unit may vote, unless the additional vote would violate
11 the terms of the declaration, or register protest to the casting of
12 votes by the other owners of the unit through a duly executed proxy.
13 A proxy shall be void if it is not dated.

14 c. An association shall provide that those unit owners wishing to
15 cast anonymous ballots shall be provided a method to do so,
16 provided that the association may utilize reasonable methods to
17 verify that ballots are being cast only by unit owners having the
18 right to do so in accordance with P.L. , c. (C.) (pending
19 before the Legislature as this bill), the declaration and the bylaws. If
20 a unit is owned by more than one person, each owner of the unit
21 may vote through a duly executed anonymous ballot, unless the
22 additional ballot would violate the terms of the declaration and
23 provided that the association adopts procedures to ensure that the
24 total number of ballots cast for each unit does not exceed the
25 permitted number of ballots under the declaration. A unit owner
26 may revoke a ballot executed pursuant to this section only by actual
27 notice of revocation to the person presiding over a meeting of the
28 association and provided the ballot may be identified as that of the
29 unit owner seeking to revoke it.

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

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

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

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

43 e. No votes allocated to a unit owned by the association shall be
44 cast.

45 f. Any vote permitted under P.L. , c. (C.) (pending before
46 the Legislature as this bill) may, at the election of the executive
47 board, be made electronically provided that (1) the association is
48 able to verify that the vote is cast by a unit owner having the right

1 to do so, and (2) the ballot may be cast anonymously or, when that
2 is not reasonably practicable, the identity of the unit owner and
3 selection indicated on any ballot shall be known only to a person or
4 persons appointed to count the ballots, which person or persons
5 shall not be a member of the executive board and who shall
6 subscribe to an oath not to divulge the identity of, or selection
7 indicated by, any unit owner. If the anonymity of an electronic
8 ballot cannot be guaranteed, electronic voting shall be permitted
9 provided that a unit owner is given the option of casting an
10 anonymous written ballot. A unit owner voting by electronic means
11 shall be deemed to be present at a meeting provided that the unit
12 owner elects a proxy pursuant to subsection b. of this section. In
13 such event, the proxy may provide that the unit owner's vote will be
14 as directed in the unit owner's electronic ballot.

15 g. The declarant shall not be permitted to cast any votes
16 allocated to unsold lots, parcels, units, or interests, in order to
17 amend the declaration, bylaws or any other document, for the
18 purpose of changing the permitted use of a lot, parcel, unit, or
19 interest, or for the purpose of reducing the common elements or
20 facilities.

21

22 59. (New section) a. A unit owner, except as an officer of the
23 association, shall have no authority to act for or bind the
24 association. An association, however, may assert tort claims
25 concerning the common elements and facilities of the development
26 as if the claims were asserted directly by the unit owners
27 individually.

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

36 c. An action alleging a wrongful act by an association, including
37 an action arising out of the condition or use of the common
38 elements, may be maintained against the association but shall not be
39 maintained against any unit owner. If the wrongful act occurred
40 during any period of declarant control and the association has given
41 the declarant reasonable notice of and an opportunity to defend
42 against the action, the declarant who then controlled the association
43 shall be liable to the association or to any unit owner for: (1) all
44 losses not covered by insurance suffered by the association or that
45 unit owner arising from that wrongful act, and (2) all costs that the
46 association would not have incurred but for the wrongful act,
47 including any breach of contract remedies. Whenever a declarant is
48 liable to the association under this section, the declarant also shall

1 be liable for all expenses of litigation, including reasonable
2 attorney's fees , incurred by the association.

3 d. Any statute of limitations affecting an association's right of
4 action against a declarant under P.L. , c. (C.) (pending
5 before the Legislature as this bill) shall be tolled until the period of
6 declarant control terminates. A unit owner shall not be precluded
7 from maintaining an action contemplated by this section because he
8 is a unit owner or a member or officer of the association. Liens
9 resulting from judgments against the association shall be governed
10 by section 64 of P.L. , c. (C.) (pending before the
11 Legislature as this bill).

12 e. When the bylaws provide, an association shall not be liable in
13 any civil action brought by or on behalf of a unit owner to respond
14 in damages as a result of bodily injury to the unit owner occurring
15 on the common elements of the association. An association shall not
16 be liable for the exercise of discretion, when, in the face of
17 competing demands, it determines whether and how to utilize and
18 apply existing resources, including those allocated for equipment,
19 facilities and personnel, unless a court concludes that the
20 determination of the association was palpably unreasonable. This
21 subsection shall not grant immunity to any association causing
22 bodily injury to a unit owner on the association's common elements
23 by its willful, wanton or grossly negligent act of commission or
24 omission.

25
26 60. (New section) a. In a condominium or planned community,
27 portions of the common elements may be conveyed or subjected to
28 a security interest by the association if persons entitled to cast at
29 least 80 percent of the votes in the association, including 80 percent
30 of the votes allocated to units not owned by a declarant, or any
31 larger percentage the declaration specifies, agree to that action; but
32 all owners of units to which any limited common element is
33 allocated shall agree in order to convey that limited common
34 element or subject it to a security interest. The declaration may
35 specify a smaller percentage only if all of the units are restricted
36 exclusively to non-residential uses. Proceeds of the sale shall be an
37 asset of the association, but the proceeds of a sale of limited
38 common elements shall be distributed equitably among the owners
39 of units to which the limited common elements were allocated.

40 b. Part of a cooperative may be conveyed and all or part of a
41 cooperative may be subjected to a security interest by the
42 association if persons entitled to cast at least 80 percent of the votes
43 in the association, including 80 percent of the votes allocated to
44 units not owned by a declarant, or any larger percentage the
45 declaration specifies, agree to that action; but, if fewer than all of
46 the units or limited common elements are to be conveyed or
47 subjected to a security interest, then all unit owners of those units,
48 or the units to which those limited common elements are allocated,

1 shall agree in order to convey those units or limited common
2 elements or subject them to a security interest. The declaration may
3 specify a smaller percentage only if all of the units are restricted
4 exclusively to nonresidential uses. Proceeds of the sale shall be an
5 asset of the association. Any purported conveyance or other
6 voluntary transfer of an entire cooperative, unless made pursuant to
7 section 42 of P.L. , c. (C.) (pending before the Legislature
8 as this bill), shall be void.

9 c. An agreement to convey common elements in a condominium
10 or planned community, or to subject them to a security interest, or
11 in a cooperative, an agreement to convey any part of a cooperative
12 or subject it to a security interest, shall be evidenced by the
13 execution of an agreement, or ratifications thereof, in the same
14 manner as a deed, by the requisite number of unit owners. The
15 agreement shall specify a date after which the agreement will be
16 void unless recorded. The agreement and all ratifications thereof
17 shall be recorded in each county in which a portion of the common
18 interest community is situated, and shall be effective only upon
19 recordation.

20 d. An association, on behalf of the unit owners, may contract to
21 convey an interest in a common interest community pursuant to
22 subsection a. of this section, but the contract shall not be
23 enforceable against the association until approved pursuant to
24 subsections a., b., and c. of this section. Thereafter, the association
25 shall have all of the powers necessary and appropriate to effect the
26 conveyance or encumbrance, including the power to execute deeds
27 or other instruments.

28 e. Unless made pursuant to this section, any purported
29 conveyance, encumbrance, judicial sale, or other voluntary transfer
30 of common elements or of any other part of a cooperative shall be
31 void.

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

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

39 (1) a conveyance of common elements pursuant to this section
40 shall terminate both the undivided interests in those common
41 elements allocated to the units and the security interests in those
42 undivided interests held by all persons holding security interests in
43 the units; and

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

1 h. The consent by holders of first security interests on units
2 described in subsection g. of this section, or a certificate of the
3 secretary affirming that those consents have been received by the
4 association, may be recorded at any time before the date on which
5 the agreement under subsection c. becomes void. Consents or
6 certificates so recorded shall be valid from the date they are
7 recorded for purposes of calculating the percentage of consenting
8 first security interest holders, regardless of late sales or
9 encumbrances on those units. Regardless of the consent of the
10 required percentage of first security interest holders, a conveyance
11 or encumbrance of common elements shall not affect interests
12 having priority over the declaration, or created by the association
13 after the declaration was recorded.

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

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

19
20 61. (New section) a. Commencing not later than the date of the
21 first conveyance of a unit to a person other than a declarant, the
22 association shall maintain, to the extent reasonably available:

23 (1) property insurance on the common elements and, in a planned
24 community, also on property that must become common elements
25 and all structural portions of the common interest community,
26 insuring against all risks of direct physical loss commonly insured
27 against or, in the case of a conversion building, against fire and
28 extended coverage perils. Unless the association's declaration
29 provides otherwise, the coverages under the property insurance
30 shall be based upon replacement cost. If the declaration or bylaws
31 do not provide for replacement cost insurance, the total amount of
32 insurance after application of any deductibles shall not be less than
33 80 percent of the actual cash value of the insured property at the
34 time the insurance is purchased and at each renewal date, exclusive
35 of land, excavations, foundations, and other items normally
36 excluded from property policies;

37 (2) liability insurance, including medical payments insurance, in
38 an amount determined by the executive board but not less than any
39 amount specified in the declaration, covering all occurrences
40 commonly insured against for death, bodily injury and property
41 damage arising out of or in connection with the use, ownership or
42 maintenance of the common elements and, in cooperatives, also of
43 all units; and

44 (3) any other insurance required by the declaration, association's
45 bylaws or applicable law.

46 b. In the case of a building that is part of a cooperative or that
47 contains units having horizontal boundaries described in the
48 declaration, the insurance maintained under paragraph (1) of

- 1 subsection a., to the extent reasonably available, shall include
2 coverage of the units, but need not include improvements and
3 betterments installed by unit owners.
- 4 c. If the insurance described in subsections a. and b. of this
5 section is not reasonably available, the association promptly shall
6 cause notice of that fact to be hand-delivered or placed in the
7 United States mail in a prepaid envelope to all unit owners. The
8 declaration may require the association to carry any other insurance,
9 and the association in any event may carry any other insurance it
10 considers appropriate to protect the association or the unit owners.
- 11 d. Insurance policies carried pursuant to subsections a. and b. of
12 this section shall provide that:
- 13 (1) each unit owner is an insured person under the policy with
14 respect to liability arising out of the owner's interest in the common
15 elements or membership in the association;
- 16 (2) the insurer waives its right to subrogation under the policy
17 against any unit owner or member of the owner's household;
- 18 (3) no act or omission by any unit owner, unless acting within
19 the scope of his authority on behalf of the association, will void the
20 policy or be a condition to recovery under the policy;
- 21 (4) there is other insurance in the name of a unit owner covering
22 the same risk covered by the policy; and,
- 23 (5) the association's policy provides primary insurance.
- 24 e. Any loss covered by the property policy under paragraph (1)
25 of subsection a. and under subsection b. of this section shall be
26 adjusted with the association, but the insurance proceeds for that
27 loss shall be payable, if in excess of \$50,000, to any insurance
28 trustee designated for that purpose, or otherwise to the association,
29 and not to any holder of a security interest. The insurance trustee or
30 the association shall hold any insurance proceeds in trust for the
31 association, unit owners, and holders of a security interest or any
32 lien holders as their interests may appear. Subject to the provisions
33 of subsection h. of this section, the proceeds shall be disbursed first
34 for the repair or restoration of the damaged property, and the
35 association, unit owners, and holders of a security interest or any
36 lien holders shall not be entitled to receive payment of any portion
37 of the proceeds unless there is a surplus of proceeds after the
38 property has been completely repaired or restored, or the common
39 interest community is terminated.
- 40 f. An insurance policy issued to the association shall not prevent
41 a unit owner from obtaining insurance for his own benefit.
- 42 g. An insurer that has issued an insurance policy under this
43 section shall issue certificates or memoranda of insurance to the
44 association and, upon written request, to any unit owner or holder
45 of a security interest. The insurer issuing the policy shall not cancel
46 or refuse to renew the policy until 30 days after notice of the
47 proposed cancellation or non-renewal has been mailed to the
48 association, and to each unit owner and each holder of a security

- 1 interest to whom a certificate or memorandum of insurance has
2 been issued, at their respective last known addresses.
- 3 h. (1) Any portion of the common interest community for which
4 insurance is required under this section which is damaged or
5 destroyed shall be repaired or replaced promptly by the association
6 unless,
- 7 (a) the common interest community is terminated, in which case
8 the provisions of section 42 of P.L. , c. (C.) (pending before
9 the Legislature as this bill) apply,
- 10 (b) repair or replacement would be illegal under any State statute
11 or local ordinance governing health or safety, or
- 12 (c) 80 percent of the unit owners, including any owner of a unit
13 or assigned limited common element that will not be rebuilt, vote
14 not to rebuild. The cost of repair or replacement in excess of
15 insurance proceeds and reserves shall be a common expense.
- 16 (2) If the entire common interest community is not repaired or
17 replaced,
- 18 (a) the insurance proceeds attributable to the damaged common
19 elements shall be used to restore the damaged area to a condition
20 compatible with the remainder of the common interest community,
21 and
- 22 (b) except to the extent that other proceeds will be distributed
23 under subparagraph (b) of paragraph (11) of subsection a. of section
24 28 of P.L. , c. (C.) (pending before the Legislature as this
25 bill), (i) the insurance proceeds attributable to units and limited
26 common elements that are not rebuilt shall be distributed first to the
27 holders of a security interest as their interests may appear, unless
28 the mortgage instrument provides otherwise, and to unit owners
29 whose units are not encumbered by security interests, and then, if
30 any surplus remains, first to owners of those units and the owners of
31 the units to which those limited common elements were allocated as
32 their interests may appear, and (ii) the remainder of the proceeds
33 shall be distributed to all other unit owners or lien holders, as their
34 interests may appear, as follows: in a condominium, in proportion
35 to the common element interests of all the units and, in a
36 cooperative or planned community, in proportion to the common
37 expense liabilities of all the units. If the unit owners vote not to
38 rebuild any unit, that unit's allocated interests shall be automatically
39 reallocated upon the vote as if the unit had been condemned under
40 subsection a. of section 7 of P.L. , c. (C.) (pending before
41 the Legislature as this bill), and the association promptly shall
42 prepare, execute and record an amendment to the declaration
43 reflecting the reallocations.
- 44 i. The provisions of this section may be varied or waived in the
45 case of a common interest community in which all units are
46 restricted to non-residential use.

1 62. (New section) Unless otherwise provided in the declaration,
2 any surplus funds of an association remaining from common
3 receipts after payment of or provision for common expenses and
4 any prepayment of reserves shall be paid to the unit owners in
5 proportion to their common expense liabilities or credited to them
6 to reduce their future common expense assessments.

7
8 63. (New section) a. Until an association makes a common
9 expense assessment, the declarant shall pay all common expenses.
10 After an assessment has been made by an association, assessments
11 shall be made at least annually, based on a budget which shall be
12 adopted at least annually by the association.

13 b. Except for assessments under subsections c., d. and e. of this
14 section, all common expenses shall be assessed against all the units
15 in accordance with the allocations set forth in the declaration
16 pursuant to subsections a. and b. of section 30 of P.L. ,
17 c. (C.) (pending before the Legislature as this bill). Any past
18 due common expense assessment or installment thereof shall bear
19 interest at a rate to be established by the association not exceeding
20 18 percent per year.

21 c. Unless the declaration provides otherwise:

22 (1) Any common expense associated with the maintenance,
23 repair or replacement of a limited common element shall be
24 assessed against the units to which that limited common element is
25 assigned, equally, or in any other proportion the declaration
26 provides;

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

32 (3) The costs of insurance shall be assessed in proportion to risk
33 and, if separately metered, the costs of utilities shall be assessed in
34 proportion to usage.

35 d. Assessments to pay a judgment against the association
36 pursuant to subsection a. of section 65 of P.L. , c. (C.)
37 (pending before the Legislature as this bill) may be made only
38 against the units in the common interest community at the time the
39 judgment was entered, in proportion to their common expense
40 liabilities.

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

46 f. If common expense liabilities are reallocated, common
47 expense assessments and any installment thereof not yet due shall

1 be recalculated in accordance with the reallocated common expense
2 liabilities.

3
4 64. (New section) a. If a unit owner shall fail to pay any
5 assessment or other monies duly owed the association, the
6 association shall have a lien on the unit for the amount of any such
7 unpaid assessment or other moneys. Upon proper notice to the unit
8 owner indicating the amount and basis of the lien, the association
9 may, simultaneously or thereafter, record a notice of the lien in the
10 amount of the delinquent assessment or other monies duly owed the
11 association together with interest thereon and, if authorized by the
12 declaration or bylaws, late fees, those fines authorized pursuant to
13 section 50 of P.L. , c. (C.) (pending before the Legislature as
14 this bill) or pursuant to a determination by a court of competent
15 jurisdiction and, subject to the provisions of paragraph 11 of
16 subsection a. of section 49 of P.L. , c. (C.) (pending before
17 the Legislature as this bill), reasonable attorney's fees ; provided,
18 however, that an association shall not record a lien in which the
19 unpaid assessment consists solely of late fees. A lien for an
20 assessment shall be effective when due. Any other lien shall be
21 effective from and after the time of recording, in the public records
22 of the county in which the unit is located, of a claim of lien stating
23 the description of the unit, the name of the record owner, the
24 amount due, and the date when due. Such claim of lien shall include
25 only sums that are due and payable when the claim of lien is
26 recorded and shall be signed and verified by an officer or agent of
27 the association. Upon full payment of all sums secured by the lien,
28 the party making payment shall be entitled to have the lien canceled
29 or discharged of record by the association, upon payment of the
30 recording fee and a discharge preparation fee to the association in
31 an amount not exceeding \$50, and to receive the canceled document
32 or discharge. Except as set forth in subsection b. of this section, all
33 such liens shall be subordinate to any lien for past due and unpaid
34 property taxes, the lien of any first mortgage to which the unit is
35 subject and to any other lien recorded prior to the time of recording
36 of the claim of lien.

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

44 (1) Such a lien shall be subordinate to any liens or encumbrances
45 recorded before the declaration and, in a cooperative, shall be
46 subordinate to any liens and encumbrances that the association
47 creates, assumes or takes title to the cooperative property subject to.

1 (2) Such a lien shall be subordinate to a first mortgage recorded
2 against a condominium unit prior to April 1, 1996, or a first
3 mortgage against any other type of common interest unit, other than
4 a cooperative, recorded prior to the effective date of P.L. ,
5 c. (C.) (pending before the Legislature as this bill).

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

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

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

15 (4) Whenever more than one association lien has been filed,
16 either because an association files more than one lien or more than
17 one association having the right to do so files liens, the total lien
18 priority for each association shall not be greater than the six-month
19 priority described in this subsection. Priority between associations,
20 whenever more than one association files a lien, shall be determined
21 by the date of recording of the lien, with the earlier recorded lien
22 having priority over later recorded liens.

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

29 (6) When recording a lien that may be granted priority pursuant
30 to this subsection, an association shall notify, in writing, any holder
31 of a first mortgage lien on the property of the filing of the
32 association lien. An association that exercises a good faith effort,
33 but which is unable to ascertain the identity of a holder of a prior
34 recorded mortgage on a unit, shall be deemed in substantial
35 compliance with this paragraph. The notice required herein shall be
36 deemed to have been properly made if mailed, by certified mail,
37 with proper postage prepaid, to the address set forth on the recorded
38 mortgage or, when the mortgage has been assigned, to the address
39 indicated on the assignment of mortgage, unless the first mortgage
40 holder or assignee has, in writing, specified a different address to
41 the association, whereupon notice shall be deemed adequately made
42 if mailed, postage prepaid, to such address.

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

47 c. If a mortgagee of a first mortgage of record or other purchaser
48 of a unit obtains title to such unit as a result of foreclosure of the

1 first mortgage, such acquirer of title, his successors and assigns
2 shall not be liable for the share of common expenses or other
3 assessments by the association pertaining to such unit or chargeable
4 to the former unit owner which became due prior to acquisition of
5 title as a result of the foreclosure. Any remaining unpaid share of
6 common expenses and other assessments, except assessments
7 derived from late fees or fines, shall be deemed to be common
8 expenses collectible from all of the remaining unit owners including
9 such acquirer, his successors and assigns.

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

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

23 f. The recording office of any county shall not accept for filing
24 any Notice of Fine concerning fines imposed by an association,
25 unless the lien filing is accompanied by a certification on behalf of
26 the association, by either its attorney or an officer designated by the
27 executive board, that the lien filing is in conformity with section 50
28 of P.L. , c. (C.) (pending before the Legislature as this bill)
29 or has been authorized pursuant to a determination of a court of
30 competent jurisdiction. A lien certified by an association, through
31 its attorney or designated officer, to be based on unpaid fees for
32 common expenses, late fees, costs of collection, or interest on such
33 fees or costs shall not be required to be accompanied by such proof.
34

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

36 (1) Except as provided in paragraph (2) of this subsection, a
37 judgment for money against the association if docketed shall not be
38 a lien on the common elements, but shall be a lien in favor of the
39 judgment lien holder against all of the units in the common interest
40 community at the time the judgment was entered. No other property
41 of a unit owner shall be subject to the claims of creditors of the
42 association.

43 (2) If the association has granted a security interest in the
44 common elements to a creditor of the association pursuant to
45 section 60 of P.L. , c. (C.) (pending before the Legislature as
46 this bill), the holder of that security interest shall exercise its right
47 against the common elements before its judgment lien on any unit
48 may be enforced.

1 (3) Whether perfected before or after the creation of the common
2 interest community, if a lien, other than a deed of trust or mortgage,
3 but including a judgment lien or lien attributable to work performed
4 or materials supplied before creation of the common interest
5 community, becomes effective against two or more units, the unit
6 owner of an affected unit may pay to the lien holder the amount of
7 the lien attributable to the owner's unit, and the lien holder, upon
8 receipt of payment, promptly shall deliver a release of the lien
9 covering that unit. The amount of the payment must be
10 proportionate to the ratio which that unit owner's common expense
11 liability bears to the common expense liabilities of all unit owners
12 whose units are subject to the lien. After payment, the association
13 may not assess or have a lien against that unit owner's unit for any
14 portion of the common expenses incurred in connection with the
15 released lien.

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

19 b. In a cooperative:

20 (1) If an association receives notice of an impending foreclosure
21 on all or any portion of the association's real estate, the association
22 shall promptly transmit a copy of that notice to each unit owner of a
23 unit located within the real estate to be foreclosed. Failure of the
24 association to transmit the notice shall not affect the validity of the
25 foreclosure.

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

29

30 66. (New section) a. Except as otherwise provided in this
31 section, all records of the association required to be maintained,
32 including but not limited to all books, financial notes, contracts, and
33 financial records, shall be made available for inspection or for
34 copying to unit owners or to their duly authorized representatives,
35 upon written request, within seven business days of receipt of the
36 request and at a charge not to exceed the reasonable cost of
37 reproduction; provided, in the case of records maintained in printed
38 form, in no event shall the charge exceed 20 cents per page
39 reproduced. If a unit owner or duly authorized representative seeks
40 to inspect records, no charge shall be imposed by the association for
41 the first hour of inspection occurring in any one-week period. A
42 reasonable charge based upon actual cost to the association may be
43 imposed for any longer period of inspection time required;
44 provided, that where the inspection time is in excess of two hours in
45 any one-week period, the person maintaining the records on behalf
46 of the association may decline to continue the inspection for more
47 than two hours so long as an appointment for additional inspection
48 time is established for a date within five business days thereafter.

1 The association shall not require a unit owner to state a reason for a
2 request to inspect or copy records. In the event that the records are
3 located off-site or the request involves the production and copying
4 of a large volume of documents in the estimation of the association,
5 the association shall have an additional seven business days to
6 comply. A fee to cover postage may be charged by an association to
7 the person requesting the documents. Nothing in this subsection
8 shall be construed as requiring an association to research its
9 records at the request of a unit owner. The association's obligation
10 to provide records will be satisfied by providing all records within
11 the category of documents where the owner's request may be
12 referenced.

13 b. An association shall not be required to make available any
14 records the disclosure of which would be an unreasonable violation
15 of the privacy of any unit owner; provided, however, that unpaid
16 common expenses which are overdue by more than 120 days shall
17 not be deemed a private matter. An association shall not be
18 required to make available any records dealing with pending or
19 anticipated litigation or contract negotiations, or with any matter
20 falling within the attorney-client privilege, to the extent that
21 confidentiality is required for the attorney to discharge his or her
22 ethical duties as a lawyer, or with respect to any matter involving
23 the employment, promotion, discipline, or dismissal of a specific
24 officer or employee of the association; provided, however, that the
25 amount of wages, salaries and bonuses paid to, and the value of
26 benefits received by, any such employee or officer, and the
27 qualifications and credentials of any such employee or officer,
28 shall be required to be made available. Any record not required to
29 be made available in accordance with this subsection shall be made
30 available at such time when there shall no longer be a need to
31 maintain confidentiality.

32 c. Any denial of access to records shall indicate the specific
33 reasons why allowing inspection of the records would violate the
34 rights of any unit owner or otherwise be in violation of subsection
35 b. of this section. A unit owner who is aggrieved by denial of
36 access to records shall have the right to appeal the denial to the
37 commissioner.

38 d. An association shall maintain detailed financial and business
39 records, including a record of all receipts and expenditures, for a
40 period which complies with customary business standards and
41 procedures and would allow a full and accurate auditing of all
42 records, but in any event for not less than seven years, unless the
43 governing documents of the association require a longer period. All
44 records required to be made available to a purchaser upon resale of
45 a unit shall be made available to a unit owner within one business
46 day upon written request.

47 e. An association shall maintain, and make available to any unit
48 owner within five business days, a permanent record of all notices

1 and orders issued by any governmental agency having jurisdiction
2 over the association or the common interest community. The record
3 shall also include documentation of all actions taken in response to
4 any such notice or order and shall identify the persons responsible
5 for the matter that gave rise to the notice or order.

6 f. Every association having gross annual receipts in excess of
7 \$75,000 shall have a certified annual audit prepared of its financial
8 books and records, which audit shall be available within 180 days
9 of the expiration of the fiscal year for which it is performed. In the
10 event that the association is unable, for good cause, to make the
11 audit available to unit owners within 180 days of the expiration of
12 the fiscal year, a statement setting forth the reason for the delay
13 shall be issued to the unit owners by the executive board. Every
14 association having gross annual receipts of at least \$25,000, but not
15 more than \$75,000, shall have such an audit prepared not less
16 frequently than once every three years. All audits shall be prepared
17 by a New Jersey certified public accountant in accordance with
18 generally accepted accounting principles.

19 g. An association shall provide each unit owner, upon request,
20 with a copy of the most recent annual financial statement of the
21 association within seven days of the request and at no cost to the
22 unit owner.

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

28
29 67. (New section) With respect to a third person dealing with
30 the association in the association's capacity as a trustee, the
31 existence of trust powers and their proper exercise by the
32 association shall be assumed without inquiry. A third person shall
33 not be bound to inquire whether the association has power to act as
34 trustee or is properly exercising trust powers. A third person,
35 without actual knowledge that the association is exceeding or
36 improperly exercising its powers, shall be fully protected in dealing
37 with the association as if it possessed and properly exercised the
38 powers it purports to exercise. A third person shall not be bound to
39 assure the proper application of trust assets paid or delivered to the
40 association in its capacity as trustee.

41
42 68. (New section) a. Subject to the rights of holders of first
43 security interests, an association may collect, from rent due from a
44 tenant to a delinquent unit owner, an amount that is not more than
45 any unpaid common expenses, late fees, interest, and costs of
46 collection, including reasonable attorney's fees , which have been
47 duly assessed against the unit owner. "Delinquent unit owner"

1 means a unit owner who owes common expense fees which are 30
2 or more days past due.

3 b. Prior to taking any action permitted by this section, an
4 association shall give written notice, by certified mail, return receipt
5 requested, to the delinquent unit owner at the unit owner's last
6 known address of its intent to collect the rent. The notice shall set
7 forth the exact amount the association claims is due and shall
8 indicate the intent of the association to collect the amount due from
9 rent, along with any other amounts which become due in the future
10 and which remain unpaid for 30 days after becoming due, including
11 any common expense fees lawfully accelerated pursuant to the
12 declaration or bylaws. A copy of the notice shall be sent to the
13 holder of the unit's first security interest of record. Any cost
14 incurred by the association to ascertain the identity of the holder of
15 the first security interest, including the cost of the preparation of a
16 title search, shall constitute additional common expense fees due
17 with respect to the unit.

18 c. A delinquent unit owner shall have 10 days from receipt of
19 the notice required to be sent pursuant to subsection b. of this
20 section to provide proof of payment or a statement of the grounds
21 upon which the assessment is disputed. Upon the failure of the unit
22 owner to respond within 10 days after receipt of the notice, or
23 within 15 days of mailing if no receipt is obtained, and provided
24 that no notice is received from the holder of the first security
25 interest that it is exercising its right of assignment of rental
26 proceeds, the association shall be entitled to notify and direct each
27 tenant renting a unit from the delinquent unit owner to pay to the
28 association all or a portion of the rent otherwise due the delinquent
29 unit owner. The amount to be applied from the rent shall be limited
30 to the lesser of: (1) the amount as stated in the notice to the
31 delinquent unit owner or, (2) an amount adjusted to reflect any
32 calculation errors sought to be corrected by the unit owner, as stated
33 in the response to the association, if timely sent. No offset shall be
34 allowed for amounts which are unrelated to claims of calculation
35 errors. The association shall have a continuing right to collect the
36 rent from the tenant or tenants until the delinquent sum is satisfied
37 in full.

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

47 e. A holder of a first security interest which is entitled to an
48 assignment of rents and which has exercised its rights by written

1 notice recorded at the county recording office in the county in
2 which the property is located, and by written notice sent by certified
3 mail to the association from which it received notice pursuant to
4 subsection b. of this section, may collect such rents in accordance
5 with an assignment of rents under which it is an assignee.
6

7 69. (New section) a. An association shall conduct elections
8 under the auspices of a committee of unit owners, none of whom
9 shall be current board members or candidates for the board, which
10 shall function independently of the executive board, or by using the
11 services of a qualified independent individual or organization taken
12 from a list provided by the department. The committee or
13 independent individual or organization, as the case may be, shall be
14 responsible for determining the eligibility of unit owners to vote or
15 to run for office, for counting ballots and for verifying results. No
16 unit owner shall be disqualified from running for office except for
17 reason of nonpayment of assessments, legal fees, late fees, fines
18 imposed in accordance with section 50 of P.L. , c. (C.)
19 (pending before the Legislature as this bill) or of a final
20 determination of a violation of the declaration, bylaws or rules of
21 the association, which violation remains uncured at the time of
22 determination of disqualification. The association shall give all unit
23 owners at least 60 days advance notice of the election so as to allow
24 all eligible persons who might be interested in filing as candidates a
25 reasonable opportunity to do so. No person shall be disqualified
26 from voting in an election for any reason other than delinquency in
27 the payment of maintenance charges. Any person who is
28 disqualified from voting or running for office and wishes to
29 challenge that disqualification may appeal the disqualification to the
30 department, which shall investigate and decide the matter. A
31 person who is disqualified and wishes to appeal the disqualification
32 may cast a ballot that shall be kept apart from the other ballots and
33 counted only in the event that the disqualification is overruled on
34 appeal; provided, however, that any such ballot that is kept apart
35 from the other ballots need only be counted if there is any
36 possibility that it might affect the outcome of the election. Unit
37 owners shall be allowed to cast ballots anonymously by mail, in
38 person, or where the association permits, by electronic ballot. A
39 mailed ballot or an electronic ballot shall be deemed to be a proxy
40 for purposes of determining a quorum for the meeting at which the
41 election is conducted. A non-directed proxy ballot may be counted
42 only in voting for an office for which there are not as many listed
43 candidates as there are positions to be filled. All candidates shall be
44 afforded the opportunity to observe the entire process of counting
45 and tabulation of the ballots, either in person or through a
46 designated representative, and shall have access to lists of persons
47 who are eligible to vote and, after the voting has started, to any list
48 of persons who have voted that the association may maintain. Any

1 challenge to the validity of an election shall be submitted to the
2 executive board and to the department within 30 days following the
3 date on which written notice of the results of the election is given to
4 members of the association. Pending the outcome of any such
5 challenge, the persons declared to be elected by the committee,
6 individual or organization responsible for conducting the election
7 shall serve as de facto officers or trustees, as the case may be.
8 Ballots, envelopes, registration records, eligibility lists, proofs of
9 mailing, and other voting materials shall be subject to inspection by
10 all unit owners at the time of the election and shall be sealed after
11 the election and kept unopened, in the custody of a licensed
12 certified public accountant or the organization that conducted the
13 election for not less than 30 days following the election, or until
14 such later time as any challenge to the election brought within that
15 30-day period has been resolved and the documents are no longer
16 required. Voting materials and procedures shall at all times be
17 subject to inspection and review by the commissioner. The parties
18 to any dispute shall be allowed the opportunity to be present or be
19 represented at any such inspection and review.

20 b. Upon the written request of any candidate submitted at least
21 10 days prior to the scheduled election, the commissioner may
22 appoint one or more persons to monitor an election to ensure
23 fairness and accuracy, if previous documented evidence of election
24 problems within an association exists. A candidate may also request
25 the commissioner to investigate any allegations of fraud or abuse in
26 election proceedings. The commissioner shall have power to
27 invalidate any election in which the commissioner finds there to
28 have been fraud or any other abuse of the electoral process,
29 including, but not limited to, denial of equal access to all eligible
30 voters for all candidates. In the event that any association fails or
31 refuses to conduct a fair and open election at such time as elections
32 are required for such association, the commissioner shall order that
33 the election be conducted at such time and under such supervision
34 as the commissioner shall direct, or the commissioner shall conduct
35 the election directly.

36 c. If, at the time that all nominations are closed, the number of
37 candidates for each office does not exceed the number of open
38 positions for each such office, all candidates may be declared
39 elected without the necessity for further compliance with the
40 provisions of this section. If the association has not formed an
41 election committee or enlisted the services of a qualified
42 independent individual or organization because, immediately prior
43 to the election meeting, no positions were contested, but one or
44 more positions become contested as a result of nominations made at
45 the meeting, an election committee shall be created to conduct the
46 election to the contested position or positions that shall be
47 composed of representatives designated by the candidates.

1 70. (New section) Notwithstanding any term of P.L. ,
2 c. (C.) (pending before the Legislature as this bill), or of any
3 other law or the governing documents of an association to the
4 contrary, an association shall not be required to enforce a violation
5 of a rule, regulation or restrictive covenant when an association or
6 its employees or agents cannot, in the ordinary discharge of their
7 functions, objectively determine that there exists a violation of such
8 rules, regulations or restrictive covenants. Nothing herein shall
9 prohibit an association from enforcing a violation that it is not
10 required to enforce, provided that the association shall undertake
11 such enforcement pursuant to the terms of P.L. , c. (C.)
12 (pending before the Legislature as this bill). Any unit owner may
13 enforce the rules, regulations and restrictive covenants of the
14 association through an action filed with a court of competent
15 jurisdiction, or by alternative dispute resolution proceedings in
16 accordance with section 86 of P.L. , c. (C.) (pending before
17 the Legislature as this bill). Any association refusing to enforce an
18 alleged violation of a rule, regulation or restrictive covenant
19 pursuant to the terms of this section shall have no liability to any
20 unit owner or third party for such refusal.

21
22 71. (New section) a. An association, to the extent practicable,
23 shall solicit a minimum of three bids for any contract for services or
24 materials whenever the amount payable by the association in
25 connection with the services or materials exceeds \$17,500, or such
26 higher amount as may be established by the Governor as the basic
27 bid threshold amount for local public contracts, in accordance with
28 section 3 of P.L 1971, c.198 (C.40A:11-3), in any 12-month period.
29 An association shall solicit in a uniform manner, containing the
30 required specifications, a minimum of three sealed bids, to be
31 opened only at a publicly announced meeting open to all unit
32 owners, which may be either a meeting of the executive board or of
33 a committee appointed by the executive board. These bidding
34 requirements shall also apply in any case in which the aggregate
35 amount that might be paid to a single entity or a group of entities
36 under common control for different services would exceed the
37 stated thresholds. The thresholds shall not be applicable, however,
38 to payments in excess of the threshold amounts that are necessarily
39 incurred as a result of circumstances not anticipated at the time that
40 the contract was awarded. The association shall award the contract
41 to the vendor who provided the lowest bid, unless the board
42 determines, for good cause that shall be expressly stated at a
43 meeting open to attendance by the owners, that it would be in the
44 best interests of the residents of the common interest community to
45 award the contract to a vendor other than that vendor. The executive
46 board shall have the right to negotiate with vendors for terms more
47 favorable to the association after opening all bids and prior to
48 awarding a contract. The requirements of this section shall not give

1 rise to a cause of action by a vendor who provides a bid to an
2 executive board. No member of an executive board or manager or
3 other person employed by, or acting on behalf of, an association
4 shall make any disclosure that gives an advantage to any bidder or
5 otherwise compromises or interferes with the integrity and fairness
6 of the bidding process.

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

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

12 (2) renewal of an existing contract for services, unless the
13 increase in payments would exceed the greater of five percent or the
14 average increase in the most-recently published Consumer Price
15 Index for Urban Wage Earners issued by the United States
16 Department of Labor and applicable to the New York and
17 Philadelphia regions, or unless the contract had not been bid for at
18 least four years;

19 (3) professional services of attorneys, accountants, community
20 managers, engineers, and architects; provided, however, that the
21 executive board shall in each instance state supporting reasons for
22 its action in the resolution awarding each contract and shall give
23 notice, stating the nature, duration, service, and amount of the
24 contract and that the resolution and contract are on file and
25 available for inspection by members of the association at the offices
26 of the association, in a manner that may reasonably be expected to
27 enable all members of the association to be informed;

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

29 (5) contracts whenever necessary to prevent or ameliorate an
30 imminent peril to life or property; provided, however, that this
31 exception shall apply only to the extent necessary to eliminate the
32 imminent peril;

33 (6) doing of work by any employee of the association in the
34 course of such employment;

35 (7) purchase of perishable foods as a subsistence supply;

36 (8) supplying of any product or the rendering of any service by a
37 public utility in accordance with tariffs or schedules of charges filed
38 with the public entity having regulatory jurisdiction;

39 (9) equipment repair service of an emergency or exceptional
40 nature, and necessary parts furnished in connection with such
41 service, under circumstances that would make competitive bidding
42 impracticable or otherwise not in the best interest of the association.
43 A written statement specifying such circumstances shall be
44 maintained as an association record open to examination by
45 homeowners;

46 (10) the publication of legal s in newspapers;

47 (11) the acquisition of artifacts or other items of unique intrinsic,
48 artistic or historical character;

- 1 (12) goods and services necessary or required to prepare and
2 conduct an election;
- 3 (13) insurance, including the purchase of insurance coverage and
4 consultant services, under circumstances that would make
5 competitive bidding impracticable or otherwise not in the best
6 interest of the association. A written statement specifying such
7 circumstances shall be maintained as an association record open to
8 examination by homeowners;
- 9 (14) library and educational goods and services;
- 10 (15) cooperative or other marketing of recycling materials
11 recovered through a recycling program;
- 12 (16) vehicle towing and storage contracts at rates and charges
13 not exceeding those established by the municipality in which the
14 common interest community is located, pursuant to section 1 of
15 P.L.1979, c.101 (C.40:48-2.49);
- 16 (17) purchase of steam or electricity;
- 17 (18) wastewater treatment services;
- 18 (19) expenses for travel and conferences; and
- 19 (20) provision or performance of goods or services for the
20 support or maintenance of proprietary computer hardware and
21 software.
- 22 c. An association of members in a community having fewer than
23 30 residential units, through a resolution adopted pursuant to an
24 open meeting and by a unanimous vote of all of the members, may
25 waive any or all of the provisions of this section.
- 26 d. Any two or more associations may contract for goods or
27 services jointly in accordance with the provisions of this section.
- 28 e. The provisions of this section shall not be applicable to any
29 contract in existence prior to the effective date of P.L. ,
30 c. (C.) (pending before the Legislature as this bill).
- 31
- 32 72. (New section) a. Except as otherwise provided in this
33 section, no member of the executive board, or employee or
34 community manager of an association shall have an interest in a
35 business organization or engage in any business, transaction or
36 professional activity, which is in conflict with the proper discharge
37 of his or her duties on behalf of the association, including, but not
38 limited to, having a direct or indirect interest in any contracts for
39 work or materials used by the association, or in any sales, leases or
40 agreements in connection with any lands owned or managed by the
41 association, or in any fees or compensation of any kind paid to or
42 owed to any broker, architect, engineer, vendor or other person
43 doing business with the association. A member of the executive
44 board, or employee or community manager of an association, who
45 has any interest that is actually or potentially in conflict with his or
46 her duties on behalf of the association, may continue in his or her
47 capacity with the association provided that he or she promptly
48 discloses the conflicting relationship at a meeting open to the

1 members of the association and recuses himself or herself from all
2 involvement in the transaction on behalf of the executive board,
3 which recusal shall be duly noted in the minutes of the meeting at
4 which it occurred; provided, however, that a community manager
5 who has recused himself or herself from the process of selecting a
6 vendor with which he or she is affiliated may perform such services
7 as may be required to fulfill the requirements of the contract once it
8 has been duly executed. Failure of a member of an executive board,
9 or an employee or community manager of an association, to comply
10 with this requirement, or failure of a vendor to disclose any such
11 conflicting relationship with any person required to recuse himself
12 or herself who has not done so, shall make the contract voidable by
13 the association.

14 b. No board member, employee or community manager shall use
15 his or her position to secure or attempt to secure unwarranted
16 privileges for any person.

17 c. No board member, employee or community manager shall act
18 in his or her capacity as a board member or employee or community
19 manager in any matter in which he or she, a related person, or any
20 other person residing in his or her household or the household of a
21 related person, or any business organization in which any of such
22 persons has an interest, has a direct or indirect financial or personal
23 involvement that might reasonably be expected to impair the
24 objectivity or independence of judgment of the board member,
25 employee or community manager.

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

30 e. A community manager who is directly or indirectly affiliated
31 with any business entity that provides services or otherwise
32 contracts with any common interest community shall file with the
33 executive board of the association a list of all such affiliated
34 entities, which list shall be updated at least annually and whenever
35 any change occurs. It shall be the obligation of the community
36 manager and of the affiliate to disclose the affiliation relationship at
37 any time that the affiliate submits a bid to an association employing
38 the community manager. If any such affiliate submits a bid to an
39 association, the exemptions set forth in section 71 of P.L. ,

40 c. (C.) (pending before the Legislature as this bill) shall not
41 apply and the bids shall be sealed and be opened at an open
42 meeting in the same manner as any other non-exempt bids. All
43 payments to any such affiliate shall be made only after at least two
44 members of the executive board shall have certified that the work
45 was performed in a satisfactory manner and shall either sign off on
46 the invoice or sign the check. Failure of either the community
47 manager or the affiliate to comply with the requirements of this
48 subsection shall render the contract voidable by the association at

1 its option; provided, however, that the contract shall not be voidable
2 if necessary service are rendered, or necessary goods are provided,
3 in an emergency situation in which it is not possible to get prior
4 approval of members of the executive board, and any affiliation
5 relationship that has not previously been disclosed is disclosed as
6 soon thereafter as possible.

7
8 ARTICLE 4

9 PROTECTION OF PURCHASERS

10
11 73. (New section) a. Sections 73 through 88 of P.L. ,
12 c. (C.) (pending before the Legislature as this bill) shall be
13 applicable to all units subject to P.L. , c. (C.) (pending before
14 the Legislature as this bill), except as provided in subsection b. of
15 this section.

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

- 18 (1) gratuitous disposition of a unit;
19 (2) disposition pursuant to court order;
20 (3) disposition by a government or governmental agency;
21 (4) disposition by foreclosure or deed in lieu of foreclosure;
22 (5) disposition to a dealer;
23 (6) disposition that may be canceled at any time and for any
24 reason by the purchaser without penalty; or
25 (7) disposition of a unit restricted to nonresidential use, unless a
26 majority of the voting interests in a common interest community
27 devoted to nonresidential use determines that sections 73 through
28 88 of P.L. , c. (C.) (pending before the Legislature as this
29 bill) shall apply, in full or part.

30
31 74. (New section) a. Except as provided in subsection b. of this
32 section, a declarant, before offering any interest in a unit to the
33 public, shall prepare a public offering statement conforming to the
34 requirements of section 8 of "The Planned Real Estate Development
35 Full Disclosure Act," P.L.1977, c.419 (C.45:22A-28).

36 b. A declarant may transfer responsibility for preparation of all
37 or a part of the public offering statement to a successor declarant
38 pursuant to section 52 of P.L. , c. (C.) (pending before the
39 Legislature as this bill) or to a dealer who intends to offer units in
40 the common interest community. In the event of any such transfer,
41 the transferor shall provide the transferee with any information
42 necessary to enable the transferee to fulfill the requirements of
43 subsection a. of this section.

44 c. If a unit is part of a common interest community and is part of
45 another common interest community in connection with the sale of
46 which the delivery of a public offering statement is required under
47 the laws of this State, a single public offering statement conforming
48 to the requirements of "The Planned Real Estate Development Full

1 Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.) as those
2 requirements relate to each regime in which the unit is located, and
3 to any other requirements imposed under the laws of this State, may
4 be prepared and delivered in lieu of providing two or more public
5 offering statements.

6
7 75. (New section) P.L. , c. (C.) (pending before the
8 Legislature as this bill) shall not affect or amend the terms or
9 applicability of "The Planned Real Estate Development Full
10 Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.), except as
11 expressly set forth in sections 2, 74 and 76 of P.L. , c. (C.)
12 (pending before the Legislature as this bill).

13
14 76. (New section) If the declaration provides that ownership or
15 occupancy of any units is or may be in time shares, the public
16 offering statement in addition to the information required by section
17 8 of "The Planned Real Estate Development Full Disclosure Act,"
18 P.L.1977, c.419 (C.45:22A-28) shall disclose the:

19 a. number and identity of units in which time shares may be
20 created;

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

22 c. minimum duration of any time shares that may be created;
23 and

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

28
29 77. (New section) a. Except in the case of a sale in which
30 delivery of a public offering statement is required pursuant to
31 section 8 of "The Planned Real Estate Development Full Disclosure
32 Act," P.L.1977, c.419 (C.45:22A-28) or unless exempt under
33 subsection b. of section 73 of P.L. , c. (C.) (pending before
34 the Legislature as this bill), a unit owner shall furnish to a purchaser
35 before the earlier of the date of conveyance or transfer of the right
36 to possession of a unit, a copy of the declaration (other than any
37 plats and plans), the bylaws, the rules or regulations of the
38 association, and a certificate containing:

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

42 (2) a statement setting forth the amount of the periodic common
43 expense assessment currently due and payable from the selling unit
44 owner;

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

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

- 1 (5) a statement of the amount of any reserves for capital
- 2 expenditures and of any portions of those reserves designated by the
- 3 association for any specified projects;
- 4 (6) the most recently prepared balance sheet and income and
- 5 expense statement, if any, of the association;
- 6 (7) the current operating budget of the association;
- 7 (8) a statement of any unsatisfied judgments against the
- 8 association and the status of any pending suits in which the
- 9 association is a defendant;
- 10 (9) a statement describing any insurance coverage maintained by
- 11 the association;
- 12 (10) a statement as to whether the executive board has given or
- 13 received written that any existing uses, occupancies, alterations, or
- 14 improvements in or to the unit or to the limited common elements
- 15 assigned thereto violate any provision of the declaration;
- 16 (11) a statement as to whether the executive board has received
- 17 written from a governmental agency of any violation of
- 18 environmental, health, or building code with respect to the unit, the
- 19 limited common elements assigned thereto, or any other portion of
- 20 the common interest community which have not been cured;
- 21 (12) a statement of the remaining term of any leasehold estate
- 22 affecting the common interest community and the provisions
- 23 governing any extension or renewal thereof;
- 24 (13) a statement of any restrictions in the declaration affecting
- 25 the amount that may be received by a unit owner upon sale,
- 26 condemnation, casualty loss to the unit or the common interest
- 27 community, or termination of the common interest community;
- 28 (14) in a cooperative, an accountant's statement, if any was
- 29 prepared, as to the deductibility for federal income tax purposes by
- 30 the unit owner of real estate taxes and interest paid by the
- 31 association;
- 32 (15) a statement describing any pending sale or encumbrance of
- 33 common elements; and
- 34 (16) a statement disclosing the effect on the unit to be conveyed
- 35 of any restrictions on the owner's right to use or occupy the unit or
- 36 to lease the unit to another person.
- 37 b. The association, within 10 days after a request by a unit
- 38 owner, shall furnish a certificate containing the information
- 39 necessary to enable the unit owner to comply with this section. A
- 40 unit owner providing a certificate pursuant to subsection a. of this
- 41 section, and any real estate broker or sales agent who provides
- 42 brokerage services to the unit owner or purchaser shall not be liable
- 43 to the purchaser for:
- 44 (1) any erroneous information provided by the association and
- 45 included in the certificate, or
- 46 (2) any matter related to the common interest community except,
- 47 with respect to liability between the unit owner and a purchaser, as
- 48 may otherwise be agreed in writing.

1 c. A purchaser, other than a purchaser through a foreclosure,
2 shall not be liable for any unpaid assessment or fee greater than the
3 amount set forth in the certificate prepared by the association. A
4 unit owner shall not be liable to a purchaser for the failure or delay
5 of the association to provide the certificate in a timely manner, but
6 the purchase contract shall be voidable by the purchaser until the
7 certificate has been provided and for five days thereafter or until
8 conveyance, whichever first occurs.

9 d. The seller shall notify the association, not less than 30 days
10 prior to the proposed settlement date for the sale, of the names,
11 addresses and telephone numbers of the prospective purchasers.
12 The association shall, upon notification, alert the seller, in writing,
13 to any violations of record that have not been remedied, and shall
14 provide a copy of the to the purchaser. The association shall,
15 within three business days following receipt of a written request
16 from purchaser, mail written notice to the purchaser confirming
17 whether the outstanding violation has been cured. If purchaser fails
18 to confirm that the violation has been cured prior to settlement, the
19 purchaser shall become responsible for curing the violation.
20

21 78. (New section) a. In the case of a sale of a unit where
22 delivery of a public offering statement is required pursuant to "The
23 Planned Real Estate Development Full Disclosure Act," P.L.1977,
24 c.419 (C.45:22A-21 et seq.), a seller:

25 (1) before conveying a unit, shall record or furnish to the
26 purchaser releases of all liens, except:

27 (a) liens on real estate that a declarant has the right to withdraw
28 from the common interest community, or

29 (b) that the purchaser expressly agrees to take subject to or
30 assume, and that encumber:

31 (i) in a condominium, that unit and its common element interest,
32 and

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

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

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

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

42 (2) all other liens on that real estate unless the public offering
43 statement describes certain real estate that may be conveyed subject
44 to liens in specified amounts.
45

46 79. (New section) a. A unit may be sold by the sheriff on
47 execution, free of any claim that is not a lien of record for common
48 expenses or other assessments by the association, but any funds

1 derived from that sale remaining after satisfaction of prior liens and
2 charges, but before distribution to the previous unit owner, shall be
3 applied to payment of such unpaid common expenses or other
4 assessments if written notice thereof shall have been given to the
5 sheriff before distribution. Any such unpaid common expenses
6 which shall remain uncollectible from the former unit owner for a
7 period of more than 60 days after such sheriff's sale may be
8 reassessed by the association as common expenses to be collected
9 from all unit owners, including the purchaser who acquired title at
10 the sheriff's sale, his successors and assigns. Unless prohibited by
11 the master deed, declaration or bylaws, the association may bid in
12 and purchase the unit at a sheriff's sale, and acquire, hold, lease,
13 mortgage, and convey the same.

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

22

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

26 (1) Any affirmation of fact or promise which relates to the unit,
27 its use, or rights appurtenant thereto, area improvements to the
28 common interest community that would directly benefit the unit, or
29 the right to use or have the benefit of facilities not located in the
30 common interest community, shall create an express warranty that
31 the unit and related rights and uses will conform to the affirmation
32 or promise.

33 (2) Any model or description of the physical characteristics of
34 the common interest community, including plans and specifications
35 of or for improvements, shall create an express warranty that the
36 common interest community will conform to the model or
37 description, unless express disclaimers in language in common
38 understanding calling the purchaser's attention to the exclusion of
39 this warranty are displayed on the plans and specifications, or in the
40 model, and are explicitly referenced in the sales contract.

41 (3) Any description of the quantity or extent of the real estate
42 comprising the common interest community, including plats or
43 surveys, shall create an express warranty that the common interest
44 community will conform to the description, subject to customary
45 tolerances.

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

1 b. Neither formal words, such as "warranty" or "guarantee," nor a
2 specific intention to make a warranty, shall be necessary to create
3 an express warranty of quality, but a statement purporting to be
4 merely an opinion or commendation of the real estate or its value
5 shall not create a warranty.

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

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

13
14 81. (New section) a. Unless the limitation period is tolled under
15 section 59 of P.L. , c. (C.) (pending before the Legislature
16 as this bill) or affected by subsection d. of this section, a judicial
17 proceeding for breach of any obligation arising under section 80 of
18 P.L. , c. (C.) (pending before the Legislature as this bill),
19 shall be commenced within six years after the cause of action
20 accrues.

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

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

28 (2) as to each common element, at the time the common element
29 is completed or, if later, as to (a) a common element that is added to
30 the common interest community by exercise of development rights,
31 at the time the first unit which was added to the condominium by
32 the same exercise of development rights is conveyed to a bona fide
33 purchaser, or (b) a common element within any other portion of the
34 common interest community, at a time the first unit is conveyed to a
35 bona fide purchaser.

36 c. If a warranty of quality explicitly extends to future
37 performance or duration of any improvement or component of the
38 common interest community, the cause of action shall accrue at the
39 time the breach is discovered or at the end of the period for which
40 the warranty explicitly extends, whichever is earlier.

41 d. During the period of declarant control, the association may,
42 pursuant to section 88 of P.L. , c. (C.) (pending before the
43 Legislature as this bill), authorize an independent committee of the
44 executive board to evaluate and enforce by any lawful means
45 warranty claims involving the common elements, and to
46 compromise those claims. If the committee is so created, the
47 limitation period for claims for these warranties shall begin to run

1 from the date of the first meeting of the committee, regardless of
2 when the period of declarant control terminates.

3 e. Nothing in this section shall be construed to impair or negate
4 any warranties which may have been created pursuant to any other
5 law or regulation, including those warranties provided pursuant to
6 "The New Home Warranty and Builders' Registration Act,"
7 P.L.1977, c.467 (C.46:3B-1 et seq.).
8

9 82. (New section) a. If a declarant or any other person subject
10 to P.L. , c. (C.) (pending before the Legislature as this bill)
11 fails to comply with any of its provisions or any provision of the
12 declaration or bylaws, any person or class of persons adversely
13 affected by the failure to comply shall have a claim for appropriate
14 relief. Punitive damages may be awarded for a willful failure to
15 comply with P.L. , c. (C.) (pending before the Legislature as
16 this bill). The court, as appropriate, may award court costs and
17 reasonable attorney's fees .

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

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

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

31 Nothing in this section shall affect the right of a unit owner to
32 submit a matter to alternative dispute resolution pursuant to section
33 86 of P.L. , c. (C.) (pending before the Legislature as this
34 bill).
35

36 83. (New section) No promotional material shall be displayed
37 or delivered to a prospective purchaser which describes or portrays
38 an improvement that is not in existence unless the description or
39 portrayal of the improvement in the promotional material is
40 conspicuously labeled or identified either as "MUST BE BUILT" or
41 as "NEED NOT BE BUILT."
42

43 84. (New section) a. Except for improvements labeled "NEED
44 NOT BE BUILT" the declarant shall complete all recreational and
45 parking facilities or amenities depicted on any site plan or other
46 graphic representation, including any plats or plans prepared
47 pursuant to section 32 of P.L. , c. (C.) (pending before the
48 Legislature as this bill), whether or not that site plan or other

1 graphic representation is contained in the public offering statement
2 or in any promotional material distributed by or for the declarant.

3 b. The declarant shall be subject to liability for the prompt repair
4 and restoration, to a condition compatible with the remainder of the
5 common interest community affected by the exercise of rights
6 reserved pursuant to or created by sections 33 through 37, 39 and 40
7 of P.L. , c. (C.) (pending before the Legislature as this bill).
8

9 85. (New section) In the case of a sale of a unit in which
10 delivery of a public offering statement is required, a contract of sale
11 may be executed, but no interest in that unit may be conveyed until
12 the declaration is recorded and the unit is substantially completed,
13 as evidenced by an independent licensed architect, surveyor or
14 engineer, or by issuance of a certificate of occupancy authorized by
15 law.
16

17 86. (New section) a. Every association shall offer an alternative
18 dispute resolution procedure that shall be readily available as a
19 cost-effective alternative to litigation for the resolution of qualified
20 disputes between individual owners and the association, and
21 between different owners. For the purposes of this section, a
22 "qualified dispute" shall be construed broadly, and means those
23 disputes involving the common interest community, the bylaws or
24 the rules of the association. An association shall not be required to
25 offer alternative dispute resolution proceedings for a dispute that is
26 exclusively a personal dispute between two or more parties and
27 which is unrelated to the common elements, or for a dispute
28 regarding collection of an unpaid assessment, or for a dispute that
29 does not involve the actual or prospective imposition of a fine or
30 loss or denial of privileges. Assessments, late fees, and fines for
31 nonpayment of assessments or late fees may be challenged in an
32 alternative dispute resolution proceeding, but only on the grounds
33 that they were not authorized by the governing documents or by law
34 or that the method utilized for imposing them was not consistent
35 with the procedure set forth in the declaration, bylaws or law.

36 b. Alternative dispute resolution shall be effectuated through
37 implementation of a mediation-arbitration procedure utilizing
38 independent persons trained in both mediation and arbitration. The
39 persons acting as mediators and arbitrators shall comply with the
40 procedural rules established by the commissioner, which shall
41 include sufficient training for mediating and arbitrating disputes in
42 a common interest community and meeting minimum requirements
43 concerning knowledge of common interest community practices and
44 procedures and the statutory and common law affecting common
45 interest communities. Qualifications for volunteer or professional
46 dispute resolvers shall include sufficient training for mediating or
47 arbitrating disputes in a common interest community, requirements

1 knowledge of community association issues and any other
2 requirements necessary to provide such services

3 c. With respect to a qualified dispute in connection with which
4 the association is a party, reasonable filing fees may be charged by
5 an association for dispute resolution; provided, however, that such
6 fees shall not exceed \$75 for each party, which shall be refundable
7 to a party found to be the prevailing party. With respect to a
8 qualified dispute in which the association is not a party to the
9 dispute, all fees charged for alternative dispute resolution shall be
10 borne by the owners who are parties to the dispute.

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

13 (1) Upon the written request of any owner for resolution of a
14 qualified dispute between the owner and the association, or between
15 owners, the association shall provide dispute resolution in
16 accordance with the terms of this section, the procedural rules of the
17 Department of Community Affairs and those rules of the
18 association that are consistent with this section. Within seven days
19 following receipt of notice from an owner for dispute resolution, or
20 prior to commencing suit, the association shall provide the owner
21 with a list of qualified mediator-arbitrators from the list maintained
22 by the Office of the Ombudsman, which list shall be maintained by
23 the Department of Community Affairs and made promptly available
24 upon request. If any owner who is a necessary party to a dispute
25 resolution fails to respond in writing, within 14 days following the
26 posting in the United States mails, postage prepaid, of the
27 association's notice offering dispute resolution and requesting a
28 response within such time period, which notice was addressed to the
29 owner at the address of record in the business office of the
30 association and at any other address that the owner may have
31 provided in writing for alternative or emergency notification, the
32 owner shall be deemed to have waived the right to participate in
33 dispute resolution and the association shall have no further
34 obligation under this section.

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

39 (3) Upon selection of a dispute resolver, the association shall
40 notify the dispute resolver so selected, who shall schedule the
41 mediation-arbitration procedure within 30 days of the dispute
42 resolver's selection.

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

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

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

14 (7) The dispute resolver shall advise the parties, prior to the
15 commencement of the dispute resolution procedure, whether the
16 parties will immediately proceed to arbitration if mediation is
17 unsuccessful, or whether a separate proceeding will be established
18 for arbitration if the mediation fails to produce a written agreement.
19 If the dispute resolver advises the parties that mediation and
20 arbitration are to be separate proceedings, and the parties do not
21 reach a written agreement during the mediation phase, the dispute
22 resolver shall schedule the arbitration hearing to occur within 30
23 days of the conclusion of mediation. Each party to the arbitration
24 shall have the right to request one adjournment of the hearing date,
25 provided the adjournment request is made within 10 days of the
26 date of the dispute resolver's notice establishing the date of the
27 hearing. In case of an emergency, and upon good cause shown, the
28 dispute resolver may honor a request for an adjournment that is
29 made more than 10 days after the dispute resolver's notice. Upon a
30 request for an adjournment, the dispute resolver shall reschedule the
31 hearing within 14 days of the original hearing date unless (a) such
32 date would cause a material hardship to one or more parties,
33 whereupon the dispute resolver shall reschedule arbitration for a
34 date certain in the arbitrator's sole discretion, but such date shall
35 only be more than 30 days after the original date set for the
36 arbitration hearing in the event of material hardship due to sickness,
37 injury or death in the immediate family of a party to the dispute; or
38 (b) the parties mutually consent to an alternate date. If any party
39 fails to comply with the dispute resolver's scheduling of the
40 arbitration, the arbitrator shall enter an award in favor of the non-
41 defaulting party or parties.

42 (8) The dispute resolver shall render a written arbitration award
43 within 14 days following the conclusion of the arbitration hearing.
44 If the arbitrator fails to issue a written award within 14 days, the
45 association shall give notice of such failure to the Department of
46 Community Affairs and to the arbitrator. If the arbitrator fails to
47 issue a written award within a further 16-day period, either party
48 shall have the right to file suit with respect to the subject matter of

1 the arbitration. Nothing herein shall prevent the association from
2 filing a lien with respect to the subject matter of the dispute
3 following the expiration of the 30-day period; provided, however,
4 that the enforcement of any such lien may be stayed by a court
5 having jurisdiction and that, in the event of a ruling by the arbitrator
6 adverse to the association after the end of the 30-day period, the
7 lien shall be discharged by the association at its sole cost and
8 expense.

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

14 e. The association shall also provide alternative dispute
15 resolution in any dispute between or among unit owners; provided,
16 however, that when the association is not a party to the dispute,
17 such dispute resolution shall be at the sole cost and expense of the
18 parties.

19 f. If emergency relief is required, a motion to stay the alternative
20 dispute proceedings may be filed in the Superior Court. The motion
21 shall be accompanied by a verified petition alleging facts that, if
22 proven, would support entry of a temporary injunction, and if an
23 appropriate motion and supporting papers are filed, the alternative
24 dispute resolution proceedings shall be stayed pending a court
25 hearing and disposition of a motion for temporary injunction.

26 g. An owner may file a claim with a court of competent
27 jurisdiction with regard to any matter that would constitute a
28 qualified dispute; provided, however, that (1) any such court filing
29 shall be deemed an election of remedies and shall bar the owner
30 from any further alternative dispute resolution proceedings; (2)
31 when an owner has initiated a claim with a court of competent
32 jurisdiction after having been advised by the association of the right
33 to participate in alternative dispute resolution proceedings, nothing
34 herein shall prohibit the association from immediately filing a
35 notice of fine or revoking or suspending the owner's privileges, if
36 otherwise permitted by law and by the governing documents and
37 subject to the authority of the court to stay any such action; and (3)
38 where an owner has, in accordance with paragraph (5) of subsection
39 d. of this section, elected to participate in binding arbitration, the
40 owner shall not be permitted to file a claim with a court of
41 competent jurisdiction except as provided in paragraph (5) of
42 subsection d of this section. No claim may be filed by an owner
43 while alternative dispute resolution proceedings are ongoing
44 pursuant to P.L. , c. (C.) (pending before the Legislature as
45 this bill), unless such proceedings have been abated pursuant to
46 subsection f. of this section. No application for alternative dispute
47 resolution shall be filed with regard to any matter pending before a
48 court of competent jurisdiction, except upon the order of the court.

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

32
33 87. (New section) Except for applications for emergent relief,
34 prior to the commencement of any form of construction defects
35 litigation on behalf of an association against a declarant or any
36 members of the executive board appointed by the declarant, the
37 following alternative dispute procedure shall be followed:

38 a. The association shall give written notice to the declarant, by
39 certified mail, return receipt requested, which shall be referred to as
40 the "notice." The notice shall be accompanied by the association's
41 statement of all known causes of action, and its version of the facts
42 involved and copies of any reports or documents supporting the
43 association's claim.

44 b. Within 30 days of the receipt of the notice from the
45 association, the declarant or its agent may send a written request to
46 investigate the association's claim, which shall be referred to as the
47 "declarant's reply." The declarant's reply shall include a stipulation
48 by the declarant that all statutes of limitation applicable to any

1 claim by the association against the declarant shall be tolled for 180
2 days or such shorter period of time as set forth in the cancellation
3 notice delivered pursuant to subsection c. of this section. The
4 tolling of the statutes of limitation shall be effective as of the date
5 of the declarant's reply. If the declarant fails to send the declarant's
6 reply within 30 days or fails to stipulate to the required tolling of all
7 applicable statutes of limitation, then the association may institute
8 an action without satisfying any other condition of this section.

9 c. Upon receipt of the declarant's reply, the association shall, to
10 the extent practicable, make available for inspection and testing by
11 declarant or its agents, all common areas, interiors of applicable
12 individual units and the documents identified in the notice. All
13 inspections and testing, including testing that may cause physical
14 damage to the subject property, shall be at declarant's sole cost and
15 expense, shall be performed during the business week unless the
16 association and declarant agree otherwise, and shall be completed
17 within 60 days from the date of the declarant's reply. The declarant
18 may conduct destructive testing if the association has conducted
19 prior destructive testing related to the defects specified in the
20 association's notice or the parties mutually agree to destructive
21 testing. "Destructive testing" shall mean any act causing substantial
22 physical change in the condition of the premises which would
23 necessitate a repair to restore the premises to the condition that
24 existed prior to the testing. The testing shall be performed to
25 determine the existence, type, extent, or cause of a defect in the
26 design or construction of the development. Acts of repair or
27 maintenance by the association shall not constitute destructive
28 testing. Upon completion of any testing, declarant shall restore the
29 property to the condition that existed immediately prior to the
30 testing.

31 d. Within 60 days after completion of its inspections and testing,
32 the declarant shall submit a written statement to the association
33 setting forth declarant's proposed settlement of the claim, which
34 shall be referred to as the "settlement offer." If the declarant does
35 not deliver the settlement offer within the 60-day period, the
36 association may institute an action without satisfying any other
37 condition of this section.

38 e. Within 30 days of receipt of the settlement offer, the
39 association shall notify the declarant of two business dates during
40 the 45-day period following the date of the association's notice, the
41 first of which will not be earlier than 10 days following the date of
42 the association's notice, on which a majority of the executive board
43 will be prepared to meet with the declarant to discuss the
44 association's claims and the settlement offer. The association and
45 the declarant may be represented at the meeting by attorneys and
46 independent consultants.

47 f. If no settlement of the association's claim, or any part thereof,
48 has been agreed upon, then either the association or the declarant

1 may deliver a written demand within 15 days from the date of the
2 meeting held pursuant to subsection e. of this section for arbitration
3 of the association's claims. The party filing the demand for
4 arbitration shall be responsible for paying any filing fees or escrow
5 deposits related thereto. The arbitration shall be undertaken by and
6 in accordance with the Commercial Arbitration Rules of the
7 American Arbitration Association then in effect, unless the
8 declarant and the association agree to another form of alternative
9 dispute resolution in lieu of the provisions of this subsection. The
10 arbitration shall be non-binding. Arbitration hearings shall be
11 conducted in the county in which the property is located unless the
12 parties agree otherwise. The declarant and the association shall be
13 responsible for their own costs in connection with presenting their
14 respective cases. The cost of the arbitrator shall be equally shared
15 by the parties unless the arbitrator determines otherwise. If neither
16 the declarant nor the association delivers a written demand for
17 arbitration as provided herein, compliance with the terms of this
18 subsection shall not be a precondition to the association's institution
19 of litigation.

20 g. At any time subsequent to the tolling of the statute of
21 limitations, as set forth in the declarant's reply, the declarant may
22 give written notice terminating the tolling of the statute of
23 limitations. Upon delivery of the termination notice, the association
24 shall be relieved of its obligation to arbitrate under subsection f. of
25 this section, but, provided declarant has satisfied its obligations
26 under subsections b. and d. of this subsection, the association shall
27 be required to satisfy its obligations under subsections h. and i. of
28 this section. The tolling of any applicable statutes of limitation shall
29 terminate 180 days following the commencement of the tolling,
30 unless extended by mutual written agreement.

31 h. If the association does not accept the declarant's settlement
32 offer, or if either the association or the declarant does not accept the
33 arbitrator's determination, then the association may commence any
34 legal action the association deems appropriate, provided that prior
35 to the filing of any complaint commencing a legal action against the
36 declarant, a majority of the association's non-declarant members
37 present, in person or by proxy at a meeting of the association where
38 a quorum is present, shall approve the commencement of a lawsuit.
39 The quorum for a meeting of the members of the association for the
40 purposes set forth in this subsection shall be 33 percent of all
41 members of the association qualified to vote, unless the declaration
42 or bylaws shall provide for a lesser quorum requirement. For
43 purposes of determining a quorum, membership interests allocated
44 to declarant units will not be considered in determining a quorum.

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

- 1 (1) a statement of the association's claim against the declarant,
2 specifying all construction defects and other claims which comprise
3 the cause of action;
- 4 (2) a copy of the settlement offer and any other written responses
5 to the claim provided by the declarant;
- 6 (3) if the declarant and association participated in an arbitration
7 procedure pursuant to subsection f. of this section, a copy of the
8 arbitrator's findings along with the association's and declarant's
9 response to such findings, if any;
- 10 (4) a statement that the recovery of damages through litigation
11 may not result in the receipt of sufficient funds to pay all damages
12 or repair costs as estimated by the association's experts;
- 13 (5) an estimate of the minimum and maximum costs to the
14 association to prosecute the litigation and a statement that such
15 costs may not be recovered in the litigation;
- 16 (6) a description of the agreement with the attorney whom the
17 association contemplates retaining to prosecute the litigation; and
- 18 (7) such other information as the association deems appropriate
19 or as the declarant may have provided to the association in
20 connection with its distribution to its members.
- 21 j. All written materials provided to the association's members
22 will be privileged communications, unless the association agrees
23 otherwise, and shall not be admissible in evidence in any action
24 unless such materials would, notwithstanding their distribution to
25 the association's members, otherwise be admissible but for their
26 distribution to the association's members.
- 27 k. If the association fails to comply with any of the provisions of
28 this section, such failure may be asserted by declarant as a
29 procedural deficiency. Upon a judicial determination that the
30 association failed to comply with the provisions set forth in this
31 section, the association's complaint shall be stayed for an
32 appropriate period of time to permit the association to cure any non-
33 compliance.
- 34 l. Neither the failure to state a particular cause of action in the
35 notice provided for in subsection a. of this section nor the failure to
36 state a particular claim under paragraph (1) of subsection i. of this
37 section shall be deemed a procedural deficiency, nor prevent the
38 association from stating such other causes of action as it deems
39 necessary or appropriate in connection with any litigation against
40 the declarant.
- 41
- 42 88. (New section) a. During the period of declarant control after
43 the initial election of unit owner board members other than the
44 declarant, the executive board of the association may, upon the
45 request of any board member, authorize an independent committee
46 of at least five unit owners other than the declarant to evaluate,
47 compromise and enforce by any lawful means as provided in this
48 section any claims involving the common elements or any other

1 improvements in the common interest community which the
2 association is obligated to maintain. Only members of the executive
3 board elected by the unit owners other than the declarant and other
4 unit owners appointed by those independent members shall serve on
5 the committee, and the committee's decisions shall be free of any
6 control by the declarant or any member of the executive board or
7 officer appointed by the declarant. Any vacancies on the committee
8 shall be filled by the independent board members within 30 days,
9 and in the case of any tie votes by such board members, by the vote
10 of the unit owners other than the declarant within 60 days after the
11 vacancy occurs.

12 b. If the committee authorized in subsection a. of this section is
13 established and there has been substantial completion of the
14 common elements and public improvements in any phase of the
15 common interest community which are not covered by the
16 performance or maintenance guarantees posted with any
17 governmental agencies having jurisdiction, the committee shall, at
18 the declarant's request, cause such common elements and
19 improvements to be inspected and evaluated for compliance with
20 the declarant's warranty and construction obligations, with the
21 assistance of qualified independent engineering and legal
22 consultants selected by the committee. The fees for such consultants
23 shall be paid from funds contributed at closing for such purposes by
24 unit owners other than the declarant or by regular or special
25 common expense assessments, or by both; provided, however, that
26 the declarant shall have the option to supplement such funds to the
27 extent that it deems appropriate.

28 c. Public improvements to be dedicated to any governmental
29 entity shall be exempt from any direct warranty or construction
30 defect claims by the association or the unit owners other than the
31 declarant. Acceptance of any such public improvements by the
32 governmental entity to which they are to be dedicated shall be
33 deemed conclusive evidence that such improvements have been
34 satisfactorily completed and the declarant shall have no further
35 obligation with respect to same to the association, to any unit
36 owners other than the declarant, or to any governmental agency
37 having jurisdiction.

38 d. Within 120 days after the association's receipt of any request
39 for inspection of any phase of the completed common elements or
40 other improvements, the committee shall cause its engineering
41 consultant to inspect the particular completed improvements and
42 render a written evaluation of same to the committee. A copy of the
43 final report, following the committee's review of the initial
44 evaluation, shall be furnished to the declarant within 30 days after
45 the committee's receipt of the report. Thereafter, the committee, or
46 its designated representatives, and the declarant shall conduct one
47 or more joint inspections of the common elements and other
48 improvements covered by the declarant's request and pursue good

1 faith negotiations to resolve any warranty or construction defect
2 claims against the declarant. All fees and related expenses incurred
3 by the committee for engineering and legal consultants shall be paid
4 promptly by the association from available designated funds upon
5 receipt of the committee's written authorization to make such
6 payments.

7 e. If a settlement agreement is finalized between the committee
8 and the declarant, the declarant controlled executive board shall
9 have the authority to execute such an agreement and to release the
10 declarant from all liability with respect to the completed common
11 elements and improvements, subject to such terms and conditions as
12 may be acceptable to the committee. Any such settlement
13 agreement and release shall be legally binding upon the association
14 and the unit owners, provided that its form is approved by the
15 independent legal counsel retained by the committee on behalf of
16 the association.

17 f. If no settlement agreement is approved by the committee
18 within 180 days after the committee's receipt of the declarant's
19 request for inspection, the parties shall be obligated to proceed to
20 mediation within 30 days thereafter in accordance with the rules of
21 the American Arbitration Association. If no settlement is reached
22 through mediation within 15 days after commencement of same,
23 then the parties shall promptly proceed to non-binding arbitration of
24 any remaining issues in accordance with the rules of the American
25 Arbitration Association, and such mediation and non-binding
26 arbitration shall be conditions precedent to any litigation of the
27 warranty and construction defect claims against the declarant,
28 which shall also require the approval of a majority of the unit
29 owners other than the declarant. All professional fees and expenses
30 reasonably incurred by the association with regard to the mediation
31 or arbitration, or both, shall be borne by the non-declarant unit
32 owners and paid by the association promptly upon the receipt of
33 written authorization of the committee.

34 g. In the event that no settlement agreement and releases are
35 executed with respect to any phase of completed common elements
36 or improvements during the period of declarant control of the
37 executive board of the association, any statutes of limitation or
38 repose applicable to such phase shall be extended for a period of
39 one year after the assumption of control of the executive board by
40 unit owners other than the declarant. In addition, the declarant
41 controlled board shall not be obligated to commence suit for any
42 such claims during its period of control.

43 h. The procedures set forth in this section shall also apply to and
44 be binding upon the declarant and the association after the unit
45 owners, other than the declarant, assume control of the executive
46 board of the association; provided, however, that the independent
47 unit owner controlled executive board of the association shall not be
48 bound by the recommendations of the committee.

1 ARTICLE 5
2 STATE OVERSIGHT OF ASSOCIATIONS
3

4 89. (New section) The Commissioner of Community Affairs
5 shall have the following powers with regard to associations:

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

9 (1) furnishing of information concerning records required to be
10 maintained by the association and to be made available to unit
11 owners;

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

14 (3) establishment and implementation of a fair and efficient
15 procedure for the resolution of disputes between associations and
16 unit owners and among unit owners;

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

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

23 (6) enforcement of standards of due process and open
24 governance.

25 b. To issue subpoenas for the production of documents and the
26 attendance of witnesses with respect to the investigation of any
27 complaint.

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

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

33 e. To enforce all statutes and rules imposing any duty upon
34 associations.

35 f. (1) If the department determines, after notice, that an
36 association, or a past or current officer or executive board member
37 of an association, has: (a) violated any provision of P.L. ,
38 c. (C.) (pending before the Legislature as this bill), the
39 "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), "The
40 Planned Real Estate Development Full Disclosure Act," P.L.1977,
41 c.419 (C.45:22A-21 et seq.), or any other statute regulating
42 associations; (b) directly or through an agent or employee
43 knowingly engaged in any violation of the governing documents of
44 the association; or (c) violated any lawful order or rule of the
45 department; the department may issue and enforce an order
46 requiring the association or past or present executive board member
47 or officer to cease and desist from the unlawful practice or to take
48 such other affirmative action as in the judgment of the department

1 will carry out the purposes of P.L. , c. (C.) (pending before
2 the Legislature as this bill).

3 In the event the department has reason to believe that any person
4 subject to licensing by any agency of State government has
5 knowingly engaged in any unlawful practice in connection with the
6 operation of an association, the department shall refer the matter to
7 the agency having licensing jurisdiction over such person.

8 If the department makes a finding of fact in writing that the
9 public interest will be irreparably harmed by delay in issuing an
10 order, it may issue a temporary cease and desist order. Every
11 temporary cease and desist order shall include in its terms a
12 provision that upon request a hearing shall be held within 10 days
13 of such request to determine whether or not it becomes permanent.
14 Such temporary cease and desist order shall be forwarded by
15 certified mail.

16 (2) The department shall provide an opportunity for a hearing for
17 any association, or for any current or former executive board
18 member or officer, prior to the imposition of any sanction,
19 including monetary fines. Associations shall be subject to fines only
20 after they have failed or refused to comply with an order of the
21 department. The maximum fine that may be levied against an
22 association or former executive board member or officer for failure
23 to comply with an order to cease and desist from continuing to
24 violate an order of the department shall be \$1,000 per order.
25 Former executive board members or officers shall be not be subject
26 to fines for violations that occurred while they held board
27 membership or office. All fines or penalties levied by the
28 department shall be collected in accordance with the "Penalty
29 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

30 g. To remove from office, after notice and the opportunity for a
31 hearing, any executive board member or officer who shall fail to
32 comply with any order issued by the commissioner to cease and
33 desist from violating any statute or rule. Following any such
34 removal, the commissioner shall provide such assistance as may be
35 required by an association in scheduling and holding elections or in
36 managing the association until such time as the executive board is
37 able to function properly. Notice of any fine imposed upon the
38 association or a former board member or of the removal of an
39 executive board member or officer by the commissioner shall be
40 given to all unit owners by the executive board within 30 days of
41 the action and shall be entered upon the minutes of the next meeting
42 of the executive board or of the association. Current executive
43 board members and officers shall not be subject to the imposition of
44 a personal monetary fine or penalty under this subsection, other
45 than for failure or refusal to comply with an order of removal from
46 office.

47 h. To select, assign and provide trained and impartial volunteer
48 dispute resolvers for the purpose of resolving disputes in

1 conjunction with the Office of Dispute Settlement in accordance
2 with section 28 of P.L.1994, c.58 (C.52:27E-73).

3 i. To employ or contract, in conjunction with the Office of
4 Dispute Settlement, with persons who are professionally trained in
5 dispute resolution, as mediators and as arbitrators, and to establish
6 ethical and professional standards for such persons.
7

8 90. (New section) a. On or before the first day of the fourth
9 month next following the effective date of P.L. , c. (C.)
10 (pending before the Legislature as this bill), and annually on the
11 same date thereafter, all homeowners associations having three or
12 more units shall register with the Commissioner of Community
13 Affairs, on such form as the commissioner shall prescribe, which
14 form shall include, but not be limited to, information concerning the
15 names and addresses of the officers and members of the executive
16 board, and shall pay an annual registration fee, which shall be as
17 follows: for an association having between three and 10 units,
18 \$25.00; for an association having between 11 and 50 units, \$25.00
19 plus \$.65 per unit after the first 10 units; for an association having
20 from 51 to 100 units, \$51.00 plus \$.55 per unit after the first 50
21 units; for an association having from 101 to 250 units, \$78.50 plus
22 \$.45 per unit after the first 100 units; for an association having from
23 251 to 500 units, \$146.00 plus \$.35 per unit after the first 250 units,
24 for an association having from 501 to 1,000 units, \$233.50 plus \$.25
25 per unit after the first 500 units; and for an association having more
26 than 1,000 units, \$358.50 plus \$.15 per unit after the first 1,000
27 units; provided, however, that the fee may be adjusted annually in
28 proportion to the percent change in the Consumer Price Index since
29 the adoption or last revision, as the case may be, of the fee
30 schedule. For the purpose of this subsection, "Consumer price
31 index" means the Consumer Price Index for All Urban Consumers,
32 New York-Northern New Jersey-Long Island Metropolitan Area,
33 All Items (1982-84=100), as published by the Bureau of Labor
34 Statistics in the United States Department of Labor. An increase to
35 the fee shall be made only if the percent change in the consumer
36 price index for the previous calendar year is greater than zero. The
37 fee shall be calculated so as to produce sufficient revenue to
38 reasonably cover the cost to the Department of Community Affairs
39 of enforcing P.L. , c. (C.) (pending before the Legislature as
40 this bill) and the cost of providing training and dispute resolution
41 services required under section 86 of P.L. , c. (C.) (pending
42 before the Legislature as this bill). The department shall reduce the
43 fee to be charged in any succeeding year if the currently available
44 and projected annual revenues will exceed the anticipated annual
45 costs by 15 percent. The department shall certify annually to the
46 State Treasurer whether or not a fee reduction is required to be
47 made. Associations shall report the fee in their financial documents
48 separate from any other assessment. Associations formed

1 subsequent to the effective date of P.L. , c. (C.) (pending
2 before the Legislature as this bill) shall register within 30 days of
3 the formation of the association; provided, however, that any
4 association formed for a planned real estate development required
5 to be registered with the department shall be registered not later
6 than the date of registration of the planned real estate development.
7 Any fee not paid in full by the date due shall be subject to penalty
8 charges in the amount of one and one-half percent per month, or
9 portion thereof, on the unpaid balance, to be collected, along with
10 the amount of the unpaid fee, in accordance with the "Penalty
11 Enforcement Law of 1999," P.L. 1999, c.274 (C.2A:58-10 et seq.).
12 An association that has not paid in full all outstanding fees, together
13 with any penalty thereon, shall not have the authority,
14 notwithstanding any other law to the contrary, to impose fines,
15 record liens or restrict privileges until the balance is paid in full.

16 b. All registration fees and penalty monies received by the
17 Department of Community Affairs pursuant to this section shall be
18 deposited in an interest-bearing, non-lapsing revolving fund,
19 entitled the "Homeowners' Association Trust Fund," to be held by
20 the State Treasurer. Moneys held in this non-lapsing revolving fund
21 shall be continuously appropriated to the Department of Community
22 Affairs and to the Department of Treasury, Office of the Public
23 Defender, Office of Dispute Settlement for the purposes expressed
24 in P.L. , c. (C.) (pending before the Legislature as this bill)
25 and shall be dedicated solely for those purposes. In the event funds
26 are appropriated or transferred from this fund for any other purpose
27 in contradiction of this section, then the obligation of associations
28 to pay the annual registration fee pursuant to this section shall be
29 suspended until such time as the full amount of the funds
30 transferred or appropriated is reinstated to the fund, and all costs
31 which cannot be paid from the fund due to insufficiencies thereafter
32 shall be paid from the General Fund. Any claims of transfers made
33 outside of the purposes of this section may be submitted to the Joint
34 Budget Oversight Committee, or its successor committee.

35
36 91. (New section) The Department of Community Affairs shall
37 prepare and publish a booklet, which shall be made available at cost
38 to the general public, to associations and to unit owners in common
39 interest communities to serve as a general guide to community
40 associations. The booklet shall be distributed by the association to
41 each unit owner free of charge initially, and at cost as required for
42 distribution to purchasers; it shall be the duty of each selling unit
43 owner to provide a copy of the booklet to a purchaser of the unit at
44 or before the time of signing of the sales contract. The booklet shall
45 include at least the following:

46 a. An explanation of the nature of home ownership in a planned
47 real estate development and a glossary of relevant terms, including,

1 but not limited to, "master declaration," "bylaws," "master deed,"
2 "covenants and restrictions," and "common elements";

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

5 c. A description of the duties and powers of, and restrictions on,
6 executive boards, including reference to applicable statutes and
7 rules. The booklet shall include information concerning conflict of
8 interest requirements applicable to executive board members and
9 officers and to professionals hired by associations and shall also
10 include reference to any other sources of information that may be
11 recommended by the commissioner as being of assistance to
12 executive board members and officers in the discharge of their
13 duties and to the public and professional bodies having authority to
14 investigate allegations of statutory or rule violations by board
15 members and officers or by managers, attorneys, accountants, or
16 other professionals;

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

20 e. A listing of documents and other information that a potential
21 purchaser of a unit in a planned real estate development should
22 obtain before entering into a contract to purchase a unit, including,
23 but not limited to: copies of the association's governing documents;
24 a copy of the latest capital reserve study, if any, showing the
25 condition, life expectancy and replacement costs of major
26 mechanical systems and other common elements; any litigation
27 pending against the association; any pending notices or orders
28 issued by the Department of Community Affairs or any other
29 governmental entity; the association's procedures for alternate
30 dispute resolution, adopting rules and regulations, providing access
31 to records, approval of budgets, and review of unit owners'
32 applications to do work on their units; delinquency and foreclosure
33 rates; the association's insurance coverages; and governmental and
34 non-governmental remedies available in the event of violation of
35 the rights of unit owners. These documents and this information
36 shall be made available to prospective purchasers upon written
37 request and copies shall be provided, for a charge not exceeding the
38 reasonable cost of copying or printing, to any person who has
39 contracted to purchase a unit within the jurisdiction of the
40 association.

41
42 92. (New section) There is hereby established the Office of the
43 Ombudsman for Homeowners and Associations, which, for
44 purposes of separation from activities related to the enforcement
45 powers granted to the commissioner, shall be separate and apart
46 from any other unit charged with carrying out such enforcement
47 activities. The office shall be headed by the ombudsman, who shall
48 be a person qualified by experience in the areas of planned real

1 estate developments and dispute resolution. No person who shall
2 have been a unit owner or an employee of, or provider of
3 professional or business services to, any association or organization
4 representing associations within the preceding 36-month period
5 shall be eligible for appointment as ombudsman. The ombudsman
6 shall have the following duties and functions:

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

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

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

18 d. To assist executive board members and officers of associations
19 in receiving appropriate training to allow them to properly
20 discharge their functions and duties. This assistance shall include
21 listings of appropriate reference and educational materials and
22 general budgetary and financial guidance;

23 e. To conduct dispute resolution workshops for executive board
24 members and unit owners; and

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

27
28 93. (New section) The commissioner shall review any
29 complaints received from unit owners' associations concerning
30 noncompliance with the provisions of P.L.1989, c.299 (C.40:67-
31 23.2 et seq.). Upon a finding that a municipality is not in
32 compliance with that act, the commissioner, through the Director of
33 the Division of Local Government Services, shall provide
34 appropriate direction to the municipality and, in the event of
35 continued noncompliance, shall take such corrective action as may
36 be appropriate, including denial of budget certification or
37 withholding of State aid. A municipality aggrieved by an order of
38 the commissioner or of the director pursuant to this section shall be
39 entitled to a hearing in accordance with the "Administrative
40 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

41
42 94. (New section) The commissioner shall have authority to
43 adopt such rules as may be necessary to enforce the provisions of
44 P.L. , c. (C.) (pending before the Legislature as this bill),
45 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
46 (C.52:14B-1 et seq.), provided the commissioner shall not adopt
47 rules creating substantive rights or obligations other than as set

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

3
4 95. (New section) It is the intent of the Legislature that the
5 provisions of P.L. , c. (C.) (pending before the Legislature
6 as this bill) shall supplement the provisions of the "Horizontal
7 Property Act," P.L.1963, c.168, (C.46:8A-1 et seq.), the
8 "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), and all
9 supplements to that act, as well as the provisions of P.L.1993, c.30
10 (C.45:22A-43 et seq.) concerning associations; provided, however,
11 that whenever any conflict or apparent conflict may be read
12 between the provisions of P.L. , c. (C.) (pending before the
13 Legislature as this bill) and the provisions of those acts, the
14 provisions of P.L. , c. (C.) (pending before the Legislature as this
15 bill) shall supersede those acts and be deemed to be the controlling
16 law.

17
18 96. Section 1 of P.L.1989, c.299 (C.40:67-23.2) is amended to
19 read as follows:

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

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

26 b. "Cooperative" means a housing corporation or association
27 wherein the holder of a share or membership interest in the
28 corporation or association is entitled to possess and occupy, for
29 dwelling purposes, a house, apartment, or other unit of housing
30 owned by the corporation or association, or to purchase a unit of
31 housing constructed or erected by the corporation or association;

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

35 d. "Horizontal property regime" means the form of real property
36 ownership provided for under the "Horizontal Property Act,"
37 P.L.1963, c.168 (C.46:8A-1 et seq.) or any law subsequently
38 enacted which provides for such a form of ownership;

39 e. "Qualified private community" means a residential
40 condominium, cooperative, fee simple community, **[or]** horizontal
41 property regime, or a common interest community as defined
42 pursuant to section 3 of P.L. , c. (C.) (now pending before the
43 Legislature as this bill), the residents of which do not receive any
44 tax abatement or tax exemption related to its construction,
45 comprised of a community trust or other trust device, condominium
46 association, homeowners' association, or council of co-owners,
47 wherein the cost of maintaining roads and streets and providing

1 essential services is paid for by **【a not-for-profit entity consisting**
2 **exclusively of unit owners within the community】** a unit owners'
3 association as defined pursuant to section 3 of P.L. , c. (C.)
4 (pending before the Legislature as this bill). No apartment building
5 or garden apartment complex owned by an individual or entity that
6 receives monthly rental payments from tenants who occupy the
7 premises shall be considered a qualified private community. No
8 "proprietary campground facility," as defined in section 1 of
9 P.L.1993, c.258 (C.45:22A-49), shall be considered to be a
10 qualified private community.

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

12

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

15 3. As used in **【this act】** P.L.1977, c.419 (C.45:22A-1 et seq.)
16 unless the context clearly indicates otherwise:

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

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

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

25 d. "Purchaser" or "owner" means any person or persons who
26 acquires a legal or equitable interest in a unit, lot, or parcel in a
27 planned real estate development, and shall be deemed to include a
28 prospective purchaser or owner.

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

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

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

33 h. "Planned real estate development" or "development" means
34 any real property situated within the State, whether contiguous or
35 not, which consists of or will consist of, separately owned areas,
36 irrespective of form, be it lots, parcels, units, or interest, and which
37 are offered or disposed of pursuant to a common promotional plan,
38 and providing for common or shared elements or interests in real
39 property. This definition shall specifically include, but shall not be
40 limited to, property subject at any time to the "Condominium Act,"
41 P.L.1969, c.257 (C.46:8B-1 et seq.), any form of homeowners'
42 association, any housing cooperative **【or to】**, any community trust
43 or other trust device, or any property subject to the "New Jersey
44 Uniform Common Interest Ownership Act," P.L. ,c. (C.)
45 (pending before the Legislature as this bill).

46 This definition shall be construed liberally to effectuate the
47 purposes of **【this act】** P.L.1977, c.419 (C.45:22A-1 et seq.).

- 1 i. "Common promotional plan" means any offer for the
2 disposition of lots, parcels, units or interests of real property by a
3 single person or group of persons acting in concert, where such lots,
4 parcels, units or interests are contiguous, or are known, designated
5 or advertised as a common entity or by a common name.
- 6 j. "Advertising" means and includes the publication or causing
7 to be published of any information offering for disposition or for
8 the purpose of causing or inducing any other person to purchase an
9 interest in a planned real estate development, including the land
10 sales contract to be used and any photographs or drawings or artist's
11 representations of physical conditions or facilities on the property
12 existing or to exist by means of any:
- 13 (1) Newspaper or periodical;
 - 14 (2) Radio or television broadcast;
 - 15 (3) Written or printed or photographic matter;
 - 16 (4) Billboards or signs;
 - 17 (5) Display of model houses or units;
 - 18 (6) Material used in connection with the disposition or offer of
19 the development by radio, television, telephone or any other
20 electronic means; or
 - 21 (7) Material used by developers or their agents to induce
22 prospective purchasers to visit the development, particularly
23 vacation certificates which require the holders of such certificates to
24 attend or submit to a sales presentation by a developer or his agents.
- 25 "Advertising" does not mean and shall not be deemed to include:
26 Stockholder communications such as annual reports and interim
27 financial reports, proxy materials, registration statements, securities
28 prospectuses, applications for listing securities on stock exchanges,
29 and the like; all communications addressed to and relating to the
30 account of any person who has previously executed a contract for
31 the purchase of the subdivider's lands except when directed to the
32 sale of additional lands.
- 33 k. "Nonbinding reservation agreement" means an agreement
34 between the developer and a purchaser and which may be
35 **【cancelled】** canceled without penalty by either party upon written
36 notice at any time prior to the formation of a contract for the
37 disposition of any lot, parcel, unit or interest in a planned real estate
38 development.
- 39 l. "Blanket encumbrance" means a trust deed, mortgage,
40 judgment, or any other lien or encumbrance, including an option or
41 contract to sell or a trust agreement, affecting a development or
42 affecting more than one lot, unit, parcel, or interest therein, but does
43 not include any lien or other encumbrance arising as the result of
44 the imposition of any tax assessment by any public authority.
- 45 m. "Conversion" means any change with respect to a real estate
46 development or subdivision, apartment complex or other entity
47 concerned with the ownership, use or management of real property
48 which would make such entity a planned real estate development.

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

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

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

11 q. "Declarant" means any person or group of persons acting in
12 concert who (1) as a part of a common promotional plan, offers to
13 dispose of any interest in a unit not previously disposed of, or (2)
14 reserves or succeeds to any special declarant right.

15 (cf: P.L.1993, c.30, s.7)

16

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

19 8. a. A public offering statement shall disclose fully and
20 accurately the characteristics of the development and the lots,
21 parcels, units, or interests therein offered, and shall make known to
22 prospective purchasers all unusual or material circumstances or
23 features affecting the development. The proposed public offering
24 statement submitted to the agency shall be in a form prescribed by
25 its rules and regulations and shall include the following:

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

27 (2) A general narrative description of the development stating the
28 total number of lots, units, parcels, or interests in the offering, and
29 the total number of such interests planned to be sold, leased or
30 otherwise transferred;

31 (3) Copies of any management contract, lease of recreational
32 areas, or similar contract or agreement affecting the use,
33 maintenance, or access of all or any part of the development, with a
34 brief and simple narrative statement of the effect of each such
35 agreement upon a purchaser, and a statement of the relationship, if
36 any, between the developer and the managing agent or firm;

37 (4) (a) The significant terms of any encumbrances, easements, liens,
38 and restrictions, including zoning and other regulations, affecting
39 such lands and each unit, lot, parcel, or interest, and a statement of
40 all existing taxes and existing or proposed special taxes or
41 assessments which affect such lands; and

42 (b) In the case of a conversion subject to the provisions of the
43 "Tenant Protection Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et
44 al.), the information required pursuant to section 14 of P.L.1991,
45 c.509 (C.2A:18-61.53);

46 (5) (a) Relevant community information, including hospitals,
47 health and recreational facilities of any kind, streets, water supply,

- 1 levees, drainage control systems, irrigation systems, sewage
2 disposal facilities and customary utilities; and
- 3 (b) The estimated cost, size, date of completion, and
4 responsibility for construction and maintenance of existing and
5 proposed amenities which are referred to in connection with the
6 offering or disposition of any interest in the subdivision or
7 subdivided lands;
- 8 (6) A copy of the proposed budget for the operation and
9 maintenance of the common or shared elements or interests;
- 10 (7) Additional information required by the agency to assure full
11 and fair disclosure to prospective purchasers.
- 12 (8) If any declaration filed pursuant to P.L. , c. (C.) (pending
13 before the Legislature as this bill) provides that a common interest
14 community is subject to any development rights, the public offering
15 statement shall disclose, subject to the limitations set forth in
16 section 47 of P.L. , c. (C.) (pending before the Legislature as this
17 bill) and, in addition to the information required under paragraphs
18 (1) through (7) of this subsection, the following:
- 19 (a) the maximum number of units, and the maximum number of
20 units per acre, that may be created;
- 21 (b) a statement of how many or what percentage of the units that
22 may be created will be restricted exclusively to residential use, or a
23 statement that no representations are made regarding use
24 restrictions;
- 25 (c) if any of the units that may be built within real estate subject
26 to development rights are not to be restricted exclusively to
27 residential use, a statement, with respect to each portion of that real
28 estate, of the maximum percentage of the real estate areas, and the
29 maximum percentage of the floor areas of all units that may be
30 created therein, that are not restricted exclusively to residential use;
- 31 (d) a brief narrative description of any development rights
32 reserved by a declarant and of any conditions relating to or
33 limitations upon the exercise of development rights;
- 34 (e) a statement of the maximum extent to which each unit's
35 allocated interests may be changed by the exercise of any
36 development right described in subsection c. of this section;
- 37 (f) a statement of the extent to which any buildings or other
38 improvements that may be erected pursuant to any development
39 right in any part of the common interest community will be
40 compatible with existing buildings and improvements in the
41 common interest community in terms of architectural style, quality
42 of construction, and size, or a statement that no assurances are made
43 in those regards;
- 44 (g) general descriptions of all other improvements that may be
45 made and limited common elements that may be created within any
46 part of the common interest community pursuant to any
47 development right reserved by the declarant, or a statement that no
48 assurances are made in that regard;

1 (h) a statement of any limitations as to the locations of any
2 building or other improvement that may be made within any part of
3 the common interest community pursuant to any development right
4 reserved by the declarant, or a statement that no assurances are
5 made in that regard;

6 (i) a statement that any limited common elements created
7 pursuant to any development right reserved by the declarant will be
8 of the same general types and sizes as the limited common elements
9 within other parts of the common interest community, or a
10 statement of the types and sizes planned, or a statement that no
11 assurances are made in that regard;

12 (j) a statement that the proportion of limited common elements to
13 units created pursuant to any development right reserved by the
14 declarant will be approximately equal to the proportion existing
15 within other parts of the common interest community, or a
16 statement of any other assurances in that regard, or a statement that
17 no assurances are made in that regard;

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

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

26 b. The public offering statement shall not be used for any
27 promotional purposes before registration of the development and
28 afterwards only if it is used in its entirety. No person may advertise
29 or represent that the agency approves or recommends the
30 development or dispositions therein. No portion of the public
31 offering statement may be underscored, italicized, or printed in
32 larger or heavier or different color type than the remainder of the
33 statement, unless the agency requires or permits it.

34 c. The agency may require the developer to alter or amend the
35 proposed public offering statement in order to assure full and fair
36 disclosure to prospective purchasers, and no change in the
37 substance of the promotional plan or plan of disposition or
38 development of a planned real estate development may be made
39 after registration without the approval of the agency. A public
40 offering statement shall not be current unless all amendments have
41 been incorporated.

42 d. The public offering statement shall, to the extent possible,
43 combine simplicity and accuracy of information, in order to
44 facilitate purchaser understanding of the totality of rights,
45 privileges, obligations and restrictions, comprehended under the
46 proposed plan of development. In reviewing such public offering
47 statement, the agency shall pay close attention to the requirements
48 of this subsection, and shall use its discretion to require revision of

1 a public offering statement which is unnecessarily complex,
2 confusing, or is illegible by reason of type size or otherwise.
3 (cf: P.L.1991, c.509, s.22)
4

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

7 28. a. The Office of Dispute Settlement may provide, in the
8 discretion of the Public Defender, mediation, and other third party
9 neutral services in the resolution of disputes which involve the
10 public interest and may enter into agreements or contracts to carry
11 out any of the purposes or functions of this section. The Office of
12 Dispute Settlement may assist public or private parties in resolving
13 disputes. The Office of Dispute Settlement is authorized to:

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

16 (2) Establish standards for the selection, assignment, and conduct
17 of persons acting on behalf of said office in the resolution of
18 disputes;

19 (3) Conduct educational programs and provide other services
20 designed to reduce the occurrence, magnitude, or cost of disputes;

21 (4) Design, develop, or operate dispute resolution programs, or
22 assist in improving or extending existing dispute resolution
23 programs;

24 (5) Work with the business ombudsman, established by
25 Executive Order No. 15, and take such other action as will promote
26 and facilitate dispute resolution in the State; **[and]**

27 (6) Coordinate and cooperate with the Office of Administrative
28 Law so as to avoid duplication of effort and to facilitate alternate
29 resolution of disputes that would otherwise require administrative
30 hearings; and

31 (7) Work with the Office of the Ombudsman for Homeowners
32 and Associations, established pursuant to section 92 of P.L. _____,
33 c. (C. _____) (pending before the Legislature as this bill), to promote
34 and facilitate dispute resolution for associations in the State and
35 provide training programs pursuant to P.L. _____, c. (C. _____) (pending
36 before the Legislature as this bill) free of charge to a volunteer, in
37 exchange for the agreement of the volunteer to offer dispute
38 resolution services free of charge to associations. Costs of training
39 incurred under this paragraph shall be reimbursed from the
40 Homeowners' Association Trust Fund established pursuant to
41 section 90 of P.L. _____, c. (C. _____) (pending before the Legislature as this
42 bill).

43 b. The Public Defender may establish reasonable fees to be
44 charged to public or private parties for the provision of the
45 educational, consultation, dispute resolution, or other services
46 authorized herein and may apply for and accept on behalf of the
47 State any federal, local, or private grants, bequests, gifts, or
48 contributions to aid in the financing of any of the programs or

1 activities of the office. The Public Defender in the name of the State
2 shall do all that is necessary and proper to receive or to collect all
3 moneys due to the State, including such fees, grants, bequests, gifts,
4 or contributions, by or reimbursement for services rendered
5 pursuant to this section.

6 (cf: P.L.1994, c.58, s.28)

7
8 100. N.J.S.12A:9-515 is amended to read as follows:

9 12A:9-515. Duration and Effectiveness of Financing Statement;
10 Effect of Lapsed Financing Statement.

11 (a) Five-year effectiveness. Except as otherwise provided in
12 subsections (b), (e), (f) and (g), a filed financing statement is
13 effective for a period of five years after the date of filing.

14 (b) Public-finance or manufactured-home transaction. Except as
15 otherwise provided in subsections (e), (f) and (g), an initial
16 financing statement filed in connection with a public-finance
17 transaction or manufactured-home transaction is effective for a
18 period of 30 years after the date of filing if it indicates that it is
19 filed in connection with a public-finance transaction or
20 manufactured-home transaction.

21 (c) Lapse and continuation of financing statement. The
22 effectiveness of a filed financing statement lapses on the expiration
23 of the period of its effectiveness unless before the lapse a
24 continuation statement is filed pursuant to subsection (d). Upon
25 lapse, a financing statement ceases to be effective and any security
26 interest or agricultural lien that was perfected by the financing
27 statement becomes unperfected, unless the security interest is
28 perfected otherwise. If the security interest or agricultural lien
29 becomes unperfected upon lapse, it is deemed never to have been
30 perfected as against a purchaser of the collateral for value.

31 (d) When continuation statement may be filed. A continuation
32 statement may be filed only within six months before the expiration
33 of the five-year period specified in subsection (a) or the 30-year
34 period specified in subsection (b), whichever is applicable.

35 (e) Effect of filing continuation statement. Except as otherwise
36 provided in 12A:9-510, upon timely filing of a continuation
37 statement, the effectiveness of the initial financing statement
38 continues for a period of five years commencing on the day on
39 which the financing statement would have become ineffective in the
40 absence of the filing. Upon the expiration of the five-year period,
41 the financing statement lapses in the same manner as provided in
42 subsection (c), unless, before the lapse, another continuation
43 statement is filed pursuant to subsection (d). Succeeding
44 continuation statements may be filed in the same manner to
45 continue the effectiveness of the initial financing statement.

46 (f) Transmitting utility financing statement. If a debtor is a
47 transmitting utility and a filed financing statement so indicates, the

1 financing statement is effective until a termination statement is
2 filed.

3 (g) Record of mortgage as financing statement. A record of
4 mortgage that is effective as a financing statement filed as a fixture
5 filing under 12A:9-502 (c) remains effective as a financing
6 statement filed as a fixture filing until the mortgage is released or
7 satisfied of record or its effectiveness otherwise terminates as to the
8 real property.

9 (h) Bondable transition property. If a filed financing statement
10 relates to a security interest in bondable transition property and the
11 financing statement so states, it is effective until a termination
12 statement is filed.

13 (i) When a financing statement covers shares or ownership
14 interests evidenced by stock certificates or other instruments, and a
15 leasehold evidenced by a proprietary lease or either of the foregoing
16 issued by an entity formed for the purpose of cooperative ownership
17 of real estate and the financing statement so states, it shall be
18 effective until a termination statement is filed.

19 (cf: P.L.2001, c.386, s.80)

20

21 101. Section 20 of P.L.1987, c.381 is amended to read as
22 follows:

23 20. **[This act]** P.L.1987, c.381 applies to all cooperatives
24 created within this State **[after the effective date of this act]** prior to
25 the effective date of P.L. , c. (C.) (now before the
26 Legislature as this bill). On or after the effective date of P.L. ,
27 c. (C.) (now before the Legislature as this bill), the provisions
28 of P.L. , c. (C.) (now before the Legislature as this bill)
29 shall apply to all cooperatives, regardless of the date of creation,
30 and the provisions of P.L.1987, c.381 (C.46:8D-1 et al) shall only
31 apply to the extent they are not expressly overridden or repealed by
32 P.L. , c. (C.) (now before the Legislature as this bill).

33 (cf: P.L.1987, c.381, s.20)

34

35 102. (New section) It is the intent of the Legislature that any
36 rights, claims, entitlements, priorities, privileges, or benefits that
37 accrued under the laws set forth below prior to the effective date of
38 P.L. , c. (C.) (pending before the Legislature as this bill) shall
39 not be superseded by the adoption of P.L. , c. (C.) (pending
40 before the Legislature as this bill). P.L. , c. (C.) (pending
41 before the Legislature as this bill) shall supersede the laws set forth
42 below with respect to all rights, claims, entitlements, priorities,
43 privileges, or benefits that accrue after the effective date of P.L. ,
44 c. (C.) (pending before the Legislature as this bill) and all
45 matters concerning a common interest community shall be solely
46 governed by P.L. , c. (C.) (pending before the Legislature as
47 this bill), except with respect to those common interest communities

1 that are fully or partially exempt from the terms of P.L. ,
2 c. (C.) (pending before the Legislature as this bill), in which
3 event the exempted common interest communities and all persons
4 owning an interest therein shall be bound, to the extent applicable,
5 by the provisions of the following:
6 Sections 1 through 28 of P.L.1963, c.168 (C.46:8A-1 et seq.);
7 Section 11 of P.L.1978, c.124 (C.46:8A-3.1);
8 Sections 1 through 30 of P.L.1969, c.257 (C.46:8B-1 et seq.);
9 Section 3 of P.L.1973, c.216 (C.46:8B-8.1);
10 Sections 2 and 3 of P.L.1979, c.157 (C.46:8B-12.1 and 46:8B-12.2)
11 Section 2 of P.L.1991, c.48 (C.46:8B-13.1);
12 Sections 1 through 8 of P.L.1979, c.297 (C.46:8B-31 et seq.);
13 Section 3 of P.L.1980, c.103 (C.46:8B-38); and
14 Sections 1 through 12 and 14 through 20 of P.L.1987, c.381
15 (C.46:8D-1 through 46:8D-12 and C.46:8D-13 through 46:8D-18).
16

17 103. This act shall take effect on the first day of the sixth month
18 after enactment, except that the Commissioner of Community
19 Affairs shall immediately take such administrative action as
20 necessary to effectuate the provisions of P.L. , c. (C.)
21 (pending before the Legislature as this bill).
22
23

24 STATEMENT

25
26 This bill seeks to consolidate all of the laws applicable to all
27 types of homeowner's associations, provide for certain homeowner
28 protections, clarify the powers of homeowners' associations and is
29 based, in part, on the recommendations of the Task Force of the
30 Assembly to Study Homeowners' Associations, which issued its
31 report to the Legislature on January 8, 1998.

32 The bill is a New Jersey version of the Uniform Common
33 Interest Ownership Act (UCIOA) which has been adopted, in full or
34 substantial part, by approximately 16 states. The UCIOA itself is an
35 act of the National Conference of Commissioners on Uniform State
36 Laws. It provides uniform guidelines for all forms of residential
37 community associations and is applicable to condominiums, fee
38 simple multifamily projects, home owner associations and
39 cooperatives. The model act was modified for New Jersey by a
40 Statewide drafting committee. The bill further combines with the
41 model act many of the recommendations of the Task Force of the
42 Assembly to Study Homeowners' Associations. One major
43 recommendation of the Task Force was that the law on community
44 associations be consolidated and applied evenly to all types of
45 homeowners' associations. Therefore, the bill replaces many of the
46 laws dealing with these associations, including the "Horizontal
47 Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.), the
48 "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), as well

1 as the "Cooperative Recording Act of New Jersey," P.L.1987, c.381
2 (C.46:8D-1 et seq.).

3 The bill consists of five separate articles, each addressing various
4 aspects of common interest property ownership. Article 1 of the bill
5 deals with the applicability of the act in general. Article 2 deals
6 with the creation, alteration and termination of common interest
7 communities. Article 3 provides the framework for the management
8 of a common interest community, including the creation and grant
9 of powers and duties to an executive board formed to manage the
10 common elements of a common interest community. Article 4
11 concerns the protection of purchasers, and Article 5 deals with the
12 oversight of the executive boards by the State Department of
13 Community Affairs.

14 Certain provisions of the bill address the problems inherent in
15 phased developments by allowing developers more flexibility in the
16 planning process to meet changed conditions in the marketplace. At
17 the same time, unit purchasers in phased developments must be
18 specifically informed of the potential risks and consequences if
19 there is modification of the development plan.

20 The bill clarifies that associations have, among other powers, the
21 power to grant easements over common property and pledge
22 assessment income in connection with loans.

23 In addition, the bill clarifies that all associations have the
24 authority to impose fines and late charges against delinquent unit
25 owners, provided that notice is provided and due process in the
26 form of alternative dispute resolution proceedings are afforded to
27 the unit owner. Although the Legislature granted that power to
28 condominium associations through the passage of P.L.1996, c.79,
29 that law did not include other types of homeowners' associations.

30 The bill seeks to provide various protections to homeowners who
31 reside in common interest communities overseen by community
32 associations.

33 The bill retains the requirement under current law that an
34 association provide a fair and efficient procedure for the resolution
35 of disputes between individual unit owners and the association, and
36 between unit owners, which shall be readily available as an
37 alternative to litigation. It adds significant detail currently absent
38 from the law with respect to the procedures to be followed to
39 provide for a fair and efficient alternative to litigation. The
40 Commissioner of Community Affairs retains oversight over the
41 implementation of these procedures.

42 In addition, the bill provides specific requirements for open
43 meetings for boards, including working sessions open to unit
44 owners, and specifies comment periods which must be set aside for
45 unit owners wishing to participate in meetings. The bill also
46 provides new guidelines for access to records and for the imposition
47 of fines by an association, including a maximum fine amount that
48 may be imposed by an association. Among the homeowner

1 protections, it also provides for bidding for certain contracts;
2 procedures to insure fair and open governing board elections;
3 procedures when associations require access to individual units;
4 limitations on leasing restrictions; and disclosure of essential
5 information to buyers of resale units within community
6 associations. It further clarifies the responsibility of successor
7 developers who complete a project commenced by a prior
8 developer.

9 The bill provides governmental oversight of common interest
10 community associations in several areas, in recognition of the
11 quasi-governmental powers granted to them. The bill requires
12 registration of all such associations with the Commissioner of
13 Community Affairs and the payment of a registration fee which is
14 indexed to the size of the membership of the association. The fees
15 from the registration would be utilized to offset the costs incurred
16 by the department in providing oversight and assistance to boards.

17 The bill creates an Office of the Ombudsman, within the
18 Department of Community Affairs, for common interest community
19 unit owners' associations. The Ombudsman is to provide assistance
20 to board members or officers of an association in receiving
21 appropriate training to enable them to execute their duties in an
22 independent, efficient and productive manner, including the
23 provision of a list of reference and educational materials
24 appropriate for board members of homeowners' associations. The
25 Ombudsman would also be a source for general budgetary guidance
26 and could function as a liaison between associations and any entity
27 concerning disputes regarding code compliance or inspections.

28 The bill amends the law commonly known as the Condominium
29 Services Law, P.L.1989, c.299 (C.40:67-23.2 et seq.), to clarify the
30 types of communities that are eligible for reimbursement from a
31 municipality for services provided to residents of the community.
32 The act defines a qualified community as one which has certain
33 expenses paid by a not-for-profit entity consisting exclusively of
34 unit owners within the community. Some municipalities have not
35 provided services or reimbursed communities for services provided
36 based on their determination that a homeowner's association
37 executive board that is still controlled by a developer is not an
38 association comprised exclusively of unit owners. The bill clarifies
39 that transition of control to the unit owners of a community is not a
40 factor for eligibility for reimbursement under the Condominium
41 Services Law. The bill also requires the Commissioner of
42 Community Affairs to track compliance by municipalities with the
43 Condominium Services Law, and offer budgetary guidance, if
44 necessary.

45 The bill grants to the Commissioner of Community Affairs
46 increased authority in the oversight of community associations in
47 recognition of their quasi-governmental functions, regardless of
48 whether "transition" (control of the board by the unit owners) has

1 occurred. The commissioner is specifically authorized to hear
2 complaints and make final determinations in reported cases of
3 violations of statutory or regulatory requirements by community
4 associations or board members of an association. The commissioner
5 is empowered under the bill to remove a board member for flagrant,
6 continuing violations of statutes or regulations.