

ASSEMBLY, No. 2034

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED FEBRUARY 8, 2010

Sponsored by:

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblywoman CONNIE WAGNER

District 38 (Bergen)

SYNOPSIS

"New Jersey Uniform Common Interest Ownership Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/7/2010)

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
10 IN GENERAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (2) directly or indirectly or acting in concert with one or more
34 other persons, or through one or more subsidiaries, owns, controls,
35 holds with power to vote, or holds proxies representing, more than
36 10 percent of the voting interest in the person,

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

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

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

48 "Allocated interests" means the following interest allocated to

1 each unit:

2 (1) in a condominium, the undivided interest in the common
3 elements, the common expense liability, and votes in the
4 association;

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

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

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

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

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

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

19 "Common elements" means,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 as this bill).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 "Unit owner" means a declarant or other person who owns a unit,
12 or a lessee of a unit in a leasehold common interest community
13 whose lease expires simultaneously with any lease the expiration or
14 termination of which will remove the unit from the common interest
15 community, but does not include a person having an interest in a
16 unit solely as security for an obligation. In a condominium or
17 planned community, the declarant is, as of the date of the recording
18 of the declaration, the owner of any unit created by the declaration.
19 In a cooperative, the declarant is treated as the owner of any unit to
20 which allocated interests have been allocated pursuant to section 30
21 of P.L. , c. (C.) (pending before the Legislature as this bill)
22 until that unit has been conveyed to another person.

23
24 4. (New section) The provisions of P.L. , c. (C.)
25 (pending before the Legislature as this bill), except as expressly
26 provided therein, may not be varied by agreement, and rights
27 conferred by it may not be waived. A declarant may not act under a
28 power of attorney, or use any other device, to evade the limitations
29 or prohibitions of P.L. , c. (C.) (pending before the
30 Legislature as this bill) or the declaration. Provisions of any power
31 of attorney or other device intended to evade the limitations or
32 prohibitions of P.L. , c. (C.) (pending before the Legislature
33 as this bill) or the declaration shall be void as against public policy.
34

35 5. (New section) a. In a cooperative, a unit owner's interest in
36 a unit and its allocated interests shall be deemed to be personal
37 property. The documents creating the ownership rights of a
38 cooperative unit owner and the bylaws of the cooperative shall be
39 construed as integrated documents incapable of being separated or
40 distinguished from each other. The transfer of any interest in a
41 cooperative shall be by means of a document recorded in the county
42 in which the cooperative is located. The transfer document shall
43 contain the following information:

- 44 (1) name of the cooperative;
45 (2) unit designation;
46 (3) reference to the last prior transfer of the unit, if previously
47 transferred;
48 (4) full name and address of the transferor and transferee of the

1 unit;

2 (5) executed and acknowledged consent of the cooperative
3 executive board authorizing and approving the transfer or
4 assignment;

5 (6) number of shares transferred;

6 (7) statement of the full consideration paid for the cooperative
7 unit which includes the purchase price paid plus the amount derived
8 from application of the percent of ownership held in conjunction
9 with the unit to the unpaid balance of the fee or leasehold mortgage
10 encumbering the entire structure as of the date of the transfer or
11 assignment; and

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

15 Nothing in this section shall be construed to affect the treatment
16 of cooperative interests pursuant to the "2004 Homestead Property
17 Tax Rebate Act," sections 1 through 10 of P.L.1990, c.61 (C.54:4-
18 8.57 through 54:4-8.66), sections 3, 14 through 16, 18, and 19 of
19 P.L.1999, c.63 (C.54:4-8.58a and C.54:4-8.66a through C.54:4-
20 8.66e) and the imposition of realty transfer fees as permitted by
21 law.

22 b. In a condominium or planned community:

23 (1) If there is any unit owner other than a declarant, each unit
24 that has been created, together with its interest in the common
25 elements, constitutes for all purposes a separate parcel of real
26 estate. A unit shall be deemed created once it has been subjected to
27 the declaration for the common interest community by the
28 recordation of either the declaration or an amendment to the
29 declaration.

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

34 c. Any portion of the common elements for which the declarant
35 has reserved any development right shall be separately taxed and
36 assessed against the declarant, and the declarant alone shall be
37 liable for payment of those taxes.

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

41

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

1 b. The condominium or cooperative form of ownership shall
2 not be prohibited through any zoning or land use law, or shall any
3 such law impose a requirement upon a condominium or cooperative
4 which would not be imposed upon a physically identical
5 development under a different form of ownership.

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

11
12 7. (New section) a. If a unit is acquired by eminent domain or
13 part of a unit is acquired by eminent domain leaving the unit owner
14 with a remnant that may not practically or lawfully be used for any
15 purpose permitted by the declaration, the award shall include
16 compensation to the unit owner for that unit and its allocated
17 interests, whether or not any common elements are acquired. Upon
18 acquisition, unless the decree otherwise provides, that unit's
19 allocated interests shall be reallocated to the remaining units in
20 proportion to their allocated interests before the taking, and the
21 association shall promptly prepare, execute and record an
22 amendment to the declaration reflecting the reallocations. Any
23 remnant of a unit remaining after part of a unit is taken under this
24 subsection shall thereafter be deemed a common element.

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

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

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

38 c. If part of the common elements is acquired by eminent
39 domain, the portion of the award attributable to the common
40 elements taken shall be paid to the association. Unless the
41 declaration provides otherwise, any portion of the award
42 attributable to the acquisition of a limited common element shall be
43 equally divided among the owners of the units to which that limited
44 common element was allocated at the time of acquisition.

45 d. The executive board of the association, on behalf of the
46 association and all affected unit owners, shall have the power to
47 amend the declaration to reallocate interests in accordance with this
48 section. The executive board shall reallocate the interests by

1 amending the declaration and recording the amendment together
2 with the court decree in every county in which any portion of the
3 common interest community is located.

4
5 8. (New section) Unless displaced by particular provisions of
6 P.L. , c. (C.) (pending before the Legislature as this bill), the
7 principles of law and equity, including the law of corporations and
8 unincorporated associations, the law of real property, and the law
9 relative to capacity to contract, principal and agent, eminent
10 domain, estoppel, fraud, misrepresentation, duress, coercion,
11 mistake, receivership, substantial performance, or other validating
12 or invalidating causes shall supplement the provisions of P.L. ,
13 c. (C.) (pending before the Legislature as this bill).

14
15 9. (New section) P.L. , c. (C.) (pending before the
16 Legislature as this bill) is a general act intended as a unified
17 coverage of its subject matter and so no part of it shall be construed
18 to be impliedly repealed by subsequent legislation if that
19 construction can be reasonably avoided.

20
21 10. (New section) P.L. , c. (C.) (pending before the
22 Legislature as this bill) shall be applied and construed to effectuate
23 its general purpose to make uniform the law with respect to the
24 subject of P.L. , c. (C.) (pending before the Legislature as
25 this bill).

26
27 11. (New section) a. If any provision of P.L. , c. (C.)
28 (pending before the Legislature as this bill) or the application
29 thereof to any person or circumstances is held invalid, the invalidity
30 shall not affect other provisions or applications of
31 P.L. , c. (C.) (pending before the Legislature as this bill)
32 which can be given effect without the invalid provisions or
33 applications, and to this end the provisions of P.L. , c. (C.)
34 (pending before the Legislature as this bill) are severable.

35 b. In interpreting the terms of P.L. , c. (C.) (pending
36 before the Legislature as this bill) it is intended that, (1) any action,
37 power or right of an association, executive board, declarant, or unit
38 owner which is not expressly prohibited by P.L. , c. (C.)
39 (pending before the Legislature as this bill) or other law, and (2)
40 any provision of a declaration which is not in conflict with
41 P.L. , c. (C.) (pending before the Legislature as this bill) or
42 other law, shall be authorized under P.L. , c. (C.) (pending
43 before the Legislature as this bill).

44
45 12. (New section) a. A court, upon finding as a matter of law
46 that a contract or contract clause relative to real estate owned or to
47 be owned under a form of common interest ownership was
48 unconscionable at the time the contract was made, may either refuse

1 to enforce the contract, enforce the remainder of the contract
2 without the unconscionable clause, or limit the application of any
3 unconscionable clause in order to avoid an unconscionable result.

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

8 (1) the commercial setting of the negotiations;

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

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

14 b. There shall be a rebuttable presumption of unconscionability
15 with respect to leases involving a common interest community,
16 including, but not limited to, leases concerning the use by unit
17 owners of parking, recreational or other common facilities or areas.
18 The presumption may be rebutted by a lessor through the
19 presentation of evidence demonstrating the existence of facts and
20 circumstances sufficient to justify and validate a lease which would
21 otherwise appear to be unconscionable under the provisions of this
22 section. A rebuttable presumption of unconscionability shall arise
23 if one or more of the following elements exist, but the failure of a
24 lease to contain any of the following elements shall neither preclude
25 a determination of its unconscionability nor raise a presumption of
26 its conscionability:

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

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

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

34 (4) The lease requires either the association or the unit owners
35 to perform some or all maintenance obligations pertaining to the
36 real estate or facilities located upon the real estate described in the
37 lease;

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

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

44 (7) The lease requires an annual rental which exceeds 20 percent
45 of the appraised value of the leased real estate as improved;
46 provided, that for purposes of this paragraph, "annual rental" means
47 the amount due during the first 12 months of the lease from all units
48 regardless of whether the units were in fact occupied or sold during

1 that period, and "appraised value" means the appraised value placed
2 upon the leased real estate the first tax year after the sale of a unit in
3 the common interest community;

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

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

9 c. When any parking, recreational or other common facility or
10 area has been leased for the use of the unit owners for 20 years or
11 more, the association or the unit owners shall have the option of
12 renewing the lease for the parking, recreational or other common
13 facility or area or of buying that facility or area and real estate at a
14 conscionable price.

15 d. No contract for the sale of a unit executed on or after the
16 effective date of P.L. , c. (C.) (pending before the Legislature
17 as this bill), or any declaration or association bylaws adopted on or
18 after that effective date, shall contain a clause or provision
19 affording the declarant or the association the right of first refusal to
20 buy a unit upon resale, gift or devise by a unit owner. No
21 declaration or association bylaw, whenever adopted, shall be
22 amended on or after the effective date of P.L. , c. (C.)
23 (pending before the Legislature as this bill) to include any such
24 clause or provision affording the right of first refusal. This section
25 shall not apply to the State of New Jersey or any political
26 subdivision of this State, or to any department, division, office,
27 agency, or bureau thereof, or any authority or instrumentality
28 created thereby, when a right of first refusal is required by State or
29 federal law.

30
31 13. (New section) Every contract or duty governed by
32 P.L. , c. (C.) (pending before the Legislature as this bill) shall
33 impose an obligation of good faith in its performance or
34 enforcement.

35
36 14. (New section) a. The remedies provided by
37 P.L. , c. (C.) (pending before the Legislature as this bill) shall
38 be liberally administered to the end that the aggrieved party is put
39 in as good a position as if the other party had fully performed.
40 Consequential, special or punitive damages, however, shall not be
41 awarded except as specifically provided in P.L. , c. (C.)
42 (pending before the Legislature as this bill) or by other rule of law.

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

46
47 15. (New section) a. As used in this section:

48 "Index" means the changes in the Consumer Price Index

1 compiled by the Bureau of Labor Statistics, United States
2 Department of Labor for the following series: Urban Wage Earners
3 and Clerical Workers (CPI-W); U.S. City Average, All Items and
4 1982-84 = 100.

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

7 b. From time to time, the dollar amounts specified in section 18
8 of P.L. , c. (C.) (pending before the Legislature as this bill),
9 section 50 of P.L. , c. (C.) (pending before the Legislature
10 as this bill), subsection a. of section 64 of P.L. , c. (C.)
11 (pending before the Legislature as this bill) , subsections a. and f. of
12 section 66 of P.L. , c. (C.) (pending before the Legislature
13 as this bill) , and subsections c. and d. of section 86 of
14 P.L. , c. (C.) (pending before the Legislature as this bill),
15 shall be adjusted, as provided in subsections c. and d. of this
16 section.

17 c. The dollar amount specified in section 18 of
18 P.L. , c. (C.) (pending before the Legislature as this bill)
19 and any amount stated in the declaration pursuant to that section,
20 and the dollar amounts specified in subsection c. of section 66 of
21 P.L. , c. (C.) (pending before the Legislature as this bill)
22 shall be adjusted on July 1 of each year if the percentage of change,
23 calculated to the nearest whole percentage point, between the index
24 at the end of the preceding year and the reference base index is 10
25 percent or more; however,

26 (1) that portion of the percentage change in the index in excess
27 of a multiple of 10 percent shall be disregarded and the dollar
28 amount shall be adjusted only in multiples of 10 percent of the
29 dollar amount in effect on the date of enactment;

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

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

36 d. If the index is revised after January, 1988, the percentage of
37 adjustment pursuant to this section shall be calculated on the basis
38 of the revised index. If a revision of the index changes the
39 reference base index, a revised reference base index shall be
40 determined by multiplying the reference base index then applicable
41 by the rebasing factor furnished by the Bureau of Labor Statistics. If
42 the index is superseded, the index referred to in this section shall be
43 the one represented by the Bureau of Labor Statistics as reflecting
44 most accurately the changes in the purchasing power of the dollar
45 for consumers.

46
47 16. (New section) a. The provisions of P.L. , c. (C.)
48 (pending before the Legislature as this bill) shall apply to all

1 common interest communities created within this State after the
2 effective date of P.L. , c. (C.) (pending before the Legislature
3 as this bill).

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

28 c. Pursuant to section 101 of P.L. , c. (C.) (pending
29 before the Legislature as this bill), any master declaration filed
30 under "The Cooperative Recording Act of New Jersey," P.L.1987,
31 c.381 (C.46:8D-1 et seq.) will be deemed a declaration under
32 P.L. , c. (C.) (pending before the Legislature as this bill) and
33 will be subject to the terms of section 19 of P.L. , c. (C.)
34 (pending before the Legislature as this bill). All cooperatives
35 created after the effective date of P.L. , c. (C.) (pending
36 before the Legislature as this bill) shall be created in accordance
37 with section 24 of P.L. , c. (C.) (pending before the
38 Legislature as this bill).

39
40 17. (New section) Except as provided in section 20 of
41 P.L. , c. (C.) (pending before the Legislature as this bill), all
42 cooperatives shall be subject to the provisions of P.L. , c. (C.)
43 (pending before the Legislature as this bill).

44
45 18. (New section) a. If a planned community:
46 (1) contains fewer than 10 units; or
47 (2) provides, in its declaration, that the annual average common
48 expense liability of all units restricted to residential purposes,

1 exclusive of optional user fees and any insurance premiums paid by
2 the association, may not exceed \$300, as adjusted pursuant to
3 section 15 of P.L. , c. (C.) (pending before the Legislature as
4 this bill), the planned community shall be subject only to sections 5,
5 6, 7, 24 and 65 of P.L. , c. (C.) (pending before the
6 Legislature as this bill), unless the declaration provides that the
7 community shall be subject to P.L. , c. (c) (pending before
8 the Legislature as this bill) in its entirety.

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

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

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

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

20 (4) The planned community is otherwise qualified to receive an
21 exemption pursuant to section 5 of "The Planned Real Estate
22 Development Full Disclosure Act," P.L.1977, c.419(C.45:22A-25).
23

24 19. (New section) All preexisting common interest communities
25 shall be controlled by all of the provisions of P.L. , c. (C.)
26 (pending before the Legislature as this bill); however, such
27 associations shall be permitted to maintain existing provisions of a
28 declaration, bylaws or plats or plans of those common interest
29 communities to the extent those provisions are not in conflict with
30 the provisions of P.L. , c. (C.) (pending before the Legislature
31 as this bill). For example, a common interest community that has
32 consistently maintained in its master deed or declaration and bylaws
33 a definition of common elements which differs from the definition
34 provided in P.L. , c. (C.) (pending before the Legislature as
35 this bill) shall be permitted to maintain such a definition provided
36 that other provisions of P.L. , c. (C.) (pending before the
37 Legislature as this bill) are not violated by maintaining that
38 definition.

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

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

47 b. the limited nature of the common or shared elements of the
48 community are such that inclusion of the community under all of

1 the provisions of P.L. , c. (C.) (pending before the Legislature
2 as this bill) is not warranted. Notwithstanding an exemption
3 granted by the commissioner under this subsection, an association
4 shall remain responsible for the maintenance of any common or
5 shared elements, and the powers and responsibilities granted
6 pursuant to sections 48 through 72 of P.L. , c. (C.) (pending
7 before the Legislature as this bill) shall apply to such an
8 association.

9
10 20. (New section) If a cooperative or planned community
11 created within this State before the effective date of
12 P.L. , c. (C.) (pending before the Legislature as this bill)
13 contains fewer than 10 units and is not subject to any development
14 rights, it shall be subject only to sections 5, 6 and 7 of
15 P.L. , c. (C.) (pending before the Legislature as this bill),
16 unless the declaration is amended to provide that the small pre-
17 existing cooperative or planned community shall be subject to all
18 sections of P.L. , c. (C.) (pending before the Legislature as
19 this bill).

20
21 21. (New section) a. Notwithstanding any law or regulation to
22 the contrary, the declaration, bylaws or plats and plans of any
23 common interest community created before the effective date of
24 P.L. , c. (C.) (pending before the Legislature as this bill) may
25 be amended to conform to it. Pursuant to section 50 of
26 P.L. , c. (C.) (pending before the Legislature as this bill), an
27 executive board may vote to amend any of the above documents
28 without obtaining unit owner approval.

29 b. Except as provided in subsection a. of section 21 of
30 P.L. , c. (C.) (pending before the Legislature as this bill), an
31 amendment to the declaration, bylaws or plats and plans authorized
32 by this section must be adopted in conformity with any procedures
33 and requirements for amending the instruments specified in those
34 instruments or, if there are none, in conformity with section 41 of
35 P.L. , c. (C.) (pending before the Legislature as this bill). If
36 an amendment grants to any person any rights, powers or privileges
37 under P.L. , c. (C.) (pending before the Legislature as this
38 bill), all correlative obligations, liabilities and restrictions imposed
39 by P.L. , c. (C.) (pending before the Legislature as this bill)
40 shall also apply to that person.

41
42 22. (New section) a. As used in this section, "nonresidential
43 common interest community" means a common interest community
44 in which all units are restricted exclusively to nonresidential
45 purposes.

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

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

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

11 (1) Notwithstanding the provisions of section 52 of
12 P.L. , c. (C.) (pending before the Legislature as this bill),
13 any management contract, employment contract, lease of
14 recreational or parking areas or facilities, and any other contract or
15 lease between an association and a declarant or an affiliate of a
16 declarant, shall continue in force after the declarant turns over
17 control of the association; and

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

23 e. A common interest community that contains units restricted
24 exclusively to nonresidential purposes and other units which may be
25 used for residential purposes shall not be subject to the provisions
26 of P.L. , c. (C.) (pending before the Legislature as this bill)
27 unless the units that may be used for residential purposes would
28 comprise a common interest community in the absence of the
29 nonresidential units, or the declaration provides that
30 P.L. , c. (C.) (pending before the Legislature as this bill)
31 applies as provided in subsections c. or d. of this section.

32
33 23. (New section) The provisions of P.L. , c. (C.)
34 (pending before the Legislature as this bill) shall not apply to
35 common interest communities which are governed by the "Real
36 Estate Sales Full Disclosure Act," P.L.1989, c.239 (C.45:15-16.27
37 et seq.).

38 39 ARTICLE 2

40 41 CREATION, ALTERATION AND TERMINATION OF 42 COMMON INTEREST COMMUNITIES

43
44 24. (New section) A common interest community may be
45 created pursuant to P.L. , c. (C.) (pending before the
46 Legislature as this bill) only by recording a declaration executed in
47 the same manner as a deed and, in a cooperative, by conveying the
48 real estate subject to that declaration to the association. The

1 declaration shall be recorded in every county in which any portion
2 of the common interest community is located and must be indexed
3 in the grantee's index in the name of the common interest
4 community and the association and in the grantor's index in the
5 name of each person executing the declaration.

6
7 25. (New section) Except as provided by the declaration:

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

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

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

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

29
30 26. (New section) a. All provisions of the declaration and
31 bylaws shall be severable.

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

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

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

46
47 27. (New section) A description of a unit which sets forth the
48 name of the common interest community, the recording data for the

1 declaration, the county and municipality in which the common
2 interest community is located, and the identifying number of the
3 unit, shall be a legally sufficient description of that unit and all
4 rights, obligations, and interests appurtenant to that unit which were
5 created by the declaration or bylaws.

6
7 28. (New section) a. The declaration shall contain:

8 (1) The names of the common interest community and the
9 association and a statement that the common interest community is
10 either a condominium, cooperative, or planned community;

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

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

15 (4) In a condominium or planned community, a description of
16 the boundaries of each unit created by the declaration, including the
17 unit's identifying number, its size or number of rooms, and its
18 location within a building if it is within a building containing more
19 than one unit;

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

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

30 (7) A description of any development rights and other special
31 declarant rights reserved by the declarant, together with a legally
32 sufficient description of the real estate to which each of those rights
33 applies, and a time limit within which each of those rights must be
34 exercised;

35 (8) If any development right may be exercised with respect to
36 different parcels of real estate at different times, a statement to that
37 effect together with (a) either a statement fixing the boundaries of
38 those portions and regulating the order in which those portions may
39 be subjected to the exercise of each development right or a
40 statement that no assurances are made in those regards, and (b) a
41 statement as to whether, if any development right is exercised in
42 any portion of the real estate subject to that development right, that
43 development right must be exercised in all or in any other portion of
44 the remainder of that real estate;

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

47 (10) An allocation to each unit of the allocated interests in the
48 manner described in section 30 of P.L. , c. (C.) (pending

1 before the Legislature as this bill) ;

2 (11) Any restrictions (a) on alienation of the units, including any
3 restrictions on leasing which exceed the restrictions on leasing units
4 that executive boards may impose pursuant to subsection d. of
5 section 49 of P.L. , c. (C.) (pending before the Legislature as
6 this bill), and (b) on the amount for which a unit may be sold or on
7 the amount that may be received by a unit owner on sale,
8 condemnation, or casualty loss to the unit or to the common interest
9 community, or on termination of the common interest community;

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

14 (13) All matters required by sections 29 through 32 of
15 P.L. , c. (C.) (pending before the Legislature as this bill),
16 section 40 of P.L. , c. (C.) (pending before the Legislature as
17 this bill), and subsection d. of section 51 of P.L. , c. (C.)
18 (pending before the Legislature as this bill).

19 b. The declaration may contain any other matters the declarant
20 considers appropriate, including any restrictions on the uses of a
21 unit or the number or other qualifications of persons who may
22 occupy units.

23

24 29. (New section) a. Any lease the expiration or termination of
25 which may terminate the common interest community or reduce its
26 size shall be recorded. Every lessor of such leases in a
27 condominium or planned community shall sign the declaration. The
28 declaration shall state:

29 (1) The recording data for the lease;

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

31 (3) A legally sufficient description of the real estate subject to
32 the lease;

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

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

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

42 b. After the declaration for a leasehold condominium or
43 leasehold planned community is recorded, neither the lessor nor the
44 lessor's successor in interest may terminate the leasehold interest of
45 a unit owner who makes timely payment of a unit owner's share of
46 the rent and otherwise complies with all covenants which, if
47 violated, would entitle the lessor to terminate the lease. A unit
48 owner's leasehold interest in a condominium or planned community

1 shall not be affected by failure of any other person to pay rent or
2 fulfill any other covenant.

3 c. Acquisition of the leasehold interest of any unit owner by
4 the owner of the reversion or remainder shall not merge the
5 leasehold and fee simple interests unless the leasehold interests of
6 all unit owners subject to that reversion or remainder are acquired.

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

15

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

17 (1) In a condominium, a fraction or percentage of undivided
18 interests in the common elements and in the common expenses of
19 the association as enumerated in subsection c. of section 63 of
20 P.L. , c. (C.) (pending before the Legislature as this bill), and
21 a portion of the votes in the association;

22 (2) In a cooperative, an ownership interest in the association, a
23 fraction or percentage of the common expenses of the association as
24 enumerated subsection c. of section 63 of P.L. , c. (C.)
25 (pending before the Legislature as this bill), and a portion of the
26 votes in the association; and

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

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

34 c. If units may be added to or withdrawn from the common
35 interest community, the declaration shall state the formulas to be
36 used to reallocate the allocated interests among all units included in
37 the common interest community after the addition or withdrawal.

38 d. The declaration may provide: (1) that different allocations of
39 votes shall be made to the units on particular matters specified in
40 the declaration; (2) for cumulative voting only for the purpose of
41 electing members of the executive board; and (3) for class voting on
42 specified issues affecting the class if necessary to protect valid
43 interests of the class. A declarant shall not utilize cumulative or
44 class voting for the purpose of evading any limitation imposed on
45 declarants by P.L. , c. (C.) (pending before the Legislature as
46 this bill) and units shall not constitute a class because they are
47 owned by a declarant.

48 e. Except for minor variations due to rounding, the sum of the

1 common expense liabilities and, in a condominium, the sum of the
2 undivided interests in the common elements allocated at any time to
3 all the units shall each equal one, if stated as a fraction, or 100
4 percent, if stated as a percentage. In the event of a discrepancy
5 between an allocated interest and the result derived from application
6 of the pertinent formula, the allocated interest shall prevail.

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

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

16 h. Except to the extent that the declaration provides for limited
17 common elements, it shall provide that the right of a unit owner to
18 the use of the common elements is a right in common with all other
19 unit owners.

20
21 31. (New section) a. Except for the limited common elements
22 described in subsections b. and d. of section 25 of
23 P.L. , c. (C.) (pending before the Legislature as this bill), the
24 declaration shall specify to which unit or units each limited
25 common element is allocated. An allocation shall not be altered
26 without the consent of the unit owners whose units are affected.

27 b. Except as the declaration otherwise provides, a limited
28 common element shall be reallocated by an amendment to the
29 declaration executed by the unit owners between or among whose
30 units the reallocation is made. The persons executing the
31 amendment shall provide a copy thereof to the association, which
32 shall record it. The amendment shall be recorded in the names of
33 the parties and the common interest community.

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

40
41 32. (New section) a. Plats and plans shall be a part of the
42 declaration and shall be required for all common interest
43 communities except cooperatives. Separate plats and plans shall not
44 be required if all of the information required by this section is
45 contained in either a plat or plan. Each plat and plan shall be clear
46 and legible and contain a certification that the plat or plan contains
47 all of the information required by this section.

48 b. Each plat shall show or project:

- 1 (1) The name and a survey or general schematic map of the
2 entire common interest community;
- 3 (2) The location and dimensions of all real estate not subject to
4 development rights, or subject only to the development right to
5 withdraw, and the location and dimensions of all existing
6 improvements within that real estate;
- 7 (3) A legally sufficient description of any real estate subject to
8 development rights, labeled to identify the rights applicable to each
9 parcel;
- 10 (4) The extent of any encroachments by or upon any portion of
11 the common interest community;
- 12 (5) To the extent feasible, a legally sufficient description of all
13 easements serving or burdening any portion of the common interest
14 community;
- 15 (6) Except as provided in subsection h. of this section, the
16 approximate location and dimensions of any vertical unit
17 boundaries not shown or projected on plans recorded pursuant to
18 subsection d. of this section and that unit's identifying number;
- 19 (7) The location with reference to an established datum of any
20 horizontal unit boundaries not shown or projected on plans recorded
21 pursuant to subsection d. of this section and that unit's identifying
22 number;
- 23 (8) A legally sufficient description of any real estate in which
24 the unit owners will own only an estate for years, labeled as
25 "leasehold real estate";
- 26 (9) The distance between non-contiguous parcels of real estate
27 comprising the common interest community;
- 28 (10) The approximate location and dimensions of any porches,
29 decks, balconies, garages, or patios allocated as limited common
30 elements, and also a narrative description of any other limited
31 common elements; and
- 32 (11) In the case of real estate not subject to development rights,
33 all other matters customarily shown on land surveys.
- 34 c. A plat also shall show the intended location and dimensions
35 of any contemplated improvement to be constructed anywhere
36 within the common interest community. Any contemplated
37 improvement shown shall be labeled either "MUST BE BUILT" or
38 "NEED NOT BE BUILT".
- 39 d. Except as provided in subsection h. of this section, to the
40 extent not shown or projected on the plats, plans of the units shall
41 show or project:
 - 42 (1) The approximate location and dimensions of the vertical
43 boundaries of each unit, and that unit's identifying number;
 - 44 (2) The approximate location of any horizontal unit boundaries,
45 with reference to an established datum, and that unit's identifying
46 number; and
 - 47 (3) The approximate location of any units in which the declarant
48 has reserved the right to create additional units or common elements

1 as enumerated in subsection c. of section 33 of P.L. , c. (C.)
2 (pending before the legislature as this bill), identified appropriately.

3 e. Unless the declaration provides otherwise, the horizontal
4 boundaries of part of a unit located outside a building shall have the
5 same elevation as the horizontal boundaries of the inside part, and
6 need not be depicted on the plats and plans.

7 f. Upon exercising any development right, the declarant shall
8 record either new plats and plans necessary to conform to the
9 requirements of subsections a., b., and d. of this section, or new
10 certifications of plats and plans previously recorded if those plats
11 and plans otherwise conform to the requirements of those
12 subsections.

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

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

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

20 (2) The declaration includes other information that shows or
21 contains a narrative description of the general layout of the units in
22 those buildings and the limited common elements allocated to those
23 units.
24

25 33. (New section) a. To exercise any development right
26 reserved under paragraph (7) of subsection a. of section 28 of
27 P.L. , c. (C.) (pending before the Legislature as this bill), the
28 declarant shall prepare, execute and record an amendment to the
29 declaration pursuant to section 40 of P.L. , c. (C.) (pending
30 before the Legislature as this bill) and, in a condominium or
31 planned community, comply with section 32 of P.L. , c. (C.)
32 (pending before the Legislature as this bill). The declarant shall be
33 the unit owner of any units thereby created. The amendment to the
34 declaration shall assign an identifying number to each new unit
35 created, and, except in the case of subdivision or conversion of
36 units described in subsection b. of this section, reallocate the
37 allocated interests among all units. The amendment shall describe
38 any common elements and any limited common elements thereby
39 created and, in the case of limited common elements, designate the
40 unit to which each is allocated to the extent required by section 31
41 of P.L. , c. (C.) (pending before the Legislature as this bill).

42 b. Development rights may be reserved within any real estate
43 added to the common interest community if the amendment adding
44 that real estate includes all matters required by sections 28 or 29 of
45 P.L. , c. (C.) (pending before the Legislature as this bill), as
46 the case may be, and, in a condominium or planned community, the
47 plats and plans include all matters required by section 32 of
48 P.L. , c. (C.) (pending before the Legislature as this bill).

1 This provision does not extend the time limit on the exercise of
2 development rights imposed by the declaration pursuant to
3 paragraph (8) of subsection a. of section 28 of P.L. , c. (C.)
4 (pending before the Legislature as this bill).

5 c. Whenever a declarant exercises a development right to
6 subdivide or convert a unit previously created into additional units,
7 common elements, or both:

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

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

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

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

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

30

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

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

39 b. Shall not change the appearance of the common elements, or
40 the exterior appearance of a unit or any other portion of the
41 common interest community, without permission of the association;
42 or

43 c. After acquiring an adjoining unit or an adjoining part of an
44 adjoining unit, may remove or alter any intervening partition or
45 create apertures therein, even if the partition in whole or in part is a
46 common element, if those acts do not impair the structural integrity
47 or mechanical systems or lessen the support of any portion of the
48 common interest community. Removal of partitions or creation of

1 apertures under this paragraph shall not be an alteration of
2 boundaries.

3
4 35. (New section) a. Subject to the provisions of the
5 declaration and other provisions of law, the boundaries between
6 adjoining units may be relocated by an amendment to the
7 declaration upon application to the association by the owners of
8 those units. If the owners of the adjoining units have specified a
9 reallocation between their units of their allocated interests, the
10 application shall state the proposed reallocations. Unless the
11 executive board determines, within 30 days, that the reallocations
12 are unreasonable, the association shall prepare an amendment that
13 identifies the units involved and states the reallocations. The
14 amendment shall be executed by those unit owners, contain words
15 of conveyance between them, and, on recordation, be indexed in the
16 name of the grantor and the grantee, and in the grantee's index in
17 the name of the association.

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

35 c. The association in a condominium or planned community
36 shall prepare and record plats or plans as necessary to show the
37 altered boundaries of affected units, and their dimensions and
38 identifying numbers. The association in a cooperative shall prepare
39 and record amendments to the declaration, including any plans, as
40 necessary to show or describe the altered boundaries of affected
41 units, and their dimensions and identifying numbers.

42
43 36. (New section) If a unit in a cooperative is sold, conveyed,
44 voluntarily or involuntarily encumbered, or otherwise transferred by
45 a unit owner, the interest in that unit which is sold, conveyed,
46 encumbered, or otherwise transferred shall be the right to
47 possession of that unit under a proprietary lease, coupled with the
48 allocated interests of that unit, and the association's interest in that

1 unit shall not be thereby affected.

2

3 37. (New section) a. If the declaration expressly so permits, a
4 unit may be subdivided into two or more units. Subject to the
5 provisions of the declaration and other relevant provisions of law,
6 upon application of a unit owner to subdivide a unit, the association
7 shall prepare, execute and record an amendment to the declaration,
8 including in a condominium or planned community the plats and
9 plans, subdividing that unit.

10 b. The amendment to the declaration shall be executed by the
11 owner of the unit to be subdivided and shall assign an identifying
12 number to each unit created and reallocate the allocated interests
13 formerly allocated to the subdivided unit to the new units in any
14 reasonable manner prescribed by the owner of the subdivided unit.

15

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

28

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

41

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

48 b. In a planned community, subject to the provisions of

1 paragraph (6) of subsection a. of section 49 of P.L. , c. (C.)
2 (pending before the Legislature as this bill), and section 60 of
3 P.L. , c. (C.) (pending before the Legislature as this bill), unit
4 owners shall have an easement,

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

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

11

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

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

48 c. Every amendment to a declaration shall be recorded in every

1 county in which any portion of the common interest community is
2 located and shall be effective only upon recordation. An
3 amendment, except an amendment pursuant to subsection a. of
4 section 35 of P.L. , c. (C.) (pending before the Legislature as
5 this bill), shall be indexed in the grantee's index in the name of the
6 common interest community and the association and in the grantor's
7 index in the name of the parties executing the amendment.

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

14 e. Amendments to the declaration required by P.L. , c. (C.)
15 (pending before the Legislature as this bill) to be recorded by the
16 association shall be prepared, executed, recorded, and certified on
17 behalf of the association by any officer of the association
18 designated for that purpose or, in the absence of designation, by the
19 president of the association.

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

1 bylaws or rules shall apply only to the specific item of personal
2 property, physical improvement or pet existing or present at the unit
3 on the effective date of the change. An item of personal property or
4 a physical improvement that violates the terms of a change to the
5 declaration, bylaws or rules shall not continue to be maintained
6 after suffering damage to more than 50 percent of its value.

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

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

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

22
23 42. (New section) a. Except in the case of a taking of all the
24 units by eminent domain pursuant to section 7 of
25 P.L. , c. (C.) (pending before the Legislature as this bill) or
26 in the case of foreclosure against a cooperative of a security interest
27 that has priority over the declaration of that cooperative, a common
28 interest community may be terminated only by agreement of unit
29 owners of units to which at least 80 percent of the votes in the
30 association are allocated, or any larger percentage that the
31 declaration specifies. The declaration may specify a smaller
32 percentage only if all of the units are restricted exclusively to
33 nonresidential uses.

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

42 c. In the case of a condominium or planned community
43 containing only units having horizontal boundaries described in the
44 declaration, a termination agreement may provide that all of the
45 common elements and units of the common interest community
46 shall be sold following termination. If, pursuant to the agreement,
47 any real estate in the common interest community is to be sold
48 following termination, the termination agreement shall set forth the

1 minimum terms of the sale.

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

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

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

43 g. Following termination of a common interest community, the
44 proceeds of any sale of real estate, together with the assets of the
45 association, shall be held by the association as trustee for unit
46 owners and holders of liens on the units as their interests may
47 appear.

48 h. Following termination of a condominium or planned

1 community, creditors of the association holding liens on the units,
2 which were recorded, filed or otherwise perfected according to law,
3 before termination, may enforce those liens in the same manner as
4 any lien holder. All other creditors of the association shall be
5 treated as if they had perfected liens on the units immediately
6 before termination.

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

18 (1) The lien of each creditor of the association which was
19 perfected against the association before termination shall become,
20 upon termination, a lien against each unit owner's interest in the
21 unit as of the date the lien was perfected;

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

25 (3) The amount of the lien of an association's creditor described
26 in paragraphs (1) and (2) of this subsection against each of the unit
27 owners' interest shall be proportionate to the ratio which each unit's
28 common expense liability bears to the common expense liability of
29 all of the units;

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

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

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

40 (1) Except as provided in paragraph (2) of this subsection, the
41 respective interests of unit owners shall be the fair market values of
42 their units, allocated interests and any limited common elements
43 immediately before the termination, as determined by one or more
44 independent appraisers selected by the association. The decision of
45 the independent appraisers shall be distributed to the unit owners
46 and shall become final unless disapproved, within 30 days after
47 distribution, by unit owners of units to which 25 percent of the
48 votes in the association are allocated. The proportion of any unit

1 owner's interest to that of all unit owners shall be determined by
2 dividing the fair market value of that unit owner's unit and its
3 allocated interests by the total fair market values of all the units and
4 their allocated interests.

5 (2) If any unit or any limited common element is destroyed to
6 the extent that an appraisal of the fair market value thereof before
7 destruction cannot be made, the interests of all unit owners shall be:

8 (a) in a condominium, their respective common element interests
9 immediately before the termination; (b) in a cooperative, their
10 respective ownership interests immediately before the termination,
11 and (c) in a planned community, their respective common expense
12 liabilities immediately before the termination.

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

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

36 m. No agreement or governmental action to be taken which will
37 result in the termination of a common interest community with
38 common elements to remain after such termination, shall be
39 effective unless there shall be provision made for the maintenance
40 of those common elements.

41
42 43. (New section) a. The declaration may require that all or a
43 specified number or percentage of the lenders who hold security
44 interests encumbering the units or who have extended credit to the
45 association approve specified actions of the unit owners or the
46 association as a condition to the effectiveness of those actions, but
47 no requirement for approval shall operate to,

48 (1) deny or delegate control over the general administrative

1 affairs of the association by the unit owners or the executive board,
2 or

3 (2) prevent the association or the executive board from
4 commencing, intervening in, or settling any litigation or
5 proceeding, or

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

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

19

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

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

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

44 d. The rights and responsibilities of unit owners with respect to
45 the unit owners' association as set forth in sections 49, 50, 51, 56,
46 57, 58 and 60 of P.L. , c. (C.) (pending before the
47 Legislature as this bill) shall apply, in the conduct of the affairs of a
48 master association, only to persons who elect the board of a master

1 association, whether or not those persons are otherwise unit owners
2 within the meaning of P.L. , c. (C.) (pending before the
3 Legislature as this bill).

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

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

16 (2) All of the members of the executive boards of all common
17 interest communities subject to the master association may elect all
18 members of the master association's executive board.

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

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

25
26 45. (New section) a. Any two or more common interest
27 communities of the same form of ownership, by agreement of the
28 unit owners as provided in subsection b. of this section, may be
29 merged or consolidated into a single common interest community.
30 In the event of a merger or consolidation, unless the agreement
31 otherwise provides, the resultant common interest community shall
32 be the legal successor, for all purposes, of all of the pre-existing
33 common interest communities, and the operations and activities of
34 all associations of the pre-existing common interest communities
35 shall be merged and consolidated into a single association that shall
36 hold all of the powers, rights, obligations, assets, and liabilities of
37 the pre-existing associations.

38 b. An agreement of two or more common interest communities
39 to merge or consolidate pursuant to subsection a. of this section
40 shall be evidenced by an agreement prepared, executed, recorded,
41 and certified by the president of the association of each of the pre-
42 existing common interest communities following approval by the
43 owners of units to which are allocated the percentage of votes in
44 each common interest community required to terminate that
45 common interest community. The agreement shall be recorded in
46 each county in which a portion of the common interest community
47 is located and shall not be effective until recorded.

48 c. When a merger of two or more common interest

1 communities involves the merger of two or more nonprofit
2 corporations, the corporations shall comply with all of the
3 requirements of N.J.S.15A:10-1.

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

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

17
18 46. (New section) In a planned community, if the right is
19 originally reserved in the declaration, the declarant, in addition to
20 any other development right, may amend the declaration at any time
21 during as many years as are specified in the declaration for adding
22 additional real estate to the planned community without describing
23 the location of that real estate in the original declaration. The
24 amount of real estate added to the planned community pursuant to
25 this section shall not exceed 10 percent of the real estate described
26 in paragraph (3) of subsection a. of section 28 of
27 P.L. , c. (C.) (pending before the Legislature as this bill)
28 and the declarant shall not in any event increase the number of units
29 in the planned community beyond the number stated in the original
30 declaration pursuant to paragraph (4) of subsection a. of section 28
31 of P.L. , c. (C.) (pending before the Legislature as this bill),
32 unless unit owners, other than the declarant, that represent at least
33 51 percent of the votes in the association, vote to approve: a. the
34 addition of real estate in excess of 10 percent of the real estate
35 described in paragraph (3) of subsection a. of section 28 of
36 P.L. , c. (C.) (pending before the Legislature as this bill), or
37 b. a number of units in excess of the number stated in the original
38 declaration pursuant to paragraph (4) of subsection a. of section 28
39 of P.L. , c. (C.) (pending before the Legislature as this bill).

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

48 b. If the requirements of subsection a. of this section are

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

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

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

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

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

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

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

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

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

28 (3) If the public offering statement conspicuously identifies the
29 fact that the community is a master planned community, the
30 disclosure requirements contained in sections 73 through 87 of
31 P.L. , c. (C.) (pending before the Legislature as this bill) shall
32 apply only with respect to units that have been declared or are being
33 offered for sale in connection with the public offering statement and
34 to the real estate described in subsection c. of this section.

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

38 f. Subject to the requirements of unconscionability in section
39 12 of P.L. , c. (C.) (pending before the Legislature as this
40 bill) and good faith in section 13 of P.L. , c. (C.) (pending
41 before the Legislature as this bill), the period of declarant control of
42 the association for a master planned community shall terminate in
43 the manner set forth in section 51 of P.L. , c. (C.) (pending
44 before the Legislature as this bill), at such earlier time as may be
45 specified in the declaration, or as the declarant specifies in a
46 recorded instrument after delivering written notice to all the unit
47 owners in the same manner as notice is required for an amendment
48 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.

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

(3) Whether or not incorporated, the association shall be an entity that shall act through its officers and may enter into contracts, bring suit and be sued. If the association is not incorporated, it may be deemed to be an entity existing pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) and a majority of the members of the executive board or of the association, as the case may be, shall constitute a quorum for the transaction of business. Process may be served upon the association by serving any 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.

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

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

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

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

3 (d) inspection to ensure compliance with requirements of State
4 or local code enforcing agencies or insurance carriers or
5 underwriters; or

6 (e) emergency repairs necessary to prevent damage to common
7 elements or to any other unit or units (the foregoing being
8 individually or in the aggregate referred to as a "permitted right of
9 entry"); provided, however, that the association shall not require a
10 unit owner to provide a unit key to any person. Nothing herein
11 shall prohibit the association from having immediate access to a
12 unit in case of an emergency. A unit owner who refuses to provide
13 a unit access key to an association that requests one for a permitted
14 right of entry shall be responsible for all reasonable costs of the
15 association to obtain access to the unit; provided, however, that the
16 association shall secure the unit after the purpose of any entry has
17 been satisfied and shall, to that end, utilize the services of a licensed
18 locksmith, the cost of which services shall be included in the
19 reasonable cost of obtaining access, and further provided that prior
20 or concurrent notice of any entry without a key shall be given to the
21 police department having jurisdiction. The association may charge
22 the unit owner for the repair of any common element damaged by
23 the unit owner or his tenant.

24 (6) The association may purchase units in the common interest
25 community and otherwise acquire, hold, lease, mortgage, and
26 convey the same. It may also lease or license the use of common
27 elements in a manner not inconsistent with the rights of unit
28 owners.

29 (7) An executive board of an association and any community
30 management personnel contracted by an association, shall be
31 responsible for safeguarding and preserving all common elements
32 within the common interest community, so as to comply with all
33 applicable laws and to protect the investment made by the owners
34 of the lots, parcels, units, or interests subject to the jurisdiction of
35 the association and also shall enforce rules requiring the proper
36 maintenance of such common elements. Executive boards and
37 community managers shall comply with all rules that may be
38 adopted by the commissioner, including, but not limited to,
39 accounting procedures and financial and common property facility
40 management requirements, provided such rules shall not include
41 substantive requirements not otherwise set forth in
42 P.L. , c. (C.) (pending before the Legislature as this bill).

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

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

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

9 (3) hire and discharge managing agents and other employees,
10 agents and independent contractors;

11 (4) institute, defend or intervene in litigation or administrative
12 proceedings in its own name on matters affecting the common
13 interest community;

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

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

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

25 (8) acquire, hold, encumber and convey in its own name any
26 right, title or interest to real estate or personal property, but (a)
27 common elements in a condominium or planned community shall
28 only be conveyed or subjected to a security interest pursuant to
29 section 60 of P.L. , c. (C.) (pending before the Legislature
30 as this bill), and (b) part of a cooperative shall only be conveyed, or
31 all or part of a cooperative shall only be subjected to a security
32 interest, pursuant to section 60 of P.L. , c. (C.) (pending
33 before the Legislature as this bill). The association may also
34 acquire or enter into agreements whereby it acquires leaseholds,
35 memberships or other possessory or use interests in lands or
36 facilities including, but not limited to, country clubs, golf courses,
37 marinas, and other recreational facilities, whether or not contiguous
38 to the common interest community property, intended to provide for
39 the enjoyment, recreation or other use or benefit of the unit owners.
40 If fully described in the declaration or bylaws, the fees, costs and
41 expenses of acquiring, maintaining, operating, repairing, and
42 replacing any such memberships, interests and facilities shall be
43 common expenses. If not so described in the declaration or bylaws
44 as originally recorded, no such membership interest or facility shall
45 be acquired except pursuant to amendment of, or supplement to, the
46 declaration or bylaws duly adopted as provided therein and in
47 P.L. , c. (pending before the Legislature as this bill). In the
48 absence of such amendment or supplement, if some but not all unit

1 owners desire any such acquisition and agree to assume among
2 themselves all costs of acquisition, maintenance, operation, repair,
3 and replacement thereof, the association may acquire or enter into
4 an agreement to acquire the same as limited common elements
5 appurtenant only to the units of those unit owners who have agreed
6 to bear the costs and expenses thereof. Such costs and expenses
7 shall be assessed against and collected from the consenting unit
8 owners in the proportions in which they share as among themselves
9 in the common expenses in the absence of some other unanimous
10 agreement among themselves. No other unit owner shall be charged
11 with any such cost or expense; provided, however, that nothing
12 herein shall preclude the extension of the interests in such limited
13 common elements to additional unit owners by subsequent
14 agreement with all those unit owners then having an interest in such
15 limited common elements. Thereafter, any such costs or expenses
16 shall be paid only by the consenting unit owners and their grantees,
17 heirs and assigns;

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

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

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

36 (12) impose reasonable charges for the preparation and
37 recordation of amendments to the declaration, resale certificates
38 required by section 76 of P.L. , c. (C.) (pending before the
39 Legislature as this bill), or statements of unpaid assessments;

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

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

45 (15) notwithstanding the provisions of the "Prudent Investor
46 Act," P.L.1997, c.26 (C.3B:20-11.1 et seq.), or any other law to the
47 contrary, invest the assets of the association and the proceeds
48 thereof, in good faith and with that degree of diligence, care and

1 skill which ordinary prudent persons would exercise under similar
2 circumstances in like positions. In discharging their duties,
3 members of the executive board shall not be liable if, acting in good
4 faith, they rely upon the opinion of counsel for the association or
5 upon written reports setting forth financial data concerning the
6 association and prepared by an independent public account or
7 certified public accountant or firm of accountants or upon financial
8 statements, books of account or reports of the association
9 represented to them to be correct by the chief executive officer, the
10 officer of the association having charge of its books of account, or
11 the persons presiding at a meeting of the executive board;

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

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

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

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

29 c. The declaration shall not impose limitations on the power of
30 the association to deal with the declarant which are more restrictive
31 than the limitations imposed on the power of the association to deal
32 with other persons.

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

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

38 (2) reasonably restrict the leasing of residential units so long as
39 the rules are designed to meet the then-current underwriting
40 requirements adopted by institutional lenders who regularly lend
41 money secured by first mortgages on units in common interest
42 communities, or regularly purchase those mortgages. Otherwise, an
43 association shall not regulate any use of, or behavior in, units unless
44 empowered to do so by the declaration or P.L. , c. (C.)
45 (pending before the Legislature as this bill).

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

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

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

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

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

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

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

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

21
22 50. (New section) If authorized by the declaration or bylaws,
23 the association may impose reasonable fines upon unit owners for
24 failure to comply with provisions of the declaration, bylaws or rules
25 and regulations, subject to the following provisions:

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

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

43 A fine shall not be imposed unless the unit owner is given
44 written notice of the action taken and of the alleged basis for the
45 action, and is advised of the right to participate in an alternative
46 dispute resolution procedure in accordance with section 85 of
47 P.L. , c. (C.) (pending before the Legislature as this bill). A
48 unit owner who does not believe that the mediation phase of the

1 alternative dispute resolution procedure has satisfactorily resolved
2 the matter and who does not agree to continue the procedure as
3 binding arbitration shall not be prevented from seeking a judicial
4 remedy in a court of competent jurisdiction. No lien shall be
5 recorded concerning a fine imposed by an association after the
6 effective date of P.L. , c. (C.) (pending before the Legislature
7 as this bill) unless: (1) the right to the lien has been established
8 pursuant to a determination by a court of competent jurisdiction, or
9 (2) the fine imposition has been authorized through alternative
10 dispute resolution proceedings pursuant to section 85 of
11 P.L. , c. (C.) (pending before the Legislature as this bill), or
12 (3) the unit owner has been notified by the association, by personal
13 service or by registered or certified mail, return receipt requested,
14 of the unit owner's right to have the dispute resolved through
15 alternative dispute resolution proceedings and has not requested
16 such proceedings within 30 days of receipt of such notice or has,
17 after requesting such proceedings, failed or refused to participate in
18 them or discontinued such participation. If service is made by
19 registered or certified mail, the date of receipt shall be deemed to be
20 the date the mail is accepted or three days following the date of
21 mailing, whichever comes first.

22
23 51. (New section) a. Except as provided in the declaration, the
24 bylaws, subsection b. of this section, or other provisions of
25 P.L. , c. (C.) (pending before the Legislature as this bill), an
26 executive board may act in all instances on behalf of the
27 association. In the performance of their duties, officers and
28 members of an executive board shall act in good faith and exercise
29 honest judgment in lawful and legitimate furtherance of the
30 association's purposes.

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

44 b. An executive board shall not act on behalf of the association
45 to:

46 (1) amend the declaration pursuant to section 41 of
47 P.L. , c. (C.) (pending before the Legislature as this bill),
48 except when necessary to render an inconsistent portion of the

1 declaration to be consistent with applicable law, but only to the
2 extent necessary to achieve consistency;

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

6 (3) elect members of the executive board or determine the
7 qualifications, powers, duties, or terms of office of executive board
8 members pursuant to subsection f. of this section; however, the
9 executive board may fill vacancies in its membership until the next
10 annual meeting of the membership at which a quorum is present, at
11 which time the membership shall elect a member to fill the vacancy
12 for the then unexpired portion of the term that was vacated.

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

16 d. Subject to subsection e. of this section, the declaration may
17 provide for a period of declarant control of the association, during
18 which a declarant, or persons designated by him, may appoint and
19 remove the officers and members of the executive board.
20 Regardless of the period provided in the declaration, a period of
21 declarant control of the executive board shall terminate no later than
22 the earlier of: (1) 60 days after conveyance of 75 percent of the lots,
23 parcels, units, or interests that may be created to unit owners other
24 than a declarant;

25 (2) two years after all declarants have ceased to offer units for
26 sale in the ordinary course of business;

27 (3) two years after any right to add new units was last exercised;
28 or

29 (4) if, at a duly held meeting of the association, the majority of
30 the unit owners appearing in person or by proxy vote to assume
31 control, the date the declarant, after giving written notice to unit
32 owners, records an instrument voluntarily surrendering all rights to
33 control activities of the association. A declarant may voluntarily
34 surrender the right to appoint and remove officers and members of
35 the executive board before termination of that period, but in that
36 event the declarant may require, for the duration of the period of
37 declarant control, that specified actions of the association or
38 executive board, as described in a recorded instrument executed by
39 the declarant, be approved by the declarant before they become
40 effective.

41 e. Not later than 60 days after conveyance to unit owners, other
42 than a declarant, of 25 percent of the lots, parcels, units, or interests
43 that may be created, at least one member and not less than 25
44 percent of the members of the executive board shall be elected by
45 unit owners other than a declarant. Not later than 60 days after
46 conveyance to unit owners other than a declarant of 50 percent of
47 the lots, parcels, units or interests that may be created, not less than
48 40 percent of the members of the executive board shall be elected

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

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

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

48 h. An association, when controlled by the owners, shall not

1 take any action that would be detrimental to the sale of units by the
2 declarant, and shall continue the same level of maintenance,
3 operation and services as immediately prior to the unit owners'
4 assumption of control, until the last unit is sold.

5 i. Notwithstanding any provision of a declaration or bylaws to
6 the contrary, the unit owners, by a two-thirds vote of all persons
7 present and entitled to vote at any meeting of the unit owners at
8 which a quorum is present, may remove any member of the
9 executive board with or without cause, other than a member
10 appointed by the declarant.

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

13 k. Not more than 60 days after the time that unit owners, other
14 than the developer, elect a majority of the members of the executive
15 board or other form of administration of an association, the
16 developer shall relinquish control of the association and the unit
17 owners shall accept control. Simultaneously, the developer shall
18 deliver to the association all property of the unit owners and of the
19 association held or controlled by the developer, including, but not
20 limited to, the following items, if applicable, as to each common
21 interest community operated by the association:

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

25 (2) A certified copy of the association's articles of incorporation,
26 or if not incorporated, then copies of the documents creating the
27 association.

28 (3) A copy of the bylaws.

29 (4) The minute books, including all minutes, and other books
30 and records of the association, if any.

31 (5) Any rules and regulations which have been promulgated by
32 the executive board.

33 (6) Resignations of officers and members of the executive board
34 or other form of administration who are required to resign because
35 the developer is required to relinquish control of the association.

36 (7) An accounting for all association funds, including capital
37 accounts and contributions.

38 (8) Association funds or control thereof.

39 (9) All tangible personal property that is property of the
40 association, represented by the developer to be part of the common
41 elements or ostensibly part of the common elements, and an
42 inventory of that property.

43 (10) A copy of the plans and specifications utilized in the
44 construction or remodeling of improvements and the supplying of
45 equipment to and in the common interest community and utilized in
46 the installation of all mechanical components serving the
47 improvements and the site, along with a certificate in affidavit form
48 of the developer, his agent or an architect or engineer authorized to

1 practice in this State, that such plans and specifications represent,
2 utilized in the construction and improvement of the common
3 interest community property and for the construction and
4 installation of the mechanical components serving the
5 improvements.

6 (11) Insurance policies.

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

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

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

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

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

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

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

26
27 52. (New section) a. A special declarant right created or
28 reserved under P.L. , c. (C.) (pending before the Legislature
29 as this bill) shall be transferred only by an instrument evidencing
30 the transfer and recorded in each county in which any portion of the
31 common interest community is located. The instrument shall not be
32 effective unless executed by the transferee.

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

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

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

47 (3) If a transferor retains any special declarant rights, but
48 transfers other special declarant rights to a successor who is not an

1 affiliate of the declarant, the transferor shall be liable for any
2 obligations or liabilities imposed on a declarant by P.L. , c.
3 (C.) (pending before the Legislature as this bill) or by the
4 declaration relating to the retained special declarant rights and
5 arising after the transfer.

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

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

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

31 (1) The declarant shall cease to have any special declarant
32 rights, and

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

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

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

43 (2) A successor to a sole right reserved in the declaration to
44 maintain models, sales offices, and signs under section 39 of
45 P.L. , c. (C.) (pending before the Legislature as this bill)
46 shall not exercise any other special declarant right and shall not be
47 subject to any liability or obligation as a declarant except the
48 obligation to provide a public offering statement and any liability

1 arising as a result thereof.

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

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

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

29 (b) On his transferor, other than:

30 (i) misrepresentations by any previous declarant;

31 (ii) warranty obligations on improvements made by any previous
32 declarant, or made before the common interest community was
33 created;

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

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

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

43 g. (1) Notwithstanding any provision of this section or any
44 other law to the contrary, a lender who makes a loan of money, or
45 who maintains an indicia of ownership primarily to protect a
46 security interest in property subject to P.L. , c. (C.) (pending
47 before the Legislature as this bill) for a loan made by the lender or a
48 predecessor in interest, the proceeds of which are used or may be

1 used by the borrower to finance the design, manufacture,
2 construction, repair, modification, or improvement of real or
3 personal property for sale or lease to others, shall not as a result of
4 its actions as a lender be liable for any loss or damage occasioned
5 by any defect or deficiency in the real or personal property so
6 designed, manufactured, constructed, repaired, modified, or
7 improved or for any loss or damage resulting from the failure of the
8 borrower to use due care in the design, manufacture, construction,
9 repair, modification, or improvement of such real or personal
10 property, unless:

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

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

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

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

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

40 (iii) Actions that are consistent with holding ownership indicia
41 primarily to protect a security interest shall not constitute
42 participation in management for purposes of P.L. , c. (C.)
43 (pending before the Legislature as this bill). The authority for the
44 lender to make such actions may, but need not, be contained in
45 contractual or other documents specifying requirements for
46 financial, environmental, or other warranties, covenants, conditions,
47 representations or promises from the borrower. Loan policing and
48 work-out activities shall cover and include all activities up to

1 foreclosure and its equivalents.

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

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

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

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

47 i. A lender who engages in work-out activities prior to
48 foreclosure and its equivalents shall remain within the exemption

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

18

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

31 This section shall not apply to:

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

37

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

40 (1) the number of members of the executive board and the titles
41 of the officers of the association;

42 (2) election by the executive board of a president, treasurer,
43 secretary, and any other officers of the association the bylaws may
44 specify;

45 (3) the qualifications, powers and duties, terms of office, and
46 manner of electing and removing executive board members and
47 officers and filling vacancies;

48 (4) which, if any, of its powers the executive board or officers

1 may delegate to other persons or to a managing agent;

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

4 (6) a method for amending the bylaws;

5 (7) for alternative dispute resolution in accordance with the
6 terms of section 85 of P.L. , c. (C.) (pending before the
7 Legislature as this bill); and

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

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

16

17 55. (New section) a. Except to the extent provided by the
18 declaration, subsection b. of this section, or subsection h. of section
19 61 of P.L. , c. (C.) (pending before the Legislature as this
20 bill), an association shall be responsible for the maintenance, repair,
21 cleaning, and replacement of the common elements, and each unit
22 owner shall be responsible for maintenance, repair and replacement
23 of the owner's unit. Subject to the terms of paragraph 4 of
24 subsection a. of section 49 of P.L. , c. (C.) (pending before
25 the Legislature as this bill), each unit owner shall afford to the
26 association and the other unit owners, and to their agents or
27 employees, such access through the owner's unit as reasonably
28 necessary for those purposes. If damage is inflicted on the common
29 elements or on any unit through which access is taken, the entity
30 responsible for the damage shall be liable for the prompt repair
31 thereof.

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

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

46

47 56. (New section) a. A meeting of the unit owners' association
48 shall be held at least annually. Special meetings of an association

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

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

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

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

1 board may prohibit the unit owner from recording the meeting.

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

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

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

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

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

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

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

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

47 (2) published in the community newsletter, if any, provided the
48 publication schedule of the newsletter permits the notice to be

1 published in adequate time for the meeting; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42

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

46 (1) property insurance on the common elements and, in a
47 planned community, also on property that must become common
48 elements and all structural portions of the common interest

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

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

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

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

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

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

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

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

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

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

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

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

48 e. Any loss covered by the property policy under paragraph (1)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 c. Unless the declaration provides otherwise:

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

1 provides;

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

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

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

16 e. If any common expense is caused by the misconduct of any
17 unit owner, the association may assess that expense exclusively
18 against that owner's unit, provided that alternate dispute resolution
19 as required pursuant to section 86 of P.L. , c. (C.) (pending
20 before the Legislature as this bill) is provided prior to assessment.

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

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

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

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

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

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

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

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

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

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

46 (5) The priority granted to a lien under this section shall expire
47 on the first day of the 60th month next following the date of
48 recording of an association's lien, provided that subsequent lien

1 filings shall have the priority otherwise set forth in this section
2 upon the expiration of any prior lien filing, subject to the expiration
3 period set forth in this subsection.

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

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

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

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

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

46 f. The recording office of any county shall not accept for filing
47 any Notice of Fine concerning fines imposed by an association,
48 unless the lien filing is accompanied by a certification on behalf of

1 the association, by either its attorney or an officer designated by the
2 executive board, that the lien filing is in conformity with section 50
3 of P.L. , c. (C.) (pending before the Legislature as this bill)
4 or has been authorized pursuant to a determination of a court of
5 competent jurisdiction. A lien certified by an association, through
6 its attorney or designated officer, to be based on unpaid fees for
7 common expenses, late fees, costs of collection, or interest on such
8 fees or costs shall not be required to be accompanied by such proof.
9

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

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

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

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

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

42 b. In a cooperative:

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

1 (2) Whether or not a unit owner's unit is subject to the claims of
2 the association's creditors, no other property of a unit owner shall
3 be subject to those claims.
4

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

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

1 benefits received by, any such employee or officer, and the
2 qualifications and credentials of any such employee or officer,
3 shall be required to be made available. Any record not required to
4 be made available in accordance with this subsection shall be made
5 available at such time when there shall no longer be a need to
6 maintain confidentiality.

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

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

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

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

42 g. An association shall provide each unit owner, upon request,
43 with a copy of the most recent annual financial statement of the
44 association within seven days of the request and at no cost to the
45 unit owner.

46 h. A unit owner may notify the Commissioner of Community
47 Affairs upon the failure of an association to comply with requests
48 made under subsections a., e. or g. of this section. Upon

1 investigation, the commissioner shall have the power to order the
2 compliance of the association with such a request.

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

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

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

40 c. A delinquent unit owner shall have 10 days from receipt of
41 the notice required to be sent pursuant to subsection b. of this
42 section to provide proof of payment or a statement of the grounds
43 upon which the assessment is disputed. Upon the failure of the unit
44 owner to respond within 10 days after receipt of the notice, or
45 within 15 days of mailing if no receipt is obtained, and provided
46 that no notice is received from the holder of the first security
47 interest that it is exercising its right of assignment of rental
48 proceeds, the association shall be entitled to notify and direct each

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

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

21 e. A holder of a first security interest which is entitled to an
22 assignment of rents and which has exercised its rights by written
23 notice recorded at the county recording office in the county in
24 which the property is located, and by written notice sent by certified
25 mail to the association from which it received notice pursuant to
26 subsection b. of this section, may collect such rents in accordance
27 with an assignment of rents under which it is an assignee.
28

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

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

42 b. Upon the written request of any candidate submitted at least
43 10 days prior to the scheduled election, the commissioner may
44 appoint one or more persons to monitor an election to ensure
45 fairness and accuracy, if previous documented evidence of election
46 problems within an association exists. A candidate may also request
47 the commissioner to investigate any allegations of fraud or abuse in
48 election proceedings. The commissioner shall have power to

1 invalidate any election in which the commissioner finds there to
2 have been fraud or any other abuse of the electoral process,
3 including, but not limited to, denial of equal access to all eligible
4 voters for all candidates. In the event that any association fails or
5 refuses to conduct a fair and open election at such time as elections
6 are required for such association, the commissioner shall order that
7 the election be conducted at such time and under such supervision
8 as the commissioner shall direct, or the commissioner shall conduct
9 the election directly.

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

22
23 70. (New section) Notwithstanding any term of
24 P.L. , c. (C.) (pending before the Legislature as this bill), or
25 of any other law or the governing documents of an association to
26 the contrary, an association shall not be required to enforce a
27 violation of a rule, regulation or restrictive covenant when an
28 association or its employees or agents cannot, in the ordinary
29 discharge of their functions, objectively determine that there exists
30 a violation of such rules, regulations or restrictive covenants.
31 Nothing herein shall prohibit an association from enforcing a
32 violation that it is not required to enforce, provided that the
33 association shall undertake such enforcement pursuant to the terms
34 of P.L. , c. (C.) (pending before the Legislature as this bill).
35 Any unit owner may enforce the rules, regulations and restrictive
36 covenants of the association through an action filed with a court of
37 competent jurisdiction, or by alternative dispute resolution
38 proceedings in accordance with section 85 of P.L. , c. (C.)
39 (pending before the Legislature as this bill). Any association
40 refusing to enforce an alleged violation of a rule, regulation or
41 restrictive covenant pursuant to the terms of this section shall have
42 no liability to any unit owner or third party for such refusal.

43
44 71. (New section) a. An association, to the extent practicable,
45 shall solicit a minimum of three bids for any contract for services or
46 materials whenever the amount payable by the association in
47 connection with the services or materials exceeds \$17,500, or such
48 higher amount as may be established by the Governor as the basic

1 bid threshold amount for local public contracts, in accordance with
2 section 3 of P.L.1971, c.198 (C.40A:11-3), in any 12-month period.
3 An association shall solicit in a uniform manner, containing the
4 required specifications, a minimum of three sealed bids, to be
5 opened only at a publicly announced meeting open to all unit
6 owners, which may be either a meeting of the executive board or of
7 a committee appointed by the executive board. These bidding
8 requirements shall also apply in any case in which the aggregate
9 amount that might be paid to a single entity or a group of entities
10 under common control for different services would exceed the
11 stated thresholds. The thresholds shall not be applicable, however,
12 to payments in excess of the threshold amounts that are necessarily
13 incurred as a result of circumstances not anticipated at the time that
14 the contract was awarded. The association shall award the contract
15 to the vendor who provided the lowest bid, unless the board
16 determines, for good cause that shall be expressly stated at a
17 meeting open to attendance by the owners, that it would be in the
18 best interests of the residents of the common interest community to
19 award the contract to a vendor other than that vendor. The executive
20 board shall have the right to negotiate with vendors for terms more
21 favorable to the association after opening all bids and prior to
22 awarding a contract. The requirements of this section shall not give
23 rise to a cause of action by a vendor who provides a bid to an
24 executive board. No member of an executive board or manager or
25 other person employed by, or acting on behalf of, an association
26 shall make any disclosure that gives an advantage to any bidder or
27 otherwise compromises or interferes with the integrity and fairness
28 of the bidding process.

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

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

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

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

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

1 d. Any two or more associations may contract for goods or
2 services jointly in accordance with the provisions of this section.

3 e. The provisions of this section shall not be applicable to any
4 contract in existence prior to the effective date of
5 P.L. , c. (C.) (pending before the Legislature as this bill).
6

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

37 b. No board member, employee or community manager shall
38 use his or her position to secure or attempt to secure unwarranted
39 privileges for any person.

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

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

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

31 ARTICLE 4

33 PROTECTION OF PURCHASERS

35 73. (New section) a. Sections 73 through 87 of
36 P.L. , c. (C.) (pending before the Legislature as this bill)
37 shall be applicable to all units subject to P.L. , c. (C.)
38 (pending before the Legislature as this bill), except as provided in
39 subsection b. of this section.

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

- 42 (1) gratuitous disposition of a unit;
- 43 (2) disposition pursuant to court order;
- 44 (3) disposition by a government or governmental agency;
- 45 (4) disposition by foreclosure or deed in lieu of foreclosure;
- 46 (5) disposition to a dealer;
- 47 (6) disposition that may be canceled at any time and for any
48 reason by the purchaser without penalty; or

1 (7) disposition of a unit restricted to nonresidential use, unless a
2 majority of the voting interests in a common interest community
3 devoted to nonresidential use determines that sections 73 through
4 87 of P.L. , c. (C.) (pending before the Legislature as this
5 bill) shall apply, in full or part.

6
7 74. (New section) a. Except as provided in subsection b. of this
8 section, a declarant, before offering any interest in a unit to the
9 public, shall prepare a public offering statement conforming to the
10 requirements of section 8 of "The Planned Real Estate Development
11 Full Disclosure Act," P.L.1977, c.419 (C.45:22A-28).

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

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

30
31 75. (New section) P.L. , c. (C.) (pending before the
32 Legislature as this bill) shall not affect or amend the terms or
33 applicability of "The Planned Real Estate Development Full
34 Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.), except as
35 expressly set forth in section 74 of P.L. , c. (C.) (pending
36 before the Legislature as this bill).

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

48 (1) a statement disclosing the effect on the proposed disposition

1 of any right of first refusal or other restraint on the free alienability
2 of the unit held by the association;

3 (2) a statement setting forth the amount of the periodic common
4 expense assessment currently due and payable from the selling unit
5 owner;

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

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

10 (5) a statement of the amount of any reserves for capital
11 expenditures and of any portions of those reserves designated by the
12 association for any specified projects;

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

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

16 (8) a statement of any unsatisfied judgments against the
17 association and the status of any pending suits in which the
18 association is a defendant;

19 (9) a statement describing any insurance coverage maintained
20 by the association;

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

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

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

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

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

41 (15) a statement describing any pending sale or encumbrance of
42 common elements; and

43 (16) a statement disclosing the effect on the unit to be conveyed
44 of any restrictions on the owner's right to use or occupy the unit or
45 to lease the unit to another person.

46 b. The association, within 10 days after a request by a unit
47 owner, shall furnish a certificate containing the information
48 necessary to enable the unit owner to comply with this section. A

1 unit owner providing a certificate pursuant to subsection a. of this
2 section, and any real estate broker or sales agent who provides
3 brokerage services to the unit owner or purchaser shall not be liable
4 to the purchaser for:

5 (1) any erroneous information provided by the association and
6 included in the certificate, or

7 (2) any matter related to the common interest community
8 except, with respect to liability between the unit owner and a
9 purchaser, as may otherwise be agreed in writing.

10 c. A purchaser, other than a purchaser through a foreclosure,
11 shall not be liable for any unpaid assessment or fee greater than the
12 amount set forth in the certificate prepared by the association. A
13 unit owner shall not be liable to a purchaser for the failure or delay
14 of the association to provide the certificate in a timely manner, but
15 the purchase contract shall be voidable by the purchaser until the
16 certificate has been provided and for five days thereafter or until
17 conveyance, whichever first occurs.

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

29
30 77. (New section) a. In the case of a sale of a unit where
31 delivery of a public offering statement is required pursuant to "The
32 Planned Real Estate Development Full Disclosure Act," P.L.1977,
33 c.419 (C.45:22A-21 et seq.), a seller:

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

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

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

40 (i) in a condominium, that unit and its common element
41 interest, and

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

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

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

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

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

6
7 78. (New section) a. A unit may be sold by the sheriff on
8 execution, free of any claim that is not a lien of record for common
9 expenses or other assessments by the association, but any funds
10 derived from that sale remaining after satisfaction of prior liens and
11 charges, but before distribution to the previous unit owner, shall be
12 applied to payment of such unpaid common expenses or other
13 assessments if written notice thereof shall have been given to the
14 sheriff before distribution. Any such unpaid common expenses
15 which shall remain uncollectible from the former unit owner for a
16 period of more than 60 days after such sheriff's sale may be
17 reassessed by the association as common expenses to be collected
18 from all unit owners, including the purchaser who acquired title at
19 the sheriff's sale, his successors and assigns. Unless prohibited by
20 the master deed, declaration or bylaws, the association may bid in
21 and purchase the unit at a sheriff's sale, and acquire, hold, lease,
22 mortgage, and convey the same.

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

32
33 79. (New section) a. Express warranties made by any seller to a
34 purchaser of a unit, if relied upon by the purchaser, shall be created
35 as follows:

36 (1) Any affirmation of fact or promise which relates to the unit,
37 its use, or rights appurtenant thereto, area improvements to the
38 common interest community that would directly benefit the unit, or
39 the right to use or have the benefit of facilities not located in the
40 common interest community, shall create an express warranty that
41 the unit and related rights and uses will conform to the affirmation
42 or promise.

43 (2) Any model or description of the physical characteristics of
44 the common interest community, including plans and specifications
45 of or for improvements, shall create an express warranty that the
46 common interest community will conform to the model or
47 description, unless express disclaimers in language in common
48 understanding calling the purchaser's attention to the exclusion of

1 this warranty are displayed on the plans and specifications, or in the
2 model, and are explicitly referenced in the sales contract.

3 (3) Any description of the quantity or extent of the real estate
4 comprising the common interest community, including plats or
5 surveys, shall create an express warranty that the common interest
6 community will conform to the description, subject to customary
7 tolerances.

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

10 b. Neither formal words, such as "warranty" or "guarantee,"
11 nor a specific intention to make a warranty, shall be necessary to
12 create an express warranty of quality, but a statement purporting to
13 be merely an opinion or commendation of the real estate or its value
14 shall not create a warranty.

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

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

22
23 80. (New section) a. Unless the limitation period is tolled under
24 section 59 of P.L. , c. (C.) (pending before the Legislature as
25 this bill) or affected by subsection d. of this section, a judicial
26 proceeding for breach of any obligation arising under section 78 of
27 P.L. , c. (C.) (pending before the Legislature as this bill),
28 shall be commenced within six years after the cause of action
29 accrues.

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

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

37 (2) as to each common element, at the time the common element
38 is completed or, if later, as to (a) a common element that is added to
39 the common interest community by exercise of development rights,
40 at the time the first unit which was added to the condominium by
41 the same exercise of development rights is conveyed to a bona fide
42 purchaser, or (b) a common element within any other portion of the
43 common interest community, at a time the first unit is conveyed to a
44 bona fide purchaser.

45 c. If a warranty of quality explicitly extends to future
46 performance or duration of any improvement or component of the
47 common interest community, the cause of action shall accrue at the
48 time the breach is discovered or at the end of the period for which

1 the warranty explicitly extends, whichever is earlier.

2 d. During the period of declarant control, the association may,
3 pursuant to section 86 of P.L. , c. (C.) (pending before the
4 Legislature as this bill), authorize an independent committee of the
5 executive board to evaluate and enforce by any lawful means
6 warranty claims involving the common elements, and to
7 compromise those claims. If the committee is so created, the
8 limitation period for claims for these warranties shall begin to run
9 from the date of the first meeting of the committee, regardless of
10 when the period of declarant control terminates.

11 e. Nothing in this section shall be construed to impair or negate
12 any warranties which may have been created pursuant to any other
13 law or regulation, including those warranties provided pursuant to
14 "The New Home Warranty and Builders' Registration Act,"
15 P.L.1977, c.467 (C.46:3B-1 et seq.).
16

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

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

30 (1) a declarant may agree with the association to do so only after
31 the period of declarant control passes, unless the agreement is made
32 with an independent committee of the executive board elected
33 pursuant to section 86 of P.L. , c. (C.) (pending before the
34 Legislature as this bill); and

35 (2) an agreement to submit to alternative dispute resolution
36 other than that provided under section 84 of P.L. , c. (C.)
37 (pending before the Legislature as this bill) shall be in a writing
38 signed by the parties.

39 Nothing in this section shall affect the right of a unit owner to
40 submit a matter to alternative dispute resolution pursuant to section
41 84 of P.L. , c. (C.) (pending before the Legislature as this
42 bill).
43

44 82. (New section) No promotional material shall be displayed
45 or delivered to a prospective purchaser which describes or portrays
46 an improvement that is not in existence unless the description or
47 portrayal of the improvement in the promotional material is
48 conspicuously labeled or identified either as "MUST BE BUILT" or

1 as "NEED NOT BE BUILT."
2

3 83. (New section) a. Except for improvements labeled "NEED
4 NOT BE BUILT" the declarant shall complete all recreational and
5 parking facilities or amenities depicted on any site plan or other
6 graphic representation, including any plats or plans prepared
7 pursuant to section 32 of P.L. , c. (C.) (pending before the
8 Legislature as this bill), whether or not that site plan or other
9 graphic representation is contained in the public offering statement
10 or in any promotional material distributed by or for the declarant.

11 b. The declarant shall be subject to liability for the prompt
12 repair and restoration, to a condition compatible with the remainder
13 of the common interest community affected by the exercise of rights
14 reserved pursuant to or created by sections 33 through 37, 39 and 40
15 of P.L. , c. (C.) (pending before the Legislature as this bill).
16

17 84. (New section) In the case of a sale of a unit in which
18 delivery of a public offering statement is required, a contract of sale
19 may be executed, but no interest in that unit may be conveyed until
20 the declaration is recorded and the unit is substantially completed,
21 as evidenced by an independent licensed architect, surveyor or
22 engineer, or by issuance of a certificate of occupancy authorized by
23 law.
24

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

44 b. Alternative dispute resolution shall be effectuated through
45 implementation of a mediation-arbitration procedure utilizing
46 independent persons trained in both mediation and arbitration. The
47 persons acting as mediators and arbitrators shall comply with the
48 procedural rules established by the commissioner, which shall

1 include sufficient training for mediating and arbitrating disputes in
2 a common interest community and meeting minimum requirements
3 concerning knowledge of common interest community practices and
4 procedures and the statutory and common law affecting common
5 interest communities. Qualifications for volunteer or professional
6 dispute resolvers shall include sufficient training for mediating or
7 arbitrating disputes in a common interest community, requirements
8 for knowledge of community association issues and any other
9 requirements necessary to provide such services

10 c. With respect to a qualified dispute in connection with which
11 the association is a party, reasonable filing fees may be charged by
12 an association for dispute resolution; provided, however, that such
13 fees shall not exceed \$75 for each party, which shall be refundable
14 to a party found to be the prevailing party. With respect to a
15 qualified dispute in which the association is not a party to the
16 dispute, all fees charged for alternative dispute resolution shall be
17 borne by the owners who are parties to the dispute.

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

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

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

46 (3) Upon selection of a dispute resolver, the association shall
47 notify the dispute resolver so selected, who shall schedule the
48 mediation-arbitration procedure within 30 days of the dispute

1 resolver's selection.

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

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

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

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

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

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

21 e. The association shall also provide alternative dispute
22 resolution in any dispute between or among unit owners; provided,
23 however, that when the association is not a party to the dispute,
24 such dispute resolution shall be at the sole cost and expense of the
25 parties.

26 f. If emergency relief is required, a motion to stay the
27 alternative dispute proceedings may be filed in the Superior Court.
28 The motion shall be accompanied by a verified petition alleging
29 facts that, if proven, would support entry of a temporary injunction,
30 and if an appropriate motion and supporting papers are filed, the
31 alternative dispute resolution proceedings shall be stayed pending a
32 court hearing and disposition of a motion for temporary injunction.

33 g. An owner may file a claim with a court of competent
34 jurisdiction with regard to any matter that would constitute a
35 qualified dispute; provided, however, that (1) any such court filing
36 shall be deemed an election of remedies and shall bar the owner
37 from any further alternative dispute resolution proceedings; (2)
38 when an owner has initiated a claim with a court of competent
39 jurisdiction after having been advised by the association of the right
40 to participate in alternative dispute resolution proceedings, nothing
41 herein shall prohibit the association from immediately filing a
42 notice of fine or revoking or suspending the owner's privileges, if
43 otherwise permitted by law and by the governing documents and
44 subject to the authority of the court to stay any such action; and (3)
45 where an owner has, in accordance with paragraph (5) of subsection
46 d. of this section, elected to participate in binding arbitration, the
47 owner shall not be permitted to file a claim with a court of
48 competent jurisdiction except as provided in paragraph (5) of

1 subsection d of this section. No claim may be filed by an owner
2 while alternative dispute resolution proceedings are ongoing
3 pursuant to P.L. , c. (C.) (pending before the Legislature as
4 this bill), unless such proceedings have been abated pursuant to
5 subsection f. of this section. No application for alternative dispute
6 resolution shall be filed with regard to any matter pending before a
7 court of competent jurisdiction, except upon the order of the court.

8 h. The department, upon a finding that an association has failed
9 to offer or provide alternative dispute resolution in accordance with
10 P.L. , c. (C.) (pending before the Legislature as this bill) and
11 the procedural rules promulgated pursuant thereto, shall provide
12 such dispute resolution, in which case any filing fees charged in
13 accordance with paragraph (3) of subsection b. of this section shall
14 be payable to the department. The department may, in its sole
15 discretion, notify the association of such failure and shall provide it
16 with not less than seven, or more than 14 days in which to comply
17 with the requirements of P.L. , c. (C.) (pending before the
18 Legislature as this bill). If, thereafter, the association fails to
19 proceed with alternative dispute resolution proceedings in
20 accordance with P.L. , c. (C.) (pending before the Legislature
21 as this bill) and the procedural rules promulgated thereunder, the
22 department shall provide the alternative dispute resolution
23 proceedings. Any alternative dispute resolution provided by the
24 association that is not consistent with this section shall be of no
25 force or effect. In carrying out its responsibilities under this section,
26 the department shall refer the dispute to the Office of the
27 Ombudsman, which shall utilize the Office of Dispute Settlement in
28 the Office of the Public Defender to provide alternative dispute
29 resolution services in accordance with this section and the
30 procedural rules adopted by the commissioner. The department
31 shall reimburse the Office of Dispute Settlement for the cost of
32 providing such services. When the department provides alternative
33 dispute resolution pursuant to this section, the costs shall be paid by
34 the department with funds from the Homeowners' Association Trust
35 Fund established pursuant to subsection b. of section 88 of
36 P.L. , c. (C.) (pending before the Legislature as this bill)
37 and revenue received from filing fees paid pursuant c.
38 of this section.

39
40 86. New section) Except for applications for emergent relief,
41 prior to the commencement of any form of construction defects
42 litigation on behalf of an association against a declarant or any
43 members of the executive board appointed by the declarant, the
44 following alternative dispute procedure shall be followed:

45 a. The association shall give written notice to the declarant, by
46 certified mail, return receipt requested, which shall be referred to as
47 the "notice." The notice shall be accompanied by the association's
48 statement of all known causes of action, and its version of the facts

1 involved and copies of any reports or documents supporting the
2 association's claim.

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

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

38 d. Within 60 days after completion of its inspections and
39 testing, the declarant shall submit a written statement to the
40 association setting forth declarant's proposed settlement of the
41 claim, which shall be referred to as the "settlement offer." If the
42 declarant does not deliver the settlement offer within the 60-day
43 period, the association may institute an action without satisfying
44 any other condition of this section.

45 e. Within 30 days of receipt of the settlement offer, the
46 association shall notify the declarant of two business dates during
47 the 45-day period following the date of the association's notice, the
48 first of which will not be earlier than 10 days following the date of

1 the association's notice, on which a majority of the executive board
2 will be prepared to meet with the declarant to discuss the
3 association's claims and the settlement offer. The association and
4 the declarant may be represented at the meeting by attorneys and
5 independent consultants.

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

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

38 h. If the association does not accept the declarant's settlement
39 offer, or if either the association or the declarant does not accept the
40 arbitrator's determination, then the association may commence any
41 legal action the association deems appropriate, provided that prior
42 to the filing of any complaint commencing a legal action against the
43 declarant, a majority of the association's non-declarant members
44 present, in person or by proxy at a meeting of the association where
45 a quorum is present, shall approve the commencement of a lawsuit.
46 The quorum for a meeting of the members of the association for the
47 purposes set forth in this subsection shall be 33 percent of all
48 members of the association qualified to vote, unless the declaration

1 or bylaws shall provide for a lesser quorum requirement. For
2 purposes of determining a quorum, membership interests allocated
3 to declarant units will not be considered in determining a quorum.

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

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

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

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

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

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

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

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

27 j. All written materials provided to the association's members
28 will be privileged communications, unless the association agrees
29 otherwise, and shall not be admissible in evidence in any action
30 unless such materials would, notwithstanding their distribution to
31 the association's members, otherwise be admissible but for their
32 distribution to the association's members.

33 k. If the association fails to comply with any of the provisions
34 of this section, such failure may be asserted by declarant as a
35 procedural deficiency. Upon a judicial determination that the
36 association failed to comply with the provisions set forth in this
37 section, the association's complaint shall be stayed for an
38 appropriate period of time to permit the association to cure any non-
39 compliance.

40 l. Neither the failure to state a particular cause of action in the
41 notice provided for in subsection a. of this section nor the failure to
42 state a particular claim under paragraph (1) of subsection i. of this
43 section shall be deemed a procedural deficiency, nor prevent the
44 association from stating such other causes of action as it deems
45 necessary or appropriate in connection with any litigation against
46 the declarant.

47
48 87. (New section) a. During the period of declarant control after

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

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

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

44 d. Within 120 days after the association's receipt of any request
45 for inspection of any phase of the completed common elements or
46 other improvements, the committee shall cause its engineering
47 consultant to inspect the particular completed improvements and
48 render a written evaluation of same to the committee. A copy of the

1 final report, following the committee's review of the initial
2 evaluation, shall be furnished to the declarant within 30 days after
3 the committee's receipt of the report. Thereafter, the committee, or
4 its designated representatives, and the declarant shall conduct one
5 or more joint inspections of the common elements and other
6 improvements covered by the declarant's request and pursue good
7 faith negotiations to resolve any warranty or construction defect
8 claims against the declarant. All fees and related expenses incurred
9 by the committee for engineering and legal consultants shall be paid
10 promptly by the association from available designated funds upon
11 receipt of the committee's written authorization to make such
12 payments.

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

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

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

1 h. The procedures set forth in this section shall also apply to
2 and be binding upon the declarant and the association after the unit
3 owners, other than the declarant, assume control of the executive
4 board of the association; provided, however, that the independent
5 unit owner controlled executive board of the association shall not be
6 bound by the recommendations of the committee.

7
8 ARTICLE 5

9
10 STATE OVERSIGHT OF ASSOCIATIONS

11
12 88. (New section) The Commissioner of Community Affairs
13 shall have the following powers with regard to associations:

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

17 (1) furnishing of information concerning records required to be
18 maintained by the association and to be made available to unit
19 owners;

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

22 (3) establishment and implementation of a fair and efficient
23 procedure for the resolution of disputes between associations and
24 unit owners and among unit owners;

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

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

31 (6) enforcement of standards of due process and open
32 governance.

33 b. To issue subpoenas for the production of documents and the
34 attendance of witnesses with respect to the investigation of any
35 complaint.

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

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

41 e. To enforce all statutes and rules imposing any duty upon
42 associations.

43 f. (1) If the department determines, after notice, that an
44 association, or a past or current officer or executive board member
45 of an association, has: (a) violated any provision of P.L. ,
46 c. (C.) (pending before the Legislature as this bill), the
47 "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), "The
48 Planned Real Estate Development Full Disclosure Act," P.L.1977,

1 c.419 (C.45:22A-21 et seq.), or any other statute regulating
2 associations; (b) directly or through an agent or employee
3 knowingly engaged in any violation of the governing documents of
4 the association; or (c) violated any lawful order or rule of the
5 department; the department may issue and enforce an order
6 requiring the association or past or present executive board member
7 or officer to cease and desist from the unlawful practice or to take
8 such other affirmative action as in the judgment of the department
9 will carry out the purposes of P.L. , c. (C.) (pending before
10 the Legislature as this bill).

11 In the event the department has reason to believe that any person
12 subject to licensing by any agency of State government has
13 knowingly engaged in any unlawful practice in connection with the
14 operation of an association, the department shall refer the matter to
15 the agency having licensing jurisdiction over such person.

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

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

38 g. To remove from office, after notice and the opportunity for a
39 hearing, any executive board member or officer who shall fail to
40 comply with any order issued by the commissioner to cease and
41 desist from violating any statute or rule. Following any such
42 removal, the commissioner shall provide such assistance as may be
43 required by an association in scheduling and holding elections or in
44 managing the association until such time as the executive board is
45 able to function properly. Notice of any fine imposed upon the
46 association or a former board member or of the removal of an
47 executive board member or officer by the commissioner shall be
48 given to all unit owners by the executive board within 30 days of

1 the action and shall be entered upon the minutes of the next meeting
2 of the executive board or of the association. Current executive
3 board members and officers shall not be subject to the imposition of
4 a personal monetary fine or penalty under this subsection, other
5 than for failure or refusal to comply with an order of removal from
6 office.

7 h. To select, assign and provide trained and impartial volunteer
8 dispute resolvers for the purpose of resolving disputes in
9 conjunction with the Office of Dispute Settlement in accordance
10 with section 22 of P.L.2005, c.155 (C.52:27EE-22).

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

15
16 89. (New section) a. On or before the first day of the fourth
17 month next following the effective date of P.L. , c. (C.)
18 (pending before the Legislature as this bill), and annually on the
19 same date thereafter, all homeowners associations having three or
20 more units shall register with the Commissioner of Community
21 Affairs, on such form as the commissioner shall prescribe, which
22 form shall include, but not be limited to, information concerning the
23 names and addresses of the officers and members of the executive
24 board. Associations formed subsequent to the effective date of
25 P.L. , c. (C.) (pending before the Legislature as this bill) shall
26 register within 30 days of the formation of the association;
27 provided, however, that any association formed for a planned real
28 estate development required to be registered with the department
29 shall be registered not later than the date of registration of the
30 planned real estate development.

31 b. All penalty monies received by the Department of
32 Community Affairs pursuant to P.L. , c. (C.) (pending
33 before the Legislature as this bill) shall be deposited in an interest-
34 bearing, non-lapsing revolving fund, entitled the "Homeowners'
35 Association Trust Fund," to be held by the State Treasurer. Moneys
36 held in this non-lapsing revolving fund shall be continuously
37 appropriated to the Department of Community Affairs and to the
38 Office of Dispute Settlement in the Division of Citizen Complaints
39 and Dispute Settlement in the Department of the Public Advocate
40 for the purposes expressed in P.L. , c. (C.) (pending before
41 the Legislature as this bill) and shall be dedicated solely for those
42 purposes. Any claims of transfers made outside of the purposes of
43 this section may be submitted to the Joint Budget Oversight
44 Committee, or its successor committee.

45
46 90. (New section) The Department of Community Affairs shall
47 prepare and publish a booklet, which shall be made available at cost
48 to the general public, to associations and to unit owners in common

1 interest communities to serve as a general guide to community
2 associations. The booklet shall be distributed by the association to
3 each unit owner free of charge initially, and at cost as required for
4 distribution to purchasers; it shall be the duty of each selling unit
5 owner to provide a copy of the booklet to a purchaser of the unit at
6 or before the time of signing of the sales contract. The booklet shall
7 include at least the following:

8 a. An explanation of the nature of home ownership in a
9 planned real estate development and a glossary of relevant terms,
10 including, but not limited to, "master declaration," "bylaws,"
11 "master deed," "covenants and restrictions," and "common
12 elements";

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

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

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

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

1 contracted to purchase a unit within the jurisdiction of the
2 association.

3
4 91. (New section) There is hereby established the Office of the
5 Ombudsman for Homeowners and Associations, which, for
6 purposes of separation from activities related to the enforcement
7 powers granted to the commissioner, shall be separate and apart
8 from any other unit charged with carrying out such enforcement
9 activities. The office shall be headed by the ombudsman, who shall
10 be a person qualified by experience in the areas of planned real
11 estate developments and dispute resolution. No person who shall
12 have been a unit owner or an employee of, or provider of
13 professional or business services to, any association or organization
14 representing associations within the preceding 36-month period
15 shall be eligible for appointment as ombudsman. The ombudsman
16 shall have the following duties and functions:

17 a. To develop and maintain, in consultation with the Office of
18 Dispute Settlement and section 22 of P.L.2005, c.155 (C.52:27EE-
19 22), a pool and list of volunteers throughout the State who have
20 been trained in dispute resolution and to establish procedures and a
21 system of training for such volunteers;

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

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

28 d. To assist executive board members and officers of
29 associations in receiving appropriate training to allow them to
30 properly discharge their functions and duties. This assistance shall
31 include listings of appropriate reference and educational materials
32 and general budgetary and financial guidance;

33 e. To conduct dispute resolution workshops for executive
34 board members and unit owners; and

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

37
38 92. (New section) The commissioner shall review any
39 complaints received from unit owners' associations concerning
40 noncompliance with the provisions of P.L.1989, c.299 (C.40:67-
41 23.2 et seq.). Upon a finding that a municipality is not in
42 compliance with that act, the commissioner, through the Director of
43 the Division of Local Government Services, shall provide
44 appropriate direction to the municipality and, in the event of
45 continued noncompliance, shall take such corrective action as may
46 be appropriate, including denial of budget certification or
47 withholding of State aid. A municipality aggrieved by an order of
48 the commissioner or of the director pursuant to this section shall be

1 entitled to a hearing in accordance with the "Administrative
2 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

3
4 93. (New section) The commissioner shall have authority to
5 adopt such rules as may be necessary to enforce the provisions of
6 P.L. , c. (C.) (pending before the Legislature as this bill),
7 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
8 (C.52:14B-1 et seq.), provided the commissioner shall not adopt
9 rules creating substantive rights or obligations other than as set
10 forth in P.L. , c. (C.) (pending before the Legislature as
11 this bill).

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

26
27 95. Section 1 of P.L.1989, c.299 (C.40:67-23.2) is amended to
28 read as follows:

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

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

35 b. "Cooperative" means a housing corporation or association
36 wherein the holder of a share or membership interest in the
37 corporation or association is entitled to possess and occupy, for
38 dwelling purposes, a house, apartment, or other unit of housing
39 owned by the corporation or association, or to purchase a unit of
40 housing constructed or erected by the corporation or association;

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

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

48 e. "Qualified private community" means a residential

1 condominium, cooperative, fee simple community, **[or]** horizontal
2 property regime, or a common interest community as defined
3 pursuant to section 3 of P.L. , c. (C.) (now pending before
4 the Legislature as this bill), the residents of which do not receive
5 any tax abatement or tax exemption related to its construction,
6 comprised of a community trust or other trust device, condominium
7 association, homeowners' association, or council of co-owners,
8 wherein the cost of maintaining roads and streets and providing
9 essential services is paid for by **[a not-for-profit entity consisting**
10 **exclusively of unit owners within the community]** a unit owners'
11 association as defined pursuant to section 3 of P.L. , c. (C.)
12 (pending before the Legislature as this bill). No apartment building
13 or garden apartment complex owned by an individual or entity that
14 receives monthly rental payments from tenants who occupy the
15 premises shall be considered a qualified private community. No
16 "proprietary campground facility," as defined in section 1 of
17 P.L.1993, c.258 (C.45:22A-49), shall be considered to be a
18 qualified private community.
19 (cf: P.L.1993, c.258, s.10)

20
21 96. Section 3 of P.L.1977, c.419 (C.45:22A-23) is amended to
22 read as follows:

23 3. As used in **[this act]** P.L.1977, c.419 (C.45:22A-1 et seq.)
24 unless the context clearly indicates otherwise:

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

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

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

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

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

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

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

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

1 This definition shall specifically include, but shall not be limited
2 to, property subject at any time to the "Condominium Act,"
3 P.L.1969, c.257 (C.46:8B-1 et seq.), any form of homeowners'
4 association, any housing cooperative **【or to】**, any community trust
5 or other trust device, or any property subject to the "New Jersey
6 Uniform Common Interest Ownership Act," P.L. ,c. (C.)
7 (pending before the Legislature as this bill).

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

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

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

22 (1) Newspaper or periodical;
23 (2) Radio or television broadcast;
24 (3) Written or printed or photographic matter;
25 (4) Billboards or signs;
26 (5) Display of model houses or units;
27 (6) Material used in connection with the disposition or offer of
28 the development by radio, television, telephone or any other
29 electronic means; or

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

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

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

47 l. "Blanket encumbrance" means a trust deed, mortgage,
48 judgment, or any other lien or encumbrance, including an option or

1 contract to sell or a trust agreement, affecting a development or
2 affecting more than one lot, unit, parcel, or interest therein, but does
3 not include any lien or other encumbrance arising as the result of
4 the imposition of any tax assessment by any public authority.

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

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

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

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

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

23 (cf: P.L.2006, c.63, s.39)

24
25 97. Section 8 of P.L.1977, c.419 (C.45:22A-28) is amended to
26 read as follows:

27 8. a. A public offering statement shall disclose fully and
28 accurately the characteristics of the development and the lots,
29 parcels, units, or interests therein offered, and shall make known to
30 prospective purchasers all unusual or material circumstances or
31 features affecting the development. The proposed public offering
32 statement submitted to the agency shall be in a form prescribed by
33 its rules and regulations and shall include the following:

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

35 (2) A general narrative description of the development stating
36 the total number of lots, units, parcels, or interests in the offering,
37 and the total number of such interests planned to be sold, leased or
38 otherwise transferred;

39 (3) Copies of any management contract, lease of recreational
40 areas, or similar contract or agreement affecting the use,
41 maintenance, or access of all or any part of the development, with a
42 brief and simple narrative statement of the effect of each such
43 agreement upon a purchaser, and a statement of the relationship, if
44 any, between the developer and the managing agent or firm;

45 (4) (a) The significant terms of any encumbrances, easements,
46 liens, and restrictions, including zoning and other regulations,
47 affecting such lands and each unit, lot, parcel, or interest, and a
48 statement of all existing taxes and existing or proposed special taxes

1 or assessments which affect such lands; and

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

6 (5) (a) Relevant community information, including hospitals,
7 health and recreational facilities of any kind, streets, water supply,
8 levees, drainage control systems, irrigation systems, sewage
9 disposal facilities and customary utilities; and

10 (b) The estimated cost, size, date of completion, and
11 responsibility for construction and maintenance of existing and
12 proposed amenities which are referred to in connection with the
13 offering or disposition of any interest in the subdivision or
14 subdivided lands;

15 (6) A copy of the proposed budget for the operation and
16 maintenance of the common or shared elements or interests;

17 (7) Additional information required by the agency to assure full
18 and fair disclosure to prospective purchasers.

19 (8) If any declaration filed pursuant to P.L. , c. (C.)
20 (pending before the Legislature as this bill) provides that a common
21 interest community is subject to any development rights, the public
22 offering statement shall disclose, subject to the limitations set forth
23 in section 47 of P.L. , c. (C.) (pending before the Legislature
24 as this bill) and, in addition to the information required under
25 paragraphs (1) through (7) of this subsection, the following:

26 (a) the maximum number of units, and the maximum number of
27 units per acre, that may be created;

28 (b) a statement of how many or what percentage of the units that
29 may be created will be restricted exclusively to residential use, or a
30 statement that no representations are made regarding use
31 restrictions;

32 (c) if any of the units that may be built within real estate subject
33 to development rights are not to be restricted exclusively to
34 residential use, a statement, with respect to each portion of that real
35 estate, of the maximum percentage of the real estate areas, and the
36 maximum percentage of the floor areas of all units that may be
37 created therein, that are not restricted exclusively to residential use;

38 (d) a brief narrative description of any development rights
39 reserved by a declarant and of any conditions relating to or
40 limitations upon the exercise of development rights;

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

44 (f) a statement of the extent to which any buildings or other
45 improvements that may be erected pursuant to any development
46 right in any part of the common interest community will be
47 compatible with existing buildings and improvements in the
48 common interest community in terms of architectural style, quality

1 of construction, and size, or a statement that no assurances are made
2 in those regards;

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

8 (h) a statement of any limitations as to the locations of any
9 building or other improvement that may be made within any part of
10 the common interest community pursuant to any development right
11 reserved by the declarant, or a statement that no assurances are
12 made in that regard;

13 (i) a statement that any limited common elements created
14 pursuant to any development right reserved by the declarant will be
15 of the same general types and sizes as the limited common elements
16 within other parts of the common interest community, or a
17 statement of the types and sizes planned, or a statement that no
18 assurances are made in that regard;

19 (j) a statement that the proportion of limited common elements
20 to units created pursuant to any development right reserved by the
21 declarant will be approximately equal to the proportion existing
22 within other parts of the common interest community, or a
23 statement of any other assurances in that regard, or a statement that
24 no assurances are made in that regard;

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

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

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

41 c. The agency may require the developer to alter or amend the
42 proposed public offering statement in order to assure full and fair
43 disclosure to prospective purchasers, and no change in the
44 substance of the promotional plan or plan of disposition or
45 development of a planned real estate development may be made
46 after registration without the approval of the agency. A public
47 offering statement shall not be current unless all amendments have
48 been incorporated.

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

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

98. Section 22 of P.L.2005, c.155 (C.52:27EE-22) is amended to read as follows:

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

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

(2) establish standards for the selection, assignment, and conduct of persons acting on behalf of the office in the resolution of disputes;

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

(4) design, develop, or operate dispute resolution programs, or assist in improving or extending existing dispute resolution programs;

(5) work with the business ombudsman or advocate in the New Jersey Commerce and Economic Growth Commission and take such other action as will promote and facilitate dispute resolution in the State; and

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

(7) Work with the Office of the Ombudsman for Homeowners and Associations, established pursuant to section 91 of P.L. , c. (C.) (pending before the Legislature as this bill), to promote and facilitate dispute resolution for associations in the State and provide training programs pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) free of charge to a volunteer, in exchange for the agreement of the volunteer to offer dispute resolution services free of charge to associations. Costs of training incurred under this paragraph shall be reimbursed from the Homeowners' Association Trust Fund established pursuant to

1 section 89 of P.L. , c. (C.) (pending before the Legislature as
2 this bill).

3 b. The Public Advocate may establish reasonable fees to be
4 charged to public or private parties for the provision of the
5 educational, consultation, dispute resolution, or other services
6 authorized herein and may apply for and accept on behalf of the
7 State any federal, local, or private grants, bequests, gifts, or
8 contributions to aid in the financing of any of the programs or
9 activities of the office. The Public Advocate in the name of the
10 State shall do all that is necessary and proper to receive or to collect
11 all moneys due to the State, including such fees, grants, bequests,
12 gifts, or contributions, by or reimbursement for services rendered
13 pursuant to this section.

14 (cf: P.L.2005, c.155, s.22)

15
16 99. N.J.S.12A:9-515 is amended to read as follows:

17 12A:9-515. Duration and Effectiveness of Financing Statement;
18 Effect of Lapsed Financing Statement.

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

22 (b) Public-finance or manufactured-home transaction. Except as
23 otherwise provided in subsections (e), (f) and (g), an initial
24 financing statement filed in connection with a public-finance
25 transaction or manufactured-home transaction is effective for a
26 period of 30 years after the date of filing if it indicates that it is
27 filed in connection with a public-finance transaction or
28 manufactured-home transaction.

29 (c) Lapse and continuation of financing statement. The
30 effectiveness of a filed financing statement lapses on the expiration
31 of the period of its effectiveness unless before the lapse a
32 continuation statement is filed pursuant to subsection (d). Upon
33 lapse, a financing statement ceases to be effective and any security
34 interest or agricultural lien that was perfected by the financing
35 statement becomes unperfected, unless the security interest is
36 perfected otherwise. If the security interest or agricultural lien
37 becomes unperfected upon lapse, it is deemed never to have been
38 perfected as against a purchaser of the collateral for value.

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

43 (e) Effect of filing continuation statement. Except as otherwise
44 provided in 12A:9-510, upon timely filing of a continuation
45 statement, the effectiveness of the initial financing statement
46 continues for a period of five years commencing on the day on
47 which the financing statement would have become ineffective in the
48 absence of the filing. Upon the expiration of the five-year period,

1 the financing statement lapses in the same manner as provided in
2 subsection (c), unless, before the lapse, another continuation
3 statement is filed pursuant to subsection (d). Succeeding
4 continuation statements may be filed in the same manner to
5 continue the effectiveness of the initial financing statement.

6 (f) Transmitting utility financing statement. If a debtor is a
7 transmitting utility and a filed financing statement so indicates, the
8 financing statement is effective until a termination statement is
9 filed.

10 (g) Record of mortgage as financing statement. A record of
11 mortgage that is effective as a financing statement filed as a fixture
12 filing under 12A:9-502 (c) remains effective as a financing
13 statement filed as a fixture filing until the mortgage is released or
14 satisfied of record or its effectiveness otherwise terminates as to the
15 real property.

16 (h) Bondable transition property. If a filed financing statement
17 relates to a security interest in bondable transition property and the
18 financing statement so states, it is effective until a termination
19 statement is filed.

20 (i) When a financing statement covers shares or ownership
21 interests evidenced by stock certificates or other instruments, and a
22 leasehold evidenced by a proprietary lease or either of the foregoing
23 issued by an entity formed for the purpose of cooperative ownership
24 of real estate and the financing statement so states, it shall be
25 effective until a termination statement is filed.

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

27
28 100. Section 20 of P.L.1987, c.381 is amended to read as
29 follows:

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

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

42
43 101. (New section) It is the intent of the Legislature that any
44 rights, claims, entitlements, priorities, privileges, or benefits that
45 accrued under the laws set forth below prior to the effective date of
46 P.L. , c (C.) (pending before the Legislature as this bill) shall
47 not be superseded by the adoption of P.L. , c. (C.) (pending
48 before the Legislature as this bill). P.L. , c. (C.) (pending

1 before the Legislature as this bill) shall supersede the laws set forth
2 below with respect to all rights, claims, entitlements, priorities,
3 privileges, or benefits that accrue after the effective date of
4 P.L. , c. (C.) (pending before the Legislature as this bill) and
5 all matters concerning a common interest community shall be solely
6 governed by P.L. , c. (C.) (pending before the Legislature as
7 this bill), except with respect to those common interest communities
8 that are fully or partially exempt from the terms of
9 P.L. , c. (C.) (pending before the Legislature as this bill), in
10 which event the exempted common interest communities and all
11 persons owning an interest therein shall be bound, to the extent
12 applicable, by the provisions of the following:
13 Sections 1 through 28 of P.L.1963, c.168 (C.46:8A-1 et seq.);
14 Section 11 of P.L.1978, c.124 (C.46:8A-3.1);
15 Sections 1 through 30 of P.L.1969, c.257 (C.46:8B-1 et seq.);
16 Section 3 of P.L.1973, c.216 (C.46:8B-8.1);
17 Sections 2 and 3 of P.L.1979, c.157 (C.46:8B-12.1 and 46:8B-12.2)
18 Section 2 of P.L.1991, c.48 (C.46:8B-13.1);
19 Sections 1 through 8 of P.L.1979, c.297 (C.46:8B-31 et seq.);
20 Section 3 of P.L.1980, c.103 (C.46:8B-38); and
21 Sections 1 through 12 and 14 through 20 of P.L.1987, c.381
22 (C.46:8D-1 through 46:8D-12 and C.46:8D-13 through 46:8D-18).

23
24 102. This act shall take effect on the first day of the sixth month
25 after enactment, except that the Commissioner of Community
26 Affairs shall immediately take such administrative action as
27 necessary to effectuate the provisions of P.L. , c. (C.)
28 (pending before the Legislature as this bill).

29

30

31 STATEMENT

32

33 This bill seeks to consolidate all of the laws applicable to all
34 types of homeowners' associations, provide for certain homeowner
35 protections, clarify the powers of homeowners' associations and is
36 based, in part, on the recommendations of the Task Force of the
37 Assembly to Study Homeowners' Associations, which issued its
38 report to the Legislature on January 8, 1998.

39 The bill is a New Jersey version of the Uniform Common
40 Interest Ownership Act (UCIOA) which has been adopted in full by
41 two states and in part by five others. The UCIOA itself is an act of
42 the National Conference of Commissioners on Uniform State Laws.
43 It provides uniform guidelines for all forms of residential
44 community associations and is applicable to condominiums, fee
45 simple multifamily projects, homeowners' associations, and
46 cooperatives. The model act was modified for New Jersey by a
47 Statewide drafting committee. The bill further combines with the
48 model act many of the recommendations of the Task Force of the

1 Assembly to Study Homeowners' Associations. One major
2 recommendation of the Task Force was that the law on community
3 associations be consolidated and applied evenly to all types of
4 homeowners' associations. Therefore, the bill replaces for newly-
5 formed associations many of the laws dealing with these
6 associations, including the "Horizontal Property Act," P.L.1963,
7 c.168 (C.46:8A-1 et seq.), the "Condominium Act," P.L.1969, c.257
8 (C.46:8B-1 et seq.), as well as "The Cooperative Recording Act of
9 New Jersey," P.L.1987, c.381 (C.46:8D-1 et seq.). Existing
10 associations will be governed by existing law and in some
11 instances, the UCIOA.

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

23 Certain provisions of the bill address the problems inherent in
24 phased developments by allowing developers more flexibility in the
25 planning process to meet changed conditions in the marketplace. At
26 the same time, unit purchasers in phased developments must be
27 specifically informed of the potential risks and consequences if
28 there is modification of the development plan, if the modification
29 will add more than 10 percent of the real estate described in the
30 declaration.

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

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

41 The bill retains the requirement under current law that an
42 association provide a fair and efficient procedure for the resolution
43 of disputes between individual unit owners and the association, and
44 between unit owners, which shall be readily available as an
45 alternative to litigation. It adds significant detail currently absent
46 from the law with respect to the procedures to be followed to
47 provide for a fair and efficient alternative to litigation. The
48 Commissioner of Community Affairs retains oversight over the

1 implementation of these procedures.

2 In addition, the bill provides specific requirements for open
3 meetings for boards, including working sessions open to unit
4 owners, and specifies comment periods which must be set aside for
5 unit owners wishing to participate in meetings. The bill also
6 provides new guidelines for access to records and for the imposition
7 of fines by an association, including a maximum fine amount that
8 may be imposed by an association. Among the homeowner
9 protections, it also provides for bidding for certain contracts;
10 procedures to ensure fair and open governing board elections;
11 procedures when associations require access to individual units;
12 limitations on leasing restrictions; and disclosure of essential
13 information to buyers of resale units within community
14 associations. It further clarifies the responsibility of successor
15 developers who complete a project commenced by a prior
16 developer.

17 The bill provides governmental oversight of common interest
18 community associations in several areas, in recognition of the
19 quasi-governmental powers granted to them. The bill requires
20 registration of all such associations with the Commissioner of
21 Community Affairs.

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

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

1 necessary.

2 The bill grants to the Commissioner of Community Affairs
3 increased authority in the oversight of community associations in
4 recognition of their quasi-governmental functions, regardless of
5 whether "transition" (control of the board by the unit owners) has
6 occurred. The commissioner is specifically authorized to hear
7 complaints and make final determinations in reported cases of
8 violations of statutory or regulatory requirements by community
9 associations or board members of an association. The
10 commissioner is empowered under the bill to remove a board
11 member for flagrant, continuing violations of statutes or
12 regulations.

WITHDRAWN